

**CHAPTER 40**

**ZONING CODE**

**ARTICLE I - GENERALLY**

**40-1-1**     **TITLE.** This Chapter shall be known and may be cited as the **Zoning Code of the City of Gibson City, Illinois.**

**40-1-2**     **PURPOSE.** The purposes of this Code are:

- (A)           To promote and protect the public health, safety, morals, comfort, and general welfare of the people;
- (B)           To divide the City into zones or districts restricting and regulating therein the location, erection, construction, reconstruction, alteration and use of buildings, structures and land for residence, business and manufacturing and other specified uses;
- (C)           To protect the character and stability of the residential, business and manufacturing areas within the City and to promote the orderly and beneficial development of such areas;
- (D)           To provide adequate light, air, privacy and convenience of access to property;
- (E)           To regulate the intensity of use of lot areas, and to determine the area of open spaces surrounding buildings, necessary to provide adequate light and air and to protect the public health;
- (F)           To establish building lines and the location of buildings designed for residential, business, manufacturing, or other uses within such areas;
- (G)           To fix reasonable standards to which buildings or structures shall conform therein;
- (H)           To prohibit uses, buildings or structures incompatible with the character of development or intended uses within specified zoning districts;
- (I)           To prevent additions to, or alterations or remodeling of, existing buildings or structures in such a way as to avoid the restrictions and limitations imposed hereunder;
- (J)           To limit congestion in the public streets and protect the public health, safety, convenience, and general welfare by providing for the off-street parking of motor vehicles and the loading and unloading of commercial vehicles;
- (K)           To protect against fire, explosion, noxious fumes and other hazards in the interest of the public health, safety, comfort, and general welfare;
- (L)           To prevent the overcrowding of land and undue concentration of structures, so far as is possible and appropriate in each district, by regulating the use and bulk of buildings in relation to the land surrounding them;

- (M) To conserve the taxable value of land and buildings throughout the City;
- (N) To provide for the elimination of non-conforming uses of land, buildings and structures which are adversely affecting the character and value of desirable development in each district; and
- (O) To define and limit the powers and duties of the administrative officers and bodies as provided herein.

#### **40-1-3 DEFINITIONS.**

**Accessory Building or Use:** A subordinate building or use which is located on the same lot on which the principal building or use is situated and which is reasonably necessary and incidental to the conduct of the primary use of such building or main use, when permitted by district regulations.

**Acreeage:** Any tract or parcel of land having an area of **one (1) acre** or more which has not been subdivided by metes and bounds or platted.

**Agriculture:** shall include the growing, harvesting and storing of crops including legume, hay, grain, fruit and truck or vegetable crops, floriculture, horticulture, mushroom growing, orchards, forestry; the keeping, raising and feeding of livestock or poultry, including dairying, poultry, swine, sheep, beef cattle, pony and horse production, and fish and wildlife farms; farm buildings used for growing, harvesting and preparing crop products for market, or for use of the farm; farm buildings for storing and protecting farm machinery and equipment from the elements, for housing livestock or poultry and for preparing livestock or poultry products for market; farm dwellings occupied by farm owners, operators, tenants or seasonal or year-round hired farm workers.

**Airport or Aircraft Landing Field:** Any landing area, runway or other facility (including heliports), designed, used or intended to be used either publicly or privately by any person or persons for the landing and taking off of aircraft, including all necessary taxiways, aircraft storage and tiedown areas, hangars, and other necessary buildings and open spaces.

**Alley:** A public way, not more than **thirty (30) feet** wide, which affords only a secondary means of access to abutting property.

**Apartment:** A room or suite of rooms in a multiple-family structure which is arranged, designed, used or intended to be used as a single housekeeping unit.

**Automobile Laundry:** A building or portion thereof where automobiles are washed with the use of a chain conveyor and blower or steam-cleaning device.

**Automobile Repair, Major:** Engine rebuilding or major reconditioning of worn or damaged motor vehicles or trailers; collision service, including body, frame or fender straightening or repair; and over-all painting of vehicles.

**Automobile Repair, Minor:** Incidental repairs, replacement of parts, and motor service to automobiles, but not including any operation specified under "Automobile Repair, Major".

**Automobile Service Station:** A place where gasoline, stored only in underground tanks, kerosene, lubricating oil or grease, for operation of automobiles, are offered for sale directly to the public on the premises and including minor accessories and services for automobiles; but not including major automobile repairs; and including washing of automobiles where no chain conveyor, blower or steam cleaning device is employed. When the dispensing, sale or offering for sale of motor fuels or oil is incidental to the conduct of a public garage, the premises shall be classified as a public garage. Automobile service stations shall not include sale or storage of junkers or junk yards, as defined herein.

**Automobile Wrecking Yard:** Any place where **two (2)** or more motor vehicles not in running condition, or parts thereof, are stored in the open and are not being restored to operation, or any land, building or structure used for wrecking or storing of such motor vehicle or parts thereof, and including any used farm vehicles or farm machinery, or parts thereof, stored in the open and not being restored to operating condition; and including the commercial salvaging of any other goods, articles or merchandise.

**Awning:** A rooflike cover, temporary in nature, which projects from the wall of a building or overhangs the public way.

**Basement:** A story partly or wholly underground. Where more than **one-half (1/2)** of its height is above the established curb level or above the average level of the adjoining ground where curb level has not been established, a basement shall be counted as a story for purposes of height measurement.

**Billboard:** Any structure or portion thereof upon which are signs or advertisements used as an outdoor display. This definition does not include any bulletin boards used to announce church services, or to display court or other public office notices, or signs offering the sale or lease of the premises on which the sign is located.

**Block:** A tract of land bounded by streets or, in lieu of a street or streets, by public parks, cemeteries, railroad rights-of-way, bulkhead lines, or shore lines of waterways or a corporate boundary line of the City.

**Boarding House:** A building other than a hotel or restaurant where meals are provided for compensation to **four (4)** or more persons, but not more than **twelve (12)**, who are not members of the keeper's family.

**Buildable Area:** The space remaining on a zoning lot after the minimum open space requirements have been complied with.

**Building:** Any structure with substantial walls and roof securely affixed to the land and entirely separated on all sides from any other structure by space or by walls in which there are no communicating doors, windows or openings; and which is designed or intended for the shelter, enclosure or protection of persons, animals or chattels. Any structure with interior areas not normally accessible for human use, such as gas holders, oil tanks, water tanks, grain elevators, coal bunkers, oil cracking towers, and other similar structures, are not considered as buildings.

**Building, Completely Enclosed:** A building separated on all sides from adjacent open space, or from other buildings or other structures, by a permanent roof and by exterior walls or party walls, pierced only by windows and normal exist or entrance doors.

**Building Height:** The vertical distance measured from the sidewalk level or its equivalent established grade opposite the middle of the front of the building to the highest point of the roof in the case of a flat roof; to the deck line of a mansard roof; and to the mean height level between eaves and ridge of a gable, hip or gambrel roof; provided that where buildings are set back from the street line the height of the building may be measured from the average elevation of the finished lot grade at the front of the building.

**Building, Non-Conforming:** Any building which does not conform to the regulations herein prescribing the maximum floor area ratio, required yards, coverage, height and setbacks, minimum required spacing between buildings on a single lot, and minimum required usable open space for the district in which such building is located.

**Building, Principal:** A building in which is conducted the main use of the zoning lot on which it is situated.

**Building Setback Line:** A line parallel to the street line at a distance from it, regulated by the front yard requirements set forth herein.

**Bulk:** The term used to describe the size and mutual relationships of buildings and other structures, as to size; height; coverage; shape; location of exterior walls in relation to lot lines, to the center line of streets, and to other walls of the same building, and to other buildings or structures; and to all open spaces relating to the building or structure.

**Bus Lot:** Any lot or land area used for the storage or layover of passenger buses or motor coaches.

**Cellar:** A cellar is a story having more than **one-half (1/2)** of its height below the curb level or below the highest level of the adjoining ground. A cellar shall not be counted as a story for the purposes of height measurement.

**Clinic or Medical Health Center:** An establishment where patients are admitted for special study and treatment by **two (2)** or more licensed physicians and their professional associates, practicing medicine together.

**Club or Lodge, Private:** A non-profit association of persons who are bona fide members paying annual dues, which owns, hires or leases a building or portion thereof.

**Curb Level:** The level of the established curb in front of the building, measured at the center of such front. Where a building faces on more than **one (1) street**, the "curb level" shall be the average of the levels of the curbs at the center of the front of each street. Where no curb elevation has been established, the mean level of the land immediately adjacent to the building shall be considered the "curb level".

**Dwelling:** A building or portion thereof, but not including a house trailer or mobile home, designed or used exclusively for residential occupancy, including one-family dwelling units, two-family dwelling units and multiple-family dwelling units, but not including hotels, boarding or lodging houses.

**Dwelling Unit:** **One (1)** or more rooms in a residential structure or apartment-hotel, designed for occupancy by **one (1) family**, plus not more than **four (4) lodgers**, for living and sleeping purposes.

**Dwelling, One-Family:** A building designed exclusively for use and occupancy by **one (1) family**, and entirely separated from any other dwelling by space.

**Dwelling, Two-Family:** A building designed or altered to provide dwelling units for occupancy by **two (2) families**.

**Dwelling, Multiple-Family:** A building or portion thereof, designed or altered for occupancy by **three (3)** or more families living independently of each other.

**Dwelling, Row (Party-Wall):** A row of **two (2)** to **eight (8)** attached, one-family, party-wall dwellings, not more than **two and one-half (2 ½) stories** in height, nor more than **two (2) rooms** in depth measured from the building line.

**Dwelling Group:** **Two (2)** or more one-family, two-family or multiple-family dwellings, or boarding or lodging houses, located on one zoning lot, but not including tourist courts or motels.

**Family:** **One (1)** or more persons related by blood, marriage or adoption or a group of not more than **five (5) persons** (excluding servants) who need not be related by blood, marriage or adoption, living together and maintaining a common household, but not including sororities, fraternities or other similar organizations.

**Fuel Bulk Station:** A place where crude petroleum, gasoline, naphtha, benzene, benzyl, kerosene, or other flammable liquid which has a flash point at or below **two hundred (200) degrees Fahrenheit** is stored for wholesale purposes, where the aggregate capacity of all storage tanks is more than **six thousand (6,000) gallons**, regardless of whether the fuel is stored above ground, underground, or in mobile tank cars or trucks.

**Garage, Bus:** Any building used or intended to be used for the storage of **three (3)** or more passenger motor buses, or motor coaches used in public transportation, including school buses.

**Garage, Private:** A detached accessory building or portion of the principal building, designed, arranged, used or intended to be used for the storage of automobiles of the occupants of the premises.

**Garage, Public:** Any building other than a private garage, used for the care, incidental servicing, and sale of automobile supplies, or where motor vehicles are parked or stored for remuneration, hire, or sale within the structure, but not including trucks, tractors, truck trailers, and commercial vehicles exceeding **one and one-half (1 ½) tons** capacity.

**Garage, Bus or Truck:** A building which is used or intended to be used for the storage of motor trucks, truck trailers, tractors and commercial vehicles exceeding **one and one-half (1 ½) tons** capacity.

**Guest House:** Living quarters within a detached accessory building located on the same premises with the principal building, for use by temporary guests of the occupants of the premises. Such quarters shall have no kitchen facilities nor be rented or otherwise used as a separate dwelling unit.

**Home Occupation:** Any gainful operation or profession engaged in by an occupant of a dwelling unit as a use which is clearly incidental to the use of the dwelling unit for residential purposes. The "home occupation" shall be carried on wholly within the principal building or within a building accessory thereto, and only by members of the family occupying the premises. No article shall be sold or offered for sale on the premises except such as is produced by the occupation on the premises and no mechanical or electrical equipment shall be installed or maintained other than such as is customarily incidental to domestic use. There shall be no exterior display, no exterior sign except as allowed by the sign regulations for the district in which such "home occupation" is located, no exterior storage of materials, no other exterior indication of the "home occupation" or variation from the residential character of the principal building, and no offensive noise, vibration, smoke, dust, odors, heat, or glare shall be produced. Offices, clinics, doctor's offices, hospitals, barber shops, beauty parlors, dress shops, millinery shops, tearooms, restaurants, tourist homes, animals hospitals and kennels, among others, shall not be deemed to be "home occupations".

**Hospital or Sanitarium:** An institution devoted primarily to the maintenance and operation of facilities for the diagnosis, treatment or care for not less than **twenty-four (24) hours** in any week of **three (3)** or more non-related individuals suffering from illness, disease, injury, deformity, or other abnormal physical conditions. The term "hospital", as used herein, does not apply to institutions operating solely for the treatment of insane persons, drug addicts, liquor addicts, or other types of cases necessitating restraint of patients, and the term "hospital" shall not be used for convalescent, nursing, shelter or boarding homes.

**Hotel, Apartment:** A building containing dwelling units or individual guest rooms, the majority of which are for permanent guests. Maid and janitor service may be provided but kitchen facilities are not necessarily included.

**Hotel or Motel:** A building in which more than **five (5) rooms** or suites are reserved to provide living and sleeping accommodations for temporary guests, with no provisions in said rooms for cooking in any individual room or suite.

**Householder:** The occupant of a dwelling unit who is either the owner or lessee thereof.

**Junk Yard:** The use of any lot, or portion thereof, for waste, scrap metal, paper, rags, or similar materials which are bought, sold, exchanged, stored, baled, packed, disassembled, or handled, including auto and building wrecking yards, but excluding similar uses taking place entirely within a completely enclosed building.

**Kennel, Commercial:** Any lot or premises or portion thereof on which more than **four (4) dogs**, cats, or other household domestic animals, over **four (4) months** of age, are kept or are boarded for compensation or kept for sale.

**Laboratory, Commercial:** A place devoted to experimental study such as testing and analyzing. Manufacturing, assembly, or packaging of products is not included within this definition.

**Line of Building (For Measuring Yards):** A line parallel to the nearest lot line drawn through the point of a building or group of buildings nearest to such lot line, exclusive of such features specified as being permitted to extend into a yard.

**Loading and Unloading Space, Off-Street:** An open hard-surfaced area of land other than a street or public way, the principal use of which is for the standing, loading and unloading of motor trucks, tractors and trailers, to void undue interference with the public use of streets and alleys. Such space shall be not less than **ten (10) feet** in width, **forty-five (45) feet** in length, and **fourteen (14) feet** in height, exclusive of access aisles and maneuvering space.

**Lodging or Rooming House:** A building with not more than **five (5)** guest rooms where lodging is provided for compensation pursuant to previous arrangement, but not open to the public or to overnight guests.

**Lot:** The word "lot" when used alone shall mean a zoning lot, unless the context clearly indicates otherwise.

**Lot, Corner:** A parcel of land situated at the intersection of **two (2)** or more streets or adjoining a curved street at the end of a block.

**Lot Coverage:** The area of a zoning lot occupied by the principal building or buildings and accessory buildings.

**Lot Depth:** The horizontal distance between the front and rear lot lines measured in the mean direction of the side lot lines.

**Lot Frontage:** The front of a lot shall be that boundary of a lot along a public street; for a corner lot the owner may elect either street line as the front lot line.

**Lot, Interior:** A lot other than a corner lot or reversed corner lot.

**Lot Line, Front:** The front property line of a zoning lot.

**Lot Line, Interior:** A side lot line common with another lot.

**Lot Line, Rear:** The rear lot line is the lot line or lot lines most nearly parallel to and most remote from the front lot line. Lot lines other than front or rear lot lines are side lot lines.

**Lot, Reversed Corner:** A corner lot, the rear of which abuts upon the side of another lot, whether across an alley or not.

**Lot, Through:** A lot having frontage on **two (2)** parallel or approximately parallel streets, and which is not a corner lot.

**Lot Width:** The horizontal distance between the side lot lines measured at right angles to the lot depth at the established front building line.

**Lot, Zoning:** See Zoning Lot.

**Marquee or Canopy:** A rooflike structure of a permanent nature which projects from the wall of a building and may overhang the public way.

**Motor Freight Terminal, Private:** A building in which freight, brought to said building by motor truck, is assembled and sorted for routing in intrastate and interstate shipment by motor truck.

**Non-Conforming Use:** Any building, structure, or land lawfully occupied by a use or lawfully established at the time of the adoption of the Zoning Code or amendments thereto, which does not conform after passage of the Code or amendments thereto, with the use regulations of the Code.

**Nursing Home or Rest Home:** A private home for the care of children or the aged or infirm, or a place of rest for those suffering bodily disorders, but not including facilities for the treatment of sickness or injuries or for surgical care.

**Octave Band:** A means of dividing the range of sound frequencies into octaves in order to classify sound according to pitch.

**Octave Band Filter:** An electrical frequency analyzer, designed according to standards formulated by the American Standards Association and used in conjunction with a sound level meter to take measurements in specific octave intervals. (American Standard for Sound Level Meters, A.S.A. No. 224.3-1944).

**Ordinance:** Reference to "ordinance" herein shall be construed as the Zoning Code.

**Parking Area, Private:** An open, hard-surfaced area of land, other than a street or public way, designed, arranged, and made available for the storage of private passenger automobiles only, of occupants of the building or buildings for which the parking area is developed and is accessory.

**Parking Area, Public:** An open, hard-surfaced area, other than a street or public way, intended to be used for the storage of passenger automobiles and commercial vehicles under **one and one-half (1 ½) tons** capacity, and available to the public, whether for compensation, free or as an accommodation to clients or customers.

**Parking Space, Automobile:** Space within a public or private parking area of not less than **one hundred sixty-two (162) square feet (eight and one-half feet by nineteen feet [8 ½' x 19']**), exclusive of access drives or aisles, ramps, columns, or office and work areas, for the storage of **one (1)** passenger automobile or commercial vehicle under **one and one-half (1 ½) tons** capacity.

**Planned Development:** A tract of land which is developed as a unit under single ownership or control, which includes **two (2)** or more principal buildings and which is at least **four (4) acres** in area, except for planned developments operated by a municipal corporation which shall be at least **two (2) acres** in area, and manufacturing planned developments which shall be at least **ten (10) acres** in area.

**Porch:** A roofed-over structure projecting out from the wall or walls of a main structure and commonly open to the weather in part.

**Public Utility:** Any person, firm, corporation or municipal department, duly authorized to furnish under public regulation to the public, electricity, gas, steam, telephone, telegraph, transportation or water.

**Railroad Right-of-Way:** A strip of land with tracks and auxiliary facilities for track operation, but not including depots, loading platforms, stations, train sheds, warehouses, car shops, car yards, locomotive shops, or water towers.

**Ringelmann Chart:** A chart which is described in the U.S. Bureau of Mines Information Circular 6888, and on which are illustrated graduated shades of grey for use in estimating the light-obscuring capacity of smoke.

**Ringelmann Number:** The number of the area of the Ringelmann Chart that coincides most nearly with the visual density of emission.

**Setback Line, Building:** See Building Setback Line.

**Sign:** A name, identification, description, display, or illustration which is affixed to, or painted or represented directly or indirectly upon a building, structure, or piece of land, and which directs attention to an object, product, place, activity, person, institution, organization or business.

**Smoke Units:** The number obtained by multiplying the smoke density in Ringelmann numbers by the time of emission in minutes. For the purpose of this chart, Ringelmann density reading is made at least once every minute during the period of observation; each reading is then multiplied by the time in minutes during which it is observed; and the various products are added together to give the total number of "smoke units" observed during the total period under observation.

**Special Use:** Any use of land or buildings, or both, described and permitted herein, subject to the provisions of the Administrative Section.

**Stable, Livery:** Any building, other than a private stable, designed, arranged, used or intended to be used for the storage of horses or horse-drawn vehicles, or both.

**Story:** That portion of a building included between the surface of any floor and the surface of the floor next above it, or if there be no floor above it, then the space between the floor and the ceiling next above it. Any portion of a story exceeding **fourteen (14) feet** in height shall be considered as an additional story for each **fourteen (14) feet** or fraction thereof.

**Story, Half:** A half story is that portion of a building under a gable, hip or mansard roof, the wall plates of which on at least **two (2)** opposite exterior walls, are not more than **four and one-half (4 ½) feet** above the finished floor of such story. In the case of one-family dwellings, two-family dwellings and multiple-family dwellings less than **three (3) stories** in height, a half story

in a sloping roof shall not be counted as a story for the purposes of this report. In the case of multiple-family dwellings **three (3)** or more stories in height, a half story shall be counted as a story.

**Street:** A public way other than an alley.

**Street Line:** The line separating an abutting lot, piece or parcel of land from a street.

**Structure:** Anything constructed or erected which requires location on the ground or is attached to something having location on the ground.

**Structural Alterations:** Any change other than incidental repairs which would prolong the life of the supporting members of a building or structure, such as bearing walls, columns, beams or girders.

**Tavern or Lounge:** A building where liquors are sold to be consumed on the premises, but not including restaurants where the principal business is serving food.

**Terrace, Open:** A level and rather narrow plane or platform, which is located adjacent to **one (1)** or more faces of the principal structure and which is constructed not more than **four (4) feet** in height above the average level of the adjoining ground.

**Tourist Courts, Motor Lodges, Motels:** A group of attached or detached buildings containing individual sleeping or living units, designed for or used temporarily by automobile tourists or transients, with garage attached or parking space conveniently located to each unit, including auto courts, motels, motor lodges or other similar type uses.

**Tourist Home:** A dwelling in which accommodations are provided or offered for transient guests.

**Toxic Material:** A substance (liquid, solid or gaseous) which, by reason of an inherent deleterious property, tends to destroy life or impair health.

**Trailer House or Mobile Home:** Any structure used for living, sleeping, business or storage purposes, having no foundation other than wheels, blocks, skids, jacks, horses or skirtings, and which has been or reasonably may be equipped with wheels or other devices for transporting the structure from place to place, whether by motive power or other means. The term "trailer" shall include camp car and house car.

**Truck Parking Area, or Yard:** Any land used or intended to be used for the storage or parking of trucks, tractors, truck trailers, and including commercial vehicles, while not loading or unloading, and which exceeds **one and one-half (1 ½) tons** in capacity.

**Use:** The purpose for which land or a building thereon is designed, arranged, or intended, or for which it is occupied or maintained, let or leased.

**Used Car Lot:** A zoning lot on which used or new cars, trailers, or trucks are displayed for sale or trade.

**Yard:** An open space on the same zoning lot with a principal building or group of buildings, which is unoccupied and unobstructed from its lowest level upward, except as otherwise permitted herein, and which extends along a lot line and at right angles thereto to a depth or width specified in the yard regulations for the district in which the zoning lot is located.

**Yard, Front:** A yard extending across the full width of the zoning lot and lying between the front line of the lot and the nearest line of a building.

**Yard, Rear:** A yard extending across the full width of the zoning lot and lying between the rear line of the lot and the nearest line of the principal building.

**Yard, Side:** That part of the yard lying between the nearest line of the principal building and a side lot line, and extending from the required front yard (or from the front lot line, if there is no required front yard) to the required rear yard.

**Zoning Maps:** The map or maps incorporated herein as a part hereof, designating zoning districts.

**Zoning Lot:** A plot of ground, made up of **one (1)** or more parcels, which is or may be occupied by a use, building or buildings including the open spaces required herein.

**ARTICLE II – USE DISTRICTS AND REGULATIONS**

**40-2-1**     **DISTRICTS ESTABLISHED.** In order to carry out the purposes and provisions herein, the City is hereby divided into the following districts:

**RESIDENTIAL DISTRICTS**

- A                     Agriculture District
- R-1                  Single-Family Dwelling District
- R-2                  General Residence District

**BUSINESS DISTRICTS**

- B-1                   Business District, General Retail and Limited Service
- B-2                   Business District, General Service and Wholesale
- B-3                   Highway Business District

**MANUFACTURING DISTRICTS**

- M-1                   Manufacturing District, Limited
- M-2                   Manufacturing District, General

**40-2-2**     **ZONING MAPS.** The location and boundaries of the districts established herein are shown on the Zoning Map which is hereby incorporated herein. The zoning map, together with all notations, references and other information shown thereon, and all amendments thereto, shall be a part hereof and shall have the same force and effect as if the zoning map, together with all notations, references and other information shown thereon were fully set forth and described herein.

**[ED. NOTE: The Zoning Map shall be published by March 31<sup>st</sup> of each year following any map revisions from the previous year.]**

**40-2-3**     **ZONING OF ANNEXED LAND.** Prior to annexation of any territory to the City, a plan of zoning the area to be annexed shall be forwarded to the City Council by the Plan Commission. Upon approval of such plan for zoning the area to be annexed, the City Council shall direct the Plan Commission to hold a public hearing in accordance with the regulations of the Administration section.

**40-2-4 ZONING OF STREETS, ALLEYS, PUBLIC WAYS AND RAILROAD RIGHTS-OF-WAY.** All streets, alleys, public ways and railroad rights-of-way, if not otherwise specifically designated, shall be deemed to be in the same zone as the property immediately abutting upon such streets, alleys, public ways and railroad rights-of-way. Where the center line of a street, alley, public way or railroad right-of-way serves as a district boundary, the zoning of such areas, unless otherwise specifically designated shall be deemed to be the same as that of the abutting property up to such center line.

**40-2-5 BOUNDARY LINES.** Wherever any uncertainty exists as to the boundary of any use district as shown on the zoning map incorporated herein, the following rules shall apply:

(A) Where district boundary lines are indicated as following streets, alleys or similar rights-of-way, they shall be construed as following the center lines thereof.

(B) Where district boundary lines are indicated as approximately following lot lines, such lot lines shall be construed to be such boundaries.

(C) Where a lot held in one ownership and of record at the effective date of the Zoning Code is divided by a district boundary line, the entire lot shall be construed to be within the less restricted district; provided that this construction shall not apply if it increases the area of the less restricted portion of the lot by more than **twenty percent (20%)**.

**ARTICLE III – GENERAL PROVISIONS**

**40-3-1**        **SCOPE OF REGULATIONS.** No building or structure shall be erected, converted, enlarged, reconstructed or structurally altered, nor shall any building or land be used for any purpose other than is permitted in the district in which the building or land is located.

**40-3-2**        **PERMITS.** No application for a building permit or other permit or license, or for a certificate of occupancy, shall be approved by the administrative officer and no permit or license shall be issued by any other City department, which would authorize the use or change in use of any land or building contrary to the provisions hereof, or the erection, moving, alteration, enlargement or occupancy of any building designed or intended to be used for a purpose or in a manner contrary to the provisions hereof.

(A)            No person, company, or corporation shall erect or cause to be erected within the City limits or within the City any building or structure of any kind or enlarge or add to the dimensions of or relocate or move any building or structure without first having obtained a permit therefor, which permit shall be issued through the office of the City Clerk who shall charge a fee therefor in accordance with the following: For Residential Construction, **Fifty Dollars (\$50.00)** for the first **One Thousand Dollars (\$1,000.00)** of the cost of construction, alteration or addition, which is a minimum, non-refundable fee, which minimum fee shall accompany the application. At the time of the issuance of the permit an additional **One Dollar (\$1.00)** per **One Thousand Dollars (\$1,000.00)** in excess of **One Thousand Dollars (\$1,000.00)** cost of construction, alteration or addition shall be paid. For Commercial Construction, **One Hundred Dollars (\$100.00)** for the first **One Thousand Dollars (\$1,000.00)** of the cost of construction, alteration or addition, which is a minimum, non-refundable fee, which minimum fee shall accompany the application. At the time of the issuance of the permit an additional **One Dollar (\$1.00)** per **One Thousand Dollars (\$1,000.00)** in excess of **One Thousand Dollars (\$1,000.00)** cost of construction, alteration or addition shall be paid. **(Ord. No. 08-16; 08-11-08)**

(B)            All permits issued pursuant to this Code shall be effective for **one (1) year** from the date of issuance. In the event the construction, alteration or addition has not been completed within **one (1) year** from the date of the issuance of the permit, there shall be paid an additional **ten percent (10%)** of the original permit price for each **thirty (30) days** that the building permit must be extended to complete the construction, alteration or addition. **(Ord. No. 1925)**

**40-3-3**        **BUILDING HEIGHT, BULK AND LOT COVERAGE.**

(A)            No building shall be erected, reconstructed, relocated or structurally altered so as to have a greater height, a higher ratio of lot coverage, or smaller open space about it than permissible under the limitations set forth herein for the district in which such building is located, except that parapet walls, chimneys, cooling towers, elevator bulkheads, fire towers, stacks, stage towers, or scenery lofts, and necessary mechanical appurtenances, shall be permitted to exceed the maximum height provisions when erected in accordance with all other ordinances of the City.

(B)            No space allocated to a building or dwelling group for the purpose of complying with the side, rear or front yard, or court or other open space or lot area requirements herein, shall thereafter, by reason of change in ownership or for any other reason, be used to satisfy the yard, court, open space or lot area requirements of any other building or dwelling group.

(C)            An open terrace, but not including a roofed-over porch or terrace, may occupy a front yard, provided the unoccupied portion of the front yard has a depth of not less than **fifteen (15) feet**. A one-story bay window may project into a front yard not more than **three (3) feet**. Overhanging eaves, including gutters, may project over the minimum required side yard not more than **eighteen (18) inches**.

(D) No usable open space or off-street parking space or loading space existing or provided hereafter for any building shall be reduced below the minimum requirements hereinafter set forth for such usable open space, parking space, or loading space, nor further reduced if already less than said minimum requirements.

(E) Any Accessory Building (excluding portable buildings) shall not exceed **eighteen (18) feet** in height, shall include customary gutters with downspouts, and shall be constructed to match and blend in with the primary structure. **(Ord. No. 08-15; 08-11-08)**

**40-3-4**      **LOT AREA AND DIMENSION.**

(A) When **two (2)** or more parcels of land, each of which lacks adequate area and dimension to qualify for a permitted use under the requirements of the use district in which they are located, are contiguous and are held in one ownership, they shall be used as one zoning lot for such use.

(B) Any single lot or parcel of land, held in one ownership, which was of record at the time of adoption of the Zoning Code, that does not meet the requirements for minimum lot width and area, may be utilized for a permitted use, provided that yards, courts or usable open space are not less than **seventy-five percent (75%)** of the minimum required dimensions or areas.

**40-3-5**      **LOCATION OF BUILDINGS.** Except as otherwise provided for herein, every building shall be constructed or erected on a lot or parcel of land which abuts upon a public street or permanent easement of access to a public street, which easement shall have a minimum width of **twenty-five (25) feet**, unless an easement of lesser width was of record prior to the adoption of the Zoning Code.

**40-3-6**      **BUILDINGS UNDER CONSTRUCTION.** Nothing herein shall be deemed to require any change in the plans, construction or designated use of any building upon which actual construction was lawfully begun prior to the adoption of the Zoning Code and upon which building actual construction has been diligently carried on, and provided further that such building shall be completed within **one (1) year** from the date of passage and publication of the Code.

**40-3-7**      **BUILDINGS ON A ZONING LOT.** Every building hereafter erected or structurally altered to provide dwelling units shall be located on a zoning lot as herein defined and in no case shall there be more than **one (1)** such building on one zoning lot, except as hereinafter provided in **Section 40-9-16(B)**.

**40-3-8**      **REZONING OF PUBLIC AND SEMI-PUBLIC AREAS.** An area indicated on the zoning map as a public park, recreation area, public school site, cemetery, or other similar open space, shall not be used for any other purpose than that designated; and when the use of the area is discontinued, it shall automatically be zoned to the most restricted adjoining district until appropriate zoning is authorized by the City Council within **three (3) months** after the date of application filed for rezoning.

**40-3-9**      **FLOOR AREA.** Every building hereafter erected, altered, or occupied for dwelling purposes shall have a floor area of not less than **eight hundred (800) square feet** for each family occupying the same, and no shed, barn, garage or other structure, not originally designed for dwelling purposes, shall be occupied or used for dwelling purposes.

**ARTICLE IV – NON-CONFORMING USES**

**40-4-1      CONTINUANCE OF USE.**

(A) Any lawfully established use of a building or land at the effective date of the Zoning Code, or of amendments thereto, that does not conform to the use regulations for the district in which it is located, shall be deemed to be a legal non-conforming use and may be continued, except as otherwise provided herein.

(B) Any legal non-conforming building or structure may be continued in use provided there is not physical change other than necessary maintenance and repair, except as otherwise permitted herein.

(C) Any building for which a permit has been lawfully granted prior to the effective date of the Zoning Code or of amendments thereto, may be completed in accordance with the approved plans; provided construction is started within **six (6) months** and diligently prosecuted to completion. Such building shall thereafter be deemed a lawfully established building.

**40-4-2      DISCONTINUANCE OF USE.**

(A) Whenever any part of a building, structure or land occupied by a non-conforming use is changed to or replaced by a use conforming to the provisions of the Zoning Code such premises shall not thereafter be used or occupied by any non-conforming use, even though the building may have been originally designed and constructed for the prior non-conforming use.

(B) Whenever a non-conforming use of a building or structure, or part thereof, has been discontinued for a period of **six (6) consecutive months**, or for a continuous period of **twelve (12) months** if the building was originally designed and constructed for a non-residential use, or whenever there is evident a clear intent on the part of the owner to abandon a non-conforming use, such use shall not after being discontinued or abandoned, be re-established, and the use of the premises thereafter shall be in conformity with the regulations of the district.

(C) Where no enclosed building is involved, discontinuance of a non-conforming use for a period of **six (6) months** shall constitute abandonment.

**40-4-3      CHANGE OF USE.**

(A) A non-conforming use of a building or structure, or part thereof, may be changed to a use of the same or of a more restricted character, but may not thereafter be changed to any less restricted use.

(B) Any part of a building, structure or land occupied by a non-conforming use which is changed to or replaced by a use conforming to the provisions of the Zoning Code shall not thereafter be used or occupied by a non-conforming use.

**40-4-4      TERMINATION AND REMOVAL OF NON-CONFORMING USES.**

The period of time during which the following non-conforming uses of buildings, structures, or land may continue or remain shall be limited to the following periods from the effective date of the Code or of any amendments thereto which causes the use to be non-conforming. Every such non-conforming use shall be completely removed from the premises at the expiration of the period signified, or shall be made to conform to the regulations of the Code.

(A)            Any non-conforming building or structure having an assessed valuation not in excess of **Seven Hundred Fifty Dollars (\$750.00)** on the effective date of this Code - **two (2) years**.

(B)            All non-conforming signs, billboards and outdoor advertising structures - **ten (10) years**.

(C)            Any non-conforming use of land where no enclosed building is involved or where the only buildings employed are accessory or incidental to such use, or where such use is maintained in connection with a conforming building - **two (2) years**.

(D)            House trailers or mobile homes - **three (3) years**.

**40-4-5      REPAIRS AND ALTERATIONS.**

(A)            Normal maintenance of a building or other structure containing a non-conforming use is permitted, including necessary non-structural repairs and incidental alterations which do not extend or intensify the non-conforming use.

(B)            No structural alterations shall be made in a building or other structure containing a non-conforming use, except in the following situations:

- (1)          When the alteration is required by law.
- (2)          When the alteration will actually result in eliminating the non-conforming use.
- (3)          When a building containing residential non-conforming uses may be altered in any way to improve livability, provided no structural alteration shall be made which would increase the number of dwelling units or the bulk of the building.

**40-4-6      DAMAGE AND DESTRUCTION.** If a building or other structure containing a non-conforming use is damaged or destroyed by any means to the extent of **fifty percent (50%)** or more of its replacement value at the time, the building or other structure can be rebuilt or used thereafter only for a conforming use and in compliance with the provisions of the district. In the event the damage or destruction is less than **fifty percent (50%)** of its replacement value, based upon prevailing costs, the building may then be restored to its original condition and the occupancy or use of such building may be continued which existed at the time of such partial destruction.

**40-4-7      ADDITIONS AND ENLARGEMENTS.**

(A)            A non-conforming building may be enlarged or extended only if the entire building is thereafter devoted to a conforming use, and is made to conform to all the regulations of the district in which it is located.

(B)            No building partially occupied by a non-conforming use shall be altered in such a way as to permit the enlargement or expansion of the space occupied by such non-conforming use.

(C)            No non-conforming building in any residential district shall be so altered as to increase the number of dwelling units therein.

(D)            No non-conforming use may be enlarged or extended in such a way as to occupy any required usable open space, or any land beyond the boundaries of the zoning lot as it existed at the effective date of the Code or to displace any conforming use in the same building or on the same premises.

**40-4-8      EXCEPTIONS.**    Wherever a lawfully existing building or other structure otherwise conforms to the use regulations of the Code, but is non-conforming only in the particular manner hereinafter specified, the building and use thereof shall be exempt from the requirements of **Sections 40-4-4** and **40-4-5**.

(A)            In any residential district where a dwelling is non-conforming only as to the number of dwelling units it contains, provided no such building shall be altered in any way so as to increase the number of dwelling units therein.

(B)            In any R-2 District, where a use permitted in the B-1 District occupies ground floor space within a multiple-family dwelling located on a corner lot.

(C)            In a business or manufacturing district where the use is less distant from a residential district than that specified in the regulations for the district in which it is located.

**ARTICLE V – ACCESSORY BUILDINGS**

**40-5-1**        **ATTACHED ACCESSORY.** Where a substantial part of the wall of an accessory building is a part of the wall of the main building or where an accessory building is attached to the main building in a substantial manner as by a roof, such accessory building shall be counted as part of the main building.

**40-5-2**        **LOCATION OF STRUCTURE.** An accessory building may not be located nearer to any interior lot line than that permitted for the main building, when any part of this accessory building is on line with the main building, if extended. However, when an accessory building is located in the rear yard, it may then be located within **three (3) feet** of the interior lot line, but not nearer than **five (5) feet** of the rear lot line.

**40-5-3**        **ERECTION PRIOR TO PRINCIPAL BUILDING.** An accessory building shall not be erected prior to the establishment or construction of the main building to which it is accessory.

**40-5-4**        **REVERSED CORNER LOT.** No accessory building shall be located on a reversed corner lot beyond the front yard required on the adjacent lot to the rear, nor be located nearer than **five (5) feet** to the side lot line of the adjacent building on the lot to the rear.

**40-5-5**        **PERMITTED ACCESSORY USES.** An accessory use includes, but is not limited to, the following:

- (A)            A children’s playhouse, garden house and private greenhouse.
- (B)            A garage, shed or building for domestic storage.
- (C)            Incinerators incidental to residential use.
- (D)            Storage of merchandise normally carried in stock on the same lot with any retail service or business use, unless such storage is excluded by the district regulations.
- (E)            Storage of goods used in or produced by manufacturing activities, on the same lot or parcel of ground with such activities, unless such storage is excluded by the district regulations.
- (F)            Off-street motor vehicle parking areas, and loading and unloading facilities.
- (G)            Signs, as permitted and regulated in each district incorporated herein.
- (H)            Swimming pools, in all residential districts shall be located not less than **twenty (20) feet** from any principal building on an adjacent lot and the pool or yard shall be fenced to a height of not less than **five (5) feet** with the type and location of the fence approved by the City Superintendent. “Swimming pool” within the meaning of this subparagraph, shall be a depression in the ground, either temporary or permanent, or a container of water either temporary or permanent and either above or below the ground in which water of more than **twenty-four (24) inches** is contained and which is used primarily for the purposes of swimming. **(Ord. No. 06-15; 04-24-06)**

(I)            No more than **one (1)** not permanently attached or movable building shall be allowed per property.

**ARTICLE VI – OFF-STREET PARKING AND LOADING**

**40-6-1**     **PURPOSE.** The purpose of this Section is to alleviate or prevent congestion of the public streets, and so promote the safety and welfare of the public by establishing minimum requirements for the off-street parking and loading and unloading of motor vehicles in accordance with the use to which property is put.

**40-6-2**     **GENERAL PROVISIONS – PARKING AND LOADING.**

(A)     **Procedure.** An application for a building permit for a new or enlarged building, structure or use shall include therewith a plot plan, drawn to scale, and fully dimensioned, showing any parking or loading facilities to be provided in compliance with the requirements of the Code.

(B)     **Extent of Control.** The off-street parking and loading requirements shall apply as follows:

- (1) All buildings and structures erected and land uses initiated after the effective date of the Code shall provide accessory off-street parking or loading facilities as required hereinafter for the use thereof, except that a building or structure for which a building permit has been issued prior to the effective date of the Code shall not be required to furnish parking or loading facilities if construction is begun thereon within **six (6) months** of the effective date of the Code and diligently prosecuted to completion.
- (2) When a building or structure erected prior to or after the effective date of the Code shall undergo any decrease in number of dwelling units, gross floor area, seating capacity, number of employees, or other unit of measurement specified hereinafter for the required parking or loading facilities, and further, when said decrease would result in a requirement for fewer total parking or loading spaces through application of the provisions of the Code thereto, parking and loading facilities may be reduced accordingly, provided that existing parking or loading facilities shall be so decreased only when the facilities remaining would at least equal or exceed the parking or loading requirements resulting from application of the provisions of the Code to the entire building or structure as modified.
- (3) When a building or structure shall undergo any increase in the number of dwelling units, gross floor area, seating capacity or other unit of measurement specified hereinafter for required parking or loading facilities, and further, when said increase would result in a requirement for additional total parking or loading spaces through application of the provisions of the Code

thereto, parking and loading facilities shall be increased accordingly, provided that existing parking or loading facilities shall be so increased that the facilities would at least equal or exceed the parking or loading requirements resulting from application of the provisions of the Code to the entire building or structure as modified.

(C) **Existing Parking and Loading Spaces.** Accessory off-street parking and loading space in existence on the effective date of the Zoning Code may not be reduced in number unless already exceeding the requirements of this Section for equivalent new construction; in which event said spaces shall not be reduced below the number required herein for such equivalent new construction.

(D) **Permissive Parking and Loading Spaces.** Nothing in this Section shall prevent the establishment of off-street automobile parking or loading facilities to serve any existing use of land or buildings, subject to full compliance with the provisions of this Section, except that off-street parking areas accessory to existing multiple-family structures cannot be located off the premises containing the main use, unless on a lot adjacent thereto, without authorization by the City Council.

(E) **Damage or Destruction.** Any building, structure or use which is in existence and is a conforming use on the effective date of this Code and which subsequently shall be damaged or destroyed by fire, collapse, explosion or other cause may be reconstructed, re-established or repaired with or without off-street parking or loading facilities, except that parking or loading facilities equivalent to any maintained at the time of such damage or destruction shall be restored or continued in operation. However, in no case shall it be necessary to restore or maintain parking or loading facilities in excess of those required herein for equivalent new construction.

(F) **Schedule of Requirements.**

(1) **Tables for Required Parking and Loading.** Requirements governing the number and location of off-street parking and off-street loading facilities in relation to the use of property are established herein. The parking and loading requirements for any use not specified herein shall be the same as for a similar specified use, as determined by **Section 40-6-6**.

(2) **Floor Area.** The term "floor area" as employed in this parking and loading section in the case of office, merchandising or service types of use shall mean the gross floor area of a building or structure used or intended to be used for service to the public as customers, patrons, clients, patients, or tenants, including areas occupied by fixtures and equipment used for display or sale of merchandise. "Floor areas" for the purposes of this Section shall not include any area used for:

- (a) Storage accessory to the principal use of a building;
- (b) Incidental repairs;
- (c) Processing or packaging of merchandise;

- (d) Show windows, or offices incidental to the management or maintenance of a store or a building;
- (e) Rest rooms;
- (f) Utilities;
- (g) Dressing, fitting or alteration rooms.

**40-6-3 ADDITIONAL REGULATIONS – PARKING.**

(A) **Use of Parking Facilities.** Off-street parking facilities accessory to residential use and developed in any residential district in accordance with the requirements of this Section shall be used solely for the parking of passenger automobiles owned by occupants of the dwelling structures to which such facilities are accessory or by guests of said occupants. Under no circumstances shall required parking facilities accessory to residential structures be used for the storage of commercial vehicles or for the parking of automobiles belonging to the employees, owners, tenants, visitors, or customers of business or manufacturing establishments, except as permitted in **Section 40-6-3(E).**

(B) **Joint Parking Facilities.** Off-street parking facilities for different buildings, structures or uses, or for mixed uses, may be provided collectively in any zoning district in which separate parking facilities for each constituent use would be permitted, provided that the total number of spaces so located together shall not be less than the sum of the separate requirements for each use.

(C) **Control of Off-Site Facilities.** When required accessory off-street parking facilities are provided elsewhere than on the lot on which the principal use served is located, they shall be in the same possession, either by deed or long-term lease, as the property occupied by such principal use, and the owner shall be bound by covenants filed of record in the office of the Recorder of Deeds of Ford County, requiring the owner and his or her said heirs and assigns to maintain the required number of parking spaces during the existence of said principal use.

(D) **Permitted Districts for Accessory Parking.** Accessory parking facilities provided elsewhere than on the same zoning lot with the principal use served in accordance with **Section 40-6-3(C)** may be located in any zoning district except as follows:

- (1) No parking facilities accessory to an apartment use shall be located in an R-1 District.
- (2) No parking facilities accessory to any business or manufacturing use shall be located in a residential district, except when authorized by the City Council as prescribed hereinafter.
- (3) No parking facilities accessory to a manufacturing use shall be permitted in a B-1 or B-2 District.

(E) **Non-Residential Parking in Residential Districts.** Accessory off-street parking facilities serving non-residential uses of property may be permitted in an R-2 District when authorized by the City Council, subject to the following requirements in addition to all other relevant requirements of this Section:

- (1) The parking lot shall be accessory to and for use in connection with, **one (1)** or more residential establishments located in adjoining districts or in connection with **one (1)** or more existing professional or institutional office buildings or institutions.
- (2) Said parking lot shall be used solely for the parking of passenger automobiles.
- (3) No commercial repair work, sales or service of any kind shall be conducted on said parking lot.
- (4) No sign of any kind other than signs designating entrances, exits and conditions of use, shall be maintained on said parking lot.
- (5) The parking lot may be open from **7:00 A.M.** to **9:00 P.M.** and shall be closed at all other times, provided, however, that when supervised by **one (1)** or more full-time attendants, the parking lot may be kept open until **12:00 Midnight**.
- (6) Each entrance to and exit from said parking lot shall be at least **twenty (20) feet** distant from any adjacent property located in any residential district, except where ingress and egress to the parking lot is provided from a public way or public alley separating the residential areas from the proposed parking lot.
- (7) In addition to the foregoing requirements, such parking lots shall conform to any further requirements and conditions as may be prescribed by the City Council for the protection of properties adjacent to and in the vicinity of the proposed parking lot.

(F)

**Design and Maintenance.**

- (1) **Parking Space – Description.** A required off-street parking space shall be an area of not less than **one hundred sixty-two (162) square feet** nor less than **eight and one-half (8 ½) feet** wide by **nineteen (19) feet** long, exclusive of access drives and aisles, ramps, columns, or office and work areas, accessible from streets or alleys or from private driveways or aisles leading to streets or alleys and to be used for the storage or parking of passenger automobiles or commercial vehicles under **one and one-half (1 ½) tons** capacity. Aisles between vehicular parking spaces shall be not less than **twelve (12) feet** in width when serving automobiles parked at a **forty-five degree (45°)** angle in one direction nor less than **twenty (20) feet** in width when serving automobiles parked perpendicular to the aisles and accommodating two-way traffic.
- (2) **Measurement of Space.** When determination of the number of required off-street parking spaces results in a requirement of a fractional space, any fraction up to and including **one-half (1/2)** shall be interpreted as **one (1)** parking space.

- (3) **Open and Enclosed Spaces.** Parking areas may be open or enclosed except that when parking facilities accessory to a multiple dwelling are located in a residential or B-1 or B-2 District elsewhere than on the same zoning lot with the principal use served, such parking facilities shall be open to the sky.
- (4) **Access.** Parking facilities shall be designed with appropriate means of vehicular access to a street or alley in such a manner as will least interfere with the movement of traffic. No driveway or curb cut in any district shall exceed **twenty-five (25) feet** in width.
- (5) **Signs.** No signs shall be displayed in any parking area within any residential district, except such as may be necessary for the orderly use of the parking facilities.
- (6) **Required Setbacks.** No parking space or portion thereof established on the same zoning lot with a building shall be located within a required front yard. No parking space or portion thereof established on a zoning lot without a building shall be located closer to any street line than the established building line on adjacent properties nor closer than the front yard setback required for the district in which the parking lot is located. Further, any wall, fence or hedge developed around any parking area shall be subject to the front yard setback requirements herein in the same manner as a building or structure.
- (7) **Surfacing.** All open off-street parking areas, except those accessory to single-family dwellings, shall be improved with a compacted macadam base, not less than **four (4) inches** thick, surfaced with asphaltic concrete or some comparable all-weather dustless material.
- (8) **Screening and Landscaping.** All open off-street parking areas for **six (6)** or more cars shall be effectively screened by a wall, a solid fence or a densely planted compact hedge along any side which adjoins or is directly across a street or alley from a property in a residential district or an institutional property. Such wall, fence or hedge shall be at least **four (4) feet**, but not more than **seven (7) feet**, in height and shall be maintained in good condition.
- (9) **Lighting.** Any lighting used to illuminate an off-street parking area shall be so arranged as to reflect the light away from adjoining properties.

(G) **"Special Use" Public Parking Areas.** Any automobile parking area developed for transient trade, and not accessory to specific main uses or groups of uses for which parking is required herein, shall be treated as a "special use" as defined herein and as allowed by the City Council.

**40-6-4      ADDITIONAL REGULATIONS – LOADING – DESIGN.**

(A)      **Loading Berth – Description.** An off-street loading berth shall be a hard-surfaced area of land, open or enclosed, other than a street or a public way, used principally for the standing, loading or unloading of motor trucks, tractors and trailers so as to avoid undue interference with the public use of streets and alleys. A required loading space shall be not less than **ten (10) feet** in width, **forty-five (45) feet** in length, and **fourteen (14) feet** in height, exclusive of access aisles and maneuvering space, except as otherwise specifically dimensioned hereafter.

(B)      **Location.** No permitted or required loading berth shall be closer than **fifty (50) feet** to any property in a residential district unless completely enclosed by building walls or a uniformly painted solid fence or wall, or any combination thereof not less than **six (6) feet** in height. No permitted or required loading berth shall be located within **twenty-five (25) feet** of the nearest point of intersection of any **two (2) streets**. Loading berths open to the sky may be located in any required yard.

(C)      **Measurement of Berth.** When determination of the number of required off-street loading berths results in a requirement of a fractional berth, any fraction up to and including **one-half (1/2)** shall be disregarded, and fractions over **one-half (1/2)** shall be interpreted as **one (1)** loading berth.

(D)      **Surfacing.** All open off-street loading berths shall be improved with a compacted macadam base not less than **seven (7) inches** thick, surfaced with not less than **two (2) inches** of asphaltic concrete or some comparable material which is dustless and all-weather.

**40-6-5      LOCATION OF PARKING AREAS – EXTENT OF CONTROL.** Off-street automobile parking facilities shall be located as hereinafter specified; where a distance is specified, such distance shall be walking distance measured from the nearest point of the parking area to the nearest entrance of the building that said parking area is required to serve.

(A)      For one- and two-family dwellings, on the same lot with the buildings they are required to serve.

(B)      For three- and four-family dwellings not over **two (2) stories** in height, on the same lot or parcel of land as the building they are required to serve. For the purposes of this requirement, a group of such uses constructed and maintained under single ownership or management shall be assumed to be on a single lot or parcel of land.

(C)      For apartment houses containing **four (4)** or more dwelling units, on the same lot or parcel of land as the building they are required to serve, or on a separate lot or parcel of land not more than **three hundred (300) feet** from the nearest entrance to the main building being served, provided the lot or parcel of land selected for the parking facilities is located in an apartment district or a less restricted district.

(D)      For rooming houses, lodging houses, clubs, hospitals, sanitariums, orphanages, homes for the aged, convalescent homes, dormitories, sorority and fraternity houses, and for the other similar uses, the off-street parking facilities required shall be on the same lot or parcel of land as the main building or buildings being served, or upon properties contiguous to the zoning lot upon which is located the building or buildings they are intended to serve.

(E) For uses other than those specified above, off-street parking facilities shall be provided on the same lot or parcel of land as the main building being served, or on a separate lot or parcel of land not over **one thousand (1,000) feet** of the entrance of the main building, measured from the nearest point on the parking area, provided the separate lot or parcel of land intended for the parking facilities is located in the same district as the principal use or in a less restricted district.

**40-6-6 SCHEDULE OF PARKING REQUIREMENTS.**

(A) For one and two-family dwelling, **one (1)** parking space for each family dwelling unit.

(B) For three or more family dwelling, **one (1)** parking space for each family dwelling unit.

(C) For hotels and clubs, **one (1)** parking space for each **four (4)** guests or **one (1)** parking space for each sleeping room or suite, plus **one (1)** additional space as shall be deemed necessary by the Zoning Administrator because of any supplementary parking-generative activities such as bars, ballrooms, dining rooms, nightclub facilities, and the like.

(D) For tourist homes, cabins, motels, **one (1)** parking space for each guest or sleeping room or suite, plus **one (1)** additional space for the owner or manager on the premises.

(E) For lodging, rooming and boarding houses, **one (1)** parking space for each **four (4) guests**, plus **one (1)** additional space for the owner or manager thereof, if resident on the premises.

(F) For private clubs or lodges (without sleeping rooms), **one (1)** parking space equal in number to **twenty-five percent (25%)** of the total membership.

(G) For fraternities, sororities, and dormitories, **one (1)** parking space for each **five (5)** active members, plus **one (1)** additional space for the housemother or manager.

(H) For hospitals, **one (1)** parking space for each **three (3)** hospital beds, plus **one (1)** parking space for each **one thousand five hundred (1,500) square feet** of gross floor area in residents' quarters, plus **one (1)** additional space for each staff or visiting doctor.

(I) For sanitariums, convalescent homes, or homes for the aged, **one (1)** space for each **six (6)** patient beds, plus **one (1)** additional space for each staff or visiting doctor.

(J) For medical or dental clinics, **five (5)** parking spaces per doctor engaged at clinic.

(K) For mortuaries or funeral parlors, **ten (10)** parking spaces for each room used as a chapel or parlor, plus **one (1)** space for each funeral vehicle maintained on the premises, plus **one (1)** space for each family residing on the premises.

(L) For bowling alleys, **two (2)** parking spaces for each alley, plus **one (1)** parking space for each **three hundred (300) feet** of floor area devoted to affiliated uses such as bars, restaurants and the like.

(M) For convention halls, dance halls, skating rinks, assembly halls, exhibition halls, or other places of assembly, **one (1)** parking space for each **one hundred (100) square feet** of floor area used for assembly.

(N) Stadia, sports arena, auditorium and gymnasium (other than incidental to a school), **one (1)** parking space for each **eight (8) seats**.

- (O) For theaters:
- (1) **Indoor.** One (1) parking space for each **ten (10) seats** up to **five hundred (500)**, plus **one (1)** parking space for each **five (5) seats** above **five hundred (500)**.
  - (2) **Outdoor.** Reservoir space equal to **ten percent (10%)** of the capacity.
- (P) For automobile laundries, **twenty (20)** parking spaces for each wash rack shall be provided, plus **one (1)** additional space for each **four (4) employees**.
- (Q) For church, high school, college and university auditoriums, **one (1)** parking space for each **twelve (12) seats** provided in said buildings or structures.
- (R) For airports, railroad passenger stations, bus depots, or other passenger terminal facilities (special uses), such parking space as the City Council, subject to the recommendations of the Plan Commission, shall deem to be adequate for employees, passengers, spectators, visitors and others.
- (S) For banks, business or professional offices, or public administration buildings, **one (1)** parking space for the first **two thousand (2,000) square feet** of floor area, and **one (1)** parking space for each additional **four hundred (400) square feet** of floor area.
- (T) For establishments handling the sale and consumption on the premises of alcoholic beverages, food or refreshments, **one (1)** parking space for the first **two thousand (2,000) square feet** of floor area and **one (1)** parking space for each additional **three hundred (300) square feet** of floor area.
- (U) For retail stores and service shops (individual or in groups) under **one (1) roof**, **one (1)** parking space for the first **two thousand (2,000) square feet** of floor area and **one (1)** parking space for each additional **three hundred (300) square feet** of retail floor area.
- (V) For furniture and appliance shops, motor vehicle sales, wholesale stores, household equipment or furniture repair shops, or machinery sales, **one (1)** parking space for the first **two thousand (2,000) square feet** of floor area and **one (1)** parking space for each additional **six hundred (600) square feet** of floor area.
- (W) For manufacturing and industrial uses; research and testing laboratories; laundry and dry-cleaning plants; printing, binding, publishing and issuing of newspapers, periodicals, books, and other reading matter; warehouses and storage buildings; engraving shops; assembly of materials and products; and other similar uses, **one (1)** parking space for each **four (4) employees**, based upon the maximum number of persons to be employed at any one work period during the day or night, plus such additional parking facilities as shall be required for all vehicles used in the conduct of the enterprise.

**40-6-7 OFF-STREET LOADING AND UNLOADING FACILITIES.** In all districts where property uses include the loading and unloading of materials or merchandise from vehicles, off-street loading and unloading facilities shall be provided in accordance with the following requirements:

(A) For hotels or apartment hotels wherein there are contained exhibition halls, convention halls, auditoriums, office facilities or retail shops, **one (1)** off-street loading and unloading space for the first **forty thousand (40,000) square feet** of gross floor area, plus **one (1)** additional off-street loading space for each **one hundred fifty thousand (150,000) square feet** of gross floor area or fraction thereof of gross floor area in excess of **forty thousand (40,000) square feet**.

(B) For hospitals or sanitariums containing **forty thousand (40,000)** to **one hundred thousand (100,000) square feet** of gross floor area, **one (1)** off-street loading and unloading space plus **one (1)** additional such space for each additional **one hundred thousand (100,000) square feet** of gross floor area or fraction thereof in excess of **one hundred thousand (100,000) square feet**.

(C) For buildings containing bowling alleys, taverns, restaurants, or any retail shops and having **ten thousand (10,000)** to **one hundred thousand (100,000) square feet** of gross floor area, **one (1)** off-street loading and unloading space, plus **one (1)** additional such space for each additional **one hundred thousand (100,000) square feet** of gross floor area or fraction thereof in excess of **one hundred thousand (100,000) square feet**.

(D) For banks, business or professional offices or public administration buildings containing **forty thousand (40,000)** to **one hundred thousand (100,000) square feet** of gross floor area, **one (1)** off-street loading and unloading space, plus **one (1)** additional such space for each additional **one hundred thousand (100,000) square feet** of gross floor area or fraction thereof in excess of **one hundred thousand (100,000) square feet**.

(E) For buildings containing furniture and appliance stores, motor vehicle sales, wholesale stores, household equipment or machinery sales, and having **eight thousand (8,000)** to **twenty-five thousand (25,000) square feet** of gross floor area, **one (1)** off-street loading and unloading space, plus **one (1)** additional such space for each additional **twenty-five thousand (25,000) square feet** of gross floor area or fraction thereof in excess of **twenty-five thousand (25,000) square feet**.

(F) For buildings containing manufacturing uses; research and testing laboratories; laundry and dry-cleaning establishments; printing, binding, publishing and issuing of newspapers, periodicals, books and other reading matter; warehouses and storage facilities; engraving shops; assembly of materials and products; processing and distribution of materials and products; and other similar uses having more than **ten thousand (10,000) square feet** of gross floor area, exclusive of basement area, and less than **forty thousand (40,000) square feet** of gross floor area, **one (1)** off-street loading and unloading space, plus **one (1)** additional such space for each additional **sixty thousand (60,000) square feet** of gross floor area in excess of **forty thousand (40,000) square feet**.

**ARTICLE VII – SIGNS**

**40-7-1 PERMITTED SIGNS – ALL DISTRICTS.** The following signs are permitted in all zoning districts:

**Highway Directional Signs and Markers** which shall be made and installed in accordance with the specifications of the City announcing the location of, or directing traffic to, given locations which include, but are not limited to, the following:

- (A) Service areas – automobile, food, lodging.
- (B) Business or business districts.

**Traffic or Directional Signs** designating entrances, exits and conditions of use of parking facilities accessory to the main use of the premises may be maintained provided they are located within the property lines of the subject lot.

**40-7-2 PERMITTED SIGNS – RESIDENTIAL DISTRICTS.** In all residential districts the following classes of signs are permitted in accordance with the regulations set forth hereinafter:

(A) **Non-Flashing, Non-Illuminated Accessory Signs.**

(1) **Nameplates and Identification Signs**, subject to the following:

- (a) For one and two-family dwellings, there shall be not more than **one (1) nameplate**, not exceeding **one (1) square foot** in area, for each dwelling unit, indicating the name or address of the occupant or a permitted occupation.
- (b) For multiple-family dwellings, for apartment hotels and for buildings other than dwellings, a single identification sign not exceeding **twelve (12) square feet** in area and indicating only the name and address of the building and the name of the management thereof may be displayed.
- (c) **Height.** No sign shall project higher than **one (1) story** or **fifteen (15) feet** above curb level, whichever is lower.

(2) **“For Sale” and “To Rent” Signs**, subject to the following:

- (a) There shall be not more than **one (1) such sign** per lot except that on a corner lot **two (2) signs**, one facing each street, shall be permitted. No sign shall exceed **eight (8) square feet** in area nor closer than **eight (8) feet** to any other zoning lot.
- (b) **Projection.** No sign shall project beyond the property line into the public way.
- (c) **Height.** No sign shall project higher than **one (1) story** or **fifteen (15) feet** above curb level, whichever is lower.

- (3) **Signs Accessory to Parking Areas**, subject to the following:
  - (a) Signs designating entrances or exits to or from a parking area and limited to **one (1) sign** for each such exit or entrance and to a maximum size of **three (3) square feet** each shall be permitted. **One (1) sign** per parking area designating the conditions of use or identity of such parking area and limited to a maximum size of **eight (8) square feet** shall be permitted provided that on a corner lot **two (2)** such signs, one facing each street, shall be permitted.
  - (b) **Height.** No sign shall project higher than **seven (7) feet** above curb level.
- (B) **Non-Flashing Accessory Signs**, as follows:
  - (1) **Church Bulletins**, subject to the following:
    - (a) There shall be not more than **one (1)** sign per lot except that on a corner lot **two (2)** signs – one facing each street – shall be permitted. No sign shall exceed **eighteen (18) square feet** in area nor be closer than **eight (8) feet** to any other zoning lot.
    - (b) **Projection.** No sign shall project beyond the property line into the public way.
    - (c) **Height.** No sign shall project higher than **one (1) story** or **fifteen (15) feet** above curb level, whichever is lower.

**40-7-3** **PERMITTED SIGNS – AGRICULTURAL DISTRICTS.** The same signs permitted in the residential districts shall be permitted in the agricultural districts, and in addition thereto, the following:

(A) **Signs Advertising the Sale or Rental of the Property** on which the sign is located or the sale of agricultural products grown or produced on such property, provided that no such sign shall exceed **twenty (20) square feet** in gross area each.

**40-7-4** **PERMITTED SIGNS – BUSINESS DISTRICTS.** In all Business Districts the following signs are permitted, subject to the requirements set forth hereinafter:

(A) All signs and nameplates permitted in the residential districts.

(B) **Signs on Marquees, Canopies and Awnings.** Restrictions imposed hereinafter on the projections of signs across property lines into the public way shall not apply – except in residential districts – to signs located on marquees or canopies, provided that any sign located on a marquee or canopy shall be affixed flat to the surface thereof and, further, that no sign shall extend **twenty-four (24) inches** vertically or **twelve (12) inches** horizontally beyond the limits of said marquee or canopy/awning.

Restrictions imposed herein on the projection of signs across property lines into the public way shall not apply except in residential districts, to signs located on awnings, provided that any sign located on an awning shall be affixed flat to the surface thereof and shall be non-flashing, and shall indicate only the name and address of the establishment on the premises.

(C) **Signs on Pylons, Standards, Clocks and Supports.** Signs, clocks, or other advertising devices erected upon standards or separate supports shall be placed so as to be entirely within the property lines of the premises upon which it is located and no part of the sign or standard shall have a total height greater than **thirty-five (35) feet** above the level of the street upon which the sign faces or above the adjoining ground level if such ground level is above the street level, nor shall the surface of any such sign exceed an area of **one hundred (100) square feet**.

(D) **Signs on Masonry Pylons.** Signs may be placed on the face of a masonry pylon when the pylon is constructed as an integral part of the building and such pylon does not project above the roof line more than **twelve (12) feet** and the type, design and construction of the pylon complies with all of the requirements herein and in the Building Code.

- (E) In all business districts, the permitted signs are subject to the following:
- (1) **Location.** The sign or signs shall front the principal street, a parking area, or in the case of a corner building, on that portion of the side street wall within **fifty (50) feet** of the principal street.
  - (2) **Projection.** Signs suspended from any building shall not project more than **sixty (60) inches** beyond the building line and the bottom of such signs shall not be less than **eight (8) feet** above the finished grade of the sidewalk.  
Any sign projecting or suspended from a building shall not exceed **five (5) feet** in height and its location and arrangement shall be subject to approval by the Zoning Administrator. No sign except those suspended from buildings shall be erected or placed between the street line and the building line.
  - (3) **Height.** No sign shall project higher than **thirty (30) feet** above curb level, and in no case shall a sign project above the roof line. **(Ord. No. 98-02; 01-26-98)**

**40-7-5** **PERMITTED SIGNS – MANUFACTURING DISTRICTS.** The following signs are permitted:

(A) All signs permitted in the Business Districts shall be permitted in the Manufacturing Districts.

(B) Billboards and poster panels having a sign area not exceeding **two hundred seventy-five (275) feet**, provided the locations of their sites and the limitations of the time of their use, and all other terms and conditions thereof, are first approved by the Zoning Administrator. **(Ord. No. 98-02; 01-26-98)**

**40-7-6** **FLASHING SIGNS.** Flashing signs are only permitted in Highway Business Districts and B-3. They are not permitted in the Manufacturing District. **(Ord. No. 98-02; 01-26-98)**

**ARTICLE VIII – ZONE DISTRICTS**

**DIVISION I – AGRICULTURAL DISTRICT**

**40-8-1**      **PERMITTED USES.** The following uses are permitted:

Land and buildings used for agricultural purposes.

Roadside stands for the display, sale or offering for sale of agricultural products grown or produced on the property, provided no structure is located less than **ten (10) feet** from the highway right-of-way.

One-family detached dwellings, subject to the requirements of **Section 40-8-3.**

Home occupations.

Schools, elementary and high, and including playgrounds, school bus garage, and athletic fields auxiliary thereto.

Churches, rectories and parish houses.

Seminaries, convents, monasteries and similar religious institutions including dormitories and other accessory uses required for operation.

Parks, forest preserves and recreational areas, when publicly owned and operated.

Golf courses, regulation size, but not including "par 3" golf courses, commercially operated driving ranges or miniature golf courses; and provided that no club house or accessory building shall be located nearer than **five hundred (500) feet** to any dwelling on another zoning lot.

Temporary buildings for construction purposes for a period not to exceed such construction.

Accessory uses.

**40-8-2**      **SPECIAL USES.** The following uses may be allowed by special use permit in accordance with the provisions of the administrative section:

Mining, loading and hauling of sand, gravel, topsoil or other aggregate or minerals, including equipment, buildings or structures for screening, crushing, mixing, washing or storage, provided that: (1) no open pit or shaft is less than **five hundred (500) feet** from an existing residence or residential district established herein; and (2) all buildings or structures for screening, crushing, washing, mixing or storage are located not less than **one thousand (1,000) feet** from an existing residence or residential district established herein.

Agricultural implement and machinery sales, service and repair.

Animal feed, storage, preparation, grinding and mixing—wholesale and retail, provided that this shall not prohibit, restrict or limit a farmer from preparing, grinding, or mixing feed for use on his farm.

Blacksmith or welding shop.

Cemeteries, including crematories and mausoleums in conjunction therewith if not located within **five hundred (500) feet** of any dwellings.

Colleges and universities, including dormitories, fraternities, sororities and other accessory buildings and structures or trade schools.

Commercial feeding of poultry and livestock.  
Dog kennels.  
Fertilizer sales, including bulk storage and mixing.  
Filling of holes, pits, quarries or lowland with non-combustible material free from refuse and food wastes.  
Fur-bearing animal farms.  
Grain elevators and storage.  
Greenhouses, wholesale and retail.  
Gun clubs, if located not nearer than **one thousand (1,000) feet** to any residence other than that of the owner or lessee of the site and if not so operated as to withdraw the land from its primary agricultural use.  
Livestock depots and sales yards.  
Milk depots.  
Milk processing and distribution, including pasteurizing and manufacture of ice cream but not including the processing or manufacture of cheese.  
Philanthropic and eleemosynary institutions.  
Penal and correctional institutions.  
Private clubs or lodges, except those the chief activity of which is a service customarily carried on as a business.  
Private recreational areas or camps.  
Public service uses, such as filtration plant, pumping station and water reservoir; sewage treatment plant; police and fire stations; and other governmental uses.  
Radio and television towers—commercial.  
Railroad rights-of-way and trackage, but not including classification yards, terminal facilities or maintenance facilities.  
Rest homes, nursing homes, hospitals and sanitariums, institutions for the aged and for children, for human beings only.  
Sales yards, wholesale or retail, for agricultural products including, but not necessarily limited to, fruits, vegetables, flowers, plants, etc.  
Sanitary land fill.  
Transportation facilities: Airports, or aircraft landing fields, bus turnarounds (off-street); passenger depots; railroad classification yards.  
Truck parking areas, the prime purpose of which is the loading and shipping of farm products, livestock, poultry, fertilizer, etc.  
Wind Energy Conversion System as defined, provided, and restricted pursuant to **Article X** of this Code. **(Ord. No. 10-01; 01-11-10)**

**40-8-3      LOT SIZES.**

(A)            Every one-family detached dwelling hereafter erected shall be located on a zoning lot having an area of not less than **one (1) acre**, all or part of which may be devoted to permitted agricultural uses. There shall only be **one (1)** such dwelling to a zoning lot.

(B)            Every church, convent, monastery, rectory or other religious institution hereafter erected shall be on a tract of land having an area of not less than **two (2) acres**.

**40-8-4**      **FRONT BUILDING LINE.** No building or structure, other than a permitted sign, hereafter erected shall be placed closer than **fifty (50) feet** to the nearest right-of-way line of any public street, road, or highway upon which the subject property abuts, or closer than **fifty (50) feet** to the nearest right-of-way line of any proposed public street, road or highway set forth in officially adopted plans and upon which the subject property would abut.

**40-8-5**      **RESERVED.**

**DIVISION II – RESIDENTIAL DISTRICTS**

**40-8-6**      **PURPOSE.** The residential districts set forth herein are established in order to protect public health, and promote public safety, convenience, comfort, morals, prosperity and welfare. These general goals include, among others, the following specific purposes:

(A)            To protect residential areas against fire, explosion, noxious fumes, offensive odors, noise, smoke, vibrations, dust, heat, glare, and other objectionable factors.

(B)            To protect residential areas to the extent possible and appropriate in each area against unduly heavy motor vehicle traffic, especially through-traffic, and to alleviate congestion by promoting off-street parking.

(C)            To protect residential areas against undue congestion of public streets and other public facilities by controlling the density of population through regulation of the bulk of buildings.

(D)            To protest and promote the public health and comfort by providing for ample light and air to buildings and the windows thereof.

(E)            To promote public comfort and welfare by providing for usable open space on the same zoning lot with residential development.

(F)            To provide sufficient space in appropriate locations to meet the probable need for future residential expansion and to meet the need for necessary and desirable services in the vicinity of residences, which increase safety and amenity for residents and which do not exert objectionable influences.

(G)            To promote the best use and development of residential land in accordance with a comprehensive land use plan, to promote stability of residential development and protect the character and desirable development and protect the value of land and improvements and so strengthen the economic base of the City.

**40-8-7**      **R-1 ONE-FAMILY DWELLING DISTRICT.**

(A)            **Permitted Uses.**

(1)            One-family detached dwellings.

(2)            Home occupations, as defined herein.

- (3) Truck gardening and other horticultural uses where no building is involved and when no sale or products is conducted on the premises.
- (4) Churches.
- (5) Convents, monasteries, rectories and parish houses.
- (6) Temporary buildings and uses for construction purposes for a period not to exceed **one (1) year**.
- (7) Accessory buildings, as defined herein and as regulated by **Article V**.
- (8) Signs, as regulated by **Article VII**.
- (9) Off-street parking facilities, as required or permitted by **Article VI**.

(B) **Special Uses.** The following uses may be allowed by special use permit in accordance with the provisions of the administrative section:

- (1) Airport, heliport, landing field or landing strip, subject to the Federal Aviation Agency certifying that a new or reoriented runway will not interfere with the flight pattern of any established airport, landing field or landing strip.
- (2) Barber shops and/or beauty parlors (**#02-13; 06-10-02**)
- (3) Bus terminal, railroad passenger station, freight terminal, or any other public transportation terminal facilities.
- (4) Cemeteries, crematories or mausoleums.
- (5) Golf courses, public or private.
- (6) Hospitals or sanitariums, public or private.
- (7) Municipal or privately owned recreation building or community center, when operated not for profit.
- (8) Penal or correctional institutions.
- (9) Planned residential developments, as defined in **Section 40-1-3**.
- (10) Police station or fire station.
- (11) Public or private park or playground.
- (12) Public utility facilities, i.e., filtration plant, water reservoir or pumping station, heat or power plant, transformer station, and other similar facilities.
- (13) Railroad rights-of-way.
- (14) Schools, elementary, high or college, public or private.
- (15) Institutions or hospitals for the care of the insane or feeble-minded, public or private.
- (16) Wind Energy Conversion System as defined, provided, and restricted pursuant to **Article X** of this Code. (**Ord. No. 10-01; 01-11-10**)

(C) **Height of Buildings.** The maximum height of buildings permitted shall be as follows:

- (1) **One-Family Detached Dwellings.** Twenty-five (25) feet and not over two and one-half (2 ½) stories.
- (2) **Church.** Seventy-five (75) feet for towers or steeples but not more than forty-five (45) feet for the main structure.

(D) **Lot Size.** Any lot platted prior to **May, 1996** shall not be subject to the **eight thousand (8,000) square foot** requirement. These lots shall be subject to the maximum **thirty-five percent (35%)** lot coverage. (**Ord. No. 96-06; 06-24-96**)

- (1) Every one-family dwelling hereafter erected or structurally altered shall be on a lot having an area of not less than **eight thousand (8,000) square feet** and a width at the established building line of not less than **fifty (50) feet**, except as provided in **Section 40-3-4(B)**.
- (2) Churches, convents and monasteries hereafter erected or structurally altered shall be on a lot having an area of not less than **ten thousand (10,000) square feet** and a width at the established building line of not less than **eighty (80) feet**.

(E) **Yard Areas.** No building shall be erected or enlarged unless the following yards are provided and maintained in connection with such building, structure or enlargement.

- (1) **Front Yard.** Each lot upon which a dwelling or permitted non-residential use is constructed shall have a front yard of not less than **twenty-five (25) feet**. Where lots comprising **forty percent (40%)** or more of the frontage between **two (2)** intersecting streets are developed with buildings having front yards with a variation of more than **fifteen (15) feet** in depth, the average of such front yards shall establish the minimum front yard depth for the entire frontage. In no case shall a front yard of more than **forty (40) feet** be required.
- (2) **Side Yard.** On each lot upon which a dwelling is constructed, there shall be a side yard on each side equal to not less than **ten percent (10%)** of the width of the lot, the combined total of the side yards on interior lots shall not be less than **twelve (12) feet**. On corner lots there shall be maintained a side yard of not less than **fifteen (15) feet** on the side adjacent to the street which intersects the street upon which the building or structure maintains frontage, and in the case of a reversed corner lot, there shall be maintained a setback from the side street of not less than **fifty percent (50%)** of the front yard required on the lots in the rear of such corner lots, but such setback need not exceed **fifteen (15) feet**. No accessory building on said reversed corner lot shall project beyond the front yard required on the adjacent lot to the rear, nor be located nearer than **five (5) feet** to the side lot line of said adjacent lot.

On lots upon which a church is constructed or extensions made to an existing church, there shall be a side yard of not less than **ten (10) feet** on each side of the main structure and a combined total of side yards of not less than **twenty-five (25) feet**.

- (3) **Rear Yard.** Every lot or parcel of land upon which a building is constructed shall have a rear yard of not less than **twenty-five (25) feet.**
- (4) **Lot Coverage.** Not more than **thirty-five percent (35%)** of any lot may be occupied by buildings or structures, including accessory buildings.
- (5) **Floor Area.** Each dwelling shall have a ground floor area of not less than **eight hundred (800) square feet.**
- (6) **Permitted Obstructions.** The following shall not be considered as obstructions when located within or over required yards:
  - (a) Terraces.
  - (b) Awnings and canopies.
  - (c) Chimneys, not exceeding **two percent (2%)** of the width of the yard.
  - (d) Steps not over **four (4) feet** in height.
  - (e) Arbors and trellises.
  - (f) Fences or walls not over **seven (7) feet** in height (rear yards only; not to extend beyond front edge of structure). **(Ord. No. 96-06; 06-24-96)**
  - (g) Breezeways and open porches (rear yards only).
  - (h) Open parking areas.

**40-8-8**

(A)

**R-2 GENERAL RESIDENCE DISTRICT.**

**Permitted Uses.**

- (1) Any permitted use in the R-1 One-Family Dwelling District.
- (2) Two-family dwellings.
- (3) One-family row dwellings (party-wall type) with not more than **six (6)** dwelling units in a building.
- (4) Multiple-family dwellings and apartments.
- (5) Boarding and lodging houses.
- (6) Tourist homes having not more than **five (5) rooms** for transient guests.
- (7) Transitional uses—principal offices of physicians, dentists, lawyers, architects, real estate brokers, and other professional occupations when conducted in a residential structure used primarily as a home and when located on lots having a side line adjoining a lot in a business or manufacturing district, or adjacent to a railroad right-of-way, or when facing a business or manufacturing district or a railroad right-of-way directly across a street or alley, provided that:

- (a) The lot on which the transitional use is located does not extend more than **seventy-five (75) feet** from the adjoining business or manufacturing district, or more than **one hundred twenty (120) feet** in depth from the street line in cases where the lot does not adjoin but faces a business or manufacturing district.
- (b) The occupations are conducted in conjunction with the use of a dwelling unit as a home by the occupant thereof, with not more than **two (2) employees**, other than members of the related family, and that the residential character of the exterior of the dwelling is not changed. Medical clinics are not included or permitted.

(B) **Special Uses.** The following uses may be allowed by special use permit in accordance with the provisions of the administrative section:

- (1) Off-street parking areas and garages, provided there is a need for this facility and that no appropriate site is available in nearby business or manufacturing districts.
- (2) Public buildings, including art gallery, library, museum, or similar structures.
- (3) Rest homes and nursing homes.
- (4) Telephone exchanges, antenna towers and other outdoor equipment essential to the operation of the exchange.
- (5) Undertaking establishments.
- (6) Wind Energy Conversion System as defined, provided, and restricted pursuant to **Article X** of this Code. (**Ord. No. 10-01; 01-11-10**)

(C) **Height of Buildings.** No building shall hereafter be erected or structurally altered to exceed **three (3) stories** nor shall it exceed **thirty-five (35) feet** in height.

(D) **Lot Size.**

- (1) **One-Family Dwellings.** The same regulations shall apply as required or permitted in the R-1 One-Family Dwelling District.
- (2) **Two-Family Dwellings.** Every two-family dwelling hereafter erected or structurally altered shall be on a lot having an area of not less than **eight thousand (8,000) square feet** and a width at the building line of not less than **fifty (50) feet**, except as provided in **Section 40-3-4(B)**.
- (3) **Converted Dwellings.** An existing one-family dwelling located on a lot of less area than required in this Section may be converted to a two-family dwelling without increasing the lot size, provided that the building is not enlarged beyond its present outside dimensions and that all other regulations herein are complied with. Additions may be made to an existing building only when lot size and yard requirements of this Section are complied with.
- (4) **Multiple-Family Dwellings.** Every building hereafter erected or structurally altered as a multiple-family dwelling, apartment, or row dwelling of more than **two (2) dwelling units** shall provide a lot area per dwelling unit of not less than **two thousand five**

**hundred (2,500) square feet.** Buildings hereafter erected or structurally altered in the R-2 District shall have a total lot area of not less than **eight thousand (8,000) square feet** nor a lot width at the established building line of not less than **fifty (50) feet.**

- (5) **Churches, Convents and Monasteries.** The same regulations shall apply as required or permitted in the R-1 District.

(E) **Yard Areas.** No buildings shall be erected or enlarged unless the following yards are provided and maintained in connection with such building, structure or enlargement.

- (1) **Front Yard.** There shall be a front yard of not less than **twenty (20) feet.**
- (2) **Side Yard.** On interior lots there shall be a side yard on each side of a main building of not less than **five (5) feet** and a combined total of side yards of not be less than **fifteen (15) feet** for all multiple-family dwellings of not more than **two (2) stories** in height. For each additional story added above the **two (2) stories** the side yard on each side of the main building shall be increased **two (2) feet** in width. On corner lots the side yard on the intersecting street side shall be not less than **ten (10) feet**, except in the case of a reversed corner lot, where there shall be a side yard on the street side of the corner lot of not less than **fifty percent (50%)** of the front yard required in the lots in the rear of such corner lot. No accessory building on said reversed corner lot shall project beyond the front yard line required on the key lot in the rear, not be located nearer than **five (5) feet** to the side lot line of such key lot.
- (3) **Rear Yard.** There shall be a rear yard of not less than **twenty (20) feet** for interior lots nor less than **fifteen (15) feet** on corner lots.
- (4) **Lot Coverage.** Not more than **thirty-five percent (35%)** of the area of a lot may be covered by buildings or structures.
- (5) **Courts.** No inner court or courts completely surrounded on all sides by a building shall be permitted. Outer courts are permitted provided the depth of the court is no greater than the width of the court.

**40-8-9 - 40-8-12 RESERVED.**

**DIVISION III – BUSINESS DISTRICTS**

**40-8-13**     **PURPOSE.** The Business Districts set forth herein are established to protect public health, to promote public safety, comfort, convenience, and the general welfare, and to protect the economic base of the City and the value of property. These general purposes include, among others, the following specific objectives:

(A)           To promote the most desirable use of land in accordance with a well considered plan so that adequate space is provided in appropriate locations for the various types of business uses, thereby protecting and strengthening the economic base of the City.

(B)           To place in separate districts those businesses which may create noise, odors, hazards, unsightliness or which may generate excessive traffic.

(C)           To permit selected business uses in districts where adjacency to or inclusion in a residential area has sufficient elements of service or convenience to such areas to offset the disadvantage.

(D)           To encourage the grouping in appropriate locations of compatible business uses which will tend to draw trade that is mutually interchangeable and so promote public convenience and business prosperity and contribute to the alleviation of traffic and pedestrian congestion.

(E)           To provide for the establishment of off-street parking facilities, permitted and required, so as to alleviate traffic congestion and so promote shopping convenience and business prosperity.

**40-8-14**     **B-1 BUSINESS DISTRICT, GENERAL RETAIL AND LIMITED SERVICE.**

(A)           **Permitted Uses.**

- (1) Art and school supply stores.
- (2) Auto accessory stores, where there is no driveway entrance across the sidewalk into the main building.
- (3) Bakery shop, including the baking and processing of food products, when prepared for retail use on the premises only.
- (4) Banks and financial institutions.
- (5) Barber shop, beauty parlor, chiropody, massage or similar personal service shop.
- (6) Book and stationery stores.
- (7) Candy and ice cream shops.
- (8) Camera and photographic supply shops for retail sale.
- (9) Coin and philatelic stores.
- (10) Custom dressmaking, millinery, tailoring, or shoe repair when conducted for retail sales on the premises only.
- (11) Currency exchanges.
- (12) Department stores.

- (13) Drug stores.
- (14) Dry-cleaning and pressing establishments, when employing facilities for the cleaning and pressing of not more than **one thousand five hundred (1,500) pounds** of dry goods per day and when using perchlorethylene or other non-inflammable non-toxic solvents approved by the Fire Department.
- (15) Dry goods stores.
- (16) Electrical appliance store and repair, but not including appliance assembly or manufacture.
- (17) Florist shop and conservatory for retail trade.
- (18) Food and fruit stores.
- (19) Frozen food stores.
- (20) Furniture stores, and upholstery when conducted as part of the retail operations and secondary to the main use.
- (21) Furrier, when conducted for retail trade on the premises only.
- (22) Garden supplies and seed stores.
- (23) Gift shops.
- (24) Hardware stores.
- (25) Haberdashery.
- (26) Hobby stores.
- (27) Hotel or motel.
- (28) Household appliance store.
- (29) Interior decorating shops, including upholstery and making of draperies, slip covers and other similar articles, when conducted as part of the retail operations and secondary to the main use.
- (30) Jewelry stores and watch repair.
- (31) Launderette and laundromat.
- (32) Leather goods and luggage stores.
- (33) Liquor stores, package goods only.
- (34) Loan offices, when located above the first floor and above a business use permitted in this Section.
- (35) Meat markets.
- (36) Musical instrument sales and repair, retail trade only.
- (37) News stand.
- (38) Notions stores.
- (39) Offices, business and professional, including medical clinics.
- (40) Office supplies and stationery.
- (41) Optician, optometrist.
- (42) Paint and wallpaper store.
- (43) Photography studio including the developing of film and pictures when conducted as a part of the retail business on the premises.
- (44) Postal substations (finance stations and contract stations).
- (45) Public utility collection offices.

- (46) Restaurant, tearoom or café, when the establishment is not of the drive-in type where food is served to occupants remaining in motor vehicles.
- (47) Savings and loan associations.
- (48) Sewing machine sales and service.
- (49) Shoe stores.
- (50) Signs, as defined and regulated in **Article VII**.
- (51) Sporting goods stores.
- (52) Stationery stores.
- (53) Telephone exchange, repeater stations, microwave relay towers and stations, mobile transmitting towers and stations, antenna towers and other outdoor equipment essential to the operation of the exchange in the interest of public convenience and necessity.
- (54) Telephone booth, outdoor.
- (55) Theater, indoor.
- (56) Tobacco shop.
- (57) Toy store.
- (58) Typewriter and adding machine sales and service.
- (59) Variety store.
- (60) Wearing apparel shop.
- (61) Any other similar type retail store or personal service not specifically listed herein, and which has compatibility with the permitted uses in this District.
- (62) All activities, except for automobile off-street parking facilities, as permitted or required in this B-1 District shall be conducted wholly within an enclosed building.

(B) **Special Uses.** The following uses may be allowed by special use permit in accordance with the provisions of the administrative section:

- (1) Auditorium, stadium, arena, armory, gymnasium, and other similar places of public events.
- (2) Clubs and lodges (non-profit), fraternal or religious institutions.
- (3) Meeting halls.
- (4) Radio and television broadcasting stations.
- (5) Electric substations.
- (6) Municipal police or fire stations and public libraries.
- (7) Planned business developments as defined in **Section 40-1-3**.
- (8) Wind Energy Conversion System as defined, provided, and restricted pursuant to **Article X** of this Code. (**Ord. No. 10-01; 01-11-10**)

(C) **Height of Buildings.** No building or structure shall be erected or structurally altered to exceed a height of **three (3) stories** nor shall it exceed **thirty-five (35) feet** in height. Parapet walls, chimneys, cooling towers, elevator bulkheads, stacks, and necessary mechanical appurtenances may be erected over and above the maximum height of **thirty-five (35) feet**, provided they are constructed in accordance with all other ordinances of the City.

(D) **Yard Areas.** No building shall be constructed or enlarged unless the following yards are provided and maintained in connection with such building.

- (1) **Front Yard.** No front yard shall be required when all frontage between **two (2)** intersecting streets lies within this District. However, when lots within this District are adjacent to and adjoining lots in a residential district, all of which front upon the same street between **two (2)** intersecting streets, there shall be established the same front yard setback for all of the frontage as has been established in the residential districts.
- (2) **Exception.** When existing buildings located in this District have already established a building line at the street line at a depth less than required above, then all new buildings may conform to the same building line, except for the first **fifty (50) feet** of the B-1 District frontage adjacent to the residential district, whereupon there shall be provided a front setback of not less than **ten (10) feet**.
- (3) **Side Yard.** No side yard is required, except for a corner lot which abuts upon a residential district or upon an alley separating this District from a residential district. There shall then be provided a side yard equal to **one-half (1/2)** the front yard required in the abutting residential district, but in no case more than **ten (10) feet**. The setback shall also apply if the business building front the intersecting street, commonly referred to as the side street.
- (4) **Rear Yard.** There shall be a rear yard of not less than **twenty (20) feet** provided, however, a one-story accessory building may be located thereon, except for the **five (5) feet** adjacent and parallel to the rear lot line or alley line for the storage of motor vehicles and the unloading and loading of vehicles under roof, as provided in **Article VI**.

**40-8-15**  
**WHOLESALE.**

(A)

**B-2 BUSINESS DISTRICT, GENERAL SERVICE AND**

**Permitted Uses.**

- (1) Any permitted use in the B-1 District.
- (2) Dwelling units, provided they are located above the first floor and above a permitted business use. Dwelling units shall not be permitted on the ground floor of business buildings or in the rear of business establishments on the ground floor.
- (3) Auction rooms.
- (4) Amusement and recreation establishments including but not limited to bowling alleys, skating rinks, dance halls, etc.
- (5) Automobile sales and service, including repair and painting and including used automobiles.
- (6) Automobile service stations.
- (7) Bicycle sales and repair.

- (8) Billiard and pool rooms.
- (9) Boat showroom, sales and service.
- (10) Building supplies, including lumber and other building materials when contained within a completely enclosed building or fenced enclosure.
- (11) Clubs and fraternal organizations.
- (12) Feed and seed stores.
- (13) Hotels, including dining and meeting rooms.
- (14) Laundries and dry cleaning establishments.
- (15) Lockers, frozen foods.
- (16) Locksmiths.
- (17) Orthopedic and medical appliance stores, but not including the assembly or manufacture of such articles.
- (18) Parking and loading facilities, off-street.
- (19) Picture framing, when conducted on the premises for retail trade only.
- (20) Physical culture and health services.
- (21) Printing, lithograph, letterpress, newspaper, blueprinting and other similar uses.
- (22) Radio and television broadcasting stations.
- (23) Schools: music, dance, business, commercial or trade.
- (24) Signs, as defined and regulated in **Article VII**.
- (25) Second-hand stores and rummage shops.
- (26) Taverns.
- (27) Telephone booths, outdoor.
- (28) Undertaking establishments.
- (29) Wholesale establishments.
- (30) Any other similar type of use not specifically permitted herein and which has compatibility with the permitted uses in this District.
- (31) Metallurgical Testing Facility. **(Ord. No. 04-07; 02-23-04)**

(B) **Special Uses.** The following uses may be allowed by special use permit in accordance with the provisions of the administrative section:

- (1) Any use which may be allowed as a special use in the B-1 District.
- (2) Planned business developments, as defined in **Section 40-1-3**.
- (3) Public utilities and public service uses, including electric substations; fire stations; police stations; public libraries; water pumping stations; water reservoir or other similar uses.
- (4) Wind Energy Conversion System as defined, provided, and restricted pursuant to **Article X** of this Code. **(Ord. No. 10-01; 01-11-10)**

(C) **Height of Buildings.** Same regulations shall apply as required or permitted in the B-1 Business District.

(D) **Yard Areas.** No building shall be constructed or enlarged unless the following yards are provided and maintained in connection with such building.

- (1) **Front Yard.** No front yard shall be required when all frontage between **two (2)** intersecting streets lies within this District. However, when lots within this District are adjacent to and adjoining lots in a residential district, all of which front upon the

same street between **two (2)** intersecting streets, there shall be established the same front yard setback for all of the frontage as has been established in the residential districts.

- (2) **Exception.** When existing buildings located in this District have already established a building line at the street line or at a lesser depth than required above, then all new buildings may conform to the same building line, except for the first **fifty (50) feet** of the B-2 District frontage adjacent to the residential district, whereupon there shall be provided a front setback of not less than **ten (10) feet**.
- (3) **Side Yard.** No side yard is required, except for a corner lot which abuts upon a residential district or upon an alley separating this District from a residential district. There shall then be provided a side yard equal to **one-half (1/2)** the front yard required in the abutting residential district, but in no case more than **ten (10) feet**. The same setback shall apply also if business buildings front the intersecting street, commonly referred to as the side street.
- (4) **Rear Yard.** There shall be a rear yard of not less than **twenty (20) feet** provided, however, that a one-story accessory building may be located thereon, except for the **ten (10) feet** adjacent and parallel to the rear lot line or alley line, for the storage of motor vehicles and the unloading and loading of vehicles under roof, as provided in **Article VI**.

**40-8-16**

(A)

**B-3 HIGHWAY BUSINESS DISTRICT.**

**Permitted Uses.**

- (1) Any permitted use in the B-2 District.
- (2) Agricultural implement sales and services, on an open lot or within an enclosed building.
- (3) Air conditioning and heating sales and service.
- (4) Automobile and truck sales, motor repair and service shop, including body repair and rebuilding or painting.
- (5) Automobile laundries, including the use of mechanical conveyors, blowers and steam-cleaning.
- (6) Battery and tire service stations.
- (7) Beverage, non-alcoholic, bottling and distributing.
- (8) Blueprinting and photostating establishments.
- (9) Bicycle and motorcycle sales and repair.
- (10) Boat showroom.
- (11) Building materials sales, when conducted wholly within a building.
- (12) Book binding.

- (13) Catering establishments.
- (14) Contractors' offices and shops, where no fabricating is done on the premises and where all storage of material is done within a building.
- (15) Exterminating shop.
- (16) Feed and seed store, retail and wholesale.
- (17) Garages, for storage of motor vehicles.
- (18) Glass-cutting and glazing establishments.
- (19) Greenhouses, wholesale growers.
- (20) Household appliance repair shop.
- (21) Laboratories, commercial (medical, dental, research, experimental and testing), provided no production or manufacturing of products takes place.
- (22) Motels.
- (23) Parcel delivery stations.
- (24) Plumbing, heating, and roofing supply shops.
- (25) Printing, publishing, and issuing of newspapers, periodicals, books, stationery and other reading matter.
- (26) Pet shop, kennel, or animal hospital when conducted wholly within an enclosed building.
- (27) Plumbing shop.
- (28) Photograph developing and processing.
- (29) Poultry and rabbit-killing for retail sale on the premises only.
- (30) Processing or assembly, provided that space occupied in a building does not exceed **ten thousand (10,000) square feet** of total floor space plus basement space, not including stairwells or elevator shafts; and provided such processing or assembly can be conducted without noise, vibration, odor, dust, or any other condition which might be disturbing to occupants of adjacent buildings. When manufacturing operations demand space exceeding **ten thousand (10,000) square feet**, they shall be located in the M-1 Manufacturing District.
- (31) Radio and television broadcasting stations.
- (32) Recreation places, including bowling alleys, dance halls, gymnasium, skating rink, archery range, golf-practicing range, miniature golf course, or other similar places of amusement or entertainment when operated for pecuniary profit.
- (33) Restaurants, drive-ins, car service.
- (34) Riding academies.
- (35) Sheet metal shop, provided floor area occupied does not exceed **six thousand (6,000) square feet**.
- (36) Signs, as defined and regulated in **Article VII**.
- (37) Trailer sales or rental (house trailers or mobile homes) on an open lot or within a building.

- (38) Used passenger automobile sales (used car lot) on an open lot or within a building.
- (39) Uses customarily incidental to any of the above uses and accessory buildings when located on the same premises.
- (40) Wholesale business, excluding a building, the principal use of which is for a storage warehouse.

(B) **Special Uses.** The following uses may be allowed by special use permit in accordance with the provisions of the administrative section:

- (1) Trailer court or mobile home park in which each trailer parking space contains **two thousand (2,000) square feet**, not including access drives.
- (2) Any use which may be allowed as a special use in the B-2 General Business District.
- (3) Planned business developments, as defined in **Section 40-1-3**.
- (4) Wind Energy Conversion System as defined, provided, and restricted pursuant to **Article X** of this Code. (**Ord. No. 10-01; 01-11-10**)

(C) **Height of Buildings.** Same regulations shall apply as required or permitted in the B-1 Business District.

(D) **Yard Areas.** No building shall be constructed or enlarged unless the following yards are provided and maintained in connection with such building:

- (1) **Front Yard.** There shall be provided on every lot a front yard not less than **fifty (50) feet** in depth, except that when existing buildings located in this District have already established a building line at a depth less than required above, then all new buildings may conform to the same building line, except for the first **fifty (50) feet** of the Highway Business District frontage adjacent to a residential district, whereupon there shall be provided a front yard of not less than **twenty-five (25) feet**.
- (2) **Side Yard.** No side yard is required, except for a corner lot or a lot which abuts upon a residential district, or upon an alley separating this District from a residential district. There shall then be provided a side yard of not less than **fifty (50) feet**. The side yard setback shall also apply if the business building fronts the intersecting street, commonly referred to as the "side street".
- (3) **Rear Yard.** There shall be a rear yard of not less than **twenty (20) feet** provided.

40-8-17 - 40-8-20 **RESERVED.**

**DIVISION IV – MANUFACTURING DISTRICTS**

**40-8-21**     **PURPOSE.**     The Manufacturing Districts set forth herein are established to protect public health, safety, comfort, convenience, and the general welfare and to protect the economic base of the City as well as the value of real estate, by regulating manufacturing developments in appropriate locations. These general objectives include, among others, the following specific objectives:

(A)           To protect established residential areas, and the health of families living therein, by restricting those nearby manufacturing activities which may create offensive noise, vibration, smoke, dust, odors, heat, glare, fire hazards, and other objectionable influences to those areas which are appropriate therefor.

(B)           To provide adequate space in appropriate locations for most types of manufacturing and related activities so that the economic structure of the community may be strengthened and that employment opportunities may be found in the interest of public prosperity and welfare.

(C)           To provide more space for manufacturing activities in locations accessible to rail and highways, so that the movement of raw materials, finished products and employees can be carried on efficiently and with a minimum danger to public life and property.

(D)           To establish proper standards of performance which will restrict obnoxious manufacturing activities, while at the same time encourage and permit the manufacturing activities which have adopted facilities for the process of finished products without adversely affecting the health, happiness, safety, convenience and welfare of the people living and working in nearby areas.

(E)           To protect manufacturing districts from incompatible uses of land by prohibiting the use of such space for new residential development, thereby preserving the land for a more appropriate use in accordance with the plans for City improvement and development.

(F)           To promote the most desirable use of land in accordance with a well considered plan of land use for all of the City, to conserve the use of property, to promote stability of manufacturing activities and related development, and to protect the character and established development in each area of the community, to enhance and stabilize the value of land and to protect the tax base of the City.

**40-8-22**     **M-1 MANUFACTURING DISTRICT, LIMITED.**

(A)           **Permitted Uses.**     Since most uses permitted in this District will be in proximity to residential districts, it is hereby declared that performance standards shall be high, and that all manufacturing, processing, or assembly of materials and products must be carried on in a manner not injurious or offensive to the occupants of adjacent premises by reason of the emission of odors, fumes or gases, dust, smoke, noise, vibrations, or fire hazards. Therefore, the following uses may be permitted provided there is compliance with the performance standards established herein:

- (1) Any use permitted in a business district, but not including residences or apartments, except such dwelling accommodations as may be needed to house a caretaker or watchman employed on the premises, and his family.
- (2) Artificial limb manufacture.
- (3) Apparel and other products manufactured from textiles.
- (4) Batteries, manufacture and rebuilding.
- (5) Bedspring and mattress manufacture.
- (6) Belting.
- (7) Bicycle manufacture.
- (8) Brooms and brushes.
- (9) Boat building and repair.
- (10) Building equipment, building materials, lumber, coal, sand and gravel yards, and yards for contracting equipment, maintenance or operating equipment of public agencies, or public utilities or materials or equipment of similar nature.
- (11) Bus line shops and garages.
- (12) Canning and preserving.
- (13) Canvas and canvas products.
- (14) Carpet and rug cleaning.
- (15) Carpet manufacturing.
- (16) Cement block manufacture.
- (17) Ceramic products, pottery, and glazed tile.
- (18) Chick hatcheries.
- (19) Cleaning and dyeing establishments when employing facilities for handling more than **one thousand (1,000) pounds** of dry goods per day.
- (20) Cigarettes and cigars.
- (21) Coated fabrics, except rubberized.
- (22) Cork and cork products.
- (23) Creameries and dairies.
- (24) Draperies and bedding manufacture.
- (25) Drugs and pharmaceutical products.
- (26) Electric motors and generators.
- (27) Engraving.
- (28) Felt manufacture.
- (29) Fur goods, not including tanning and dyeing.
- (30) Glass products, from previously manufactured glass.
- (31) Heating appliances and sheet metal products, including stoves and ranges.
- (32) Hosiery manufacture.
- (33) Ice cream and ice manufacture.
- (34) Laundries, more than **one thousand (1,000) pounds** daily capacity.

- (35) Machine shops and metal products manufacture, when not equipped with heavy (exceeding **fifty (50) ton** pressure) punch presses, drop forges, riveting and grinding machines, or any other equipment which may create noise, vibration, smoke, or odors, heat, glare or fire hazards exceeding the performance standards made a part of this Section.
- (36) Metal polishing and plating.
- (37) Musical instruments.
- (38) Pianos and organs.
- (39) Perfumes and cosmetics.
- (40) Plastic products, but not including the processing of the raw materials.
- (41) Public utility electric substations and distribution centers, gas regulation centers and underground gas holder stations.
- (42) Rubber products (small) such as washers, gloves, footwear and bathing caps, but excluding rubber and synthetic rubber processing.
- (43) Shoes and boots.
- (44) Signs, as defined and regulated in **Article VII**.
- (45) Storage of household goods.
- (46) Storage and sale of trailers, farm implements and other similar products on an open lot.
- (47) Sporting and athletic equipment.
- (48) Storage of flammable liquids, fats or oils in tanks, each of **fifty thousand (50,000) gallons** or less capacity, but only after the location and protective measures have been approved by local governing authorities.
- (49) Stone, marble, and granite grinding and cutting.
- (50) Textiles—spinning, weaving, dyeing and printing.
- (51) Tools and hardware, such as hand tools, bolts, nuts, screws, cutlery, house hardware, locks and plumbing appliances.
- (52) Tool and die shops.
- (53) Truck, tractor, trailer or bus storage yard, but not including a truck terminal.
- (54) Toys and children's vehicles.
- (55) Wire brush manufacture.
- (56) Any other manufacturing establishment that can be operated in compliance with the requirements of this Section, without creating objectionable noise, odors, dust, gas, smoke, fumes or vapor and that is a use compatible with the use and occupancy of adjoining properties.

(B) **Special Uses.** The following uses may be allowed by special use permit in accordance with the provisions of the administrative section:

- (1) Any use which may be allowed in the B-2 or B-3 Districts.
- (2) Planned developments, industrial.
- (3) Airport and aircraft landing fields.
- (4) Stadiums, auditoriums and arenas.
- (5) Outdoor theaters.
- (6) Public or privately owned and operated fairgrounds, permanent carnivals, "kiddie parks" or other similar amusement centers.
- (7) Wind Energy Conversion System as defined, provided, and restricted pursuant to **Article X** of this Code. (**Ord. No. 10-01; 01-11-10**)

(C) **Height of Buildings.** No building or structure shall be erected or structurally altered to exceed a height of **three (3) stories** nor shall it exceed **forty-five (45) feet** in height, except as provided in **Article III**.

(D) **Yard Areas.**

- (1) **Side Yards.** There shall be a minimum side yard of not less than **fifteen (15) feet** on both sides of the building or buildings, but where the property is adjacent to a residential district, there shall be a side yard of not less than **twenty-five (25) feet** on the side nearest to residential lots. The parking of private automobiles may be permitted within the side yard areas, but not closer than **five (5) feet** to any lot zoned for residential use.
- (2) **Rear Yard.** A rear yard is not required except where a lot abuts upon a residential district, in which case there shall be a rear yard of not less than **thirty (30) feet**, and no storage of materials or equipment, or the parking of automobiles shall take place within the **ten (10) feet** closest to any residential lot or lots.

(E) **Performance Standards.** The following requirements shall apply:

(1) **Noise.**

(a) **Definitions.**

**Background Sound Level:** The A-weighted sound level, measured in accordance with the procedures specified in Section 900.103 of the Illinois Code for Noise, Title 35, Subtitle B, which is exceeded **ninety percent (90%)** of the time during the period of observation, during which sounds from motor racing facilities are inaudible. The period of observation need not necessarily be contiguous; however, the period of observation must be at least of **ten (10) minutes** duration.

**Daytime Hours:** 7:00 A.M. to 10:00 P.M., local time.

**Nighttime Hours:** 10:00 P.M. to 7:00 A.M., local time.

**Decibel:** (dB)

**Impulsive Sound:** Either a single pressure peak or a single burst (multiple pressure peaks) for a duration usually less than **one (1) second**.

LeB: Equivalent continuous sound pressure level in decibels.

Noise Pollution: The emission of sound that unreasonably interferes with the enjoyment of life or with any lawful business or activity.

Property-Line-Noise-Source: Any equipment or facility, or combination thereof, which operates within any land used as specified by 35 Ill. Adm. Code 901.101. Such equipment or facility, or combination thereof, must be capable of emitting sound beyond the property line of the land on which operated.

Residential Dwelling Unit: All land used as specified by Standard Land Use Coding Manual (SLUCM) Codes 110 through 190 and those portions of land used as specified by SLUCM Code 6741 used for sleeping.

(b) **Prohibition of Noise Pollution.** No person shall cause or allow the emission of sound beyond the boundaries of his property, as property is defined in Section 25 of the Illinois Environmental Protection Act, so as to cause noise pollution in Illinois, or so as to violate any provision of that Chapter.

Note: Classification of Land According to Use is specified by SLUCM Codes. Generic land classifications include:

- Class R land – residential
- Class B and C land – business and commercial

(c) **Sound Emitted to Class R Land.** No person shall cause or allow the emission of sound during daytime or nighttime hours from any property-line-noise-source which exceeds any allowable octave band sound pressure level specified, when measured at any point within such receiving Class R land, provided, however, that no measurement of sound pressure levels shall be made less than **twenty-five (25) feet** from such property-line-noise-source.

Octave Band Center Frequency (Hertz)	Allowable Octave Band Sound Pressure Levels (dB) of Sound Emitted to any Receiving Class R Land from Class C and B Land (daytime hours)	Allowable Octave Band Sound Pressure Levels (dB) of Sound Emitted to any Receiving Class R Land from Class C and B Land (nighttime hours)
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31.5	75	69
63	74	67
125	69	62
250	64	54
500	58	47
1000	52	41
2000	47	36
4000	43	32
8000	40	32

(d) **Impulsive Sound.**

Classification of Land On which Property-Line-Noise-source is Located      Allowable A-weighted Sound Levels in Decibels of Impulsive Sounds Emitted to Receiving Class R or B Land

	Class B Land	Class R Land Daytime	
Nighttime			
Class R Land	50	50	45
Class B Land	57	50	45
Class C Land	61	56	46

**(NOTE: 35 III. Adm. Code 900.102, and as adopted by this Code by reference, prohibits noise that unreasonably interferes with the enjoyment of life or with any lawful business or activity.)**

**(Ord. No. 99-02; 04-12-99)**

- (2) **Smoke and Particulate Matter.** The emission of smoke or dusts by manufacturing plants in an amount sufficient to create a general nuisance to adjoining properties shall be prohibited. Total emission of smoke and particulate matter shall be limited to the following:

**Ringelmann Requirements.** All smoke and the emission of all other particulate matter in quantities sufficient to produce an opacity at any point greater than Ringelmann 3 is prohibited. The only exception shall be a plume consisting entirely of condensed steam. A Ringelmann 1 unit is defined as **twenty percent (20%)** density for **one (1) minute**. No more than **fifteen (15) units** of Ringelmann smoke shall be permitted per hour and no smoke more intense than Ringelmann 2, except that during **one (1) hour** of a **twenty-four (24) hour** day, **thirty (30) units** of smoke may be emitted but with no smoke more intense than Ringelmann 3.

- The total quantity of emitted solids shall not exceed **one (1) pound** per hour, per acre of lot area.
- (3) **Odors.** No odor shall be emitted by any use permitted in this District in such quantities as to be readily detectable by an average observer at any point on the boundary line of the premises or beyond.
  - (4) **Noxious Gases.** Processes and operations of permitted uses capable of dispersing gases or toxic particulates into the atmosphere must be hooded or otherwise suitably enclosed. The emission of such toxic gases or particulate matter shall be from a stack.
  - (5) **Glare and Heat.** Operations producing intense light or heat shall be performed within an enclosed building and not be visible beyond any lot line bounding the property whereon the use is conducted.
  - (6) **Vibrations.** There shall be no uses which create heavy earth-shaking vibrations which are noticeable at the property line of the subject premises.

**40-8-23      M-2 MANUFACTURING DISTRICT, GENERAL.**

(A) **Permitted Uses.** The uses permitted in this District generally include those manufacturing and industrial activities which cannot be operated economically without creating some conditions which may be objectionable or obnoxious to the occupants of adjoining properties and for that reason must be grouped in areas where similar industrial uses are not located or where the permitted uses will be best located in accordance with the comprehensive land use plan of the City, which is designed to protect the welfare of the community:

- (1) Any use permitted in the M-1 District.
- (2) Aircraft, assembly and testing of fuselage and motors.
- (3) Automobiles, truck and trailers.
- (4) Blacksmith shops.
- (5) Box and crate manufacture.
- (6) Brass foundry.
- (7) Brick, tile, and terra cotta manufacture.
- (8) Building materials—such as prefabricated houses, composition wallboards, partitions and panels.
- (9) Cement products.
- (10) Chemicals, not including those which may be inflammable or explosive.
- (11) Coffin manufacture.
- (12) Cooperage works.
- (13) Corrugated metal products.
- (14) Dyes, aniline, ink pigments and others.
- (15) Feed milling and processing.

- (16) Grain elevators.
- (17) Glass blowing and manufacture.
- (18) Graphite and graphite products.
- (19) Hemp products.
- (20) Ink from primary raw materials, including colors and pigment.
- (21) Linoleum.
- (22) Lumber, preserving treatment, processing, sawmills and planing mills.
- (23) Metal stamping and extrusion of metal products.
- (24) Metal foundries, and casting.
- (25) Machinery, heavy manufacturing and repair—including electrical, construction, mining and agriculture.
- (26) Meat and fish products, packing and processing of, but not including slaughtering and glue and size manufacturing.
- (27) Motor freight terminal.
- (28) Motor testing of internal combustion motors.
- (29) Porcelain products—such as bathroom and kitchen equipment.
- (30) Railroad equipment—such as railroad car and locomotive manufacture.
- (31) Rubber products, including tires and tubes and tire recapping.
- (32) Wax products, manufacture from paraffin.
- (33) Wool scouring and pulling.

(B) **Special Uses.** The following uses may be allowed by special use permit in accordance with the provisions of the administrative section:

- (1) Any use which may be allowed as a special use in the M-1 District, unless already permitted under **Section 40-8-23(A)**.
- (2) Areas for the dumping or disposal of garbage, refuse or trash, provided the sanitary landfill method is used.
- (3) Extraction of gravel, sand or other raw materials.
- (4) Wind Energy Conversion System as defined, provided, and restricted pursuant to **Article X** of this Code. (**Ord. No. 10-01; 01-11-10**)

(C) **Height of Buildings.** No building or structure shall hereafter be erected or structurally altered to exceed a height of **four (4) stories or sixty (60) feet**, except as provided in **Article III**.

(D) **Yard Areas.** The same regulations shall apply as required or permitted in the M-1 District.

(E) **Performance Standards.** The following requirements shall apply:

- (1) **Noise.** The sound pressure levels shall be the same as those permitted in the M-1 Manufacturing District.
- (2) **Smoke and Particulate Matter.** The emission of smoke or dusts in an amount sufficient to create a general nuisance to occupants of adjoining properties or to the occupants in the general area wherein the use is located shall be prohibited.

- (3) **Odors.** No odor shall be emitted by any use permitted in this District in such quantities as to be readily detectable by an average observer at any point on the boundary line of the nearest residential or business district.
- (4) **Noxious Gases.** Processes and operations of permitted uses capable of dispersing gases or toxic particulates into the atmosphere must be hooded or otherwise suitably enclosed. The emission of such toxic gases or particulate matter shall be from a stack not less than **twenty-five (25) feet** in height.
- (5) **Glare and Heat.** Operations producing intense light or heat, when adjacent to a residential or business district, shall be performed within an enclosed building and not be visible beyond the boundary separating the subject premises from any adjoining residential or business district.
- (6) **Vibrations.** There shall be no uses which create heavy earth-shaking vibrations which are noticeable at any district boundary separating residential and business uses from an M-2 Manufacturing District.

**ARTICLE IX – ADMINISTRATION AND PROCEDURES**

**DIVISION I - GENERALLY**

**40-9-1**      **ENFORCING OFFICER.** The Building Commissioner is designated as the Zoning Administrator of said City to be responsible for enforcing this Zoning Code. The Building Commissioner shall have the power and shall see that the provisions herein are properly enforced.

**40-9-2**      **BUILDING PERMITS, CERTIFICATE OF COMPLIANCE AND USE PERMITS.**

(A)      **Building Permit.** No building or structure shall hereafter be erected or structurally altered until a building permit shall be issued by the Building Commissioner stating that the building or structure and use of land, comply with the regulations of this Code and all building and health laws and ordinances of the City.

All applications for building permits shall be accompanied by a plat in duplicate, drawn to scale, showing the actual dimensions of the lot or lots to be built upon, the size of the building or structure to be erected or structurally altered, its location on the lot or lots, and such other information as may be necessary to provide for the enforcement of these regulations. A careful record of such applications and plats shall be kept in the office of the Building Commissioner. Provided that on an application for a building permit for a building to be used for agricultural purposes, the name and address of the person proposing to construct the building, the use to which the building is to be put, and the distance that the front of the building will be from the street or highway is all the information that shall be required.

(B)      **Certificate of Compliance.** No building or structure hereafter erected or structurally altered shall be occupied and used until a certificate of compliance has been issued by the Building Commissioner. The certificate of compliance shall be issued only after the Building Commissioner makes a finding that the building or structure has been erected or structurally altered in conformance with the provisions of this Code and other health and building laws and in accordance with a building permit.

Certificates of compliance shall be applied for coincident with the application for a building permit and shall be issued within **ten (10) days** after the erection and alterations of such building shall have been satisfactorily completed. A record of all certificates shall be kept on file in the office of the Building Commissioner and copies shall be furnished, on request, to any persons having a proprietary or tenancy interest in the building affected.

Certificates for the continued occupancy of non-conforming uses existing at the time of the passage of this Code shall be issued by the Building Commissioner and the certificate shall state that the use is a non-conforming one and does not conform with the provisions herein. The Building Commissioner shall notify the owners of property being used as non-conforming use and shall furnish said owner with a certificate of occupancy for such non-conforming use.

A certificate of occupancy shall not be required for buildings to be used for agricultural purposes.

(C) **Use Permit.** No change shall be made in the use of a building or part thereof now or hereafter erected or structurally altered, or in the use of land now or hereafter occupied, without a use permit having first been issued by the Building Commissioner. No such permit shall be issued to make such change unless it is in conformity with the provisions of this Code and amendments hereto hereafter duly enacted.

(D) **Continuance of Existing Uses.** Nothing in this Section shall prevent the continuance of the present occupancy or lawful use of any existing building or zoning lot, except as may be necessary for the safety of life and property, and except as provided in **Article III**.

**40-9-3      RESERVED.**

**DIVISION II – ZONING BOARD OF APPEALS**

**40-9-4**      **CREATION OF MEMBERSHIP.**    There is hereby established a Zoning Board of Appeals. The Board of Appeals shall consist of **seven (7) members** appointed by the Mayor and confirmed by the City Council. At least **two (2) members** shall be residents of the unincorporated area subject to the provisions of this Code. The members of the Board of Appeals shall serve respectively for the following terms: **one (1) for one (1) year; one (1) for two (2) years; one (1) for three (3) years; one (1) for four (4) years; one (1) for five (5) years; one (1) for six (6) years; one (1) for seven (7) years.**

The successor of each member so appointed shall serve for a term of **five (5) years.** Vacancies shall be filled by the Mayor, subject to the confirmation of the City Council for the unexpired term. Members may be removed by the Mayor for cause after written charges have been filed and after a public hearing has been held, if demanded by the member so charged.

One of the members of the Board shall be designated by the Mayor, with the consent of the City Council, as Chairman of the Board and shall hold such office as Chairman until a successor is appointed. Such Chairman, or in his absence the Acting Chairman, may administer oaths and compel the attendance of witnesses.

The City Clerk shall act as clerk for the Board and shall make and keep a record of all its meetings and official acts.

**40-9-5**      **JURISDICTION, AUTHORITY AND PROCEEDINGS.**

(A)      **Appeals and Review.** Any person aggrieved by a request of the Building Commissioner charged with the enforcement of the Code or by any officer, department, board or bureau of the City concerning the interpretation of the Code, may take an appeal to the Zoning Board of Appeals.

Such appeal shall be taken within such time as shall be prescribed by the Zoning Board of Appeals by general rules adopted by it, and shall be taken by filing with the City Clerk and with the Zoning Board of Appeals, a notice of appeal specifying the grounds thereof, together with such plats and exhibits as are reasonably necessary. Such appeal shall be taken upon forms provided by the Zoning Board of Appeals. The City Clerk shall forthwith transmit to the Board all of the papers constituting the record upon which the action appealed was taken.

The Board may reverse or affirm, wholly or partly, or may modify or amend the order, requirements, decisions or determination appealed from to the extent and in the manner that the Board may decide to be fitting and proper in the premises, and to that end, the Board shall also have all the powers of the officer from whom the appeal is taken.

The Board shall also hear and decide all matters referred to it or upon which it is required to pass under the Code.

The concurring vote of **four (4) members** of the Board shall be necessary to reverse any order, requirement, decision or determination of the Building Commissioner or to decide in favor of the applicant any matter upon which it is authorized by the Code to render decisions.

The Zoning Board of Appeals shall fix a reasonable time and place for the hearing of such appeals and shall give notice thereof to the persons appealing and to the officer from whom the appeal is taken. It shall hear and decide the appeal within a reasonable time. At the hearing, parties of interest may appear in person or by agent or attorney.

(B) **Stay of Proceedings.** The appeal shall stay all proceedings and furtherance of action appealed from, unless the Building Commissioner certifies to the Zoning Board of Appeals, after notice of appeal has been filed with him, that by reason of facts stated in the certificate a stay would, in his opinion cause imminent peril to life or property; in which case the proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Zoning Board of Appeals or by court of record on application, with notice to the officer from whom the appeal is taken, and all due causes shown.

(C) **Variations.** When a property owner or his agent shows that a strict application of the terms of this Code relating to the use, construction or alteration of buildings or structures or the use of land, imposes upon him practical difficulties or particular hardship, then the Board may recommend such variations of the strict application of the terms of this Code as are in harmony with its general purpose and intent when the Board is satisfied, under the evidence heard before it, that such a variation will not merely serve as a convenience to the applicant, but is necessary to alleviate some demonstrable hardship or difficulty so great as to warrant a variation from the provisions of this Code, or in the following instances:

- (1) To permit the extension of a district where the boundary line of a district divides a lot in single ownership as shown on record prior to the date of passage of the Code.
- (2) To permit a front yard, a side yard, or a rear yard less than that required by the Code, but such variation shall not exceed **twenty-five percent (25%)** of the depth of the front yard, or the depth of the rear yard, or the width of the side yard, as required herein.
- (3) To permit a building to exceed the height limit by not more than **ten percent (10%)** of the height limit established by the Code.
- (4) To permit the use of a lot less in area by not more than **ten percent (10%)** of the lot area required herein.
- (5) To permit the use of a lot less in width by not more than **fifteen percent (15%)** of the lot width as required by this Code.
- (6) To interpret the provisions of this Code where the street layout actually on the ground varies from the street layout as shown on the map fixing the several districts, which map is attached to and made a part of this Zoning Code.

In considering all proposed variations to this Code, the Board shall, before recommending any variation from this Code in a specific case, first determine and make a finding of fact that: (1) the property in question cannot yield a reasonable return if permitted to be used only under the conditions allowed by the regulations in that zone; (2) the plight of the owner is due to unique circumstances; and (3) the variation, if granted, will not alter the essential character of the locality. A variation shall be permitted only if the evidence, in the judgment of the Board of Appeals, sustains each of the three conditions enumerated; and further, the proposed variation

will not: (a) impair an adequate supply of light and air to adjacent property; (b) unreasonably increase the congestion in public streets; (c) increase the danger of fire or endanger the public safety; (d) unreasonably diminish or impair established property values within the surrounding area, or in any other respect impair the public health, safety, comfort, morals and welfare of the inhabitants of the City.

No variation shall be made except in a specific case and after a public hearing before the Board of Appeals of which there shall be a notice of the time and place of the hearing published at least once, not more than **thirty (30) days** nor less than **fifteen (15) days** before the hearing, in **one (1)** or more newspapers published in the City. This notice shall contain the particular location for which the variation is requested as well as a statement of what the proposed variation consists.

The Board shall report its findings and recommendations to the City Council within **fifteen (15) days** after the public hearing.

(D) **City Council Action.** No variation in any specific case shall be made by the City Council without a hearing by the Zoning Board as required herein nor without a report thereof having been made by the Board to the City Council, and every such report shall be accompanied by a finding of fact specifying the reasons for the report.

Upon the report of the Zoning Board of Appeals, the City Council may, without further public hearing, adopt or deny any proposed variation or may refer the report back to the Board for further consideration. Any proposed variation which fails to receive the approval of **four (4) members** of the Zoning Board of Appeals shall not be passed except by the favorable vote of **three-fourths (3/4)** of all elected members of the City Council. In making any variations, the City Council shall be governed by the same considerations and restrictions as the variations in particular instances under the paragraph headed "Jurisdiction".

(E) **Rules and Procedure.** All meetings of the Board shall be held at the call of the Chairman and at such other times as the Board may determine. The Board shall keep minutes of its proceedings, showing the vote of each member upon every question or, if absent or failing to vote, indicating such fact, and shall also keep records of its examinations and other official actions. Findings of fact shall be included in the minutes on each case and the reasons for granting or denying each application shall be specified. Every rule, regulation, and every order, requirement, decision or determination of the Board shall immediately be filed in the office of the City Clerk and shall be a public record.

The Board shall adopt its own rules of procedure, a copy of which and all recommendations thereto, shall be filed in the office of the City Clerk.

All meetings of the Board shall be open to the public, and all minutes of the Board shall be open to public examination at reasonable hours.

(F) **Change of Zoning.** Nothing herein contained shall be construed to give or grant to the Zoning Board the power or authority to alter or change the Zoning Code or any use district made a part of the Zoning Map; such power and authority being reserved to the City Council, and the Board shall not have any power or authority with respect to any alterations or change of the Zoning Code except to make recommendations to the City Council in such specific cases as may properly come before the Zoning Board of Appeals.

(G) **Miscellaneous.** No order for a variance permitting the erection or alteration of a building shall be valid for a period longer than **six (6) months**, unless such use is established within such period, provided, however, that where such use permitted is dependent upon the erection or alteration of a building, such order shall continue in force and effect if a building permit for said erection or alteration is obtained within such period and such erection or alteration is started and proceeds to completion in accordance with the terms of such permit.

No order for a variance permitting a use of a building or premises shall be valid for a period longer than **six (6) months**, unless such use is established within such period, provided, however, that where such use permitted is dependent upon the erection or alteration of a building, such order shall continue in force and effect if a building permit for said erection or alteration is obtained within such period and such erection or alteration is started and proceeds to completion in accordance with the terms of such permit.

**40-9-6      RESERVED.**

**DIVISION III – AMENDMENTS**

**40-9-7**     **PETITION FOR AMENDMENT.**     The City Council, the Plan Commission, and other governmental bodies, and any private petitioner may apply for an amendment in the text of this Code, and in the accompanying zoning maps made a part of this Code. Any petition for an amendment by a private party shall be accompanied by a filing fee as established by the City Council, which fee shall be deposited with the City Clerk within **fifteen (15) days** after the receipt thereof and no part shall be returnable to the petitioner.

**40-9-8**     **REVIEW OF PETITION.**     The regulations imposed and the zoning districts created under this Code may be amended by ordinance, but no such amendment shall be made by the City Council without public notice and without a public hearing before the Plan Commission. The Plan Commission shall hold the public hearing and forward its recommendations to the City Council within **forty-five (45) days** of the date the petition was submitted to the Plan Commission, unless it is withdrawn by the petitioner.

**40-9-9**     **NOTICE OF PUBLIC HEARING.**     The Plan Commission shall cause notice of public hearing of petitioner’s application to be given in the following manner: (1) by publishing notice of the time and place of such hearing in a paper of general circulation in the City at least **fifteen (15) days** prior to the hearing; (2) by causing said notice to contain the particular location for which the amendment is requested, as well as a brief statement describing the proposed amendment; and (3) by notifying such property owners, groups or organizations as it deems desirable of the proposal.

**40-9-10**    **WRITTEN PROTEST.**     In the event of written protest against the proposed amendment signed and acknowledged by the owners of **twenty percent (20%)** of the frontage proposed to be altered, or by the owners of **twenty percent (20%)** of the frontage immediately adjoining or across the alley or rear line therefrom, or by the owners of **twenty percent (20%)** of the frontage directly opposite the frontage proposed to be altered as to such regulations or zoning district, and filed with the City Clerk, such amendment shall not be passed except by the favorable vote of **three-fourths (3/4)** of all of the members of the City Council.

**40-9-11**    **FINAL DECISION.**     The City Council, without further public hearing, may adopt or deny the report of the Plan Commission for any proposed amendment, or may refer the petition back to the Plan Commission for further consideration.

Any proposed amendment which fails to receive the approval of a majority of the Plan Commission members, and is so reported shall not be passed by the City Council except by the favorable vote of **three-fourths (3/4)** of all the elected members of the City Council.

**40-9-12**    **RESERVED.**

**DIVISION IV – SPECIAL USES**

**40-9-13**     **PURPOSE.** The principal objective of this Zoning Code is to provide for an orderly arrangement of compatible building and land uses, and for the proper location of all types of uses required for the social and economic welfare of the City. To accomplish this objective, each type and kind of use is classified as permitted in one or more of the various districts established by this Code. However, in addition to those uses specifically classified and permitted in each district, there are certain additional uses which it may be necessary to allow because of their unusual characteristics or the service they provide the public. These “special uses” require particular consideration as to their proper location in relation to adjacent established or intended uses, or to the “planned development” of the community. The conditions controlling the location and operation of such “special uses” are established by the following provisions.

**40-9-14**     **CONDITIONS OF APPROVAL.** The Plan Commission may recommend, and the City Council may impose, such restrictions upon the height, bulk and area of occupancy of any structure so approved for “special use” as may be reasonable under the particular circumstances, provided that such restrictions and stipulations shall not be more restrictive than the requirements established for the district in which such structure is proposed to be located, or as may be required in any municipal code. Off-street parking facilities as well as off-street loading and unloading spaces may also be stipulated in the order permitting the “special use”.

**40-9-15**     **PROCEDURE.** The procedure to be followed in considering applications for “special uses” shall be as follows:

(A)           **Application.** An application verified by the owner or authorized agent of the owner of the property involved, shall be filed with the City Clerk for the attention of the Plan Commission upon a form prescribed therefor, which shall contain or be accompanied by all required information.

(B)           **Public Hearing.** Upon receipt of such verified application, the City Clerk shall notify the Chairman of the Plan Commission, or in his absence, the Vice-Chairman, who shall give notice of a public hearing in the same manner as provided for hearings on the reclassifications of property, as contained above. A record of pertinent information presented at the public hearing shall be made and maintained by the Plan Commission as part of the permanent record relative to the application.

(C)           **Determination.** The Plan Commission shall then make its findings and recommendations to the City Council within **thirty (30) days** following the date of public hearing on each application. The City Council may then authorize a “special use” as defined herein by specific ordinance, provided the evidence presented is such as to establish beyond reasonable doubt:

- (1) That the proposed use at the particular location requested is necessary or desirable to provide a service or a facility which is in the interest of public convenience, and will contribute to the general welfare of the neighborhood or community;
- (2) That such use will not, under the circumstances of the particular case, be detrimental to the health, safety, morals or general welfare of persons residing or working in the vicinity or injurious to property values or improvements in the vicinity;
- (3) That the proposed use will comply with the regulations and conditions specified in this Code for such use, and with the stipulations and conditions made a part of the authorization granted by the City Council.

**40-9-16 PLANNED DEVELOPMENTS.** Planned developments, as defined herein, are of such substantially different character from other special uses that specific and additional standards and exceptions are hereby set out to govern the recommendations of the Plan Commission and the action of the City Council.

(A) **Use Exceptions.** In the case of residential, business or manufacturing planned developments, the Plan Commission may recommend and the City Council may authorize that there be in part of the area of such development and for the duration of such development, specified uses not permitted by the use regulations of the district in which said development is located, provided the Plan Commission shall find:

- (1) That the uses permitted by such exception are necessary or desirable and are appropriate with respect to the primary purpose of the development;
- (2) That the uses permitted by such exception are not of a detrimental influence on the surrounding neighborhood;
- (3) That not more than **twenty percent (20%)** of the ground area or of the gross floor area of such development shall be devoted to the uses permitted by said exceptions; and
- (4) That in a manufacturing planned development, such additional uses allowed by exception shall conform with the performance standards of the district in which the development is located.

(B) **Bulk Regulations.** In the case of any planned development, the Plan Commission may recommend, and the City Council may authorize exceptions to the applicable bulk regulations of this Code within the boundaries of such development, provided that the Plan Commission shall find:

- (1) That such exception shall be solely for the purpose of promoting an integrated site plan no less beneficial to the residents or occupants of such development as well as of neighboring properties than would obtain under the bulk regulations of this Code for buildings developed on separate zoning lots.

- (2) That the overall bulk of buildings of the development shall not exceed that prescribed in this Code for the district in which it is located.
- (3) That the minimum lot area per dwelling unit requirements of this Code shall be adhered to in any such development containing residential uses, and that there shall be available to each residential building and immediately adjacent thereto (including the land upon which it is erected), the minimum amount of land area required for such building under the lot area per dwelling unit provisions of this Code.
- (4) That spacing between principal buildings shall be at least equivalent to such spacing as would be required between buildings similarly developed under the terms of this Code on separate zoning lots, due consideration being given to the openness normally afforded by intervening streets and alleys.
- (5) That along the periphery of such planned developments, yards shall be provided as required by the regulations of the district in which said development is located.

**DIVISION V – INTERPRETATION, FEES AND PENALTIES**

**40-9-17** **PURPOSE AND CONFLICT.** In interpreting and applying the provisions of this Code, they shall be held to be the minimum requirements for the promotion of the safety, health, convenience, comfort, prosperity and general welfare. It is not intended by this Code to interfere with, abrogate, annul, or repeal any ordinance, rules or regulations previously adopted and not in conflict with any of the provisions of this Code or which shall be adopted, pursuant to law relating to the use of buildings or premises, nor is it intended by this Code to interfere with or abrogate or annul any easements, covenants or other agreements between parties, except that where this Code imposes a greater restriction upon the use of buildings or premises or upon the height of buildings or requires larger open spaces than are imposed or required by such other ordinances or such easements, covenants or other agreements, the provisions of this Code shall control.

**40-9-18** **FEES.** Fees pertaining to petitions for zoning amendments, use permits, certificates of compliance, variation, and for appeals to the Zoning Board of Appeals, shall be established by action of the City Council from time to time. Such fees shall be paid to the City Clerk, who shall give a receipt therefor and account for same at regular intervals to the City Council.

**40-9-19** **VIOLATIONS; PENALTY.** Any person, firm, corporation who violates, disobeys, omits, neglects, or refuses to comply with or who resists the enforcement of any of the provisions of this Code shall be fined not less than **Twenty-Five Dollars (\$25.00)** nor more than **Two Hundred Dollars (\$200.00)** for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

**[ED. NOTE:** The general penalty for the entire City Code has been set at a maximum of Seven Hundred Fifty Dollars (\$750.00).]

(Ord. No. 04-13-65)

ARTICLE X

STANDARDS FOR WIND ENERGY CONVERSION SYSTEMS AND WIND TOWERS

**40-10-1 INTRODUCTION.**

(A) **Title.** This Article shall amend the Gibson City Zoning Code and be known, cited and referred to as "Article X Standards for Wind Energy Conversion System and Wind Towers".

(B) **Purpose.** This Article is adopted for the following purposes:

- (1) To assure that any development and production of wind-generated electricity in Gibson City is safe and effective;
- (2) To facilitate economic opportunities for local residents;
- (3) To promote the supply of wind energy in support of Illinois' statutory goal of increasing energy production from renewable energy sources.

**40-10-2 DEFINITIONS.**

(A) **"Applicant"** means the entity or person who submits to the City, pursuant to **Section 40-10-5** of this Code, an application for the special use permit for any WECS.

(B) **"City"** means the City of Gibson corporate authority otherwise known as Gibson City.

(C) **"Financial Assurance"** means reasonable assurance from a credit worthy party, examples of which include a surety bond, trust instrument, cash escrow, or irrevocable letter of credit, or corporate guaranty from an entity whose credit is investment grade (reviewed on an annual basis).

(D) **"Operator"** means the entity responsible for the day-to-day operation and maintenance of the WECS and/or Wind Tower, including any third party subcontractors.

(E) **"Owner"** means the entity or entities with direct equity interest in the WECS(s) and/or Wind Tower(s), including their respective successors and assigns. Owner does not mean (i) the property owner from whom land is leased for locating the WECS and/or Wind Tower (unless the property owner has an equity interest in the WECS); or (ii) any person holding a security interest in the WECS(s) and/or Wind Tower solely to secure an extension of credit, or a person foreclosing on such security interest provided that after foreclosure, such person seeks to sell the WECS(s) and/or Wind Tower at the earliest practicable date.

(F) **"Professional Engineer"** means a qualified individual who is licensed as a professional engineer in any state in the United States.

(G) **"Primary Structure"** means, for each property, the structure that one or more persons occupy the majority of time on that property for either business or personal reasons. Primary Structure includes structures such as residences, commercial

buildings, hospitals, churches, schools and day care facilities. Primary Structure excludes structures such as hunting sheds, storage sheds, pool houses, unattached garages and barns.

(H) *"Wind Energy Conversion System"* ("WECS") means all necessary facilities that together convert wind energy into electricity and deliver that electricity to a utility's transmission lines, including, but not limited to, the rotor, nacelle, generator, WECS Tower, electrical components, WECS foundation, transformer, electrical cabling from the WECS Tower to the substation(s)/switchyard(s), communications facilities, transmission lines, poles, and/or towers, operations and maintenance building, and other related devices, facilities, and equipment.

(I) *"WECS Project"* means the collection of WECSs as specified in the special use permit application pursuant to **Section 40-10-5** of this Article.

(J) *"WECS Tower"* means the support structure to which the nacelle and rotor are attached.

(K) *"WECS Tower Hub Height"* means the distance from the center of the rotor hub to the top surface of the WECS Tower foundation.

(L) *"WECS Tower Tip Height"* means the distance from the rotor blade at its highest point to the top surface of the WECS foundation.

(M) *"Wind Tower"* shall mean any structure that converts wind energy into electricity including, but not limited to, the rotor, nacelle, generator, tower, foundation, transformer, transmission lines, and related equipment.

**40-10-3** **APPLICABILITY.** This Article governs the special use of WECS(s) and WECS Projects that generate electricity to be sold to wholesale or retail markets, private owners of WECS(s) over 100kw who locate the WECS(s) on their own property for their own personal use, and private owners who locate a wind tower on their property regardless of output, size, or use.

**40-10-4** **PROHIBITION.** No WECS, WECS Project, or Wind Tower governed by **Section 40-10-3** of this Article shall be constructed, erected, installed, or located within the limits of Gibson City or areas lying within **one and one-half (1 ½) miles** of the corporate limits of the City, unless prior special use permit application has been approved for each individual WECS or WECS Project pursuant to this Article. Upon special use approval a construction permit shall be obtained from the City Building Inspector prior to the commencement of construction of any WECS, WECS Project, or Wind Tower or any part thereof.

**40-10-5** **SPECIAL USE PERMIT APPLICATION.**

(A) To obtain special use approval, the Applicant must first submit a special use permit application to the City Zoning Board of Appeals and City Council.

(B) The special use permit application shall contain or be accompanied by the following information:

- (1) A WECS Project summary or Wind Tower summary, including, to the extent available: (1) a general description of the project, including its approximate name plate generating capacity; the potential equipment manufacturer(s), type(s) of WECS(s), maximum number of WECSs, and approximate name plate generating capacity of each WECS; the maximum height of the WECS Tower(s) and maximum diameter of the WECS(s) rotor(s); the general location of the project; and (2) a description of the Applicant, Owner and Operator, including their respective business structures;
- (2) The name(s), address(es), and phone number(s) of the Applicant(s), Owner and Operator, and all property owner(s), if known;
- (3) A site plan for the installation of WECSs or Wind Tower showing the planned location of each WECS Tower, Wind Tower, guy lines and anchor bases (if any), Primary Structure(s), property lines (including identification of adjoining properties), setback lines, public access roads and turnout locations, Substations(s), electrical cabling from the WECS Tower and/or Wind Tower to the Substation(s), ancillary equipment, third party transmission lines, and layout of all structures within the geographical boundaries of any applicable setback;
- (4) All required studies, reports, certifications, and approvals demonstrating compliance with the provisions of this Article;
- (5) Financial assurance that the project can be developed as proposed; and
- (6) Any other information normally required by the city as part of its Zoning Code.

(C) The Applicant shall notify the City of any material changes to the information provided in **Section 40-10-5(B)** above that occur while the special use permit application is pending.

**40-10-6 DESIGN AND INSTALLATION.**

(A) **Design Safety Certification.**

- (1) WECS(s) and/or Wind Towers shall conform to applicable industry standards, including those of the American National Standards Institute ("ANSI"). Prior to the issuance of construction permits, Applicant shall submit certificates of design compliance that equipment manufacturers have obtained from Underwriters Laboratories ("UL"), Det Norske

Veritas ("DNV"), Germanischer Lloyd Wind Energie ("GL"), or an equivalent third party. All turbines shall be new equipment commercially available; no used or experimental equipment shall be approved by the Building Inspector or the Zoning Board of Appeals without the issuance of a variance.

- (2) Following the granting of the special use permit under this Article, a Professional Engineer shall certify, as part of the construction permit application that the foundation and tower design of the WECS is within accepted professional standards, given local soil and climate conditions.

(B) **Controls and Brakes.** All WECS and/or Wind Towers shall be equipped with a braking system that conforms to applicable industry standards.

(C) **Electrical Components.** All electrical components of the WECS and/or Wind Towers shall conform to applicable codes and standards.

(D) **Color.** WECS towers and blades shall be painted white or gray or another non-reflective, unobtrusive color to be approved by the City Building Inspector.

(E) **Turbine Consistency.** To the extent feasible, the project shall consist of turbines of similar design and size, including tower height. All turbines shall rotate in the same direction.

(F) **Compliance with the Federal Aviation Administration.** The WECS and/or Wind Towers shall comply with all applicable FAA requirements.

(G) **Lighting.** Projects shall utilize minimal lighting. No exterior tower lighting other than normal security lighting shall be permitted except as may be required by the FAA.

(H) **Warnings.**

- (1) A reasonably visible warning sign concerning voltage must be placed at the base of all pad-mounted transformers and substations.
- (2) Visible, reflective, colored objects, such as flags, reflectors, or tape shall be placed on the anchor points of guy wires and along the guy wires up to a height of **fifteen (15) feet** from the ground.

(I) **Climb Prevention.**

- (1) All WECS Towers and/or Wind Towers must be unclimbable by design or protected by anti-climbing devices such as: ABS Partnership, 401 E. Mercury, Champaign, IL.
- (a) Fences with locking portals at least **six (6) feet** high; or
- (b) Anti-climbing devices **twelve (12) feet** vertically from the base of the WECS Tower; or
- (c) Locked doors and interior ladders.

(J) **Height.** WECS and/or Wind Tower Tip Height shall not exceed **five hundred (500) feet**.

(K) **Blade Clearance.** The minimum distance between the ground and any protruding blade(s) utilized on a WECS and/or Wind Tower shall be **fifteen (15) feet**, as measured at the lowest point of the arc of the blades.

(L) **Setbacks.**

- (1) All WECS and/or Wind Towers shall be set back a distance of at least **one thousand (1,000) feet**, from any Primary Structure in existence or which has received construction permits for construction as of the date of approval of the special use permit. Distance shall be measured from the point of the Primary Structure foundation closest to the WECS Tower to the center of the WECS Tower foundation. The owner(s) of the Primary Structure may waive this setback requirement in writing; but in no case shall a WECS Tower be located closer to a Primary Structure than 1.10 times the WECS Tower Tip Height.
- (2) All WECS and/or Wind Towers shall be set back a distance of at least **one thousand five hundred (1,500) feet**, from the legally established boundaries, as of the date of approval of the special use permit, of any platted community which enforces its own government. Distance shall be measured from the closest Corporate Limit boundary line to the center of the WECS Tower foundation.
- (3) All WECS and/or Wind Towers shall be set back a distance of at least 1.0 times the WECS Tower Hub Height from adjacent property lines, established as of the date of approval of the special use permit, unless waived in writing by the affected adjacent property owner(s). Distance shall be measured from such adjacent property line to the center of the WECS Tower foundation.
- (4) All WECS and/or Wind Towers shall be set back a distance of at least 1.10 times the WECS Tower Tip Height from the nearest above-ground third party transmission lines, telephone lines and communication towers, in existence as of the date of approval of the special use permit, unless waived in writing by the affected property owner(s) and utility company. Distance shall be measured from the center of the WECS and/or Wind Tower foundation to the closest point on such above-ground public electric power line, third party transmission line, telephone line and center of the base of the communication tower.
- (5) All WECS and/or Wind Towers shall be set back a distance of at least 1.10 times the WECS Tower Tip Height from the nearest edge of the existing right-of-way of public roads as of the date of approval of the special use permit. Distance shall

be measured from the nearest edge of the road right of way of such public road in existence as of the date of approval of the special use permit. The City Council may waive this setback requirement at its election during the application for the special use permit.

- (6) The Applicant does not need to obtain a variance or other approval from the City upon written waiver by the applicable State, County, Township, utility company or property owner(s) of any of the above setback requirements. Any waiver of any of the above setback requirements shall run with the land and be recorded as part of the chain of title in the deed of the subject property.

(M) **Drainage Repair.** The Owner or Operator will repair waterways, drainage ditches, field tiles, or any other infrastructures damaged during construction and maintenance phases.

(N) **Compliance with Additional Regulations.** Nothing in this Article is intended to preempt other applicable state and federal laws and regulations.

(O) **Use of Public Roads.**

- (1) An Applicant, Owner, or Operator proposing to use any county, municipality, township or village road(s), for the purpose of transporting WECS and/or Wind Tower or Substation parts and/or equipment for construction, operation, or maintenance of WECS(s) or Substation(s), shall, prior to the issuance of construction permits:

- (a) Identify all such public roads; and  
(b) Obtain applicable weight and size permits from relevant government agencies prior to construction.

- (2) To the extent an Applicant, Owner, or Operator must obtain a weight or size permit from the county, municipality, township or village, the Applicant, Owner, or Operator shall, prior to the issuance of construction permits:

- (a) Conduct a pre-construction baseline survey to determine existing road conditions for assessing potential future damage; and  
(b) Secure Financial Assurance, in a reasonable amount agreed to by the relevant parties, for the purpose of repairing any damage to public roads caused by constructing, operating or maintaining the WECS and/or Wind Tower.

- (3) Reasonable dust control measures will be required during construction of the WECS and/or Wind Towers.

(P) **Term.** Notwithstanding any other provisions of the County Zoning Code, a special use permit for a WECS and/or Wind Tower shall be effective and may be relied upon so long as construction of the WECS is commenced within **thirty-six (36) months** after issuance of the special use permit, which period may be extended by the Zoning Board of Appeals without further public hearing.

**40-10-7 OPERATION.**

(A) **Maintenance.** Any physical modification to the WECS and/or Wind Tower that alters the mechanical load, mechanical load path, or major electrical components shall require re-certification under **Section 40-10-6(A)(1)** of this Article. Like-kind replacements shall not require re-certification. Prior to making any physical modification (other than a like-kind replacement), the Owner or Operator shall confer with a relevant third-party certifying entity identified in **Section 40-10-6(A)(1)** of this Article to determine whether the physical modification require re-certification.

(B) **Interference.**

- (1) The Applicant shall provide the applicable microwave transmission providers and local emergency service provider(s) (911 operators) copies of the project summary and site plan, as set forth in **Section 40-10-5(B)(1)** and **40-10-5(B)(3)** of this Article. To the extent that the above provider(s) demonstrate a likelihood of interference with its communications resulting from the WECS(s), the Applicant shall take reasonable measures to mitigate such anticipated interference. If, after construction of the WECS, the Owner or Operator receives a written complaint related to the above-mentioned interference, the Owner or Operator shall take reasonable steps to respond to the complaint.
- (2) If, after construction of the WECS and/or Wind Tower, the Owner or Operator receives a written complaint related to interference with local broadcast residential television, the Owner or Operator shall take reasonable steps to respond to the complaint.

(C) **Coordination with Local Fire Department.**

- (1) Prior to commencement of construction, the Applicant, Owner or Operator shall submit to the local fire department a copy of the site plan.
- (2) Prior to the issuance of construction permits, the Owner or Operator shall cooperate with the local fire department to develop and implement a fire protection plan in coordination with local emergency response authorities to ensure that all the appropriate emergency services agencies are cognizant of actions required in the event of a fire or other emergency at the wind power facility. In addition, the owner of the wind power facility shall provide training for, and the necessary equipment to, local emergency response authorities and their personnel so that they can properly respond to a potential emergency at the wind project.
- (3) Nothing in this Section shall alleviate the need to comply with all other applicable fire laws and regulations.

- (D) **Materials Handling, Storage and Disposal.**
- (1) All solid wastes related to the construction, operation and maintenance of the WECS and/or Wind Tower shall be removed from the site promptly and disposed of in accordance with all federal, state and local laws.
  - (2) All hazardous materials related to the construction, operation and maintenance of the WECS and/or Wind Tower shall be handled, stored, transported and disposed of in accordance with all applicable local, state and federal laws.

**40-10-8 NOISE LEVELS.** Noise levels from each WECS, WECS and/or Wind Tower Project shall be in compliance with applicable Illinois Pollution Control Board (IPCS) regulations. The Applicant, through the use of a qualified professional, as part of the special use application process, shall appropriately demonstrate compliance with the above noise requirements.

**40-10-9 PUBLIC PARTICIPATION.** Nothing in this Article is meant to augment or diminish existing opportunities for public participation in the City's consideration of the special use application.

**40-10-10 LIABILITY INSURANCE AND INDEMNIFICATION.**

(A) Commencing with the issuance of construction permits, the Applicant, Owner or Operator of the WECS(s) and/or Wind Tower shall maintain a current general liability policy covering bodily injury and property damage with limits of at least \$3 million per occurrence and \$5 million in the aggregate. Such insurance may be provided, pursuant to a plan of self insurance, by a party with a net worth of \$50 million or more. The City shall be named as an additional insured on the policy to the extent the City is entitled to indemnification in accordance with **Section 40-10-11(B)**. In the case of a single Wind Tower, the Zoning Board of Appeals and City Council may elect to reduce such insurance amounts.

(B) Applicant, Owner or Operators shall defend, indemnify and hold harmless the City and its officials, employees and agents (collectively and individually, the "Indemnified Parties") from and against any and all claim, demands, losses, suits, causes of action, damages, injuries, costs, expenses and liabilities whatsoever, including reasonable attorney's fees, except to the extent arising in whole or in part out of the negligence or intentional acts of such Indemnified Parties (such liabilities together known as "liability") arising out of Applicant, Owner or Operators selection, construction, operation and removal of the WECS and/or Wind Tower and affiliated equipment including, without limitation, liability for property damage or personal injury (including death), whether said liability is premised on contract or on tort (including without limitation strict liability or negligence). This general indemnification shall not be construed as limiting or qualifying the City's other indemnification rights available under the law.

**40-10-11 DECOMMISSIONING PLAN.** Prior to the issuance of construction permits, Owner or Operator shall prepare a Decommissioning Plan with the following elements:

(A) Provisions describing the triggering events for decommission the WECS and/or Wind Tower Project;

(B) Provisions for the removal of above-ground structures, debris and cabling, and provisions for the removal of underground foundations and cables;

(C) Provisions for the restoration of the soil and vegetation;

(D) An estimate of the decommissioning costs and salvage value, certified by a Professional Engineer or other qualified professional reasonably acceptable to the County, which shall be updated and submitted to the City Building Inspector every **five (5) years**;

(E) Financial Assurance, secured by the Owner or Operator, for the purpose of adequately performing decommissioning, in an amount equal the positive difference, if any, between the Professional Engineer's certified estimate of the decommissioning costs and salvage value;

(F) Identification of and procedures for City access to Financial Assurances;

(G) A provision that the terms of the Decommissioning Plan shall be binding upon the Owner or Operator and any of their successors, assigns, or heirs; and

(H) A provision that the City shall have access to the site, pursuant to reasonable notice, to effect or complete decommissioning.

**40-10-12 REMEDIES.**

(A) The Applicant's, Owner's, or Operator's failure to materially comply with any of the above provisions shall constitute a default under this Article. Approval of the conditional use for a WECS and/or Wind Tower shall be deemed conclusive evidence that the Applicant, Owner, or Operator has complied with the above provisions with respect to application for and approval of such special use.

(B) Prior to implementation of the existing City procedures for the resolution of such default(s), the City shall first provide written notice to the Owner and Operator, setting forth the alleged default(s). Such written notice shall provide the Owner and Operator a reasonable time period, not to exceed **sixty (60) days**, for good faith negotiations to resolve the alleged default(s).

(C) If after the **sixty (60) day** period: (i) the Applicant, Owner, or Operator has not cured the alleged default, or (ii) the City determines in its discretion, that the parties cannot resolve the alleged default(s) within the good faith negotiation period, the existing City ordinance provisions addressing the resolution of such default(s) shall govern.

**(Ord. No. 10-01; 01-11-10)**