

## **CHAPTER 21 Zoning**

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### **ARTICLE I Establishment, Procedures, Administration**

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**Sec. 21-1. Purpose.**

These regulations are enacted for the purpose of promoting the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of the City of Idaho Springs, by lessening of congestion in the streets and roads; securing safety from fire and other dangers; providing adequate light and air; classifying land uses and the distribution of land development and utilization; avoiding undue congestion of population; facilitating the adequate provision of transportation, water, schools, sewerage and other public requirements; and by other means in accordance with the Comprehensive Plan and with the zoning maps adopted herewith or hereafter.

(Ord. 8 §1, 2006)

**Sec. 21-2. Interpretation.**

The provisions of this Chapter shall be held to be the minimum requirements for the promotion of public health, safety, morals, order, convenience, happiness, prosperity and general welfare. These regulations are not intended to interfere with, abrogate or annul any easements, covenants or agreements between other parties; provided, however, that wherever the provisions hereof impose a greater restriction upon the use of buildings or premises or upon the height of buildings, or require larger open spaces than are imposed or required by other provisions of this Code, or other rules, regulations, permits, easements, covenants or agreements, the provisions of this Chapter shall govern.

(Ord. 8 §1, 2006)

**Sec. 21-3. General application.**

No building, structure or land shall be used and no building, structure or part thereof shall be erected, constructed, reconstructed, altered, repaired, moved or structurally altered except in conformance with the regulations herein specified; nor shall any yard, lot or open space be reduced in dimensions or area to less than the minimum requirements set forth herein. Section 21-8 below shall govern the administration and enforcement of this Chapter.

(Ord. 8 §1, 2006)

**Sec. 21-4. Zoning districts.**

In order to regulate the location, height, bulk and size of buildings and other structures, the percentage of lot which may be occupied, the size of lots, courts and other open spaces, the density and distribution of population, the location and uses of land, buildings and structures for trade, industry, residence, recreation, public activities or other purposes, the City is hereby divided into the following classes of districts:

|     |                             |
|-----|-----------------------------|
| R-E | Residential Estate District |
| R-1 | Residential One District    |
| R-2 | Residential Two District    |
| R-3 | Residential Three District  |

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|      |                                            |
|------|--------------------------------------------|
| R-M  | Rural Multiple-Family Residential District |
| C-1  | Commercial One District                    |
| C-2  | Commercial Two District                    |
| C-3  | Commercial Interchange District            |
| I-1  | Industrial One District                    |
| L-1  | Light Industrial District                  |
| P    | Parks and Recreation District              |
| CONS | Conservation District                      |
| PUD  | Planned Unit Development District          |

All areas that are annexed to the City shall be zoned one (1) of the above zoning districts within ninety (90) days after annexation.

(Ord. 8 §1, 2006)

### **Sec. 21-5. Zoning map.**

- (A) The boundaries and zoning classification of districts hereby established are as shown on a map on file in the office of the City Clerk, entitled *Zoning Map of Idaho Springs*, which map and all notations, references, data and other information shown thereon are by reference hereby made a part of this Chapter.
- (B) In the event uncertainty shall be deemed to exist on the Zoning Map, district boundaries shall be on section lines, lot lines, the center lines of highways, streets, alleys, railroad rights-of-way, channelized waterways such as streams, or other lines to be determined by the use of scales shown on said map.
- (C) Where a lot is divided by a zoning district boundary line at the time of enactment of these regulations or by subsequent amendments, the less restrictive zone requirements may be extended in the lot into the more restrictive zoning district for a distance of not more than twenty-five (25) feet.

(Ord. 8 §1, 2006)

### **Sec. 21-6. Nonconforming uses; buildings.**

- (A) Definitions.

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- (1) A *nonconforming building* shall include any legally existing building which does not conform to the *minimum yard or usable open space* regulations of this Chapter for the district in which such *nonconforming building* is located, either at the effective date of this Code or as a result of a subsequent amendment which may be incorporated into this Chapter.
  - (2) A *nonconforming use* shall include any legally existing use, whether within a building or on a tract of land, which does not conform to the *use* regulations of this Chapter for the district in which such *nonconforming use* is located, either at the effective date of this Code or as a result of subsequent amendments which may be incorporated into this Chapter.
- (B) Continuation of use. A nonconforming use may be continued and a nonconforming building may continue to be occupied, except as both of the foregoing are otherwise provided for in this Section.
- (C) Change of use. A nonconforming use may be changed only to a conforming use.
- (D) Termination of use. If use of a nonconforming building, other structure or tract of land in such nonconforming manner is discontinued for a period of twelve (12) consecutive calendar months, the building, other structure or tract of land where such nonconforming use previously existed shall thereafter be occupied and used only for a conforming use. Intent to resume active operations without actual resumption shall not affect the foregoing. Hardship caused by this regulation may be appealed to the Planning Commission and the City Council, and the time extended if approved by each body.
- (E) Restoration. A nonconforming building or a building containing a nonconforming use which has been damaged by fire or other causes may be restored to its original pre-calamity use, provided that such work is started within six (6) months of such calamity and completed within eighteen (18) months of the time the restoration is commenced.
- (F) Enlargement of a building containing a nonconforming use. A building which contains a nonconforming use shall not be enlarged or extended.
- (G) Structural changes. Any building or other structure containing a nonconforming use or any nonconforming building or portion thereof declared unsafe by the Building Official may be strengthened or restored to a safe condition.

(Ord. 8 §1, 2006)

### **Sec. 21-7. Building permit.**

No structure shall be erected or altered, used or occupied until a building permit for such erection or alteration, use or occupancy has been issued by the City. Neither the use of or the uses upon any land nor the use of or the uses within any structure shall be changed until a building permit for such change of use shall have been issued by the City. No building permit shall be issued until and unless the Building Official determines that the provisions of this Chapter have been met.

(Ord. 8 §1, 2006)

### **Sec. 21-8. Violations.**

- (A) Unlawful use. It is unlawful for any person to use any building, structure or land, or any part thereof, in violation of any applicable regulation or requirements set forth herein.
- (B) Unlawful construction. It is unlawful for any person to erect, construct, reconstruct, alter, repair, move or structurally alter any building or structure in violation of any applicable regulation or requirement set forth herein.
- (C) Misrepresentation. It is unlawful for any person to make any representation which was false at the time made and known by such person to be false at that time in any application for a building permit or any other application required herein.

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- (D) Enforcement. It shall be the duty of the Building Official to enforce the provisions of this Chapter. Appeals from the decision of the Building Official may be made to the Variance Board as provided in Article X of this Chapter.
- (E) Culpability. The provisions of Sections 1-5, 1-6 and 1-7 of this Code shall be fully applicable to violations of this Chapter.
- (F) Penalty. Any person who violates any provision of this Chapter shall be subject to the general penalty provisions set forth in Section 1-8 of this Code. A separate and distinct offense shall be deemed committed upon each day that a violation is permitted to exist or continue.
- (G) Additional remedies. If any building or structure is erected, constructed, reconstructed, altered, repaired, converted or maintained or if any building, structure or land is used in violation of these regulations, the City or any resident of or owner of land in the City may institute any appropriate action or proceeding to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use, to restrain, correct or abate such violation, to prevent the occupancy of said building, structure or land or to prevent any illegal act, conduct of business or use in or about such premises. The imposition of any penalty hereunder shall not preclude any proceeding to require compliance with the provisions herein and with administrative orders and determinations made hereunder. In addition, any building or structure erected or premises used in violation of any provision herein is hereby declared to be a nuisance and the same may be abated in such manner as nuisances may be abated under existing law.

(Ord. 8 §1, 2006)

### **Sec. 21-9. Termination of authorizations.**

Every authorization and permission, of whatever kind and nature and however obtained, heretofore granted by the City or by any other governmental body, or any department, board, agency, officer or employee thereof, to use or occupy any land or to design, erect, alter, use or occupy any structure in any manner other than in full compliance with all the provisions of this Chapter shall terminate and expire ninety (90) days after the effective date of any ordinance modifying this Chapter. Thereafter, any change in plans, construction or designated use of such land or building for which any such authorization and permission has been previously granted must be made in accordance with a permit issued subsequent to the date of adoption of this Chapter; except, however, that this provision shall not apply to any change in plans, construction or designated use of any building for which any such authorization or permission was granted prior to the adoption of this Chapter where the ground story framework of said building, including the second tier of beams, has been completed prior to the adoption of this Chapter.

(Ord. 8 §1, 2006)

### **Sec. 21-10. Effect of other ordinances.**

Wherever higher or more restrictive standards are established by the provisions of any other applicable statute or ordinance than are established by the provisions of this Chapter, the provisions of such other statute or ordinance shall govern.

(Ord. 8 §1, 2006)

### **Sec. 21-11. Deposit for costs.**

Any application for conditional use review filed pursuant to Article III of this Chapter, any application for site plan review filed pursuant to Article V of this Chapter, any petition for rezoning filed pursuant to Article IX of this Chapter, any application for planned unit development filed pursuant to Article XI of this

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Chapter and any application for a wireless communication facility filed pursuant to Article XII of this Chapter shall be accompanied by the deposit of a sum to be determined by the City to ensure payment of the City's costs incurred in processing the application and an executed agreement by which the applicant agrees to replenish the deposit when requested by the City and to pay on a monthly basis all costs incurred by the City in processing the application. The City Clerk shall send the applicant a monthly statement of costs incurred by the City. Costs chargeable hereunder include, but are not limited to, publication costs, postage costs, recording fees, attorney's fees, engineering fees, planning fees, administrative costs and other professional fees. Any amount of the deposit not expended will be refunded by the City within forty-five (45) days after the applicant's withdrawal of the application or petition, the City's final action on the application or the effective date of the zoning ordinance.

(Ord. 11 §1, 2007)

**Sec. 21-12—21-20. Reserved.**

### **ARTICLE II Definitions**

[Sec. 21-21. Interpretation.](#)

[Sec. 21-22. Definitions.](#)

[Secs. 21-23—21-30. Reserved.](#)

#### **Sec. 21-21. Interpretation.**

As used in this Chapter, the following words shall be interpreted and defined in accordance with the provisions set forth in this Section.

- (1) The particular controls the general.
- (2) In case of any difference of meaning or implication between the text of this Chapter and the captions for each Section, the text shall control.
- (3) The word *shall* is always mandatory and not directory. The word *may* is permissive.
- (4) Words used in the singular number include the plural and words in the plural number include the singular, unless the context clearly indicates the contrary.
- (5) Words used in the present tense include the future, unless the context clearly indicates the contrary.
- (6) A building or structure includes any part thereof. A building or other structure includes all other structures of every kind, regardless of similarity of buildings.

(Ord. 8 §1, 2006)

#### **Sec. 21-22. Definitions.**

For the purposes of this Chapter, the words and phrases set forth below shall have the meanings ascribed to them as follows:

*Accessory building* . A subordinate building, or portion of a main building, the use of which is incidental to that of the main building on the same lot.

*Accessory use* . An accessory use is one (1) which:

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- (1) Is subordinate to and serves the principal building or principal use;
- (2) Is subordinate in area, extent or purpose to the principal building or principal use served;
- (3) Contributes to the comfort, convenience or necessity of occupants of the principal building or principal use served; and
- (4) Is located on the same lot as the principal building or principal use served.

*Adult businesses* . See *sexually oriented businesses* .

*Alley* . A public way providing only secondary access to the rear of abutting property.

*Alter* . Any structural change in the supporting or load-bearing members of a building, such as bearing walls, columns, beams, girders and floor joists.

*Apartment* . A room or suite of rooms offered to the public for compensation, and arranged or designed for permanent occupancy, with facilities for sleeping, cooking, eating and sanitary purposes; a dwelling unit.

*Area of lot* . The total horizontal area within the lot lines of a lot.

*Assembly* . A joining together of completely fabricated parts to create a finished product.

*Automotive service station* . A building or premises operated for commercial purposes and used for retail sales of fuels, lubricants and mechanical repair of a motor vehicle.

*Balcony, exterior* . An elevated floor space projecting beyond the outside faces of the exterior walls of a building. For the purposes of this definition, at least twenty-five (25) percent of the perimeter of such balcony shall remain open, except for railing as needed for safety purposes.

*Bed and breakfast* . An establishment operated in a private residence or portion thereof, which provides temporary accommodations to overnight guests for a fee and which is occupied by the operator of such establishment.

*Boarding and rooming house* . A building other than a hotel where lodging and/or meals for five (5) or more persons are served for compensation.

*Body art establishment*. A commercial establishment where the practice of physical body adornment is performed by artists utilizing techniques, including but not limited to body piercing and tattooing; for the purposes of this Chapter, ear piercing does not constitute body piercing.

*Boundary line of a lot* . Any line separating a lot from a street, alley, another lot or any other land not part of the lot.

*Building* . Any permanent structure built for the shelter or enclosure of persons, animals, chattels or property of any kind, which:

- (1) Is permanently affixed to the land;
- (2) Has one (1) or more floors and a roof; and
- (3) Is bounded by either open space or the lot lines of a lot.

*Building height* is measured from the average of finished grade at the center of all walls of the building to the top of the parapet or highest roof beam (whichever is higher) on a flat or shed roof, to the top of the parapet or deck level (whichever is higher) of a mansard roof, or the average distance between the highest ridge and its eave of a gable, hip or gambrel roof.

*Church* . A building, together with its accessory buildings and uses, where persons regularly assemble for religious worship, and which building, together with its accessory buildings and uses, is maintained and controlled by a religious body organized to sustain public worship.

*Clinic, dental or medical* . A building in which a group of physicians, dentists or physicians and dentists and allied professional assistants are associated for the purpose of carrying on their profession. The clinic may include a dental or medical laboratory. It shall not include in-patient care or operating rooms for major surgery.

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*Club or lodge* . An association of persons for the promotion of some nonprofit common objective, such as literature, science, politics, good fellowship, etc., meeting periodically, limited to members, with not more than one-third (?) of the gross floor area used for residential occupancy.

*Community center* . A building, together with lawful accessory buildings and uses, used for recreational and cultural activities.

*Cul-de-sac* . A local street with only one (1) outlet and culminated by a turnaround.

*Cul-de-sac lot* . A parcel of land that abuts the turn circle of a cul-de-sac.

*Detached structure* . Any structure having no party wall or common wall with another structure. Bridges, tunnels, breezeways and other similar means of connecting one (1) structure to another shall not, for the purpose of this Chapter, be considered to constitute a party wall or a common wall.

*Dwelling* . A building used exclusively for residential occupancy, including single-family dwellings, two-family dwellings and multi-family dwellings.

*Dwelling, multi-family* . A dwelling containing three (3) or more dwelling units, including what is commonly known as an apartment building, but not including group, row or town houses, hotels, motels or condominiums, fraternity and sorority houses and similar group accommodations.

*Dwelling, single-family* . A building, including a Type I manufactured home, designed exclusively for occupancy by one (1) family.

*Dwelling, single-family attached* . A residential building containing dwelling units, each of which has primary ground floor access to the outside and which are attached to each other by party walls without openings. The term is intended primarily for such dwelling types as town houses and duplexes.

*Dwelling, single-family detached* . A single-family dwelling which is not attached to any other dwelling or building by any means, excluding mobile homes and manufactured housing situated on a permanent foundation.

*Dwelling, two-family* . A building occupied by two (2) families living independently of each other.

*Dwelling unit* . One (1) or more rooms and a single kitchen and at least one (1) bathroom, designed, occupied or intended for occupancy as separate quarters for the exclusive use of a single family for living, cooking and sanitary purposes, located in a single-family, two-family or multi-family dwelling or mixed-use building.

*Employees* . A gross number of persons to be employed in the building in question during any season of the year at any time of day or night.

*Fabrication* . Manufacturing, excluding the refining or other initial processing of basic raw materials such as metal ores, lumber or rubber. *Fabrication* relates to stamping, cutting or otherwise shaping the processed materials into useful objects.

*Family* . Any number of persons related by blood, adoption or marriage, or an unrelated group of not more than five (5) persons living together in a dwelling unit.

*Fence* . A structure designed or intended to constitute an enclosure or barrier, including a wall planter not exceeding twenty-four (24) inches in width, or other similar structure.

*Floor area ratio, maximum* . The maximum permitted ratio of gross floor area of all structures on the lot to the total area of the lot.

*Garage, private* . An accessory building or an accessory portion of a main building designed for the shelter or storage of motor vehicles owned or operated by the occupants of the main building only.

*Garage, public* . An entirely enclosed building, other than a private garage, used for the housing or care of motor vehicles, or where vehicles are equipped for operation, repaired or stored for monetary or other consideration, or kept for sale, hire or rental.



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*Gross floor area* . The sum of the gross horizontal areas of the several floors of a structure and accessory structures, including interior balconies and mezzanines; all horizontal measurements to be made between the exterior faces of walls, including the walls of roofed porches having more than two (2) walls.

*Ground level* . A horizontal plane passing through the average of the highest and lowest elevation of the ground along that facade of the building or structure which is nearest the street. In the absence of any building or structure, the points shall be located on the front setback line, between the two (2) side setback lines (or between the side lot lines, if no side setback is specified in the district).

*Guest room* . A room in a hotel, motel or tourist home offered to the public for compensation, in which room no provision is made for cooking and which room is used only for transient occupancy.

*Habitable room* . A room in a dwelling unit designed to be used for living, sleeping, eating or cooking, excluding bathrooms, toilet compartments, closets, halls, storage and similar space.

*Habitable story* . A story which is at least five (5) feet between the ground level and the ceiling joists, has enough area to provide a habitable room with net floor-to-ceiling distances of seven (7) feet six (6) inches over half the floor area of the room, constitutes a habitable room as defined in the building code.

*Home occupation*. An occupation or business activity which results in a product or service and is conducted in whole or in part in a dwelling unit, is subordinate to the residential use of the dwelling unit, and employs no more than three (3) persons who are not inhabitants.

*Hospital* . An institution providing health services, primarily for in-patients, and medical or surgical care of the sick or injured, which may include as an integral part of the institution such related facilities as laboratories, out-patient departments, training facilities, central service facilities and staff offices.

*Hotel and motel* . A building designed for occupancy as the more or less temporary abiding place of individuals who are lodged with or without meals in which there are six (6) or more guest rooms, and in which no provision is made for cooking in any individual room or suite. A motel or hotel room or suite which includes cooking facilities shall be considered a dwelling unit.

*Junk* . All used or scrap metals, rubber, alloys, bones, rags, cloth, rope, bottles, machinery of any type, tools, appliances, fixtures, utensils, lumber, boxes or crates, pipes, conduit, used automobiles in nonoperative condition, used tires and other manufactured goods that are so damaged, worn, deteriorated or obsolete as to make them unusable in their existing condition.

*Junkyard* . A junkyard is defined as an open area where any junk waste, used or secondhand materials are bought, sold, exchanged, stored, bailed, parked, disassembled or handled with the intention for resale in the normal course of said occupant's business. A *junkyard* includes an auto wrecking, salvage and storage business of any inoperative motor vehicles, but a *junkyard* does not include:

- (1) Uses entirely established within an enclosed building.
- (2) Two (2) or less motor vehicles completely covered with a nontransparent covering at all times, except when said vehicle is being worked upon on the premises at any one (1) time and said vehicle is owned by the owner or occupant of the premises or members of the family of the owner or occupant. As used in this Section, *being worked upon* means in the actual process of repair with the person making the repairs physically present at the location of the motor vehicle.
- (3) When the owner or occupant of a business dealing with the sale or repair of secondhand material entirely within an enclosed building displays or deposits said junk outside of his or her business building on his or her property for a period not to exceed seventy-two (72) consecutive hours.

*Lot* . The combined areas of one (1) or more platted City lots, contiguous to each other and in common ownership, which shall be deemed a single parcel for building and development purposes. A lot may be all or parts of two (2) or more platted City lots. The area of a lot as defined herein shall be sufficient to meet minimum requirements for use, street frontage, coverage and area, allow required yards and other open spaces in the zoning district in which the parcel is located, and have direct access onto a public or private street. A lot as so defined and designated on an application for a site plan or building permit which is approved by the City shall thereupon be deemed a single ownership parcel. For purposes of this definition, *common ownership* means the right to possess and use two (2) or more parcels for the purposes proposed

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in the site plan or building permit application, whether by long-term leasehold, fee title ownership or other legally cognizable interest or combination thereof.

*Lot, corner* . A lot of which at least two (2) adjacent sides abut for their full length upon a street.

*Lot, interior* . A lot other than a corner lot.

*Lot line, front* . The common boundary line between an interior lot (other than a through lot) and a street, the common boundary line between a corner lot (other than a through lot) and that street toward which the principal or usual entrance to the main building situated on such lot more nearly faces, or the common boundary line between a through lot and the adjacent street which is in the surrounding lots most commonly referred to as the front or principal end of a through lot.

*Lot line, rear* . That boundary line of a lot which is most nearly opposite the front lot line of such lot.

*Lot line, side* . Any boundary line of a lot, other than a front lot line or rear lot line.

*Lot, through* . An interior lot abutting on more than one (1) street or a corner lot abutting on more than two (2) streets.

*Manufacture* . All operations required to produce the material named.

*Manufactured home* . A structure which is designed primarily for long-term occupancy as a residence, is partially or wholly manufactured in a factory or at a location other than the site of the completed home, contains sleeping areas, a flush toilet, a tub or shower bath and kitchen facilities, has plumbing and electrical connections provided for attachment to outside systems, is transportable in one (1) or more sections, can be installed on a permanent foundation, and meets all established snow loads. *Manufactured home* does not include park trailers, camper trailers, travel trailers or other similar vehicles.

- (1) *Type I* is a manufactured home which is transportable in two (2) or more sections, has brick, wood or cosmetically equivalent exterior siding and a pitched roof, is not less than twenty-four (24) feet wide at its narrowest dimension and not less than thirty-six (36) feet long, has a minimum floor area of one thousand (1,000) square feet, and is certified pursuant to the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. § 5401 *et seq.*, as amended, and all regulations enacted pursuant thereto, or is certified by the State as being in compliance with the requirements of the International Building Code as adopted by the State and enforced and administered by the Colorado Division of Housing.
- (2) *Type II* is a single-section manufactured home which is designed to be transported on its own or detachable wheels or on a trailer, is eight (8) feet or more in width at its narrowest dimension and thirty-two (32) feet or more in length, and bears a label certifying that it is built in compliance with the Federal Manufactured Home Construction and Safety Standards Act of 1974, which became effective June 15, 1976. Except where the context requires a different interpretation, *Type II manufactured home* shall be deemed synonymous with *mobile home* .

*Manufacturing, heavy*. The basic processing and manufacturing of materials or products predominately from extracted or raw materials.

*Manufacturing, light*. The finishing and assembly, from previously prepared materials, of finished products or parts, including processing, fabrication, assembly, treatment, packaging, incidental storage, sales or distribution of such products. Further, *light manufacturing* shall mean uses such as the manufacture of electronic instruments, preparation of food products, pharmaceutical manufacturing, research and scientific laboratories or the like. *Light manufacturing* shall not include uses such as mining and extracting industries, petrochemical industries, rubber refining, primary metal or related industries.

*Mini-storage warehouse*. A building or a group of buildings containing separate, individual self-storage units divided from the floor to ceiling by a wall, with an independent entrance from the exterior of the building, designed to be rented or leased on a short-term basis to the general public for public storage of personal goods, materials and equipment.

*Mobile home* and related definitions. See *manufactured home* .

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*Off-street loading space* . An off-street loading space or area, either within a structure or without a structure on the same lot, provided and maintained solely for loading and unloading of materials and merchandise and having direct and unobstructed access to a street or alley.

*Off-street parking space* . A reasonably level off-street area or space surfaced to an extent to permit the reasonable use thereof under all weather conditions, designated for the temporary storage or parking of motor vehicles and having direct and unobstructed access to a street or alley.

*Open space* . A parcel of land, an area of water or a combination of land and water within a development site designed and intended primarily for the use or enjoyment of residents, occupants and owners of the development site or the general public for uses including, but not limited to: open landscaped areas, recreation areas and facilities, plazas, gardens, parks, walkways, paths, sidewalks and trails, and areas of native vegetation left substantially in their natural state or supplemented by additional plant material. The term shall not include space devoted to buildings, drive aisles, parking, storage and loading areas, private open space or sidewalks, paths, etc., with less than three (3) feet of planted landscaping on each side of the sidewalk or path.

*Parking lot* . An area or structure used for the short-term parking of motor vehicles. It does not include vehicle or boat storage areas or, except as permitted by Section 21-107 of this Chapter, areas for occupancy of travel trailers.

*Parks* . Areas of land designated for recreation and leisure purposes that are open to the general public, residents and tourists and reserved for recreational, educational or scenic purposes.

*Pawn shop* . A commercial establishment which either purchases goods for resale or extends credit upon the pledge of goods which may be resold to the public if the credit is not repaid.

*Peep booth* . A viewing room, other than a private room, of less than one hundred fifty (150) square feet of floor space upon the premises of a sexually oriented business where there are exhibited photographs, films, motion pictures, video cassettes or other video reproductions, slides or other visual representations which depict or describe specified sexual activities or specified anatomical areas.

*Permanent occupancy* . The rental of housing accommodations or rooms on a week-to-week, month-to-month, year-to-year or other periodic basis, with a fixed rent for each period of occupancy.

*Permitted structure* . A structure meeting all the requirements established by this Chapter for the district in which the structure is located.

*Permitted use* . Any use listed as a use by right, a use by temporary permit, a home occupation or an accessory use when permitted in any given district.

*Planned unit development* . An area of land, controlled by one (1) or more landowners, to be developed under unified control or unified plan of development for a number of dwelling units, commercial, educational, recreational or industrial uses or any combination of the foregoing, the plan for which does not correspond in lot size, bulk or type of use, density, lot coverage, open space or other restriction to the existing land use regulations.

*Planning Commission* . A Commission appointed by the City Council, as described in Chapter 5, Article I of this Code.

*Porch, enclosed* . A porch which is open to the atmosphere on at least two (2) sides.

*Private room* . A room in a sexually oriented motel that is not a peep booth, has a bed in the room, has a bath in the room or adjacent to the room and is used primarily for lodging.

*Professional office* . An office for professions such as physicians, dentists, lawyers, architects, engineers, artists, musicians, designers, teachers, accountants and others who, through training, are qualified to perform services of a professional nature, and where no storage or sale of merchandise exists.

*Residential occupancy* . Any building or part of a building in which a person or group of persons are provided with sleeping accommodations. Other housekeeping accommodations may also be provided.

*Residential structure* . Any building or part of a building constructed with sleeping accommodations for a person or group of persons. Other housekeeping accommodations may also be provided.

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*Retail* . Sale of service or of a finished product to the ultimate consumer for direct consumption.

*Room* . Any enclosed division of a building containing over seventy (70) square feet of floor space and commonly used for living purposes, not including lobbies, halls, closets, storage space, bathrooms, utility rooms and unfinished attics, cellars or basements. An enclosed division is an area in a structure bounded along more than seventy-five (75) percent of its perimeter by vertical walls or partitions, or by other types of dividers which serve to define the boundaries of the division.

*Setback, front* . A line parallel with a front lot line of a lot, tangent to that part of a building situated on such lot (other than an open fire escape or stairway, a chimney or a one-story unenclosed porch) which is closest to such front lot line and intersecting two (2) other lot lines of such lot.

*Setback line, front cul-de-sac* . A line concentrically parallel to the right-of-way line of the street on the cul-de-sac (bulb) and a line parallel to and a minimum of twenty (20) feet from the right-of-way line of the remainder of the cul-de-sac.

*Setback line, rear* . A line parallel with a rear lot line of a lot, tangent to that part of a building situated on such lot which is closest to such rear lot line and intersecting two (2) other lot lines of such lot.

*Setback line, side* . A line parallel with a side lot line of a lot, tangent to that part of a building situated on such lot which is closest to such side lot line and intersecting two (2) other lot lines of such lot.

*Sexual encounter establishment* . A business or commercial establishment which, as one (1) of its primary business purposes, offers for any form of consideration a place where two (2) or more persons may congregate, associate or consort for the purpose of specified sexual activities or the exposure of specified anatomical areas, when one (1) or more of the persons exposes any specified anatomical area.

*Sexually oriented business* . Use of property where the principal use, or a significant or substantial adjunct to another use of the property, is the sale, rental, display or other offering of live entertainment, dancing, services or goods (including printed or electronically recorded materials) which is distinguished or characterized by its emphasis on depicting, exhibiting, describing or relating to specified sexual activities or specified anatomical areas as the primary attraction to the premises, including but not limited to:

- (1) *Sexually oriented arcade* means any place to which the public is permitted or invited wherein coin-operated, slug-operated or electronically, electrically or mechanically controlled still or motion picture machines, projectors or image-producing devices are maintained to show images to five (5) or fewer persons per machine at any one (1) time, and where the images so displayed are distinguished or characterized by the depicting or describing of specified sexual activities or specified anatomical areas.
- (2) *Sexually oriented bookstore* or *sexually oriented video store* means a place where books, magazines, motion pictures, prints, photographs, periodicals, video or audio recordings, novelties and devices, or any of these things, which have as their primary or dominant theme matter depicting, illustrating, describing or relating to specified sexual activities or specified anatomical areas, are sold or offered for sale to adults, and includes a place with only a portion or section of its area set aside for the display or sale of such material to adults, except that any place, otherwise included within this definition, that derives not more than ten (10) percent of its gross income from the sale of such material, shall be exempt from the provisions of this definition so long as such material is kept in a location where it is not visible and shall not be a self-service item for the customers of such place.

*Sexually oriented business* also includes:

- (1) The opening or commencement of any sexually oriented business as a new business;
- (2) The conversion of an existing business, whether or not a sexually oriented business, to a sexually oriented business;
- (3) The addition of any sexually oriented business to any other existing sexually oriented business;
- (4) The relocation of any sexually oriented business; or

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- (5) The continuation of a sexually oriented business in existence on the effective date of the initial ordinance codified herein.

*Sexually oriented cabaret* . A nightclub, bar, restaurant or similar business which regularly features:

- (1) Persons who appear in a state of nudity;
- (2) Live performances which are characterized by the exposure of specified anatomical areas or by specified sexual activities; or
- (3) Films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

*Sexually oriented motel* . A hotel, motel or similar business which offers private rooms to the public and provides patrons live performances or closed-circuit television transmissions, films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

*Sexually oriented motion picture theater* . A business where films, motion pictures, video cassettes, slides or similar photographic reproductions are regularly shown which are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

*Sexually oriented photo studio* . Any establishment which, upon payment of a fee, provides photographic equipment and/or models for the purpose of photographing specified anatomical areas.

*Sexually oriented theater* . A theater, concert hall, auditorium or similar business which regularly features persons who appear in a state of nudity, or live performances which are characterized by the exposure of specified anatomical areas or by specified sexual activities.

*Shop* . A use devoted primarily to the sale of a service or a product where the service is performed or the product to be sold is prepared in its finished form on the premises.

*Sign* . Any device designed to inform or attract the attention of persons not on the premises on which the sign is located, but not including any flag, badge or insignia of any governmental agency or of any civic, charitable, religious or fraternal organization. *Signs* include identification signs (used to identify the premises), "for sale" signs, "for rent" signs, building and freestanding signs, and billboards.

*Specified anatomical areas* . Any of the following:

- (1) Less than completely and opaquely covered human genitals, pubic region, buttocks and female breast below a point above the top of the areola.
- (2) Human male genitals in a discernibly turgid state even if completely and opaquely covered.

*Specified sexual activities* . Acts, simulated acts, exhibitions, representations, depictions or descriptions of any of the following:

- (1) Human genitals in a state of sexual stimulation or arousal.
- (2) Fondling or other erotic touching of human genitals, pubic region, buttocks or female breast.
- (3) Intrusion, however slight, of any object, any part of an animal's body or any part of a person's body into the genital or anal openings of any person's body or into the body of an animal.
- (4) Cunnilingus, fellatio, anilingus, masturbation, bestiality, lewd exhibition of genitals or excretory function.
- (5) Flagellation, mutilation or torture for purposes of sexual arousal, gratification or abuse.

*Stage* . A raised floor or platform at least three (3) feet above the surrounding floor measured perpendicularly from the edge of the stage to the surrounding floor and at least thirty-six (36) square feet in area.

*Storage* . The act of depositing goods, wares or merchandise in any structure, part of a structure or warehouse.

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*Store* . A use devoted exclusively to the retail sale of a commodity or commodities.

*Story* . That part of a building between the surface of a floor and the ceiling immediately above.

*Street* . A public thoroughfare for vehicular traffic.

*Structure* . Anything which is constructed or erected and the use of which requires permanent location on ground and attachment to something (other than wheels), having permanent location on the ground; an edifice or a building of any kind; or any production or piece of work, artificially built up or composed of parts and joined together in some definite manner.

*Structural alterations* . Any change in the supporting members of a structure, such as bearing walls, columns, beams or girders, floor joists or roof joists.

*Tattoo parlor* . See *body art establishment* .

*Theatre* . A structure used for dramatic, operatic, motion picture or other performance, for admission to which entrance money is received and in which no audience participation or meal service is allowed.

*Tourist court or camp* . A building or a group of buildings designed for occupancy by transients.

*Tourist home* . A dwelling in which rooms are rented on a daily or weekly basis for the purpose of accommodating travelers or temporary guests.

*Transient occupancy* . The rental of housing accommodations or rooms on a day-to-day basis, including a daily change of linen and towels with no change in rate based on the period of occupancy.

*Travel trailer (camper)* . Any travel trailer, camper, coach, mounted tent, motor home or other habitable vehicle intended for and capable of temporary human occupancy as a dwelling, mounted on wheels and capable of being moved by its own power or pulled by another vehicle, used or intended to be used primarily for travel or recreational purposes; it does not include *manufactured home* .

*Travel trailer park* . Land or property utilized for or intended for use as temporary occupancy space for transient users of travel campers or trailers.

*Unobstructed open space* . An area of land at ground level upon which no structure may be erected or surface area utilized for vehicular movement or parking.

*Use* . The purpose for which land or a structure thereon is designed, arranged or intended to be occupied or used, or for which it is occupied, maintained, rented or leased.

*Use by right* . A use which is listed as a use by right in any given zone district in this Chapter. Uses by right are not required to show need for their location.

*Variance Board* . A Board appointed by the City Council to hear and decide upon requests for variances from the requirements of this Chapter, more fully described in Chapter 5, Article II of this Code.

*Veterinary animal hospital* . A place where animals or pets of all types are given medical or surgical treatment. Use as a kennel shall be limited to short-time boarding and shall only be incidental to such hospital use and need not be enclosed within the main building.

*Wall, retaining* . A wall used or intended to be used to resist the lateral displacement of earth.

*Warehouse* . A structure or part of a structure used for storing goods, wares or merchandise, whether for the owner or for others, and whether the same is a public or private warehouse.

*Wholesale* . Sale for resale, not for direct consumption.

*Width of lot* . The shortest distance between any two (2) lot lines of a lot which are intersected by the same front setback line, measured from either any point on each line or the points of intersection with the front setback line.

*Yard* . An open space on the same lot with a building, unoccupied and unobstructed from the ground upward except by landscaping or as otherwise provided herein.

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*Yard, front* . That portion of a lot lying between a public street and the nearest parallel front setback line of such lot.

*Yard, rear* . That portion of a lot lying between the rear lot line and the rear setback line of such lot.

*Yard, side* . That portion of a lot lying between a side lot line and the nearest parallel side setback line of such lot.

(Ord. 8 §1, 2006; Ord. 7, §1, 2008; Ord. 2 §1, 2009; Ord. 2 § 1, 2015)

**Secs. 21-23—21-30. Reserved.**

### **ARTICLE III Use Districts**

[Sec. 21-31. Uses permitted by right.](#)

[Sec. 21-32. R-E, Residential Estate District.](#)

[Sec. 21-33. R-1, Residential One District.](#)

[Sec. 21-34. R-2, Residential Two District.](#)

[Sec. 21-35. R-3, Residential Three District.](#)

[Sec. 21-36. C-1, Commercial One District.](#)

[Sec. 21-37. C-2, Commercial Two District.](#)

[Sec. 21-38. I-1, Industrial One District.](#)

[Sec. 21-39. PUD, Planned Unit Development.](#)

[Sec. 21-40. P, Park and Recreation District.](#)

[Sec. 21-41. CONS, Conservation District.](#)

[Sec. 21-42. R-M, Rural Multiple-Family Residential District.](#)

[Sec. 21-43. C-3, Commercial Interchange District.](#)

[Sec. 21-44. L-I, Light Industrial.](#)

[Sec. 21-45. Home occupations.](#)

[Secs. 21-46—21-50. Reserved.](#)

#### **Sec. 21-31. Uses permitted by right.**

No land shall be used or occupied and no structure shall be designed, erected, altered, used or occupied except for either one (1) or more of the following uses by right; except for those uses in use prior to the enactment of this Code and classified as *nonconforming uses* as defined by this Chapter.

(Ord. 8 §1, 2006)

#### **Sec. 21-32. R-E, Residential Estate District.**

The following uses are permitted by right in the R-E District:

- (1) Single-family dwelling.

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- (2) Accessory buildings and accessory uses.
- (3) Accessory dwelling when associated with a permitted use.
- (4) Church, church facilities or parish house.
- (5) Group homes for up to eight (8) developmentally disabled persons, handicapped individuals, children or senior citizens.
- (6) Public park or playground, public or private golf course or cemetery.
- (7) Public or private preschool, elementary or secondary school, child care.
- (8) Gas regulator station or utility pumping station.
- (9) Bed and breakfast establishment.
- (10) Home occupations.
- (11) Other uses, by conditional use permit.

(Ord. 8 §1, 2006; Ord. 2 §2, 2009)

### **Sec. 21-33. R-1, Residential One District.**

The following uses are permitted by right in the R-1 District:

- (1) Any use permitted in R-E District.
- (2) Other uses, by conditional use permit.

(Ord. 8 §1, 2006)

### **Sec. 21-34. R-2, Residential Two District.**

The following uses are permitted by right in the R-2 District:

- (1) Any use permitted in R-1 District.
- (2) Single-family or two-family dwelling.
- (3) Library.
- (4) Private club or lodge.
- (5) Other uses, by conditional use permit.

(Ord. 8 §1, 2006)

### **Sec. 21-35. R-3, Residential Three District.**

The following uses are permitted by right in the R-3 District:

- (1) Any use permitted in R-2 District.
- (2) Multiple-family dwelling.
- (3) Professional offices with approval of the Planning Commission.
- (4) Medical and dental clinics - by conditional use permit.
- (5) Public facilities, excluding storage yard facilities.



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- (6) Group homes for up to eight (8) developmentally disabled persons, handicapped individuals, children or senior citizens.
- (7) Child care facility (licensed) for more than six (6) children.
- (8) Other uses, by conditional use permit.

(Ord. 8 §1, 2006; Ord. 2 §3, 2009)

### **Sec. 21-36. C-1, Commercial One District.**

The following uses are permitted by right in the C-1 District:

- (1) Public or private park, recreation building, bowling alley, community center and theatre.
- (2) Multiple-family dwelling.
- (3) Church and church facilities, private club or lodge.
- (4) Library and museum.
- (5) Accredited college or university as approved by the State.
- (6) Post office, firehouse and police station with jail.
- (7) Hospital, medical and dental office, clinic or laboratory.
- (8) Mixed residential and commercial occupancy uses.
- (9) Parking lot or commercial garage.
- (10) Professional offices and offices where chattels, goods, wares or merchandise are not commercially created, exchanged, stored or sold.
- (11) Studio for professional work or teaching any form of fine arts and used for selling such arts.
- (12) Restaurants and drinking places without drive-in facilities.
- (13) Banks, savings and loan and finance companies.
- (14) Barbershop and beauty shop.
- (15) Retail stores or shops; camera, drugstore, jewelry, dry goods, floral, gift, novelty, souvenir, hardware, paint and wallpaper, music, sporting goods, etc.
- (16) Grocery stores and stores and shops selling grocery items (meat, dairy, bakery, etc.).
- (17) Cleaning shop, involving perchlorethylene methods only or collection and distribution only, and laundry facilities.
- (18) Printing and newspaper offices.
- (19) Automotive service station.
- (20) Bed and breakfast establishment.
- (21) Hotel, motel, tourist home.
- (22) Light manufacturing.
- (23) Sale, rental, repair or inside storage of any equipment, supplies or materials.
- (24) Small animal veterinary hospital or clinic with all uses enclosed limited to domestic animals.
- (25) Workshops and custom small industry uses.
- (26) Tourist facilities.
- (27) Funeral homes.

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- (28) Health and membership clubs.
- (29) Other uses, by conditional use permit.

(Ord. 8 §1, 2006; Ord. 2 §4, 2009)

### **Sec. 21-37. C-2, Commercial Two District.**

The following uses are permitted by right in the C-2 District:

- (1) Any use permitted in C-1 District.
- (2) Restaurants with drive-in facilities.
- (3) Hotels, motels and tourist homes.
- (4) Large animal veterinary animal hospital or clinic with all uses enclosed limited to all animals domestic, agricultural or livestock, and wildlife.
- (5) Automotive sales by a licensed dealer, automotive repairing, automotive service stations and wash facilities.
- (6) Dry-cleaning and laundry plant.
- (7) Lumber yard.
- (8) Any assembly process where there is no fabrication; the entire process must be enclosed by a building.
- (9) Contractor's office and yard.
- (10) Wholesale stores and large volume high traffic retail stores.
- (11) Travel trailer parks - by conditional use permit.
- (12) Sales, rentals, repair or inside storage of any equipment, supplies or materials.
- (13) Mini-storage warehouse - by conditional use permit.
- (14) Heavy manufacturing, welding shop or machine shop where the entire process is enclosed by a building - by conditional use permit.
- (15) Body art establishments - by conditional use permit.
- (16) Pawn shops - by conditional use permit.
- (17) River rafting operation offices and headquarters, excluding employee accommodations. All operations related to this use, including but not limited to employee parking, patron transportation (busses or vans) and storage of rafts and equipment must be conducted entirely on-site on the lot or lots owned, leased or rented by the rafting operation.
- (18) Other uses, by conditional use permit.

(Ord. 8 §1, 2006; Ord. 3 §1, 2008; Ord. 1 §1, 2009; Ord. 2 §5, 2009)

### **Sec. 21-38. I-1, Industrial One District.**

The following uses are permitted by right in the I-1 District:

- (1) Any use permitted in C-2 District.
- (2) Foundry, rock crusher, gravel pit, mine or mill, machine shop, sawmill or welding shop.
- (3) Warehouses.

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- (4) Manufacturing, processing or fabrication of any commodity.
- (5) Automotive and other junk yards totally enclosed or screened from view.
- (6) Storage and sales of bulk gasoline or other petroleum products.
- (7) Sexually oriented business - by conditional use permit.
- (8) Other uses, by conditional use permit.

(Ord. 8 §1, 2006; Ord. 2 §6, 2009)

### **Sec. 21-39. PUD, Planned Unit Development.**

See Article XI of this Chapter for requirements.

(Ord. 8 §1, 2006)

### **Sec. 21-40. P, Park and Recreation District.**

The following uses are permitted by right in the P District:

- (1) Public park and park facilities, greenbelt spaces and public and private golf courses.
- (2) Public recreation building or facility and community center.

(Ord. 8 §1, 2006)

### **Sec. 21-41. CONS, Conservation District.**

No structures or development of any type shall be permitted. All land in this area shall remain in its natural, undisturbed state.

(Ord. 8 §1, 2006)

### **Sec. 21-42. R-M, Rural Multiple-Family Residential District.**

The following uses are permitted by right in the R-M District:

- (1) Multiple-family dwelling.
- (2) Public or private playground.
- (3) Public or private golf course.
- (4) Other uses, by conditional use permit.

(Ord. 8 §1, 2006)

### **Sec. 21-43. C-3, Commercial Interchange District.**

The following uses are permitted by right in the C-3 District:

- (1) Bowling alley, movie theatre.
- (2) Campgrounds, overnight recreational vehicle park.

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- (3) Post office, firehouse and police station.
- (4) Hospital, medical and dental office, clinic or laboratory.
- (5) Library and museum.
- (6) Public parking lot or parking garage.
- (7) Professional office and office where goods, wares or merchandise are created, exchanged, stored or sold.
- (8) Restaurant and drinking place with or without drive-in facilities.
- (9) Conference center facility with attendant retail.
- (10) Hotel, motel, bed and breakfast accommodations.
- (11) Barbershop and beauty salon.
- (12) Retail store or shop ( e.g ., camera, drugstore, jewelry, dry goods, floral, gift).
- (13) Grocery store and shop selling grocery items.
- (14) Automobile/truck center for retail sale of gasoline and diesel fuel, minor roadside vehicle repair, attendant retail.
- (15) River rafting operation, headquarters and recreational use, including employee accommodations.
- (16) Banking facility.
- (17) Other use, by conditional use permit.

(Ord. 8 §1, 2006)

### **Sec. 21-44. L-I, Light Industrial.**

The following uses are permitted by right in the L-I District:

- (1) All uses permitted by right in the C-3 District.
- (2) Electrical substation and transmission lines.
- (3) Natural gas facility.
- (4) Outdoor boat and RV storage; household and commercial storage.
- (5) Communication tower.
- (6) Regeneration facility.
- (7) Warehousing.
- (8) Other uses, by conditional use permit.

(Ord. 8 §1, 2006)

### **Sec. 21-45. Home occupations.**

- (A) A home occupation shall be allowed as a permitted accessory use, provided that all of the following conditions are met:
- (1) Such use shall be conducted entirely within a dwelling and carried on by the inhabitants living there and no more than three (3) others.

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- (2) Such use shall be clearly incidental and secondary to the use of the dwelling for dwelling purposes and shall not change the character thereof.
  - (3) The total area used for such purposes shall not exceed one-half (½) the first floor area of the user's dwelling unit.
  - (4) There shall be no exterior advertising other than identification of the home occupation.
  - (5) There shall be only incidental sale of stocks, supplies or products conducted on the premises.
  - (6) There shall be no exterior storage on the premises of material or equipment used as a part of the home occupation.
  - (7) The use shall not generate traffic, noise, vibration, glare, fumes, odors or electrical interference beyond what normally occurs in any residential zone district.
  - (8) x shall provide additional off-street parking area adequate to accommodate all needs created by the home occupation, specifically including one (1) off-street parking space for each employee or other non-inhabitant of the premises who is involved with the home occupation.
- (B) In particular, a home occupation may include, but is not limited to, the following, provided that all requirements contained herein are met: art studio, dressmaking or millinery work, professional office, office for insurance or real estate sales, teaching and the renting of rooms to not more than two (2) persons per dwelling.
- (C) A home occupation shall not be interpreted to include the following: veterinary animal hospital, nursing home, restaurant or tourist home.

(Ord. 8 §1, 2006; Ord. 2 § 2, 2015)

**Secs. 21-46—21-50. Reserved.**

### **ARTICLE IV General District Requirements**

[Sec. 21-51. Application.](#)

[Sec. 21-52. Volume of sound generated.](#)

[Sec. 21-53. Vibration generated.](#)

[Sec. 21-54. Enclosure of uses.](#)

[Sec. 21-55. Emissions.](#)

[Sec. 21-56. Outdoor storage; waste disposal.](#)

[Sec. 21-57. Signs in residential areas.](#)

[Sec. 21-58. Major flood channels.](#)

[Sec. 21-59. Use limitations; corner lots.](#)

[Sec. 21-60. Obstruction on public lands.](#)

[Sec. 21-61. Storm drainage.](#)

[Sec. 21-62. Use limitations; cul-de-sac lots.](#)

[Sec. 21-63. Marijuana.](#)

[Secs. 21-64—21-70. Reserved.](#)

**Sec. 21-51. Application.**

No structure shall be designed, erected or altered except in accordance with the regulations of this Article. This Article shall apply to all zoning districts except as noted herein.

(Ord. 8 §1, 2006)

**Sec. 21-52. Volume of sound generated.**

Every use, unless expressly exempted by these regulations, shall be so operated that the volume of sound inherently and recurrently generated does not exceed fifty-five (55) decibels at any point of any boundary line of the lot on which the use is located.

(Ord. 8 §1, 2006)

**Sec. 21-53. Vibration generated.**

Every use shall be so operated that the ground vibration inherently and recurrently generated is not perceptible, without instruments, at any point of any boundary line of the lot on which the use is located.

(Ord. 8 §1, 2006)

**Sec. 21-54. Enclosure of uses.**

Every use, unless expressly exempted by these regulations, shall be operated in its entirety within a completely enclosed structure; the exemption of a use from the requirement of enclosure will be indicated by the phrase "need not be enclosed" appearing after any use exempted.

(Ord. 8 §1, 2006)

**Sec. 21-55. Emissions.**

Every use shall be so operated that it does not emit an obnoxious or dangerous degree of heat, glare, radiation or fumes beyond any boundary line of the lot on which the use is located.

(Ord. 8 §1, 2006)

**Sec. 21-56. Outdoor storage; waste disposal.**

No highly flammable or explosive liquids, solids or gases shall be stored in bulk above ground. Tanks or drums of fuel directly connecting with heating devices or appliances located on the same lot as the tanks or drums of fuel are excluded from this provision. All outdoor storage facilities for fuel, raw materials and products shall be enclosed by a fence or wall adequate to conceal such facilities from adjacent property. No materials or wastes shall be deposited upon a lot in such form or manner that they may be transferred off the lot by natural causes or forces. All materials or wastes which might cause fumes or dust, which constitute a fire hazard or which may be edible by or otherwise be attractive to rodents or insects shall be stored outdoors only in closed containers.

(Ord. 8 §1, 2006)

**Sec. 21-57. Signs in residential areas.**

No advertising sign or billboard of any character shall be permitted in any residence district except signs as allowed in Chapter 20 of this Code.

(Ord. 8 §1, 2006)

**Sec. 21-58. Major flood channels.**

For the purpose of this Chapter, there are or may be established and designated on the zoning district map of the City, "major flood channels" within which no building or other structure is permitted, except a flood control dam or irrigation structure, first approved by the City Council, according to the following special conditions:

- (1) Any building or structure which is approved shall be located so as to offer minimum obstruction to the flow of flood water and shall not cause lands outside of the natural flood channel to be flooded.
- (2) No dwelling unit or mobile homes shall be permitted.
- (3) No schools, churches or other places of public assembly shall be permitted.
- (4) No storage of materials which could be moved by flood waters shall be permitted.

(Ord. 8 §1, 2006)

**Sec. 21-59. Use limitations; corner lots.**

On any corner lot, no wall, fence or other structure shall be erected or altered and no hedge, tree, shrub or other natural growth shall be maintained which may constitute a hazard to traffic by obstructing the view or vision of operators of motor vehicles.

(Ord. 8 §1, 2006)

**Sec. 21-60. Obstruction on public lands.**

No fence, wall, structure, tree, shrub or other obstruction shall be placed on or in any street, alley, parkway or public way. Such restrictions shall not apply to curbs, gutters, curb cuts, sidewalks and driveways constructed according to the building code.

(Ord. 8 §1, 2006)

**Sec. 21-61. Storm drainage.**

An improved lot must absorb the same volume of water that would be absorbed on an unimproved lot, based on a twenty-year storm.

(Ord. 8 §1, 2006)

**Sec. 21-62. Use limitations; cul-de-sac lots.**

The minimum lot width at the street frontage shall be fifty (50) feet. The average width of the lot shall not be less than the minimum required frontage of standard lots within the zone district in which such lot is located, and the lot shall meet the area requirements of the zone district.

(Ord. 8 §1, 2006)

**Sec. 21-63. Marijuana.**

- (A) As used in this section, "marijuana" means all parts of the plant of the genus cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or its resin, including marijuana concentrate but shall not include industrial hemp, the fiber produced from the stalks, oil or cake made from the seeds of the plant, sterilized seed of the plant which is incapable of germination, or the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other product whether for medicinal or non-medicinal (recreational) purposes.
- (B) Cultivation, drying, processing, manufacturing and storage of marijuana and marijuana-infused products is permitted as an accessory use to any residential dwelling; provided, however, that the following requirements are met:
  - (1) Such use shall be conducted only within an enclosed locked space within the dwelling and may not be conducted within any accessory structure.
  - (2) Such use shall be incidental and secondary to the use of the dwelling for dwelling purposes and shall not change the character thereof.
  - (3) Such use may only be conducted by a person who resides within the dwelling in which the use is occurring.
  - (4) No more than twelve (12) total plants are allowed per residence, regardless of the number of adults living there.
  - (5) The use shall not generate traffic, noise, vibration, glare, fumes, odors or electrical interference beyond what normally occurs in any residential zone district.
  - (6) There shall be no visible evidence from any property line that such use is occurring within the dwelling.
  - (7) The use of compressed, flammable gas as a solvent in the extraction of THC or other cannabinoids is prohibited.
  - (8) The installation or modification of any electrical, mechanical, plumbing or any other type of system or fixture related to the use shall comply with all applicable provisions of the City's building regulations as set forth in Chapter 5 of this Code.
- (C) Except as authorized by this Section, cultivation, drying, processing, manufacturing and storage of marijuana and marijuana-infused products is prohibited in residential districts and residential structures.
- (D) Except as provided for in Article XI of Chapter 9 of this Code, cultivation, drying, processing, manufacturing and storage of marijuana and marijuana-infused products is prohibited in non-residential districts and non-residential structures.

(Ord. 1 § 3, 2015)



**Secs. 21-64—21-70. Reserved.**

## **ARTICLE V Site Plan Approval for Certain Districts**

[Sec. 21-71. Required.](#)

[Sec. 21-72. Application.](#)

[Sec. 21-73. Deposit for costs for site plan review.](#)

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### **Sec. 21-71. Required.**

No building permit shall issue for structures in an R-3, R-M, C-1, C-2, C-3, I-1, L-I or PUD District until a site plan meeting the requirements of this Article has been approved for it.

(Ord. 8 §1, 2006; Ord. 11 §2, 2007)

### **Sec. 21-72. Application.**

Site plan review is to ensure compliance with zoning district requirements set forth in Article III of this Chapter for R-3, R-M, C-1, C-2, C-3, I-1 and L-I zone districts and in Article XI of this Chapter for PUD Districts, and to provide for the construction and installation of any public improvements needed to serve the proposed uses on the property. Applications for approval of a site plan shall be submitted on forms furnished by the City. The application shall be completed in full and submitted, along with all requirements set forth herein, to the City.

(Ord. 8 §1, 2006; Ord. 11 §3, 2007)

### **Sec. 21-73. Deposit for costs for site plan review.**

Any person who applies for a site plan approval shall pay all of the costs incurred by the City to review such application. At the time such application is made, the applicant shall submit to the City Clerk the deposit and the executed agreement required by Section 21-11 of this Code. The City need not perform or continue any review services for such person without an adequate amount to pay the costs thereof being on deposit.

(Ord. 8 §1, 2006; Ord. 11 §4, 2007)

**Sec. 21-74. Submittal requirements.**

All applicants shall submit five (5) sets of all drawings at full size and twenty (20) sets of drawings at an eleven-inch-by-seventeen-inch reduced size and five (5) sets of all associated materials (title, narratives, etc.) that provide the following information:

- (1) A legal description of the property.
- (2) Evidence of ownership, consisting of one (1) of the following: attorney title opinion, current title insurance commitment or policy, subdivision guarantee or certificate or written ownership and encumbrance report issued by a title insurance company, all of which shall be dated not more than thirty (30) days prior to the submittal.
- (3) Location and dimension of parcel boundaries, and parcel size in gross and net acres or square feet.
- (4) Description of all existing and proposed improvements and uses, including fences and landscaping features, including length, width, floor area, height, location in relation to lot lines and other structures, and type of construction.
- (5) Estimated total floor area and estimated ratio of floor area to lot size of each building.
- (6) Existing and proposed circulation system for adjoining streets, including off-street parking areas, service areas, loading areas and major points of access to public rights-of-way, including major points of ingress and egress to the property.
- (7) Estimated demands to be imposed upon public water, sanitary sewer and drainage utility systems by the proposed uses of the property.
- (8) Estimated number of employees.
- (9) Plan or design for off-street parking, including locations and square footage of specific parking areas, size and number of spaces, location of handicapped and bicycle parking spaces and such additional information as may be necessary to comply with the requirements of Article VII of this Chapter.
- (10) Location and dimensions of off-street loading space, together with sufficient additional information to comply with the requirements of Article VII of this Chapter.
- (11) Signage.
- (12) Landscape plan.
- (13) Proposed treatment of the perimeter of the property, including materials and techniques used, such as screens, fences, walls and landscaping.
- (14) The area shown on the site plan shall extend beyond the boundary of the property to include a survey of the area and uses presently existing within one hundred fifty (150) feet of the property subject to the site plan.
- (15) For bed and breakfast, motel and hotel uses in the C-1, C-2, C-3, I-1 and L-I zoning districts:
  - (a) Total number, type and density per type of dwelling units.
  - (b) Total bedrooms per each dwelling unit type.
  - (c) Residential density (gross and net).
- (16) Proof that the proposal meets the requirements of Chapter 27, Design Standards, of this Code.

(Ord. 8 §1, 2006; Ord. 2 §7, 2009)

**Sec. 21-75. Public improvements.**

If the uses proposed for the property require or may in the reasonable judgment of the City require the construction of any public improvements, the application shall be referred to the City Planner and the Public Works Department which shall, in accordance with the provisions of Chapters 22 and 24 of this Code, determine the nature and extent of any and all public improvements required, and make adequate provision for the design, construction and dedication thereof as provided by the foregoing provisions and by Chapter 24, Article V of this Code.

(Ord. 8 §1, 2006)

**Sec. 21-76. Review process; approval criteria.**

- (A) Site plans for lots under one-half (½) acre. For site plans for lots under one-half (½) acre (21,780 sq. ft.) in size, the review process shall be as follows:
  - (1) The City Planner shall review the application for completeness.
  - (2) Upon determining that the site plan application is complete, the City Planner may distribute and refer a copy of the application to public agencies, City departments and County departments for their review and comment. Each public agency, City department and County department receiving a copy of the site plan and accompanying materials may, within fourteen (14) days after receipt, forward written reports of its findings and recommendations to the City. Failure of any reviewing agency or department to respond within the allotted time may be deemed as a response that the agency or department has no comment on the application and submission documents. Failure to submit a written report to the City shall not be deemed as approval or acceptance of the proposed site plan by such agency. Reports received by the City after the allotted referral time may but need not be accepted by the City.
  - (3) If the City Planner determines that the site plan shows compliance with zoning district requirements set forth in Articles III, IV and XI of this Chapter, as applicable, and that adequate provision for the construction of any necessary public improvements has been made, the City Planner shall approve the site plan.
- (B) Site plans for lots over one-half (½) acre to less than two (2) acres in size. For site plans for lots over one-half (½) acre to less than two (2) acres in size, the review process shall be as follows:
  - (1) The steps described in Paragraphs (A)(1) and (A)(2) of this Section shall be followed.
  - (2) The City Planner shall make a recommendation to the Planning Commission.
  - (3) The City shall schedule the matter for presentation to the Planning Commission at a public hearing. Notice of said hearing shall be provided in the same manner as set forth in Subsection 21-116(E) of this Chapter. The Planning Commission shall review the site plan application for conformance with the requirements of Articles III and IV of Chapter 21, as applicable, and determine that adequate provision for the construction of any necessary public improvements has been made. The Planning Commission may postpone or continue any hearing for the purpose of obtaining additional information necessary to render a final decision on the site plan application. At the conclusion of the Planning Commission's hearing, but in no case later than thirty (30) days after the conclusion of the hearing, the Planning Commission shall render a written decision that the site plan should be approved, conditionally approved or disapproved.
- (C) Site plans for lots of over two (2) acres in size. For site plans for lots of over two (2) acres, the review process shall be as follows:
  - (1) The steps described in Paragraphs (A)(1) and (A)(2) of this Section shall be followed.
  - (2) The steps described in Paragraphs (B)(2) and (B)(3) shall be followed.

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- (3) Following City Council's receipt of a Planning Commission recommendation on the site plan, the City shall schedule the site plan for presentation to the City Council at a public hearing. Notice of said hearing shall be provided in the same manner as set forth in Subsection 21-116(E) of this Chapter. At a public hearing, the City Council shall consider and review the site plan for conformance with the requirements of Articles III and IV of Chapter 21, as applicable, and determine that adequate provision for the construction of any necessary public improvements has been made. The City Council may postpone or continue any meeting for the purpose of obtaining additional information necessary to render a final decision on the site plan. At the conclusion of the meeting, the City Council shall render a final decision that the site plan is approved, conditionally approved or disapproved. Where the City Council disapproves a site plan, the City Council shall provide written reasons for such decision, which shall be made available to the applicant and any interested party. The City Council's decision shall be the final decision of the City.

(Ord. 8 §1, 2006; Ord. 11 §5, 2007)

### **Sec. 21-77. Effect of approval.**

- (A) Site plan approvals shall be by written order of the City Planner. Such order shall include the legal description of the property, specify in detail the improvements and uses authorized and clearly specify any and all conditions and requirements imposed. The order shall run with the described property, and the City Clerk shall maintain a file containing all documents relevant to the application and resulting approval.
- (B) Approval of a site plan shall constitute authorization to construct improvements upon and use the property subject thereto only as provided on the approved site plan. No person shall cause or permit any use of property subject to an approved site plan in any manner not provided for on the site plan, or fail to comply with any of the requirements specified in the approval thereof.

(Ord. 8 §1, 2006)

### **Sec. 21-78. Revocation.**

Any site plan approval may be revoked by order of the City Planner, following notice to and an opportunity for the owner of the property to be heard, where the property has not been devoted to the approved site plan improvements or uses for a period of more than two (2) years.

(Ord. 8 §1, 2006)

### **Sec. 21-79. Rezoning.**

Any rezoning of the property after a site plan approval but before the improvements and uses covered by the site plan approval begin on the property shall automatically terminate and void the site plan approval unless the City expressly reaffirms the same as part of the rezoning.

(Ord. 8 §1, 2006)

### **Sec. 21-80. Amendment of approved site plan.**

An application for amendment of an approved and valid site plan approval shall be processed in accordance with the requirements applicable to the consideration of a new application.

(Ord. 8 §1, 2006)

**Sec. 21-81—21-90. Reserved.**

**ARTICLE VI Building Regulations**

[Sec. 21-91. Application.](#)

[Sec. 21-92. Minimum gross floor area.](#)

[Sec. 21-93. Fences; walls; retaining walls.](#)

[Sec. 21-94. Regulations.](#)

[Sec. 21-95—21-100. Reserved.](#)

**Sec. 21-91. Application.**

No structure shall be designed, erected or altered except in accordance with the regulations of this Article and other applicable provision of this Chapter.

(Ord. 8 §1, 2006)

**Sec. 21-92. Minimum gross floor area.**

No dwelling unit shall have a gross floor area of less square footage than listed as follows:

| <i>District</i> | <i>Dwelling Type</i>                | <i>Minimum Gross Square Footage</i> |
|-----------------|-------------------------------------|-------------------------------------|
| R-E             | Single-family                       | 1,200                               |
| R-1             | Single-family                       | 850 (a)                             |
| R-2, R-3 & R-M  | Single-family                       | 850 (a)                             |
| R-2, R-3 & R-M  | Multiple-family buffet apartment    | 400 (a)                             |
| R-2, R-3 & R-M  | Multiple-family 1-bedroom apartment | 550 (a)                             |
| R-2, R-3 & R-M  | Multiple-family 2-bedroom apartment | 720 (a)                             |

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|                |                                          |                                                     |
|----------------|------------------------------------------|-----------------------------------------------------|
| R-2, R-3 & R-M | Multiple-family 3-bedroom apartment      | 900 (a)                                             |
| R-2, R-3 & R-M | Multiple-family over 3-bedroom apartment | Add 200 sq. ft. for each bedroom to the 3rd bedroom |

(a) F.H.A. or H.U.D. minimum requirement shall govern for dwelling units constructed under their programs.

(Ord. 8 §1, 2006)

**Sec. 21-93. Fences; walls; retaining walls.**

Fences, walls and retaining walls not exceeding forty-eight (48) inches in height may be erected on any part of the lot between the front lot line and the front setback line for structures and, on any other part of the lot, may be erected to a height not to exceed seventy-two (72) inches; provided, however, that:

- (1) Retaining walls abutting public rights-of-way or other lot lines may be built to any height, provided that the vision of a motor vehicle operator is not impaired; and
- (2) Schools, public parks and playgrounds may erect open-mesh fences to any height on the lot.

The height of walls, fences and retaining walls shall be determined by measurement from the ground level at the lowest grade level on either side of such. When used in any combination, the total height shall not exceed the maximum allowable height. No fence of barbed wire construction shall be allowed, except in the I-1 zone.

(Ord. 8 §1, 2006)

**Sec. 21-94. Regulations.**

| District | Minimum Lot Area in Square Feet | Minimum Lot Width in Feet at Front of Setback Line (a) | Minimum Proportion of Lot in Unobstructed Open Space | Setbacks in Feet (f) |          |          |                    | Maximum Height of Structures (in Feet) | Maximum Floor Area Ratio |
|----------|---------------------------------|--------------------------------------------------------|------------------------------------------------------|----------------------|----------|----------|--------------------|----------------------------------------|--------------------------|
|          |                                 |                                                        |                                                      | Front (d)(e)(f)      | Rear (f) | Side (f) | Bulk of Structures |                                        |                          |
| R-E      | 14,520 (1/3 acre)               | 100'                                                   | 50%                                                  | 30'                  | 20'      | 15'      | 10' (g)            | 35'                                    | 1/2:1                    |

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|      |                 |         |      |         |         |        |         |     |     |
|------|-----------------|---------|------|---------|---------|--------|---------|-----|-----|
| R-1  | 6,000 (b)       | 50' (b) | 50%  | 20'     | 20' (h) | 5'     | 10' (g) | 35' | ¾:1 |
| R-2  | 5,000 (b)(c)    | 50' (b) | 50%  | 20'     | 20' (h) | 5'     |         | 35' | 1:1 |
| R-3  | 5,000 (b)(i)    | 50' (b) | 50%  | 15'     | 20' (h) | 5'     |         | 35' | 1:1 |
| R-M  | 14,520 (½ acre) | 100'    | 50%  | 30'     | 20'     | 15'    | 10' (g) | 45' | 3:1 |
| C-1  | (—) (j)         | (—) (j) | 10%  | 10' (k) | 10' (k) | 5' (k) |         | 35' | 3:1 |
| C-2  | (—) (j)         | (—) (j) | 15%  | 10' (k) | 10' (k) | 5' (k) |         | 35' | 3:1 |
| C-3  | (—) (j)         | (—) (j) | 20%  | 10' (k) | 10' (k) | 5' (k) |         | 35' | 3:1 |
| I-1  | (—) (j)         | (—) (j) | 20%  | 10' (k) | 10' (k) | 5' (k) |         | 35' | 3:1 |
| L-1  | (—) (j)         | (—) (j) | 20%  | 10' (k) | 10' (k) | 5' (k) |         | 35' | 3:1 |
| PUD  | *               | *       | 30%  | *       | *       | *      | 10' (g) | 35' | *   |
| Park | (—)             | (—)     | 50%  | 20'     | 20'     | 20'    | 10' (g) | 35' | 1:1 |
| CONS | (—)             | (—)     | 100% | (—)     | (—)     | (—)    | (—)     | (—) | (—) |

Note:

\* See Article XI, PUD.

(—) This symbol means that no limitations are specified.

- (a) The widths given are for lots of rectangular shape; for lots not rectangular, the width shall be ½ the width given but not less than 30 feet. The values given in the table shall then be the average lot width.

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(b) The area and width may be reduced for a structure used as a single-family dwelling if:

1. The lot is located in a subdivision existing prior to adoption of this Code.
2. The lot is adjoined on both sides by lots with structures thereon, or by a street on 1 side and a lot with a structure thereon on the other side.

|            |                                            |     |     |    |       |     |    |     |    |        |
|------------|--------------------------------------------|-----|-----|----|-------|-----|----|-----|----|--------|
| Reductions |                                            |     |     |    | shall |     |    |     |    | be:    |
| 1. R-1:    | 4,400                                      | sq. | ft. | of | area  | and | 37 | ft. | in | width. |
| 2. R-2:    | 3,900                                      | sq. | ft. | of | area  | and | 35 | ft. | in | width. |
| 3. R-3:    | 3,900 sq. ft. of area and 35 ft. in width. |     |     |    |       |     |    |     |    |        |

(c) A minimum of 1,800 square feet per dwelling unit for two-family and multiple-family dwellings.

(d) Front setbacks for all accessory uses and detached private garages shall be 1½ times the distance listed in the table.

(e) Where more than 25% of the lots by frontage along 1 block front are occupied by structures containing a permitted use by right, no structure hereafter designed, erected or altered shall project beyond the predominant front setback established by such existing structures; however, this regulation shall not require a front setback of more than 30 feet.

(f) Permitted encroachments on setback space:

1. Any structure or part thereof which is below the grade of any setback may project any distance into such setback space.
2. The following may project 18 inches into all setbacks: belt courses, sills, lintels, pilasters, chimneys not over 6 feet in width, gas and electric meters and transformers.
3. The following may project 5 feet into all setbacks: building accessories designed and intended to control light entering a building, unwallied porches, terraces and balconies and outside stairways.
4. Cornices, eaves, roof overhangs and gutters may project 5 feet into the front and rear setbacks and 5 feet or ½ the side setback space, whichever is less, into the side setback.

(g) Bulk of structures: No part of a structure, except permitted encroachments (f), shall project up through the bulk limits which are defined by planes extending up over the lot at an angle of 45 degrees with respect to the horizontal (a pitch of 1 foot additional rise for each additional foot setback) and which planes are co-directional and begin at points above the natural grades of the centerline of the street for the front lot line, the rear and side lot lines are as follows:

1. R-E, R-1, R-M, PUD and Park = 10 feet vertical, then 45 degrees.
2. R-2 = 15 feet vertical, then 45 degrees.
3. R-3 = 20 feet vertical, then 45 degrees.
4. C-1, C-2, C-3, I-1, and L-1 = 25 feet vertical, then 45 degrees.

(h) Private garages and accessory buildings shall be set back a distance of 4 feet.

(i) A minimum of 1,500 square feet per dwelling unit for multifamily dwellings.

(j) Same requirements as R-3 for residential construction.

(k) The setback of front, side and rear can be deleted, and the structure built on the lot line if the wall is a 4-hour rated wall as defined in the building code.

(Ord. 8 §1, 2006; Ord. 2 §8, 2009; Ord. No. 8, §1, 2016)

**Sec. 21-95—21-100. Reserved.**

**ARTICLE VII Parking and Loading Requirements**

[Sec. 21-101. Scope; duty to provide.](#)



[Sec. 21-102. Location; parking and loading.](#)

[Sec. 21-103. Improvements; maintenance.](#)

[Sec. 21-104. Parking space required.](#)

[Sec. 21-105. Parking dimensions; layout.](#)

[Sec. 21-106. Loading space required.](#)

[Sec. 21-107. Restrictions.](#)

[Sec. 21-108—21-110. Reserved.](#)

**Sec. 21-101. Scope; duty to provide.**

- (A) The regulations herein set forth shall apply and govern in all zoning districts.
- (B) No land shall be used or occupied, no structures shall be designed, erected or altered and no use shall be operated unless the off-street parking and loading spaces herein are provided in at least the amount and maintained in the manner set forth in this Article.
- (C) The duty to provide and maintain off-street parking space shall be the joint and several responsibility of the operator and the owner of the land on which the use is located and for which off-street parking is to be provided and maintained.
- (D) For land, structures or uses by right actually used, occupied or operated on February 1, 2007, the number of existing off-street parking spaces shall not be reduced below the minimum number of spaces required under this Article. If such land area, structure or use by right is enlarged, expanded or changed, there shall be provided the following amounts of off-street parking and loading:
  - (1) If such land area, structure or use by right is enlarged or expanded, there shall be provided for the increment only at least the amount or number of off-street parking and loading spaces that would be required hereunder if the increment were a separate land area, structure or use by right established or placed into operation after the effective date of this Code; or
  - (2) If such land area, structure or use by right is changed from one (1) use by right to any other use by right allowed under this Chapter which requires more off-street parking and loading spaces than the previous use by right, there shall be provided no additional off-street parking and loading spaces if the new use by right requirement does not exceed the previous use by right requirement by more than twenty-five (25) percent; however, additional off-street parking and loading spaces shall be provided for any new use by right if this Article requires such spaces in excess of one hundred twenty-five (125) percent of the overall requirement for the previous use by right.

(Ord. 8 §1, 2006)

**Sec. 21-102. Location; parking and loading.**

- (A) Off-street parking.
  - (1) Where possible, off-street parking space shall be located on the same zone lot as the use required to provide such space, but space may be composed of one (1) or several parcels.
  - (2) Separate off-street parking space shall be provided for each use, or the space required to be provided by two (2) or more uses located on the same lot may be combined and used jointly; provided, however, that where off-street parking space is combined and used jointly by two (2) or more uses having different standards for determining the amount of required space, the space

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shall be adequate in area to provide the sum total of the off-street parking space requirements of all such uses.

- (3) Either part or all of the required off-street parking space may be located off the lot on which is located the use for which space is provided. The space to be provided by any use shall be located no farther from the lot than the land adjacent to such lot.
- (B) Off-street loading. Off-street loading space shall be located on the same lot as the structure for which provided and shall be composed of one (1) parcel.

(Ord. 8 §1, 2006)

### **Sec. 21-103. Improvements; maintenance.**

- (A) Improvements to parking and loading spaces.
- (1) Entrances and exits shall be so located as to minimize traffic congestion.
  - (2) Barriers of such dimensions that occupants of adjacent structures are not unreasonably disturbed by the movement of vehicles, wheel and bumper guards of not more than twenty-four (24) inches in height and so located that no part of parked vehicles will extend beyond the parking area, and lighting facilities so arranged that they disturb neither adjacent residential property nor traffic shall be provided.
- (B) Maintenance. All off-street parking and loading spaces, aisles and driveways shall be so graded as to dispose of all surface water, other dust free surface, and maintained in good condition, free of weeds, dust, trash and debris.

(Ord. 8 §1, 2006)

### **Sec. 21-104. Parking space required.**

- (A) Off-street parking shall be provided in the amounts not less than those listed below:
- (1) Single-family and two-family dwellings and mobile homes: Two (2) spaces per dwelling unit or mobile home.
  - (2) Multifamily dwellings containing three (3) or more dwelling units: One and one-half (1½) spaces per dwelling unit.
  - (3) Multifamily dwellings for the elderly only: One-half (½) space per dwelling unit plus one (1) space for each two (2) employees and one (1) space per five (5) dwellings for visitors.
  - (4) Residential hotel, rooming or boarding house: Four (4) spaces per five (5) guest accommodations.
  - (5) Hotel and motel: One and one-fourth (1¼) spaces per guest room or suite.
  - (6) Convalescent hospital, nursing home, rest home or home for the aged: One and one-fourth (1¼) spaces per two (2) beds.
  - (7) Hospital: One and one-half (1½) spaces per bed.
  - (8) Church or mortuary: One (1) space per three (3) seats or every six (6) feet of bench length in the main auditorium.
  - (9) All schools, except senior high school: Two (2) spaces per each teacher and employee plus off-street student loading and unloading facility.
  - (10) Senior high school: One (1) space for each teacher and employee plus one (1) space for each six (6) students.

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- (11) Bowling alley: Five (5) spaces per lane, plus one (1) space per two (2) employees.
  - (12) Retail store, medical and dental clinic, library or museum: One (1) space per four hundred (400) square feet of gross floor area, plus one (1) space per every two (2) employees.
  - (13) Service or repair shop, retail store handling exclusively bulky merchandise such as automobiles and furniture, bank, office buildings (except medical and dental): One (1) space per six hundred (600) square feet of gross floor area plus one (1) space per two (2) employees.
  - (14) Eating or drinking establishments: One (1) space per two hundred fifty (250) square feet of gross floor area.
  - (15) Manufacturing or industrial use, warehousing and wholesaling establishments: One (1) space per eight hundred (800) square feet of gross floor area.
- (B) Parking requirements for uses not listed shall be determined by the Planning Commission based upon the criteria that the parking needs of any use shall be provided off-street.

(Ord. 8 §1, 2006)

**Sec. 21-105. Parking dimensions; layout.**

The minimum size of required parking space shall be a width of nine (9) feet and a length of twenty (20) feet.

| <i>Angle of parking</i> | <i>Stall depth</i> | <i>Curb length</i> | <i>Driveway width</i> |                |
|-------------------------|--------------------|--------------------|-----------------------|----------------|
|                         |                    |                    | <i>One-way</i>        | <i>Two-way</i> |
| 00 degrees              | 9' 0"              | 20' 0"             | 12' 0"                | 23' 0"         |
| 30 degrees              | 17' 10"            | 21' 10"            | 12' 0"                | 23' 0"         |
| 45 degrees              | 20' 6"             | 20' 6"             | 12' 0"                | 23' 0"         |
| 60 degrees              | 21' 10"            | 17' 10"            | 18' 0"                | 23' 0"         |
| 90 degrees              | 20' 0"             | 9' 0"              | 23' 0"                | 23' 0"         |

(Ord. 8 §1, 2006)

**Sec. 21-106. Loading space required.**

- (A) At least the following amount of off-street loading space shall be provided, plus an area or means adequate for maneuvering, ingress and egress. Off-street loading space is not required for: single-family and multifamily dwellings or commercial, recreation and similar type buildings of fifteen thousand (15,000) square feet or less when approved by the Planning Commission.

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(B) Each berth shall be ten (10) feet wide, thirty-five (35) feet long and fourteen (14) feet high. The number of berths required shall be as follows:

| <i>Square Feet of Gross Floor Area</i>     | <i>Required No. of Berths</i> |
|--------------------------------------------|-------------------------------|
| 0 to 40,000                                | 1                             |
| 40,001 to 100,000                          | 2                             |
| 100,001 to 200,000                         | 3                             |
| For each additional<br>90,000 over 200,000 | 1 Additional                  |

(Ord. 8 §1, 2006)

**Sec. 21-107. Restrictions.**

- (A) In R-E, R-1, R-2 and R-3 Districts only: Vehicles up to three-fourths-ton manufacturer's rated capacity and not more than one (1) commercial vehicle shall be parked on the lot or on the street for each dwelling unit. The lot shall not be used for the commercial sale, repair, dismantling or servicing of any vehicles, equipment, materials or supplies. Front setback space shall not be used for the parking of a motor or other wheeled vehicle except in the case of single-family and two-family dwellings, where parking on the driveway located between the street and the dwelling unit shall be allowed. Automobile trailers and travel trailer units shall be parked or stored only on the rear one-half (½) of the lot; provided, however, that the rear one-half (½) of the lot is located so as to comply with front and side setback requirements for structures and is screened from the street and adjacent properties by a fence as high as the maximum fence height permitted in the district.
- (B) In all districts, it is unlawful for any occupied travel trailer to remain upon any lot, place or parcel of land except in a travel trailer park; except, however, that not more than one (1) occupied travel trailer may be kept on a single parcel of privately owned property with the consent of the owner of the property for a single period of time not to exceed four (4) consecutive months in any calendar year, only by permit from the City. Application for said permit must be made on forms provided by the City within seven (7) days of arrival.

(Ord. 8 §1, 2006)

**Sec. 21-108—21-110. Reserved.**

**ARTICLE VIII Conditional Use Permit**

[Sec. 21-111. General.](#)

[Sec. 21-112. Applicability.](#)

[Sec. 21-113. Approval standards.](#)

[Sec. 21-114. Permit conditions.](#)

[Sec. 21-115. Submittal requirements.](#)

[Sec. 21-116. Review process.](#)

[Sec. 21-117. Amendment.](#)

[Sec. 21-118. Appeal.](#)

[Sec. 21-119. Development permit required.](#)

[Sec. 21-120—21-130. Reserved.](#)

**Sec. 21-111. General.**

Article III of this Chapter permits uses not specified as being by right in the various zoning districts to be approved and implemented by conditional use permit. This Article governs the application for and approval, administration and enforcement of conditional use permits. Conditional uses generally present special impacts upon adjacent properties which necessitate individualized review and consideration and, in most instances, the approval of a conditional use requires the imposition of conditions or requirements designed to eliminate, reduce or mitigate adverse impacts resulting from the proposed use.

(Ord. 8 §1, 2006)

**Sec. 21-112. Applicability.**

This Article applies to all uses identified as conditional uses pursuant to Article III of this Chapter. As used in this Article, the term *property* means the entire ownership parcel of real property, or any specifically described portion thereof, which is subject to a conditional use permit or application therefor. No building permit shall be issued in any zoning district for any use specified as a conditional use, nor shall any person cause or permit such use upon property owned, controlled or occupied by such person, until a conditional use permit has been approved by the City Council according to the requirements of this Article.

(Ord. 8 §1, 2006)

**Sec. 21-113. Approval standards.**

Conditional use permits may be approved by the City only where the applicant demonstrates that all of the following conditions will be met:

- (1) The proposed use conforms to all requirements of this Article and all other applicable provisions of this Chapter and other development regulations, standards or requirements adopted by the City;
- (2) The proposed use is in general conformance with applicable provisions of the Comprehensive Plan, or that changed conditions occurring since the adoption of the Comprehensive Plan support approval of the proposed conditional use of the property; and
- (3) The proposed use will not result in impacts to adjacent properties which are significantly different in nature, type or extent than impacts caused by uses which are permitted by right in the zone district where the property is located.

(Ord. 8 §1, 2006)

**Sec. 21-114. Permit conditions.**

- (A) The Planning Commission may recommend, and the City Council may impose, reasonable conditions on the approval of the conditional use permit which are deemed necessary or desirable:
  - (1) To ensure that the conditional use will not injure the health, safety or welfare of the public;
  - (2) To ensure that the conditional use will conform to the standards for approval stated in Section 21-113(1) above.
- (B) Conditions may include, but shall not be limited to, the imposition of development standards and requirements applicable to the operation, location, arrangement, use and construction of any conditional use, including standards which protect adjacent property from noise, vibration, dust, dirt, smoke, fumes, gas, odor, explosion, glare, offensive view or other undesirable or hazardous conditions.
- (C) Failure to conform to any condition imposed upon the approval of a conditional use permit shall constitute a violation of this Chapter and may be prosecuted or abated in the same manner as any other violation hereof.

(Ord. 8 §1, 2006)

**Sec. 21-115. Submittal requirements.**

Applications for a conditional use permit may be submitted by any person, firm or corporation having an ownership interest in the property on forms provided by the City. The completed application shall be submitted to the City and include, at a minimum, the following:

- (1) A complete narrative description of the proposed conditional use.
- (2) Two (2) originals of a site plan, drawn at a scale of not less than one (1) inch to two hundred (200) feet, and twenty-five (25) copies not larger than eleven (11) inches by seventeen (17) inches, describing or indicating the following:
  - (a) Existing zoning district classifications of the property and all other lands within three hundred (300) feet of it.
  - (b) All natural or man-made features, whether existing or proposed, within the property and within three hundred (300) feet of it.
  - (c) The location, size and height of all buildings, structures and improvements proposed for construction as part of the proposed conditional use.
- (3) A vicinity map indicating the general location of the property within the City.
- (4) A typed or printed legal description, and a boundary and improvements survey of the property, prepared and certified by a land surveyor licensed in the State of Colorado, on eight-and-one-half-inch by eleven-inch paper suitable for use as an attachment to an ordinance approving the conditional use permit.
- (5) A written, professionally prepared impact assessment, and other or additional studies or reports necessary or useful to permit a full and thorough evaluation of the conditional use permit application, as determined at the preapplication conference provided in Subsection 21-116(A) below. The applicant shall pay all costs incurred by the City in obtaining such reports, whether they are prepared by the applicant or by the City. Such costs shall be in addition to the fees required above, and shall be paid in full before the Planning Commission places the application on the agenda for a meeting to consider the same.
  - (a) The subject matter of any such reports or studies submitted by the applicant may include, but may not be limited to, the following:

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1. Traffic impact/trip generation.
  2. Parking.
  3. Water demand/service.
  4. Electric, gas, telecommunications and utility service.
  5. Environmental hazards and mitigation plan.
  6. Natural resources.
  7. Sanitary sewer demand/service.
  8. Historic preservation.
  9. Drainage, including off-site impacts.
  10. Visual impacts.
  11. Educational needs.
  12. Emergency services needs.
- (b) At the preapplication conference required by Subsection 21-116(A) below, the City Planner shall determine and specify the subject matter and scope of any reports to be submitted by the applicant. All studies related to traffic, utilities, education, parking and emergency services shall specifically evaluate and identify both the existing capacity of available services and the projected demand for such services expected to be generated by the proposed conditional use.
- (c) All studies and reports submitted by the applicant shall be prepared by a qualified professional selected by the applicant, subject to the approval of the City Planner. Applicants are strongly encouraged to obtain the City Planner's written approval of the selected preparer at the preapplication conference and, in any event, before commencing the preparation of the study or report. The City Planner may reject any applicant-selected preparer where, in the opinion of the City Planner, the preparer lacks sufficient training, experience or professional license or certification to prepare the study or report to a quality or standard commensurate with studies and reports produced by preparers of similar reports in the metropolitan Denver area.
- (6) Stamped, addressed envelopes for all record owners of property within three hundred (300) feet of the property for which the conditional use is proposed.

(Ord. 8 §1, 2006; Ord. 11 §6, 2007)

### **Sec. 21-116. Review process.**

- (A) Prior to filing any application or other submittal, the applicant shall meet with the City Planner to discuss the general nature of the project and the review process, and to resolve issues relating to impact assessment and other reports required by Section 21-115 above. Based upon factors, including, without limitation, the scope or complexity of the proposed conditional use, the extent of its apparent impact upon other affected lands and City services, and the experience and other resources of the applicant, the City Planner shall determine whether and to what extent the impact assessment and other reports required by Section 21-115 above will be prepared by the applicant or by the City. The City Planner will determine the estimated reasonable cost of any such reports to be prepared by the City, and the applicant shall tender that amount as a portion of the costs deposit required by Section 21-11 of this Chapter at the time the application is filed. The applicant may, within three (3) business days after the City Planner's decision on any of the foregoing matters, appeal the same by giving written notice of such appeal to the City Clerk, who shall schedule the appeal before the City Council

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in the same manner as other public comment items. The City Council shall promptly determine the issues raised by the appeal.

- (B) The City Planner shall determine if the submitted application for conditional use is complete. If the application is deemed incomplete, the City Planner shall reject it and inform the applicant of the materials needed to complete the application. If the application is complete, the City Planner shall initiate the conditional use review process.
- (C) Technical review.
  - (1) A technical review committee composed of the City Planner, the Building Official, the Public Works Director or Superintendent, the City Engineer, the City Surveyor, the City Attorney and, when the property is a designated historic building or structure or is located in the historic preservation district, a representative from the Historic Preservation Review Commission, shall administratively review all conditional use applications.
  - (2) When review by the technical review committee is complete, the City Planner shall prepare a staff report including the pertinent comments of the participating City departments and other affected public agencies, and the recommendations of the technical review committee.
  - (3) Upon its completion, the City Planner shall forward the staff report and recommendation to the Planning Commission.
- (D) The Planning Commission shall, at a duly convened meeting, hold a public hearing to consider the application and submittals, impact assessment and other reports, the staff report and recommendation, and any other relevant factors. Notice of the hearing shall be provided in the same manner set forth in Subsection (E) below.
- (E) City Council review.
  - (1) Upon receipt of the Planning Commission's written findings and recommendation, and following proper notice, the City Council shall hold at least one (1) public hearing on the application. Notice of public hearing shall be given by the City Clerk at least fifteen (15) days in advance of the date the City Council shall consider the permit application by:
    - (a) Mailing notice to the record owners of property lying within three hundred (300) feet of the property;
    - (b) Publishing notice in a newspaper of general circulation in the City; and
    - (c) Posting one (1) or more signs on the property, such signs bearing substantially the same information included in the notice of public hearing.
  - (2) Notices shall include the date, time and place of the public hearing; a brief description of the use applied for; a brief summary of the possible action; and a statement as to the location and availability of the application for public inspection and review.
  - (3) Prior to taking action on the application, the City Council shall review and consider the application and submittals, the impact assessment and other reports, the staff report and recommendation, the Planning Commission's findings and recommendations, and any other relevant information presented to or generated by the Planning Commission or the City Council during the review process.
  - (4) The City Council may approve, approve with conditions or deny the application. The City Council shall make a finding whether the application meets the standards set forth in herein. Where the City Council's decision is contrary to the recommendation and findings of the Planning Commission, the City Council shall make specific findings to support its decision. Further, the City Council may remand the conditional use permit application to the Planning Commission for additional findings or to obtain further evidence.
  - (5) Nothing in this Chapter shall limit the authority of the City Council to refer its decision on the conditional use permit to the eligible electors of the City for final determination.



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- (6) This Article supersedes and controls any contrary or inconsistent provisions of Article IX of this Chapter.
- (F) All approved conditional use permits shall be approved by ordinance. Such ordinance shall include the legal description of the property, specify in detail the conditional use permitted and clearly specify any and all permit conditions imposed. The ordinance shall be recorded in the records of the County Clerk and Recorder, and the permit shall run with the described property. All approved conditional use permits shall be referenced on the zoning district map and a file containing all documents relevant to the application and the resulting permit shall be maintained by the City Clerk.
- (G) Any conditional use permit may be revoked at any time by ordinance of the City Council, following notice to the owner of the property and observance of substantially the same procedure provided herein for City Council consideration of issuance of the permit, where the City Council finds failure to meet the conditions imposed, if any, or that the property has not been devoted to the approved conditional use for a period of more than two (2) years.
- (H) Any rezoning of the property after a conditional use permit is approved but before the approved conditional use is implemented on the property shall automatically terminate and void the conditional use permit unless the City expressly reaffirms the permit as part of the rezoning.

(Ord. 8 §1, 2006; Ord. 11 §7, 2007)

### **Sec. 21-117. Amendment.**

An application for amendment of an approved and valid conditional use permit shall be processed in accordance with the requirements applicable to the issuance of a conditional use permit.

(Ord. 8 §1, 2006)

### **Sec. 21-118. Appeal.**

Decisions of the City Council concerning an application for a conditional use permit or an amendment thereof shall be deemed the final action of the City for purposes of appeal to District Court.

(Ord. 8 §1, 2006)

### **Sec. 21-119. Development permit required.**

Approval of a conditional use permit shall establish the approved use as a permitted use for the property under the provisions of this Chapter.

(Ord. 8 §1, 2006)

### **Sec. 21-120—21-130. Reserved.**

## **ARTICLE IX Amendments; Zone Changes**

[Sec. 21-131. Authority.](#)

[Sec. 21-132. Property owner petitions.](#)

[Sec. 21-133. Planning Commission review.](#)

[Sec. 21-134. City Council review.](#)

[Sec. 21-135. Denial; resubmittal.](#)

[Sec. 21-136—21-140. Reserved.](#)

**Sec. 21-131. Authority.**

The City Council may, from time to time, on its own motion, on motion of the Planning Commission or on petition by any property owner, after notice and public hearings as provided by law and in accordance with the procedures and requirements set forth in this Article, amend, supplement or change the zoning map or any provision of this Chapter.

(Ord. 8 §1, 2006)

**Sec. 21-132. Property owner petitions.**

- (A) Petition. Any petition to change zoning for specific property shall be filed with the City Clerk and shall be signed by the owners of one hundred (100) percent of the property proposed for zoning, exclusive of public streets and alleys. Such petition shall furnish or provide at a minimum the following information:
  - (1) A legal description of the property proposed for rezoning.
  - (2) A list of the names and addresses of all owners of property within the area proposed for rezoning, together with a legal description of the property within such area owned by each such owner.
  - (3) A statement of the present zoning of the area proposed for rezoning.
  - (4) A statement of the type of zoning sought by the petition.
  - (5) A narrative summary of the existing uses within the area proposed for rezoning.
- (B) Required attachments. Such petition shall be accompanied by the following attachments:
  - (1) Three (3) copies of a map prepared at a scale of one hundred (100) feet to one (1) inch or larger, and twenty (20) copies no larger than eleven (11) inches by seventeen (17) inches, showing the property proposed for rezoning, its location and the length and direction of each boundary thereof, the location and use of all buildings on such property, and the principal use of all properties within one hundred (100) feet of the boundaries of such lands, disregarding intervening public streets and alleys; and
  - (2) Stamped and addressed envelopes for the record owners of all properties proposed for rezoning and all properties within one hundred (100) feet of any part of the area proposed for rezoning, disregarding intervening public streets and alleys.
- (C) Deposit. Such petition shall be accompanied by the deposit and executed agreement required by Section 21-11 of this Chapter.
- (D) Time for submitting petition. To allow adequate time for staff, professional and Planning Commission review, the completed petition shall be submitted to the City Clerk at least thirty (30) days prior to the Planning Commission meeting at which it will be considered.

(Ord. 8 §1, 2006; Ord. 11 §8, 2007)

**Sec. 21-133. Planning Commission review.**

Upon receipt of a complete property owner submittal, or on its own motion or request for same by the City Council, the Planning Commission shall review, evaluate and investigate the proposed rezoning. The Planning Commission may hold such public hearings, solicit comment from interested persons and perform such other investigations as it deems appropriate, and shall hold a public hearing if so directed by the City Council. Upon completion of its investigation, it shall prepare and transmit its report and recommendations concerning the same to the City Council.

(Ord. 8 §1, 2006)

**Sec. 21-134. City Council review.**

- (A) Public hearing; notice. Upon receipt of the report and recommendations of the Planning Commission, the City Council shall schedule a public hearing on the proposed rezoning. Not less than fifteen (15) days prior to the date scheduled for the hearing, notice thereof shall be:
  - (1) Published in a paper of general circulation in the City;
  - (2) Mailed to all owners of the property proposed for rezoning and to the owners of all properties within one hundred (100) feet of any part of the property proposed for rezoning, disregarding intervening public streets and alleys; and
  - (3) Posted on the property proposed for rezoning.
- (B) Approval criteria. In determining the zoning, the City Council shall consider the following factors:
  - (1) Whether the proposed zoning is in conformity with the Comprehensive Plan.
  - (2) Whether there have been material changes in the character of the neighborhood such as to justify a change in the zoning.
  - (3) Whether the proposed rezoning will tend to preserve and promote property values in the neighborhood.
  - (4) Whether development of the property in accordance with the proposed rezoning will be in harmony and compatible with surrounding land uses and present development in the area.
  - (5) Whether the property can be reasonably used and developed as presently zoned.
  - (6) Whether the proposed rezoning will affect traffic congestion in the area.
  - (7) Whether the proposed rezoning will promote the public welfare.
  - (8) Whether the property was properly zoned when its current zoning was established.
  - (9) Whether denial of the proposed rezoning would preclude any reasonable economic use of property.
  - (10) Whether any other zoning classification would afford any reasonable use of the property.
  - (11) Whether denial of the proposed rezoning would impose an undue hardship on the owner.
  - (12) Whether the proposed rezoning will promote or disturb stability in the zoning of the neighborhood.
- (C) Protest to changes. If a written protest against any proposed change in these zoning regulations or in the zoning classification of any property is filed with the City Clerk at least twenty-four (24) hours before the City Council's vote on the same, and such protest is signed by the owners of twenty (20) percent or more of the property proposed for rezoning or of the area of land located within one hundred (100) feet of any part of such property, disregarding intervening public streets and alleys, such change shall not become effective except by the favorable vote of a majority of all members of the City Council.

(Ord. 8 §1, 2006)

**Sec. 21-135. Denial; resubmittal.**

If a property owner petition is denied, a period of one (1) year must elapse from the date of such denial before another property owner's petition to establish the same or substantially similar zoning for the same property may be submitted.

(Ord. 8 §1, 2006)

**Sec. 21-136—21-140. Reserved.**

**ARTICLE X Variance Board**

[Sec. 21-141. Appeals.](#)

[Sec. 21-142. Variances.](#)

[Sec. 21-143. Applications; hearings.](#)

[Sec. 21-144. Hearing procedures; action.](#)

[Sec. 21-145—21-150. Reserved.](#)

**Sec. 21-141. Appeals.**

- (A) The Variance Board shall hear and decide appeals where it is alleged that there is an error in any order, requirement, decision or determination made by the Building Official in the administration of this Chapter. The Variance Board may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination, where the Variance Board finds that the Building Official acted:
  - (1) Without clear and convincing evidence to support the order, requirement, decision or determination; or
  - (2) Beyond the Building Official's authority.
- (B) Except where specifically provided otherwise, all questions of administration and enforcement of this Chapter shall first be presented to the Building Official. Questions shall be presented to the Variance Board only on appeal from the decision of the Building Official.
- (C) Appeals made to the Variance Board must be made in writing and filed with the City within thirty (30) days following the action or decision from which the appeal is taken.
- (D) An appeal from an order, requirement, decision or determination made by the Building Official shall stay all proceedings unless the Building Official certifies that such stay would cause imminent peril to life or property.

(Ord. 8 §1, 2006)

**Sec. 21-142. Variances.**

- (A) The Variance Board may authorize variances from the requirements of this Chapter and Chapter 20 of this Code. A variance shall be considered an extraordinary remedy. When considering a variance from the requirements of Chapter 20, the Variance Board shall apply those criteria set forth in

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Subsection 20-23(C) of this Code. When considering a variance from the requirements of this Chapter, the Variance Board shall apply the criteria set forth in Subsection (B) below.

- (B) The endorsement of the variance by adjacent landowners does not relieve the applicant of the burden of meeting all of the requirements set forth in this Subsection. No variances shall be authorized unless the Variance Board finds all of the following:
  - (1) The applicant would suffer hardship as a result of the strict application of these regulations, which hardship is not generally applicable to other lands or structures in the same zone district because of considerations relating to the preservation of historic structures, the unusual configuration of the applicant's property boundaries, unique circumstances related to existing structures or topographic conditions.
  - (2) There are no reasonable design alternatives or alternative locations for structures that would eliminate or reduce the need for the requested variance, or decrease the scope or extent of the variance required, that do not involve unreasonable expense under the circumstances.
  - (3) The need for the variance does not result from the intentional, reckless or negligent actions of the applicant or his or her agent, a violation of any provision of this Chapter, this Code, any other code or ordinance adopted and in effect in the City or a previously granted variance.
  - (4) Reasonable protections are afforded adjacent properties.
  - (5) The variance is the minimum variance that will make possible the reasonable use of the land or structure.
  - (6) The granting of the variance will:
    - (a) Observe the spirit of this Chapter;
    - (b) Secure the public safety and welfare;
    - (c) Ensure that substantial justice is done; and
    - (d) Observe common sense.
- (C) In granting any variance, the Variance Board may prescribe appropriate conditions and safeguards in conformity with this Chapter and the Comprehensive Plan and particularly the standards set forth above. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this Chapter and punishable under Section 21-8 of this Chapter.
- (D) Under no circumstances shall the Variance Board grant a variance to allow a use not authorized under the terms of this Chapter in the district involved, or any use expressly or by implication prohibited by the terms of this Chapter in said district. Also, neither a nonconforming use of neighboring lands or structures in the same district, nor a permitted or nonconforming use of lands or structures in other districts shall be considered grounds for the issuance of a variance.
- (E) Every variance shall run with the land, but shall apply only to the specific building or structure for which it was originally sought.
- (F) The granting of any variance shall not constitute or be construed as a precedent, ground or cause for any other variance.
- (G) A variance shall be effective for a period of one (1) year from the date it is granted by the Variance Board. Failure to obtain a building permit for the structure for which the variance was granted prior to the expiration of said period will cause lapse of the variance. Requests for an extension of said period shall be presented to the City Planner in writing at least thirty (30) days prior to the scheduled expiration date. The City Planner may authorize up to one (1) additional year if cause exists for the extension and there would be no harm to the adjacent property owners or the community in general arising from the extension.

(Ord. 8 §1, 2006)

**Sec. 21-143. Applications; hearings.**

- (A) No matter shall be set for a hearing before the Variance Board until the applicant:
  - (1) Submits eight (8) copies of an application on the City-provided form.
  - (2) Submits the deposit and executed agreement required by Section 21-11 of this Chapter.
  - (3) Has been afforded a pre-hearing conference with the City Planner, which shall be held within ten (10) days if requested by the applicant.
  - (4) Meets in at least one (1) pre-hearing conference with the Building Official, which conference may result in amendments or corrections to the application.
  - (5) Submits within twenty (20) days after the final pre-hearing conference with the Building Official eight (8) copies of the application or revised application as applicable, addressing the Building Official's comments made at the pre-hearing conference.
- (B) The official application form must contain the following:
  - (1) The applicant's name, address, telephone number and facsimile number, if any.
  - (2) Address of the property.
  - (3) Legal description of the property.
  - (4) Citation to or copy of the section or subsection of this Chapter from which the variance is being requested, or a copy of the Building Official's order, requirement, decision or determination from which an appeal is taken.
  - (5) Reasons for filing an appeal or request for variance. Requests for variances must describe the evidence supporting each of the conditions required in order for a variance to be granted, as set forth in Subsection 21-142(B) above.
  - (6) Stamped and addressed envelopes for the owners of all properties within one hundred (100) feet of any part of the affected property, disregarding intervening public streets and alleys.
  - (7) Any other information pertinent to the application which addresses issues raised during the review process, or which is deemed necessary by the applicant.
- (C) Notice of the hearing shall be given as provided in Section 21-134 of this Chapter for hearings on zoning matters, except that published notice shall not be required.

(Ord. 8 §1, 2006; Ord. 11 §9, 2007)

**Sec. 21-144. Hearing procedures; action.**

- (A) All hearings before the Variance Board shall be open to the public.
- (B) All evidence and testimony shall be presented publicly. The Variance Board may take notice of, and may consider, any relevant facts within the personal knowledge of any member of the Variance Board which are publicly stated on the record.
- (C) The Variance Board shall cause a record of its proceedings to be prepared, which shall include all documents and physical evidence considered in each case, together with minutes of the proceedings. Minutes or a written findings and order shall state the grounds for each decision, and shall indicate by name the maker and second of each motion and the vote on each motion. The record of proceedings shall be filed in the office of the City Clerk.
- (D) In cases of requests for variances, the Variance Board shall make specific findings on each of the factors set forth in Section 21-142(B) above.

- (E) The concurring vote of three (3) members of the Variance Board shall be necessary to reverse or modify any order, requirement, decision or determination of the City or to approve an application on any matter upon which the Variance Board has been granted jurisdiction. Any decision of the Variance Board shall constitute the final order of the City and shall be subject to review by a court of competent jurisdiction as provided by the Colorado Rules of Civil Procedure.

(Ord. 8 §1, 2006)

**Sec. 21-145—21-150. Reserved.**

## **ARTICLE XI PUD Planned Unit Development**

[Sec. 21-151. Purpose.](#)

[Sec. 21-152. Scope of application.](#)

[Sec. 21-153. Area.](#)

[Sec. 21-154. Uses permitted.](#)

[Sec. 21-155. Ownership requirements.](#)

[Sec. 21-156. Building and site regulations.](#)

[Sec. 21-157. Off-street parking; loading requirements.](#)

[Sec. 21-158. Preliminary plan.](#)

[Sec. 21-159. Final plan.](#)

[Sec. 21-160. Successors bound.](#)

[Sec. 21-161. Subdivision regulations applicable.](#)

[Sec. 21-162. Amending final PUD plan.](#)

[Sec. 21-163. Approved plan required.](#)

[Sec. 21-164—21-170. Reserved.](#)

### **Sec. 21-151. Purpose.**

The Planned Unit Development (PUD) is established as a district to provide a greater flexibility in land development and use by allowing such development to be based upon a comprehensive, integrated, detailed plan rather than upon specific constraints as applicable to uniform lot-by-lot development. The PUD shall promote and provide:

- (1) Flexibility in design and permit planned diversification in the location of structures;
- (2) The efficient use of land to facilitate a more economic arrangement of buildings, circulation systems, land use and utilities;
- (3) To the greatest extent possible, maintenance of the existing landscape features and amenities and utilization of such features in a harmonious fashion;
- (4) More usable and suitably located recreation facilities and other public and common facilities than would otherwise be provided under conventional land development procedures;
- (5) The combination and coordination of architectural styles, building forms and relationships within the PUD; and

(6) A quality of construction that will be commensurate with other developments within the City.

(Ord. 8 §1, 2006)

**Sec. 21-152. Scope of application.**

The PUD District may be made applicable to any area and to any future land area annexed into the City. The change of a parcel in a zone district to a PUD will constitute rezoning and must be done in accordance with Article IX of this Chapter.

(Ord. 8 §1, 2006)

**Sec. 21-153. Area.**

The minimum land area that will be considered for a PUD District zoning shall be four (4) acres, unless otherwise approved by the Planning Commission.

(Ord. 8 §1, 2006)

**Sec. 21-154. Uses permitted.**

A PUD of any nature (residential, commercial, industrial, public or quasi-public) either as a single use or a combination of uses may be permitted. The Planning Commission and the City Council shall determine the uses allowed in each PUD, and those approved uses shall be stated on the approved PUD plan. The following criteria shall be observed when determining uses:

- (1) All types of residential uses may be combined in one (1) PUD;
- (2) Supporting commercial in residential PUDs shall be placed so as not to detract from the residential areas, and shall be designed to only serve the residents of the PUD; and
- (3) Commercial and industrial PUDs shall not have a negative impact on existing and future traffic, utilities and residential areas.

(Ord. 8 §1, 2006)

**Sec. 21-155. Ownership requirements.**

The applicant shall supply the Planning Commission with sufficient information that the applicant is the full owner as recorded or that he or she has executed a binding sales agreement before final approval of his or her plan. *Owner* shall mean any person, persons, corporation, association, partnership, condominium or owners' association that has been legally organized.

(Ord. 8 §1, 2006)

**Sec. 21-156. Building and site regulations.**

- (A) Areas, walls and fences: The requirements of minimum gross floor area and fence, walls and retaining walls set forth in Article VI of this Chapter shall apply.
- (B) Minimum lot areas and lot widths shall be determined by the use and design of the PUD.
- (C) Minimum unobstructed open space shall be thirty (30) percent of the PUD land area.



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- (D) No building wall shall be located closer to another building than a distance equal to one-half (1/2) the gross height of the taller building, but in no case less than twenty-five (25) feet. The distance between corner-to-corner placement shall not be less than twenty-five (25) feet. Buildings used for residential purposes shall not be located any closer to streets and parking areas than twenty (20) feet, excluding private garages and private drives to dwellings. The distance between residential buildings and other uses shall be such as to prevent excessive infringements from sound, light and traffic.
- (E) Height restrictions of Article VI of this Chapter shall apply.

(Ord. 8 §1, 2006)

**Sec. 21-157. Off-street parking; loading requirements.**

Article VII and this entire Chapter apply to all PUDs.

(Ord. 8 §1, 2006)

**Sec. 21-158. Preliminary plan.**

- (A) An application for preliminary plan review shall be filed with the City Clerk on forms provided by the City. In addition to the application, there shall be submitted:
  - (1) The deposit and executed agreement required by Section 21-11 of this Chapter;
  - (2) Five (5) full-size and twenty (20) eleven-inch-by-seventeen-inch reductions of the preliminary plan. Information required on the plan shall be:
    - (a) Names and addresses of owners, trustees and mortgagees, if any.
    - (b) Names and addresses, seal and license number of the surveyor, architect and engineers preparing documents.
    - (c) Total acreage, present zoning classification and zoning classification of all abutting districts.
    - (d) Legal description.
    - (e) Adjacent and included public rights-of-way, private and public easements and street lines, watercourses, drainage structures and utility lines shown on a boundary survey with existing topography at a contour interval of five (5) feet within the parcel and for two hundred fifty (250) feet outside the boundaries of the parcel.
    - (f) Development drawings showing the proposed division of land; dwelling unit densities; commercial floor areas and parking-loading ratios; street and parking layouts; siting of all structures locating common open spaces; location, size, type and design of each proposed and existing structure.
  - (3) The applicant shall also submit a written statement outlining the type of development, development and management of the PUD and all other pertinent information.
  - (4) The following certificate shall accompany the submittal:

I, \_\_\_\_\_, owner and developer of the property set forth above, do hereby agree that I will develop the above property as a Planned Unit Development at a density or densities as shown on the attached Preliminary Plan.

/s/

Signature

CHAPTER 21 Zoning

Approved this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by the City of Idaho Springs Planning Commission.

/s/

Chairman

Approved this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by the City Council of the City of Idaho Springs.

/s/

Mayor

ATTEST:

/s/

City Clerk

- (B) The City Planner shall review the plan for general conformity with the standards and requirements of this Article and shall prepare a report of his findings to be included in the information provided to the Planning Commission and the City Council for review.
- (C) The Planning Commission shall approve, disapprove or conditionally approve the preliminary plan and, when approved or conditionally approved, shall forward it to the City Council for final approval of this stage.
- (D) The City Council may approve, approve with conditions or deny the application. The Council may, in its discretion, remand the application to the Planning Commission for additional findings or to obtain further evidence.
- (E) PUD, annexation, subdivision and/or rezoning may take place at the same time and with a set of documents that will satisfy all requirements.
- (F) Approval of the preliminary submittal shall be valid for a period of one (1) year only. Upon written application, the Planning Commission may grant an extension of time not exceeding one (1) year for filing the final plan.

(Ord. 8 §1, 2006; Ord. 11 §10, 2007; Ord. 2 §9, 2009)

**Sec. 21-159. Final plan.**

- (A) Any applicant who has, within the immediate year prior, received approval or conditional approval of a preliminary PUD plan from the City, may apply for final approval. An application for final PUD plan approval shall be filed with the City Clerk on forms provided by the City. In addition to the application, there shall be submitted:
  - (1) The deposit and executed agreement required by Section 21-11 of this Chapter.
  - (2) Five (5) full-size and twenty (20) eleven-inch-by-seventeen-inch reduced sized copies of the final plan. Information contained in the final plan shall include:
    - (a) Site plan:
      - 1. Names and addresses of owners, trustees and mortgagees, if any.

## CHAPTER 21 Zoning

2. Name, business address, seal and license number of the individual responsible for preparation of plans.
  3. North points, scale and date.
  4. Legal description.
  5. Adjacent and included public rights-of-way and street lines.
  6. Specification for the total PUD and each section of the PUD of:
    - a. Gross area in acres and square feet;
    - b. Zoning classification;
    - c. Uses;
    - d. Area of streets and of street rights-of-way in acres, square feet and percent of gross area;
    - e. Total number of parking spaces and area of off-street parking and loading space in acres, square feet and percent of gross area;
    - f. Gross floor area and floor area ratio for each use;
    - g. Number of dwelling units;
    - h. Site area covered by structures in acres, square feet and percent of gross area;
    - i. Net site area in unobstructed open space in acres, square feet and percent of gross area; and
    - j. Site area to be maintained in common open space in acres, square feet and percent of gross area.
- (b) The location, size and type of each existing structure to be retained, each new structure use or uses to be contained therein, the number of stories, height of building, gross floor area and locations of entrances and loading points for each.
  - (c) All curb cuts, driving lanes, loading areas, public transportation points, parking areas, pedestrian walks, malls, open areas for use by tenants, the public and others, and facilities for illumination of same, with appropriate dimensions to indicate size, spacing and location accurately.
  - (d) Indication of all walks, fences, screening and plantings, including location, materials, size and height.
  - (e) Types of surfacing such as paving, concrete, turf or gravel to be used at various locations.
  - (f) The location of all common open spaces within the development, together with the proposed method of development, maintenance, and ownership of said common open spaces, together with legal documentation providing for development, maintenance and ownership of said common open spaces.
  - (g) The location, size, height and orientation of all signs, including signs flat on building façades.
  - (h) The location, size and purpose of all easements to be provided.
  - (i) A time schedule for the completion of the project or the phases thereof.
  - (j) Grading, drainage and utilities plan:
    1. Original contours at an interval of not greater than two (2) feet in dotted lines.
    2. Final contours at an interval of not greater than two (2) feet in solid lines.
    3. Outline of first floor foundation of each structure with elevation of first floor indicated, whether above or below ground level.

## CHAPTER 21 Zoning

4. Location, sizes, elevations and grades of existing and proposed storm and sanitary sewers, utility lines and water lines both within the PUD and in adjacent rights-of-way, including indication of the closest fire hydrant in each principal direction if none are included within the development.
  5. Site drainage, including indication of runoff of surface water, drainage channels and drainage structures, and any particular treatment of underground seepage or springs.
- (k) Architectural plans: illustrations of proposed architectural style of typical structures and typical floor plans of each type of residential unit to be developed, and floor plans of each commercial structure with room dimensions and areas and gross floor area of the total structure.
  - (l) Other information that the Planning Commission and/or City Council deems necessary to make a decision as to the compliance of the development with applicable ordinances and regulations shall be included on the appropriate plans.
  - (m) The final plans shall include space for certification of approval in accordance with the form used for subdivision platting. The owners and mortgagees must sign the final plat or plan.
- (3) Stamped and addressed envelopes for all record owners, trustees and mortgagees of the property and all record owners of property within one hundred (100) feet of any part of the property intended to be included in the PUD.
- (B) The City Planner shall review the application for completeness and compliance with the preliminary approval or conditional approval. If the application is found to be incomplete, it shall be returned to the applicant along with a list of items required for completion. An incomplete application may not be considered by the Planning Commission or the City Council.
  - (C) The Planning Commission shall review the complete application at a regular meeting. Unless otherwise directed by the City Council, the Planning Commission's meeting need not include a noticed public hearing, but if the Planning Commission holds a public hearing, notice of said hearing shall be in conformance with the procedures for a final subdivision plat, as set forth in Chapter 24 of this Code. The Planning Commission shall approve, disapprove or conditionally approve the final plan and, when approved or conditionally approved, shall forward its recommendation to the City Council.
  - (D) Upon receipt of the Planning Commission's recommendation, the City Council shall consider the application at a regular meeting in a noticed public hearing. Notice of said hearing shall be in conformance with the procedures for a final subdivision plat, as set forth in Chapter 24 of this Code. The City Council may approve, deny or conditionally approve the final plan.
  - (E) Approval.
    - (1) When approved by the City Council, the applicant shall file two (2) copies of the final plan with the City Clerk.
    - (2) The City Clerk shall cause to be executed and recorded in the office of the County Clerk and Recorder, at the applicant's expense, an instrument in the following form:

### Statement of Establishment of Planned Unit Development.

Under the Zoning Regulations of the City of Idaho Springs, on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, a Planned Unit Development of the following described property by Ordinance No. \_\_\_\_, Series 20\_\_\_\_. The following described property shall be developed only in accordance with the Planned Unit Development plan on file in the office of the City Clerk of the City of Idaho Springs, Idaho Springs, Colorado. The legal description of the property involved is as follows:

[Insert Legal Description]

/s/

Mayor

ATTEST:

/s/

City Clerk

(Ord. 8 §1, 2006; Ord. 11 §11, 2007; Ord. 2 §10, 2009)

**Sec. 21-160. Successors bound.**

A change of zoning to PUD shall bind the development of that property so zoned to the PUD plan, regardless of any change in ownership of the subject property.

(Ord. 8 §1, 2006)

**Sec. 21-161. Subdivision regulations applicable.**

The PUD plan is not a subdivision plat for any purpose, and full compliance with the subdivision and/or building regulations of the City must be met before a building permit is issued. However, subdivision, PUD approval and annexation may take place at the same time and with a set of documents that will satisfy each. Subdividing the property contained within the PUD plan may be in whole by one (1) subdivision plat or in parts by a series of subdivision plats, and each subdivision plat submitted under the procedures of the subdivision regulations must be in substantial compliance with the PUD plan. The final subdivision plat may be approved at the same time as the final PUD plan is approved.

(Ord. 8 §1, 2006)

**Sec. 21-162. Amending final PUD plan.**

(A) Amendments to the PUD development plan shall be considered only when one (1) or more of the following conditions exist:

- (1) A clear and obvious hardship would result unless an amendment to this plan is granted;
- (2) There was an error or mistake in the plan;
- (3) There has been a change of conditions in the surrounding area which would necessitate a change in the plan.

(B) Procedure for amendment shall be the same as that prescribed for plan approval. Should the City Council approve the amendment to the PUD, an amended plan shall be filed and notice thereof recorded in the same manner as the original plan. Minor changes which improve the character of the site plan and do not increase the lot coverage, building density or building height can be made with the written approval of the Planning Commission.

(Ord. 8 §1, 2006)

**Sec. 21-163. Approved plan required.**

No property zoned PUD without an approved final development plan shall be developed, nor shall any building permit issue for construction upon such property or any portion thereof until the owner has secured City approval of a final development plan as required by Section 21-159 above.

(Ord. 8 §1, 2006)

**Sec. 21-164—21-170. Reserved.**

**ARTICLE XII Wireless Communication Facilities**

[Sec. 21-171. Definitions.](#)

[Sec. 21-172. Policy statement.](#)

[Sec. 21-173. Conditional use permit required.](#)

[Sec. 21-174. Applicability.](#)

[Sec. 21-175. Approval criteria.](#)

[Sec. 21-176. Priorities.](#)

[Sec. 21-177. Co-location.](#)

[Sec. 21-178. Design criteria.](#)

[Sec. 21-179. Inspection requirements.](#)

[Sec. 21-180. Operational regulations.](#)

[Sec. 21-181. Nonuse or abandonment.](#)

[Sec. 21-182. Application requirements.](#)

[Sec. 21-183. Third party review.](#)

[Sec. 21-184. Termination.](#)

[Sec. 21-185—21-190. Reserved.](#)

**Sec. 21-171. Definitions.**

For the purposes of this Article, the following terms shall have the meanings ascribed to them below:

*Antenna* . Any exterior apparatus designed for telephonic, radio, data, Internet or television communications through the sending and/or receiving of electromagnetic waves, including equipment attached to a tower, pole, light standard or building for the purpose of providing personal wireless services, including without limitation, unlicensed wireless telecommunications services, wireless telecommunications services utilizing frequencies authorized by the Federal Communications Commission for "cellular," "paging," "enhanced specialized mobile radio," "low power mobile radio" and "personal communications services" telecommunications services and its attendant base station.

*Antenna height* . The vertical distance measured from the base of the antenna support structure at grade to the highest point of the structure, even if said highest point is an antenna. Measurement of tower height shall include antenna, base pad and other appurtenances and shall be measured from the finished grade of the parcel. If the support structure is on a sloped grade, then the average between the highest and lowest grades of the parcel shall be used in calculating the antenna height.

## CHAPTER 21 Zoning

*Antenna support structure* . Any pole, light standard, telescoping mast, tower, tripod or other structure which supports a device used in the transmitting or receiving of radio frequency signals.

*Cell site* . A tract or parcel of land that contains personal wireless service facilities, including any antenna, tower support structure, accessory building and parking, and may include other uses associated with and ancillary to personal wireless services.

*FAA* . The Federal Aviation Administration.

*FCC* . The Federal Communications Commission.

*Governing authority* . The City Council.

*Personal wireless service* and *personal wireless service facilities* , as used in this Article, shall be defined in the same manner as in Title 47, U.S.C. § 332(c)(7)(C), as they may be amended now or in the future. As used in this Article, the term *facilities* shall be synonymous with *personal wireless service facilities*

*Tower* . Any structure that is designed and constructed primarily for the purpose of supporting one (1) or more antennas, and includes an antenna support structure, self-supporting lattice towers, guy towers or monopole towers. The term encompasses personal wireless service facilities, including radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers or personal communications services towers, alternative tower structures and the like.

(Ord. 8 §1, 2006)

### **Sec. 21-172. Policy statement.**

The purpose of this Article is to provide specific regulations for the placement, construction and modification of personal wireless service facilities. The provisions of this Article are not intended to and shall not be interpreted to prohibit or to have the effect of prohibiting the provision of personal wireless services, nor shall the provisions of this Article be applied in such a manner as unreasonably to discriminate between providers of functionally equivalent personal wireless services. The goals of this Article are to:

- (1) Encourage the location of towers in nonresidential areas and to minimize the total number of towers throughout the City;
- (2) Encourage strongly the joint use of new and existing sites;
- (3) Encourage users of towers and antennas to locate and configure them, to the extent possible, in areas where adverse visual impacts are minimal;
- (4) Enhance the ability of the providers of telecommunications services to provide such services throughout the City quickly, effectively and efficiently;
- (5) Manage the location of towers and antennas in the City;
- (6) Protect residential areas and land uses from potential adverse impacts of towers and falling ice;
- (7) Minimize visual impacts of towers through careful design, siting, landscape screening and innovative camouflaging techniques;
- (8) Accommodate the growing need for towers;
- (9) Promote and encourage shared use/co-location of existing and new towers as a primary option rather than construction of additional single-use towers, and reduce the number of such structures needed in the future; and
- (10) Avoid potential damage to adjacent properties through engineering and proper siting of antenna support structures.

(Ord. 8 §1, 2006)

**Sec. 21-173. Conditional use permit required.**

Any person who desires to construct or install any personal wireless service facility in the City, to perform any work on or to modify, expand, enlarge or improve an existing facility beyond routine maintenance thereof, shall be required to secure a conditional use permit for the facility pursuant to the provisions of Article VIII and this Article prior to commencing any construction, installation, modification, expansion, enlargement or improvement work at the site. In the event of a conflict between any provision of this Article and a provision of Article VIII, the provision of this Article shall control.

(Ord. 8 §1, 2006)

**Sec. 21-174. Applicability.**

Use and operation of all facilities existing on February 1, 2007, shall be allowed to continue, and routine maintenance thereof shall be permitted. The construction or installation of new facilities, and any modification, expansion, enlargement or improvement of an existing facility beyond routine maintenance after said date shall be subject to the permitting and other requirements of this Article.

(Ord. 8 §1, 2006)

**Sec. 21-175. Approval criteria.**

- (A) In siting a new facility, it is anticipated that the applicant will propose locations that are technically compatible with a network. A general area will be identified based upon engineering constraints and the desired area of service. As a fundamental element of this Article, an applicant is required to demonstrate, using technological evidence, that the antenna must go where it is proposed in order to satisfy its function in the applicant's grid system. Further, the applicant must demonstrate by technological evidence that the height requested is the minimum height necessary to fulfill the cell site's function within the applicant's grid system.
- (B) Applications for permits will not be accepted unless and until the applicant demonstrates that it is either an FCC-licensed telecommunications provider or has in place necessary agreements with an FCC-licensed telecommunications provider for use or lease of the support structure.
- (C) Permit applications will be evaluated considering the following factors and criteria, which are not listed in order of priority, in addition to those specified in Article V:
  - (1) Facilities shall be located and designed to minimize any impacts on residential property values. Sites should be placed in locations where the existing topography, vegetation, buildings or other structures provide the greatest amount of screening.
  - (2) Location and design of sites in all zone districts shall consider the impact of the site on the surrounding neighborhood and the visual impact within the zone district.
  - (3) Facilities shall be sited to take advantage of existing land forms and vegetation to aid in screening and to blend in with the surrounding built and natural environment. Buildings, cabinets, antenna and their support structures must be architecturally and visually compatible with existing and historic uses in the area, or those likely to exist under the terms of the applicable zone district.
  - (4) Facilities, access roads and utility lines shall be located to avoid a dominant silhouette on ridge lines and to preserve view corridors.
  - (5) Appropriate and reasonable screening techniques shall be used depending on site conditions. Techniques may include but are not limited to landscaping, berming, camouflaging, screening and fencing where appropriate. Equivalent screening shall be maintained throughout the life of the facility and until such time as conditions no longer warrant screening as determined by the City Council.



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- (6) Fencing materials shall be compatible with those used in surrounding land uses and/or to blend with the surrounding environment, consistent with the City regulations.
- (7) Topography as it relates to line of sight transmissions for optimum efficiency in telephone service.
- (8) Availability of road access, electric power and land based telephone lines or microwave link capability.
- (9) Compatibility with adjacent land uses.
- (10) Availability of suitable existing structures for antenna mounting.

(Ord. 8 §1, 2006)

### **Sec. 21-176. Priorities.**

- (A) The order of priorities for locating new facilities shall be as follows:
  - (1) Place antennas on appropriate existing structures, such as buildings, towers and water towers.
  - (2) Place antennas and towers in districts zoned C-1, C-2 (excluding the Historic Preservation District) or I-1.
  - (3) Place antennas and towers in residential districts:
    - (a) Only if locations for which a need has been demonstrated are not available on existing structures or in nonresidential districts;
    - (b) Only on or in existing churches, parks, schools, utility facilities or other appropriate buildings; and
    - (c) Only if such facilities are screened or camouflaged so as to render them not visible or not identifiable from public streets in the vicinity.
- (B) An applicant for a new antenna or antenna support structure to be located in a residential zoning district shall demonstrate that a diligent effort has been made to locate the proposed facilities on a private institutional structure or other appropriate existing structures within a nonresidential zoning district, and that, due to valid considerations including physical constraints or technological feasibility, no appropriate location is available. The applicant shall be required to demonstrate that it contacted the owners of structures within the City to request permission to install the antenna on such structures, and was denied for reasons other than economic. The information submitted by the applicant shall include a map of the area to be served by the tower, its relationship to other antenna sites in the applicant's network and an evaluation of the applicable buildings and towers in the City.

(Ord. 8 §1, 2006)

### **Sec. 21-177. Co-location.**

- (A) To minimize adverse visual impacts associated with the proliferation of towers, co-location of antennas by more than one (1) carrier on existing or new towers and other antenna support structures shall be encouraged and promoted over the construction of new single-use towers as follows:
  - (1) Upon completion of the technical review provided in Article V, an application for a co-located antenna on an approved support structure in a nonresidential zone shall proceed directly to the City Council and bypass review by the Planning Commission.
  - (2) The City may deny the application to construct a new tower if the applicant has not shown by substantial evidence that it has made a good faith effort to mount the antenna on an existing structure.

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- (3) In order to reduce the number of antenna support structures needed in the City in the future, new proposed support structures shall be designed to accommodate antenna for more than one (1) user, unless the applicant demonstrates why such design is not feasible for economic, technical or physical reasons.
  - (4) Unless co-location has been demonstrated to be infeasible, the site plan shall designate an area near the base of the tower, or on the building carrying the antenna support structure, as appropriate, to be used for the placement of additional equipment buildings for other users. The site plan for towers in excess of one hundred (100) feet high must propose space for two (2) additional comparable tower users, and the site plan for towers one hundred (100) feet high or less must propose space for one (1) additional comparable tower user.
  - (5) The conditional use permit approval conditions for towers shall allow them to be modified or reconstructed upon administrative review and approval by the Building Official to accommodate the co-location of additional antennas, provided that every additional antenna shall be consistent with the use and aesthetics of those currently on the tower, as follows:
    - (a) Height: An existing tower may be modified or rebuilt to a taller height, to accommodate the co-location of additional antennas.
    - (b) Onsite location: An existing tower may be rebuilt to accommodate the co-location of additional antennas. Such tower may be moved on site within fifty (50) feet of its existing location so long as it remains within the same zone and complies with the other provisions of this Article. After the tower is rebuilt to accommodate co-location, only one (1) tower may remain on the site.
- (B) No antenna owner or lessee, or officer or employee thereof, shall fail to cooperate in good faith to accommodate other competitors in their attempts to use the same tower or building for other antennas. If a dispute arises about the feasibility of accommodating another competitor, the City Administrator may require a third-party technical study, at the expense of either or both parties, to resolve the dispute.

(Ord. 8 §1, 2006)

### **Sec. 21-178. Design criteria.**

The following shall govern the design of all facilities:

#### (A) General.

- (1) Facilities should be architecturally compatible with the surrounding buildings and land uses in the zoning district or otherwise integrated, through location and design, to blend in with the existing characteristics of the site to the extent practical. The antenna and its support structure shall be a color that blends with the structure on which they are mounted.
- (2) Site location and development shall preserve the pre-existing character of the site as much as possible. Existing vegetation should be preserved or improved, and disturbance of the existing topography of the site should be minimized, unless such disturbance would result in less visual impact of the site on the surrounding area. The effectiveness of visual mitigation techniques must be evaluated by the City, in the City's sole discretion, taking into consideration the site as built.
- (3) Facilities must be architecturally and visually (color, size and bulk) compatible with surrounding existing buildings, structures, vegetation and/or uses or those likely to exist under the terms of the underlying zoning. Such facilities will be considered architecturally and visually compatible if they are camouflaged to be disguised.
- (4) Ground-level equipment and buildings and the tower base shall be screened from public streets and surrounding properties, in accordance with the requirements of Subsection (E) below.

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- (5) Unless there are unusual geographic limitations or other public policy considerations as determined in the City's sole discretion, no antenna, antenna array or its support structure shall be erected or maintained closer to any street than the minimum setback of the zone in which it is located.
  - (6) If the cell site is fully automated, adequate parking shall be required for maintenance workers. If the site is not automated, arrangements for adequate off-street parking shall be made and documentation thereof provided to the City. Security fencing shall be colored or should be of a design which blends into the character of the existing environment.
  - (7) Towers and antenna support structures shall be designed to accommodate co-location for antenna for more than one (1) user, unless the applicant demonstrates why such design is not feasible for economic, technical or physical reasons.
  - (8) All towers and antennas must meet or exceed current standards and regulations of the FAA, FCC and any other agency of the federal government with the authority to regulate towers and antennas. If such standards and regulations are changed, then the owners of the towers and antennas governed by this Article shall bring such towers and antennas into compliance with such revised standards and regulations in accordance with the compliance deadlines and requirements of such standards and regulations. Failure to bring towers and antennas into compliance with such revised standards and regulations shall constitute grounds for the removal of the tower or antenna at the owner's expense.
  - (9) The applicant shall demonstrate that the proposed antenna and support structures are safe. All support structures shall be fitted with anti-climbing devices, as approved by the manufacturers. The antenna and its support structure shall be designed to withstand a wind force of one hundred (100) miles per hour without the use of supporting guy wires, in all zones.
  - (10) No guy or other support wires shall be used in connection with an antenna or its support structure except when used to anchor the antenna or support structure to an existing building to which such antenna or support structure is attached.
- (B) Towers.
- (1) Tower setbacks shall be measured from the base of the tower to the property line of the parcel on which it is located. Unless there are unusual geographic limitations or other public policy considerations, as determined in the City's sole discretion, where permitted in residential districts and residential land use areas, towers shall be set back from all property lines a distance equal to one hundred (100) percent of the tower height as measured from ground level. Except as provided herein and except for unusual geographic limitations or other public policy considerations, as determined in the City's sole discretion, towers shall comply with the minimum setback requirements of the area in which they are located in all other zoning districts.
  - (2) Towers shall have a camouflage generally matching their surroundings or background that minimizes their visibility, unless a different camouflage is required by the FCC or FAA.
  - (3) A well-constructed masonry, stone or wood fence, not less than eight (8) feet in height from finished grade, shall be provided around each tower. Access to the tower and equipment structures shall be through a locked gate.
  - (4) No signals, lights or signs shall be permitted on towers unless required by the FCC or FAA. Should lighting be required at the time of construction of the tower in cases where there are residential uses of property located within a distance which is one hundred (100) percent of the height of the tower, then dual mode lighting shall be requested from the FAA.
  - (5) Towers shall be constructed to the Electronic Industries Association ("EIA") standards, as constituted from time to time, and all applicable construction/building codes. Further, any improvements and/or additions to existing towers shall require submission of site plans, sealed and verified by a professional engineer, which demonstrate compliance with the EIA

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standards and all other good industry practices in effect at the time of said improvement or addition. Said plans shall be submitted to and reviewed at the time approval for modification of the conditional use permit for the tower is requested.

### (C) Antennas.

- (1) The following types of antennas are permitted:
  - (a) Omnidirectional or whip antenna no more than seven (7) inches in diameter and, except as provided in Paragraph 4 below, extending no more than ten (10) feet above the structure to which it is attached; or
  - (b) Panel or similar antenna no more than two (2) feet wide and six (6) feet long, extending above the structure to which it is attached by no more than ten (10) feet.
- (2) The applicant shall demonstrate that the antenna is the minimum height required to function satisfactorily. No antenna shall be taller than such minimum height.
- (3) Antennas on or above a building shall be subject to the following:
  - (a) The antenna must be architecturally compatible with the building and wall on which it is mounted and designed and located so as to minimize any adverse aesthetic impact.
  - (b) The antenna shall be mounted on a wall of an existing building in a configuration as flush to the wall as technically possible and shall not project above the wall on which it is mounted unless for technical reasons the antenna needs to project above the roof line. In no event shall an antenna project more than ten (10) feet above the roofline.
  - (c) The antenna shall be constructed, painted or fully screened to match as closely as possible the color and texture of the building and wall on which it is mounted.
  - (d) The antenna may be attached to an existing conforming mechanical equipment enclosure which projects above the roof of the building, but may not project any higher than the enclosure.
  - (e) No antenna shall be permitted on property designated as an individual historic landmark or that is in the historic preservation district, unless such antenna has been approved in accordance with Chapter 22 of this Code.
- (4) Whip antennas shall be set back five (5) feet from the edge of the roof or structure to which they are mounted, may extend no more than ten (10) feet above the parapet of the roof or the structure with an allowable increase of six (6) inches for every one (1) foot of increased setback, and shall not exceed fifteen (15) feet in height.
- (5) Panel antennas and accessory equipment shall be mounted to the building or may extend no more than six and one-half (6.5) feet above the parapet of the flat roof with a required five-foot setback from the edge of the structure, with an allowable increase of six (6) inches for every one (1) foot of increased setback; not to exceed ten (10) feet in height. If the roof is not flat, panel antenna shall be reviewed and a determination made if appropriate mitigating measures have been considered and if the site plan is in substantial conformance with the site criteria established herein.

### (D) Equipment buildings and structures.

- (1) Standards for equipment buildings are as follows:
  - (a) The maximum floor area is three hundred fifty (350) square feet per provider, and the maximum height is twelve (12) feet. Depending upon the aesthetics and other factors, the City, in its sole discretion, may approve multiple equipment structures or one (1) or more larger structures.
  - (b) Ground-level buildings shall be screened from adjacent properties by landscape plantings, fencing and other appropriate means, as specified herein or elsewhere in this Code.

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- (2) Equipment buildings mounted on a roof and other roof-mounted equipment shall have a finish similar to the exterior building walls. Equipment for roof-mounted antennas may also be located within the building on which the antenna is mounted.
  - (3) Equipment buildings, antenna and related equipment shall occupy no more than twenty-five (25) percent of the total roof area of a building which may vary in the City's sole discretion if co-location and an adequate penthouse-type structure are used. Antenna or equipment buildings not meeting these standards require a special exception in addition to the conditional use permit. The special exception must be approved on a comprehensive sketch plan or final development plan, as applicable.
  - (4) If an accessory equipment shelter is present, it must blend with the surrounding buildings in architectural character and color.
- (E) Landscaping/screening.
- (1) In order to soften the appearance thereof, ground-level facilities shall be screened by landscaping meeting the following requirements:
    - (a) Existing vegetation shall be preserved to the maximum extent practicable and may be used as a substitute for or in supplement towards meeting landscaping requirements.
    - (b) New landscaping shall be installed on the outside of and around the perimeter of fences and shall consist of a row of evergreen trees a minimum of ten (10) feet tall at planting a maximum of six (6) feet apart; a row of deciduous or coniferous trees a minimum of ten (10) feet tall at planting a maximum of fifteen (15) to twenty-five (25) feet apart; a continuous hedge at least thirty-six (36) inches high; or a five-gallon size shrub at planting, capable of growing to at least forty-eight (48) inches in height within eighteen (18) months.
  - (2) The City may permit any combination of existing vegetation, topography, walls, decorative fences or other features instead of landscaping if they achieve the same degree of screening as would the required landscaping. The standards set forth herein may be waived by the City for those sides of facilities that are located adjacent to undevelopable lands and lands not in public view.

(Ord. 8 §1, 2006)

### **Sec. 21-179. Inspection requirements.**

Each year after a facility becomes operational, the facility operator shall conduct a safety inspection in accordance with EIA and FCC standards and, within sixty (60) days after the inspection, file a report with the City Administrator. Submittal to the City Administrator of an FCC-required and duly filed safety inspection report, or the facility operator's maintenance reports for the prior twelve (12) months if no FCC report is required for such year, shall satisfy the requirements of this Section.

(Ord. 8 §1, 2006)

### **Sec. 21-180. Operational regulations.**

- (A) No antenna owner or lessee shall fail to assure that the antenna complies at all times with the then-current applicable EIA or FCC standards, or other applicable federal standards, whichever standard is more stringent. After installation, but prior to putting the antenna in service, each antenna owner shall provide to the City a sworn statement signed by a qualified engineer to that effect.
- (B) No antenna shall cause localized interference with the reception of any other communications signals, including but not limited to public safety signals and television and radio broadcast signals.

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- (C) To ensure the structural integrity of towers, the owner of a tower shall ensure that it is maintained in compliance with standards contained in applicable City building codes and the applicable standards of towers that are published by the EIA, as amended from time to time. If, upon inspection, the City concludes that a tower fails to comply with such codes and standards and constitutes a danger to persons or property, then, upon notice being provided to the owner of the tower, the owner shall have thirty (30) days to bring such tower into compliance with such standards. If the owner fails to bring such tower into compliance within said thirty (30) days, the City may remove such tower at the owner's expense.

(Ord. 8 §1, 2006)

### **Sec. 21-181. Nonuse or abandonment.**

- (A) In the event the use of any tower or antenna has been discontinued for a period of sixty (60) consecutive days, the tower or antenna shall be deemed to be abandoned. Determination of the date of abandonment shall be made by the City, which shall have the right to request documentation and/or affidavits from the tower or antenna owner or operator regarding the issue of tower or antenna usage. Upon such abandonment, the owner or operator of the tower or antenna or the owner of property upon which such facility is located shall have an additional sixty (60) days after notice of determination of such abandonment by the City within which to:
- (1) Reactivate the use of the tower or antenna or transfer the tower or antenna to another owner or operator who makes actual use of the tower or antenna (the new owner must meet all the requirements of this Article); or
  - (2) Dismantle and remove the tower or antenna. If such tower or antenna is not removed within said sixty (60) days from the date of abandonment, the City may remove such tower or antenna, in accordance with applicable law, at the facility owner's and/or property owner's expense. If there are two (2) or more users of a single tower or antenna, then this provision shall not become effective until all users cease using the tower or antenna.
- (B) At the earlier of sixty (60) days after the date of notice of abandonment without reactivation or the date of completion of dismantling and removal, the conditional use permit for the tower or antenna shall automatically expire.

(Ord. 8 §1, 2006)

### **Sec. 21-182. Application requirements.**

Except as expressly provided in this Section and in Section 21-173 above, applications for personal wireless service facilities shall be reviewed and considered as applications for conditional use permits pursuant to Article VIII of this Chapter. In reviewing any such application, the City shall act within a reasonable period of time, taking into account the nature and scope of the application. The submittal requirements of this Section shall supersede those set forth in Article VIII, except that the deposit and executed agreement required by Section 21-11 of this Chapter shall be payable with applications filed under this Article. The submittal requirements hereunder shall consist of any combination of site plans, surveys, maps, technical reports or written narratives necessary to convey the following information:

- (1) A scaled site plan clearly indicating the location, type and height of the proposed facility, on-site land uses and zoning, adjacent land uses and zoning, adjacent roadways, proposed means of access, setbacks from property lines, elevation drawings of any proposed tower and any other proposed structures.
- (2) A current map and aerial photo as provided by the County Assessor's office showing the location of the proposed tower.

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- (3) Legal description of the site, and written evidence of the applicant's ownership of or legal right to occupy and use it for the purposes desired.
- (4) Approximate distance between the proposed facility and the nearest residential unit, platted residentially zoned properties and unplatted residentially zoned properties.
- (5) A landscape plan showing specific landscaping materials.
- (6) A description of the fencing and camouflage and, if applicable, the method of illumination.
- (7) Written representation by the applicant stating that the facility will comply with all EIA standards, all applicable federal and state laws and regulations and this Code, including specifically FAA regulations.
- (8) A statement by the applicant as to whether construction of the facility will accommodate co-location of additional antenna for future users.
- (9) Written representation signed by the applicant stating that the use or operation of any proposed antenna will not interfere with other adjacent or neighboring transmission or reception functions.
- (10) Copy of the applicant's FCC license if required to be licensed under FCC regulations.
- (11) Written proof of lease agreements with an FCC-licensed telecommunications provider if such telecommunications provider is required to be licensed by the FCC.
- (12) A full site plan for all cell sites, showing the antenna, antenna support structure, building, fencing, buffering, access and all other items required in this Article. A site plan shall not be required if the antenna is to be mounted on an existing structure;
- (13) A description of how the proposed site fits into the applicant's overall network within the City.

(Ord. 8 §1, 2006; Ord. 11 §12, 2007)

### **Sec. 21-183. Third party review.**

Wireless communications providers use various methodologies and analysis tools, including geographically based computer software, to determine the specific technical parameters of personal wireless services and facilities, such as expected coverage area, antenna configuration, topographic constraints that affect signal paths, etc. In certain instances, there may be a need for expert review by a third party of the technical data submitted by the applicant. The City Council or the Planning Commission may require such a technical review, to be paid for by the applicant. The selection of the third party expert shall be by mutual agreement between the applicant and City, such agreement not to be unreasonably withheld by either party. The expert review is intended to be a site-specific review of technical aspects of the application and other matters as described herein, and not a subjective review of the site selection. Such a review shall address the accuracy and completeness of the technical data, whether the analysis techniques and methodologies are legitimate, the validity of the conclusions and any specific technical issues outlined by the City Council, Planning Commission, City staff or interested parties. Based on the results of the third-party review, the City may require changes to the application that comply with the recommendations of the expert.

(Ord. 8 §1, 2006)

### **Sec. 21-184. Termination.**

The City Council may, subject to applicable law, rescind any previously granted or pending City approval or lease necessary for the construction, installation or operation of any facility if it determines that any one (1) of the following conditions exists:

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- (1) A potential user with a higher priority cannot find another adequate location, and the potential use would be incompatible with the existing use;
- (2) A user's frequency broadcast unreasonably interferes with other users of higher priority, regardless of whether or not this interference was adequately predicted in the technical analysis; or
- (3) A user violates any of the standards in this Article or the conditions of City approval, lease provisions with the City or other terms of authorization by the City.

Before taking action, the City will provide notice to the user of the intended termination and the reasons for it, and provide a reasonable opportunity for the user to either cure the alleged interference, violation or condition or address the City Council regarding the proposed action. This procedure need not be followed in emergency situations.

(Ord. 8 §1, 2006)

**Sec. 21-185—21-190. Reserved.**