

CHAPTER 40

ZONING CODE

ARTICLE I – GENERAL PROVISIONS

40-1-1 **ADOPTION AND REPEAL.** This is an ordinance amending the City of Sullivan Zoning Code which became effective **December 15, 1967**, by repealing said ordinance and all subsequent amendments thereto, and enacting a new ordinance in lieu thereof to establish comprehensive zoning regulations for Sullivan, Illinois, and providing for the administration, enforcement, and amendment thereof; and to repeal all ordinances or resolutions in conflict herewith.

40-1-2 **TITLE.** This Code shall be known and may be cited as the **“1990 Sullivan Zoning Code”** with a reference to the ordinance number.

40-1-3 **AUTHORITY AND PURPOSE.** This Code is adopted pursuant to the authority contained in the zoning enabling legislation of the **Illinois Compiled Statutes, Chapter 65, Section 5/11-13-1 et seq.** The intention of the City Council in enacting this Code is to obtain the objectives set out in Paragraph 5/11-13-1 of the enabling legislation, including: maintenance of the community’s health, safety and welfare; conservation and promotion of the value of land and buildings; and insurance and facilitation of the preservation of sites, areas, and structures of historical, architectural and aesthetic importance.

The City Council intends this Code to contribute to the realization of the mission of the 1987 Comprehensive Plan adopted by the Council, which is to:

- (A) Increase employment opportunities;
- (B) Improve standards of living;
- (C) Provide the highest quality educational, cultural and recreational opportunities;
- (D) Provide a safe, caring and healthy environment.

The City Council expresses its further intent that neither this Chapter nor any amendment to it may be challenged on the basis of any alleged nonconformity with any planning document.

40-1-4 **DEFINITIONS.**

(A) **Rules of Construction.** Unless otherwise expressly stated, the following words shall, for the purpose of this Code, have the meaning herein indicated. Any pertinent word or term not a part of this listing but vital to the interpretation of this Code shall be construed to have its usual legal definition.

- (1) the present tense includes the future tense.
- (2) the masculine gender includes the feminine and the neuter.

- (3) the singular number includes the plural, and vice versa.
- (4) the word "shall" is always mandatory; the word "may" is always permissive.

(B)

Terms.

- (1) **Accessory Use:** See Article II.
- (2) **Adjacent:** adjoining, bordering, touching or contiguous. If **two (2) lots** are separated by a street, public alley or public walk, they shall be deemed to be adjacent.
- (3) **Alley:** A public or private thoroughfare that affords only a secondary means of access to property abutting thereon and is not intended for general traffic.
- (4) **Alteration, Structural:** Any change in the bearing wall, columns, beams, girders, or supporting member of a structure, any change in the total floor area of a building, any change in size of a structure, whether by extending horizontally or by increasing in height, or any movement of a structure from one location to another.
- (5) **Apartment:** A room or suite of rooms, in a building other than a single-family dwelling, used exclusively for a residence by a single family.
- (6) **Basement:** A story of a building having more than **one-half (1/2)** its height below the level of the sidewalk opposite the middle of the front of the building or, if there is no sidewalk in front of the building, measured from the level of the surface of the ground at the point on the front lot line opposite the middle of the front of the building. For the purposes of this Code the word "basement" is synonymous with "cellar".
- (7) **Bed and Breakfast:** An operator-occupied residence providing accommodations for a charge to the public with no more than **five (5) guest rooms** for rent, in operation for more than **ten (10) nights** in a **twelve (12) month** period. Breakfast may be provided to the guests only. "Bed and breakfast" establishments shall not include in its definition motels, hotels, boarding houses, or food service establishments.
 - (a) "Guest room" as used in the definition of a "Bed and Breakfast" establishment shall mean a sleeping room intended to serve no more than **two (2)** transient guests per night.
- (8) **Boarding House:** A building in which meals, but not lodging, are regularly provided or offered for compensation to **three (3)** or more persons by prearrangement and for definite periods of time, but which is not open to transient customers.
- (9) **Building, Accessory:** A minor building that is located on the same lot as a principal building and that is used incidentally to a principal building or that houses an accessory use.

- (10) **Building, Principal:** The primary building on a lot or a building that houses a principal use.
- (11) **Certify:** Whenever this Code requires that some agency certify the existence of some fact or circumstance to the City, the City may require that such certification be made in any manner that provides reasonable assurance of the accuracy of the certification. By way of illustration, and without limiting the foregoing, the City may accept certification by telephone from some agency when the circumstances warrant it, or the City may require that the certification be in the form of a letter or other document.
- (12) **Child Care Facility:** Any facility for the care of children which requires licensing by the State of Illinois.
- (13) **Commercial Feed Lot:** Any tract on which the principal use is the raising of, or the concentrated feeding of livestock, fowl or edible animals for the sale of such animals or for the sale of products derived from such animals.
- (14) **Developer:** A person who is responsible for any undertaking that requires a zoning permit, special use permit, or sign permit.
- (15) **Development:** That which is to be done pursuant to a zoning permit, special use permit, or sign permit.
- (16) **Dwelling Unit:** An enclosure containing sleeping, kitchen, and bathroom facilities designed for and used or held ready for use as a residence by **one (1) family**.
- (17) **Family:** **One (1)** or more persons living together as a single housekeeping unit.
- (18) **Farm:** A tract of land used for the growing and storage of the usual agricultural products such as grain, vegetables, and fruit, as well as the raising thereon of the usual farm poultry and farm animals, such as horses, cattle, sheep, and swine. The term "farms" includes the utilization of such land for **one (1)** or more of the above uses including dairy farms with the necessary operations for treating or storing the product provided, however, that the operation of any accessory uses shall be secondary to that of the normal farming activities. The term "farms" excludes the raising of livestock except on adequately fenced tracts containing not less than **ten (10) acres** and having an average width of **three hundred (300) feet**, and excludes the raising of poultry except when on a tract which is adequately fenced and which contains not less than **three (3) acres**, but in no event shall such livestock or poultry be housed or confined within **two hundred (200) feet** of a tract of **one (1) acre** or less containing a single-family residence. Livestock or poultry may be raised only in quantities reasonably sufficient for the immediate use of and consumption by the occupants of the premises.

- (a) Any tract on which the principal use is the raising of fur-bearing animals, such as mink, muskrats, rabbits, etc., shall not be considered a farm.
 - (b) A commercial feed lot shall be considered a farm.
 - (c) Residential structures occupied by persons primarily engaged in farming are included in the term "farming". However, there shall not be more than **three (3)** dwelling units on any **one (1) farm**.
- (19) **Floodplain:** Any land area susceptible to be inundated by water from the base flood. As used in this Code, the term refers to that area designated as subject to flooding from the base flood (100-year flood) on the "Flood Boundary and Floodway Map" prepared by the U.S. Department of Housing and Urban Development, a copy of which is on file in the office of the City Clerk.
- (20) **Frontage:** That portion of a lot abutting a street or alley.
- (21) **Gross Floor Area:** The total area of a building measured by taking the outside dimensions of the building at each floor level intended for occupancy or storage.
- (22) **Handicapped Care Facility:** Any facility which is licensed by the State of Illinois for the care and treatment of handicapped individuals.
- (23) **Home Garden:** A private garden in which vegetables and fruits are raised for consumption by the gardener and his family and non of the produce thereof is sold or placed on the market.
- (24) **Home Occupation:**
- (a) A commercial activity that:
 - (i) is conducted by a person on the same lot (in a residential district) where such person resides, and
 - (ii) is not so insubstantial or incidental or is not so commonly associated with the residential use as to be regarded as an accessory use, but can be conducted without any significantly adverse impact on the surrounding neighborhood.
 - (b) Without limiting the generality of the foregoing, a use may not be regarded as having an insignificantly adverse impact on the surrounding neighborhood if:
 - (i) goods, stock in trade, or other commodities are displayed,
 - (ii) any on-premises retail sales occur,
 - (iii) more than **one (1) person** not a resident on the premises is employed permanently in connection with the purported home occupation,
 - (iv) it creates objectionable noise, fumes, odor, dust or electrical interference, or

- (v) more than **twenty-five percent (25%)** of the total gross floor area of residential buildings plus other buildings housing the purported home occupation, or more than **five hundred (500) square feet** of gross floor area (whichever is less), is used for home occupation purposes.
- (c) The following is a non-exhaustive list of examples of enterprises that may be home occupations if they meet the foregoing definitional criteria:
 - (i) the office or studio of a physician, dentist, artist, musician, lawyer, architect, engineer, teacher, or similar professional,
 - (ii) workshops, greenhouses, or kilns,
 - (iii) dressmaking or hairdressing studios.
- (25) **Hospital:** A building or portion thereof used for the treatment of sick, injured or infirm persons, and licensed as a hospital by the State of Illinois.
- (26) **Hotel or Motel:** includes every building or structure kept, used, maintained, advertised, and held out to the public to be a place where lodging, or lodging and food, or apartments, or suites, or other accommodations are offered for adequate pay to travelers and guests, whether transient, permanent or residential, in which **five (5)** or more rooms are used for the lodging, or lodging and food, or apartments, or suites, or other accommodations of such guests.
- (27) **Lawful Use:** Any use of a building or land which either conforms with the applicable use regulations or fails to conform with those regulations but qualifies and is permitted to continue to exist as a nonconforming use under the provisions of this or a prior Zoning Code.
- (28) **Lawfully Existing:** Existing in compliance with the provisions of an applicable Zoning Code but not necessarily in conformity with the use regulations of that Code.
- (29) **Loading Space:** An off-street space or berth on the same lot with a building, or contiguous to a group of buildings, for the temporary parking of a commercial vehicle while loading or unloading merchandise or materials, and which abuts upon a street, alley, or other appropriate means of access.
- (30) **Lot:**
 - (a) A parcel of land whose boundaries have been established by some legal instrument such as a recorded deed or a recorded map and which is recognized as a separate legal entity for purposes of transfer of title.

- (b) The permit-issuing authority and the owner of **two (2)** or more contiguous lots may agree to regard the lots as one lot if necessary or convenient to comply with any of the requirements of this Code.
- (31) **Lot Area:** The total area circumscribed by the boundaries of a lot, except that:
 - (a) when the legal instrument creating a lot shows the boundary of the lot extending into a public street right-of-way, then the lot boundary for purposes of computing the lot area shall be the street right-of-way line, or if the right-of-way line cannot be determined, a line running parallel to and **thirty (30) feet** from the center of the traveled portion of the street, and
 - (b) in a residential district, when a private road that serves more than **three (3)** dwelling units is located along any lot boundary, then the lot boundary for purposes of computing the lot area shall be the inside boundary of the traveled portion of that road.
- (32) **Lot, Corner:** A lot abutting **two (2)** or more streets at their intersection, or upon **two (2)** parts of the same street, such intersection streets or parts of the same street forming an interior angle of less than **one hundred thirty-five (135) degrees**.
- (33) **Lot Line, Front:** The line dividing a lot from the street right-of-way. In the case of multiple street frontages, the shortest equaling or exceeding **thirty (30) feet** in length shall be the front lot line.
- (34) **Lot Line, Rear:** The lot line opposite the front lot line. For purposes of establishing the required rear yard, in the case of an irregularly shaped or **three (3) sided** lot, it shall mean a line within the lot, **ten (10) feet** long, concentric with and at the maximum distance from the front lot line. A lot need not have a rear lot line.
- (35) **Lot Line, Side:** Any lot line other than a front or rear lot line. A side lot line separating a lot from a street shall be called a side street line. A side lot line separating a lot from another lot or lots shall be called an interior side lot line.
- (36) **Mini-Warehouse:** A building primarily containing rental compartments for storage of goods or materials not to be sold on the premises.
- (37) **Mobile Home:** A portable dwelling unit with a Red HUD sticker denoting mobile home, with all the following characteristics:
 - (a) designed for long term occupancy and to be transported after fabrication on its own wheels, or on a flat bed or other trailers or on detachable wheels.

- (b) arrives at the site where it is to be occupied as a portable dwelling unit complete and ready for occupancy except for minor and incidental unpacking and assembly operations, location on foundation supports, connection to utilities and the like.
- (38) **Nonconforming Lot:** A lot existing at the effective date of this Chapter (and not created for the purposes of evading the restrictions of this Chapter) that does not meet the minimum area requirement of the district in which the lot is located.
- (39) **Nonconforming Use:** A nonconforming situation that occurs when property is used for a purpose or in a manner made unlawful by the use regulations applicable to the district in which the property is located. This also refers to the activity that constitutes the use made of the property.
- (40) **Nursing Care Facility:** Any facility licensed by the State of Illinois for nursing care and treatment.
- (41) **Office:** A room or a suite of rooms used for the practice of a profession or for the conduct of a business which does not involve the sale of goods from the premises. The term does not include a personal service shop. If the goods or merchandise are sold for delivery on or from the premises otherwise than as a customary incident to the principal office use, then the premises shall be considered to be a store rather than an office.
- (42) **Open Space:** A yard, court, or the space between **two (2) buildings** or between a building and the boundary line of a parcel.
- (43) **Parking:** See Article IV, Division I.
- (44) **Permitted Use:** Any use of a building or land which is included in the list of permitted uses in the District in which the building or land is situated.
- (45) **Person:** An individual, trustee, executor, other fiduciary, corporation, firm, partnership, association, organization, or other entity acting as a unit.
- (46) **Planned Unit Development:** A development of a tract of land wherein the tract is subdivided and developed as a cohesive residential or other area having common grounds or recreational areas with a workable arrangement, by way of covenants running with the land, dedication, property owners associations or otherwise for the continuing existence of the common areas and maintenance thereof.
- (47) **Plat:** A map, plan, or layout showing the subdivision of land and indicating the location and boundaries of individual lots.
- (48) **Public Utility Services:** The erection, construction, alteration, or maintenance, by public utilities or municipal or other governmental agencies, of gas, electrical, steam or water transmission or

distribution systems, collection, communication, supply or disposal systems reasonably necessary for the furnishing of adequate City-wide, community or neighborhood services by such public utilities or municipal or other governmental agencies for the public health or safety or general welfare, but not including buildings. Public utility services shall be deemed to exclude customary connections maintained by the individual customer.

- (49) **Residential, Multi-Family:** A residential use consisting of a building containing **three (3)** or more dwelling units. For purposes of this definition, a building includes all dwelling units that are enclosed within that building, or attached to it by a common floor or wall (even the wall of an attached garage or porch).
- (50) **Residence, Single-Family:** A residential use consisting of a single detached building containing **one (1)** dwelling unit and located on a lot containing no other dwelling units.
- (51) **Residence, Two-Family:** A residential use consisting of a building containing **two (2)** dwelling units. If **two (2)** dwelling units share a common wall, even the wall of an attached garage or porch, the dwelling units shall be considered to be located in one building.
- (52) **Restaurant:** An establishment in which foods, refreshments or beverages are offered for sale for consumption in the building in which the establishment is located or at tables situated on the lot upon which the establishment is located.
- (53) **Retail Store:** A store in which goods are sold for delivery on or from the premises to the ultimate consumer.
- (54) **Service Station:** Any building or premises used for the dispensing, sale or offering for sale at retail of automobile fuels, oil and accessories. When the dispensing, sale or offering for sale is incidental to the conduct of a public garage, the building or premises shall be deemed to be a public garage.
- (55) **Sign:** See Article IV.
- (56) **Sign Permit:** See Article IV.
- (57) **Special Use Permit:** A permit issued by the Zoning Board of Appeals that authorizes the recipient to make use of property in accordance with the requirements of this Chapter as well as any additional requirements imposed by the Zoning Board of Appeals.
- (58) **Story:** That portion of a building included between the surface of any floor and the surface of the next floor above it, or if there be no floor above it, then the space between such 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. **One-half (1/2) story** is any story or space situated, wholly or partly in the roof, so designated, arranged or built to be used for storage or habitation.

- (59) **Street:** Any public or private way whose primary function is to furnish the chief means of vehicular access to the properties abutting it.
- (60) **Structure:** Anything constructed or erected.
- (61) **Structure, Alteration:** Any change in the structural members of a building, such as foundations, bearing walls, columns, beams, or girders.
- (62) **Trailer:** A portable dwelling unit designed as a temporary dwelling for travel, recreational and vacation uses which:
 - (a) is identified on the unit by the manufacturer as a travel trailer, or
 - (b) is carried on a truck or specially designed automobile or bus or truck, or
 - (c) is a specially designed automobile, truck or bus, or
 - (d) is in the form of a tent or expandable trailer or truck.
- (63) **Truck Terminal:** A premises which is used for loading or unloading of trucks upon which storage of cargo is incidental to the primary function of motor freight shipment, and which is designed to accommodate the simultaneous loading or unloading of **five (5)** or more trucks.
- (64) **Variation:** A grant of permission by the Zoning Board of Appeals that authorizes the recipient to do that which, according to the strict letter of this Chapter, he could not otherwise legally do.
- (65) **Warehouse:** A building used for the storage of goods for compensation or the storage of goods which will be subsequently transported to another location for sale or consumption.
- (66) **Yard:** An open space, other than a court, on the same lot with a building or group of buildings which open space lies between the building or group of buildings and a lot line and is unoccupied and unobstructed from the ground upward.
- (67) **Yard, Front:** A yard extending across the full width of the lot and lying between the front lot line of the lot and the nearest line of the building.
- (68) **Yard, Rear:** A yard extending across the full width of the lot and lying between the rear lot line of the lot and the nearest line of the building. The depth of a rear yard shall be the minimum distance between the building and rear lot line, measured at right angles to the rear line of the lot.
- (69) **Yard, Side:** An open, unoccupied space between the side lot line of the lot and the nearest line of the building and extending from the front yard to the rear yard, or, in the absence of either of such yards, to the front or rear lot lines, as may be. The width of a side yard shall be the minimum distance between the building and the side lot line, measured at right angles to the side line of the lot.
- (70) **Zoning Permit:** A permit issued by the Zoning Administrator that authorizes the recipient to make use of property in accordance with the requirements of this Code.

ARTICLE II – DISTRICTS AND USE REGULATIONS

40-2-1 COMPLIANCE WITH REGULATIONS.

(A) Applicability.

- (1) The regulations set forth by this Article for each district shall be minimum regulations and shall apply uniformly to each class or kind of structure or land except as set forth elsewhere in this Chapter.
- (2) No building, structure, or land shall be used or occupied, and no building or structure or part thereof shall be erected, constructed, reconstructed, or structurally altered unless in conformity with all of the regulations specified herein and for the district in which it is located.
- (3) The regulations, standards, rules, requirements, provisions, and restrictions set by this Chapter shall apply to all structures, uses, lots, and tracts of land created or established after the effective date of this Code and shall not be deemed to require any change in the structures, uses, lots, and/or tracts of land lawfully existing on the effective date of this Code except as expressly specified herein.
 - (a) No more than **one (1)** main building shall be erected on **one (1) lot**.
 - (b) Nothing in this Code shall be deemed to prohibit or regulate any public road or street improvement or any temporary structure incidental to that construction provided that the temporary structure shall be removed at the completion of such construction.
 - (c) No part of a yard, or other open space, or off-street parking or loading space required about or in connection with any building for the purpose of complying with this Code, shall be included as part of a yard, open space, or off-street parking or loading space similarly required for any other building.
 - (d) No yard or lot existing at the time of passage of this Code shall be reduced in dimension or area below the minimum requirements set forth herein. Yards or lots created after the effective date of this Code shall meet at least the minimum established by this Code.
 - (e) Every front, side, and rear yard shall be open to the sky, unobstructed by buildings or structures, except for accessory buildings in a rear yard.

- (B) **Restrictions.**
- (1) It shall be unlawful to lease, sell or convey a portion of an improved lot when the effect of such action is to reduce the number of parking spaces or open space on the lot below the minimum number of such parking spaces or open space required by this Code.
 - (2) It shall also be unlawful to lease, sell or convey a lot, or a portion of a lot, used for required off-street parking without providing other parking facilities which meet the requirements of this Code.

40-2-2 CATEGORIES AND PURPOSES OF DISTRICTS. In order to regulate and restrict the location of buildings erected, converted, enlarged or structurally altered for specific uses; to regulate the use of land and buildings; to regulate the intensity of the use of land and buildings; and to require off-street parking facilities for certain uses in particular areas of the City; the City of Sullivan, Illinois is hereby divided into the following districts:

(A) **R-1 Low Density Residence District.** This district is designed and intended to provide for single-family residences on relatively large lots to permit spacious development with modern safety standards, as well as compatible low density non-residential uses.

(B) **R-2 Medium Density Residence District.** This district is designed and intended to secure for the persons who reside there a comfortable, healthy, safe, and pleasant environment in which to live, sheltered from incompatible and disruptive activities that properly belong in nonresidential districts.

(C) **R-3 High Density Residence District.** This district is designed and intended to allow for two-family and multi-family structures in addition to single-family dwellings. The purposes contained in the definitions of R-1 and R-2 districts pertain here as well.

(D) **B-1 Low Density Business District.** This district is primarily designed and intended to accommodate retail and professional business uses. Such areas will also generally constitute transition or buffer zones between major arterial streets or more intensively developed commercial or business areas and residential districts.

(E) **B-2 Central Business District.** This district is designed and intended to accommodate a wide variety of commercial activities (particularly those that are pedestrian oriented) that will result in the most intensive and attractive use of the City's central business district.

(F) **I-1 Light Industrial District.** This district is designed and intended to provide for the range of light industrial activities, which by their nature, must be segregated from the lower intensity activities found in the residential and low density business districts. This segregation is intended to help secure the safety of the lower intensity districts.

(G) **I-2 Heavy Industrial District.** The heavy industrial district is designed and intended to provide for a broad range of light and heavy industrial activities. These uses are by their nature segregated from other zone districts.

40-2-3 ZONING MAP.

(A) Incorporation and Handling of Map.

- (1) There shall be a map known and designated as the Official Zoning Map, which shall show the boundaries of all zoning districts within the City's planning jurisdiction.
- (2) The Official Zoning Map dated **April 8, 1991** is adopted and incorporated herein by reference. This map and all notations, colors, references, legends, symbols, and text thereon pertaining to the zoning districts shall be as much a part of this Code as if fully described herein. This map shall be drawn on a durable material from which prints can be made, shall be dated, and shall be kept by the Zoning Administrator. It shall also be available for public reference in the office of the City Clerk.
- (3) Should the Official Zoning Map be lost, destroyed, or damaged, the Zoning Administrator may have a new map drawn on a durable material from which prints can be made. No further Council authorization or action is required so long as no district boundaries are changed in this process.
- (4) The Zoning Administrator shall keep copies of superseded prints of the Zoning Map for historical reference.

(B) Interpretation of Map and District Boundaries. The boundaries of the districts as shown on the map accompanying and made a part of this Code are generally intended to coincide with the center lines of streets and alleys or with platted lot lines. If, on the map, the boundary line of a district:

- (1) approximates the line of a street or alley the boundary line shall be construed to be the center line of the street or alley.
- (2) approximates the boundary line of a platted lot the district boundary line shall be construed to be the lot line.
- (3) divides a platted lot, or unplatted or unsubdivided property, into distinct parts the district boundary lines shown on the map shall be determined by the scale appearing on the map.

40-2-4 CLASSIFICATION OF LAND SUBSEQUENTLY ANNEXED.

(A) All land which may hereafter become a part of the incorporated area of the City, as a result of annexation, shall automatically be classified as R-1 Low Density Residence District, with the exception of land which shall be annexed pursuant to the terms and conditions of an annexation agreement executed between the City and a landowner, which shall have the classification stated in said agreement. **(Ord. No. 08-10; 04-28-08)**

(B) Within **three (3) months** of the date of such annexation the Planning Commission shall hold a public hearing, after notice as required for amendments to this Code.

(C) Within **thirty (30) days** after such hearing the Planning Commission shall report to the City Council on its recommendations for the classification of the annexed territory.

40-2-5 TABLE OF PERMISSIBLE USES. The following are permitted uses in the specific districts:

R-1	R-2	R-3	B-1	B-2	I-1	I-2	PERMISSIBLE USES
							Residential
Z	Z	Z	Z	Z			Single-family residences
S	Z	Z	Z	Z			Two-family residences
S	S	Z	Z	Z			Multi-family residences
							Accommodations
Z	Z	Z	Z				Bed and breakfast establishments
		Z	S				Boarding houses
		Z	Z				Hotels and motels
							Miscellaneous
Z	Z	Z	Z	Z	Z	Z	Farms
		Z	S				Mobile home parks
							Business
Z	Z	Z	Z	Z			Home occupations
		Z	S	Z	S		Recreation, amusement, entertainment
		S	Z	S			Services and enterprises related to animals
		Z	Z	Z		Z	Office, clerical, research and services not primarily related to goods or merchandise
			Z	Z	Z	Z	Sales and rental of goods, merchandise and equipment
			Z	S	S	S	Motor vehicle sales and service
			Z	Z			Restaurants, bars, night clubs
			Z				Mini-warehouses
			Z	Z	Z	Z	Newspaper publication
				S	S	S	Advertising sign or billboard
							Industrial (See Appendix "A")
							Public, Semi-Public
							Educational
Z	Z	Z	Z				Schools
Z	Z	Z	S	S			Religious facilities
		Z	Z	Z			Libraries and similar uses

(Ord. No. 09-04; 03-09-09)

R-1	R-2	R-3	B-1	B-2	I-1	I-2	PERMISSIBLE USES
							Institutional
Z	Z	Z	Z				Child care facility
S	S	Z	Z				Nursing care facility
S	S	S	S				Handicapped care facility
		S	Z				Hospitals
			Z	S			Penal and correctional facilities
							Other
S	S	S	S	S	S	S	Planned unit developments
S	S	S	S			S	Cemeteries
S	S	S	Z	Z	S	S	Funeral homes
		S	Z	Z		S	Bus stations, train stations

Legend

When used in connection with a particular use in the Table of Permissible Uses, the letter "Z" means that the use is permissible in the indicated zone with a zoning permit issued by the Zoning Administrator. The letter "S" means a special use permit must be obtained from the Zoning Board of Appeals.

40-2-6
(A)

PERMISSIBLE USES AND SPECIFIC EXCLUSIONS.
Liberal Construction of Table of Permissible Uses.

- (1) The presumption established by this Code is that all legitimate uses of land are permissible within at least **one (1)** zoning district in the City's planning jurisdiction. Therefore, because the list of permissible uses set forth in the Table of Permissible Uses cannot be all-inclusive, those uses that are listed shall be interpreted liberally to include other uses that have similar impacts to the listed uses.
- (2) Notwithstanding the above, all uses that are not listed in the Table of Permissible Uses, even given the liberal interpretation mandated by the language above, are prohibited. Nor shall the Table of Permissible Uses be interpreted to allow a use in one zoning district when the use in question is more closely related to another specified use that is permissible in other zoning districts.

(B) **Specific Exclusions.** Without limiting the generality of the foregoing provisions, the following uses are specifically prohibited in all districts:

- (1) any use that involves the manufacture, handling, sale, distribution, or storage of any highly combustible or explosive materials in violation of the City's Fire Prevention Code;
- (2) stockyards, slaughterhouses, rendering plants, commercial feed lots;

- (3) use of a travel trailer or motor home as a temporary or permanent residence, except that overnight occupancy may be allowed on an occasional basis for not more than **three (3) days**. Situations that do not comply with this subsection on the effective date of this Code are required to conform within **one (1) year**.
- (4) use of a motor vehicle parked on a lot as a structure in which, out of which, or from which any goods are sold or stored, any services are performed, or other business is conducted. Situations that do not comply with this subdivision on the effective date of this Code are required to conform within **thirty (30) days**.

40-2-7 ACCESSORY USES.

(A) **Definition.** Whenever an activity (which may or may not be separately listed as a principal use in Table of Permissible Uses) is conducted in conjunction with another principal use and the former use (1) constitutes only an incidental or insubstantial part of the total activity that takes place on a lot, or (2) is commonly associated with the principal use and integrally related to it, then the former use may be regarded as accessory to the principal use and may be carried on underneath the umbrella of the permit issued for the principal use.

(B) **Interpretation of Definition of Accessory Uses.** Without limiting the generality of the above subsection, the following activities, so long as they satisfy the general criteria set forth above, are specifically regarded as accessory to residential principal uses:

- (1) offices or studios within an enclosed building and used by an occupant of a residence located on the same lot as such building to carry on administrative or artistic activities of a commercial nature, so long as such activities do not fall within the definition of a home occupation;
- (2) hobbies or recreational activities of a noncommercial nature;
- (3) the renting out of **one (1) or two (2) rooms** within a single-family residence to not more than **two (2) persons** who are not part of the family that resides in the single-family dwelling;
- (4) yard sales or garage sales, so long as such sales are not conducted on the same lot for more than **three (3) days** (whether consecutive or not) during any **ninety (90) day** period.

(C) **Activities Not Regarded as Accessory.** The following activity shall not be regarded as accessory to a residential principal use and is prohibited in residential districts: storage outside of a substantially enclosed structure of any motor vehicle that is neither licensed nor operational.

(D) **No Zoning or Special Use Permits Needed for Certain Uses.** Notwithstanding any other provisions of this Chapter, no zoning or special use permit is necessary for the following uses;

- (1) streets;
- (2) electric power, telephone, telegraph, cable television, gas, water, and sewer lines, wires or pipes, together with supporting poles or structures, located within a public right-of-way;
- (3) neighborhood utility facilities located within a public right-of-way with the permission of the owner (state or town) of the right-of-way.

40-2-8 **CHANGE IN USE.** A substantial change in use of property occurs whenever the essential character or nature of the activity conducted on a lot changes. This occurs whenever:

(A) the change involves a change from one principal use category to another.

(B) a mere change in the status of property from unoccupied to occupied or vice versa does not constitute a change in use. Whether a change in use occurs shall be determined by comparing the two active uses of the property without regard to any intervening period during which the property may have been unoccupied, unless the property has remained unoccupied for more than **one hundred eighty (180) consecutive days** or has been abandoned.

ARTICLE III – INTENSITY REGULATIONS

40-3-1 APPLICABILITY. Except as otherwise provided, every principal and accessory building and use in the R-1, R-2, R-3, B-1, B-2, I-1 and I-2 districts shall be subject to the applicable standards set forth in the following Table of Intensity Regulations.

40-3-2 TABLE OF INTENSITY REGULATIONS.

Requirement	District						
	R-1	R-2	R-3	B-1	B-2	I-1	I-2
<u>Section 3.2 Lot Areas</u>							
Minimum Lot Size (in square feet)	8000	4000	4000	3000	----	3000	3000
<u>Section 3.4 Lot Widths</u>							
Minimum Lot Width (in linear feet)	80	50	50	25	----	50	50
<u>Section 3.5 Yards</u>							
Required Yards (in feet)							
Front	25	25	20	20	0	15	15
Side	10	10	8	8	0	8	8
Rear	20	12	12	12	0	12	12
<u>Section 3.6 Height</u>							
Maximum Height (in feet)	35	35	35	35	75	85	85

(Ord. No. 04-11; 05-24-04)

NOTE: Also refer to the related sections of this Article, whose provisions supplement the requirements of this Table. (Ord. No. 01-16; 10-08-01)

40-3-3 LOT AREAS.

- (A) All lots in Sullivan’s zoning districts shall have at least the amount of square footage indicated in the preceding table.
- (B) Lots used or to be used for more than one dwelling unit shall have a minimum area of **two thousand (2,000) square feet** per dwelling unit.

40-3-4 **LOT WIDTHS.**

(A) **Prohibition.** No lot may be created that is so narrow or otherwise so irregularly shaped that it would be impracticable to construct on it a building that:

- (1) could be used for purposes that are permissible in that zoning district and;
- (2) could satisfy any applicable yard requirements for that district.

(B) **Presumptive Standards.** Without limiting the generality of the foregoing standard, the preceding table indicates minimum lot widths that are recommended and are deemed presumptively to satisfy the standard set forth in **Section 40-3-4(A)**. The lot width shall be measured along a straight line connecting the points at which a line that demarcates the required yard from the street intersects with lot boundary lines at opposite sides of the lot.

(C) **Future Lots.** No lot created after the effective date of this Chapter that is less than the recommended width shall be entitled to a variation from any minimum yard requirement.

40-3-5 **YARDS.**

(A) **Minimum.** No portion of any building or any freestanding sign may be located on any lot closer to the street right-of-way line or centerline than is authorized in the table set forth in this Article.

(B) **Front.**

- (1) If the street right-of-way line is readily determinable (by reference to a recorded map, set irons, or other means), the front yard shall be measured from such right-of-way line. If the right-of-way line is not so determinable, the yard shall be measured by subtracting **one-half (1/2)** of the distance of the width of the street from the measurement of the yard from the street centerline.
- (2) Lots having a frontage on **two (2)** or more streets shall have a required front yard on each street frontage except that neither the buildable width nor depth of the lot shall be reduced to less than **thirty (30) feet**.
- (3) As used in this Section, the term "building" includes any substantial structure which by nature of its size, scale, dimensions, bulk, or use tends to constitute a visual obstruction or generate activity similar to that usually associated with a building. Without limiting the generality of the foregoing, the following structures shall be deemed to fall within this description:
 - (a) gas pumps and overhead canopies or roofs;
 - (b) fences adjacent to public street rights-of-way if such fences exceed **six (6) feet** in height and are substantially opaque.
- (4) Whenever a lot in a nonresidential district has a common boundary line with a lot in a residential district, and the property line yard requirement applicable to the residential lot is greater than that applicable to the nonresidential lot, then the lot in the

nonresidential district shall be required to observe the property line yard requirement applicable to the adjoining residential lot.

- (5) Front yard distances shall be measured from the street right-of-way line to a point on the lot that is directly below the nearest extension of any part of the building that is substantially a part of the building itself and not a mere appendage to it (such as a flagpole, etc.)

(C) **Side.** The provision of required side yards shall not reduce the buildable width of a lot to less than **thirty (30) feet**, except that a required side yard shall not be less than **five (5) feet** in the districts which require side yards.

(D) **Rear.** The provision of required rear and front yards shall not reduce the buildable depth of a lot to less than **thirty (30) feet** in length, except that a required rear yard shall not be less than **seven (7) feet**.

40-3-6 HEIGHT.

(A) **Interpretation.** For purposes of this Section:

- (1) The height of a building shall be the vertical distance measured from the mean elevation of the finished grade at the front of the building to the highest point of the building.
- (2) A point of access to a roof shall be the top of any parapet wall or the lowest point of a roof's surface, whichever is greater. Roofs with slopes greater than **seventy-five percent (75%)** are regarded as walls.

(B) **Certain Features Exempt From District Height Limitations.**

The following features are exempt from the district height limitations set forth in the Table of Intensity Regulations:

- (1) chimneys, church spires, elevator shafts, and similar structural appendages not intended as places of occupancy or storage;
- (2) flagpoles and similar devices;
- (3) heating and air conditioning equipment, solar collectors, and similar equipment, fixtures, and devices.
- (4) grain elevators.

(C) **Requirements for Height Exemptions for Certain Features.**

The features listed in **Section 40-3-6(B)** are exempt from the height limitations set forth in the Table of Intensity Regulations if they conform to the following requirements:

- (1) not more than **one-third (1/3)** of the total roof area may be consumed by such features;
- (2) the features described in **Section 40-3-6(B)** must be set back from the edge of the roof a minimum distance of **one (1) foot** for every foot by which such features extend above the roof surface of the principal building to which they are attached;

- (3) the Zoning Administrator may authorize or require that parapet walls be constructed (up to a height not exceeding that of the features screened) to shield the features listed in **Sections 40-3-6(B)(1) and 40-3-6(B)(3)** from view.

(D) **Fire Chief Certification Limitation.** Notwithstanding **Section 40-3-6(B)**, in any zoning district the vertical distance from the ground to a point of access to a roof surface of any nonresidential building or any multi-family residential building containing **four (4)** or more dwelling units may not exceed **thirty-five (35) feet** unless the Fire Chief certifies to the permit-issuing authority that such building is designed to provide adequate access for fire fighting personnel or the Building Inspector certifies that the building is otherwise designed or equipped to provide adequate protection against the dangers of fire.

ARTICLE IV

SPECIAL REGULATIONS

DIVISION I – PARKING AND LOADING

40-4-1 **DEFINITIONS.** Unless otherwise specifically provided or unless clearly required by the context, the words and phrases defined below shall have the meaning indicated when used in this Section.

(A) **Circulation Area.** That portion of the vehicle accommodation area used for access to parking or loading areas or other facilities on the lot. Essentially, driveways and other maneuvering areas (other than parking aisles) comprise the circulation area.

(B) **Driveway.** That portion of the vehicle accommodation area that consists of a travel lane bounded on either side by an area that is not part of the vehicle accommodation area.

(C) **Gross Floor Area.** The total area of a building measured by taking the outside dimensions of the building at each floor level intended for occupancy or storage.

(D) **Loading and Unloading Area.** That portion of the vehicle accommodation area used to satisfy the requirements of **Section 40-4-1**.

(E) **Vehicle Accommodation Area.** That portion of a lot that is used by vehicles for access, circulation, parking, and loading or unloading. It comprises the total of circulation areas, loading and unloading areas, and parking areas (spaces and aisles).

(F) **Parking Area Aisles.** That portion of the vehicle accommodation area consisting of lanes providing access to parking spaces.

(G) **Parking Space.** A portion of the vehicle accommodation area set aside for the parking of **one (1) vehicle**.

40-4-2 **NUMBER OF PARKING SPACES REQUIRED.**

(A) All developments in all zoning districts except in the B-2 district shall provide a sufficient number of parking spaces to accommodate the number of vehicles that ordinarily are likely to be attracted to the development in question.

(B) The presumptions established by this Article are that:

(1) a development must comply with parking standards set forth in the accompanying Table of Parking Requirements to satisfy the requirement stated in **Section 40-4-2(A)**, and;

(2) any development that does meet these standards is in compliance. However, the Table of Parking Requirements is only intended to establish presumptions and should be flexibly administered.

(C) When determination of the number of parking spaces required by the Table of Parking Requirements results in a requirement of a fractional space, any fraction of **one-half (1/2)** or less may be disregarded, while a fraction in excess of **one-half (1/2)** shall be counted as **one (1) parking space**.

(D) The City Council recognizes that the Table of Parking Requirements set forth in **Section 40-4-3** cannot and does not cover every possible situation that may arise. Thus, the inflexible application of the parking standards set forth in **Division II** may result in a development either with inadequate parking space or parking space in excess of its needs. The former situation may lead to traffic congestion or parking violations in adjacent streets as well as unauthorized parking in nearby private lots. The latter situation wastes money as well as space that could more desirably be used for valuable development or environmentally useful open space. Therefore, the Zoning Administrator may permit deviations from the presumptive requirements of **Division II** and may require more parking or allow less parking whenever he finds that such deviations are more likely to satisfy the standard set forth in **Section 40-4-2(A)**.

(E) Without limiting the generality of the foregoing, the Zoning Administrator may allow deviations from the parking requirements set forth in **Division II** when he finds that:

- (1) a residential development is irrevocably oriented toward the elderly, or
- (2) a business is primarily oriented to walk-in trade.

(F) Whenever the Zoning Administrator allows or requires a deviation from the presumptive parking requirements set forth in **Division II**, he shall enter on the face of the permit the parking requirement that he imposes and the reasons for allowing or requiring the deviation.

(G) If the Zoning Administrator concludes, based upon information he receives in the consideration of a specific development proposal, that the presumption established by **Division II** for a particular use classification is erroneous, he shall initiate a request for an amendment to the Table of Parking Requirements.

40-4-3 TABLE OF PARKING REQUIREMENTS.

PRINCIPAL USE	PARKING REQUIREMENTS
Residential	
Single-Family Residence	P1
Two-Family Residence	P1
Multiple-Family Residence	P2
Bed and Breakfast Establishments	P1 & P3
Boarding Houses	P1 & P13
Hotels and Motels	P3 & P4
Farms	P1
Mobile Home Parks	P1
Home Occupations	P1 & P5

40-4-4 PARKING SPACE DIMENSIONS.

(A) Subject to **Sections 40-4-4(B), (C), and (D)**, each parking space shall contain a rectangular area at least **nineteen (19) feet** long and **nine (9) feet** wide. Lines demarcating parking spaces may be drawn at various angles in relation to curbs or aisles, so long as the parking spaces so created contain within them the rectangular area required by this Section.

(B) In parking areas containing **ten (10)** or more parking spaces, up to **twenty percent (20%)** of the parking spaces need contain a rectangular area of only **seven and one-half (7 ½) feet** in width by **fifteen (15) feet** in length. If such spaces are provided, they shall be conspicuously designated as reserved for small or compact cars only.

(C) Wherever parking areas consist of spaces set aside for parallel parking, the dimensions of such parking spaces shall be not less than **twenty-two (22) feet** by **nine (9) feet**.

(D) In parking areas containing **ten (10)** or more parking spaces, **one (1)** handicapped parking space shall be provided for each **twenty-five (25)** required parking spaces up to **one hundred (100)** such required parking spaces, plus **one (1)** handicapped parking space for each **fifty (50)** additional required parking spaces in excess of **one hundred (100)**. Each handicapped parking space shall be at least **nineteen (19) feet** long and **sixteen (16) feet** wide, and shall be clearly marked as being reserved for handicapped parking.

40-4-5 REQUIRED WIDTHS OF PARKING AREA AISLES AND DRIVEWAYS.

(A) Parking area aisle widths shall conform to the following table, which varies the width requirement according to the angle of parking.

Parking Angle (degrees)	0	30	45	60	90
One-Way Traffic (feet)	13	11	13	18	24
Two-Way Traffic (feet)	19	20	21	23	24

(B) Driveways shall be not less than **ten (10) feet** in width for one-way traffic and **eighteen (18) feet** in width for two-way traffic, except that **ten (10) foot** wide driveways are permissible for two-way traffic when:

- (1) the driveway is not longer than **fifty (50) feet**;
- (2) it provides access to not more than **six (6) spaces** and;
- (3) sufficient turning space is provided so that vehicles need not back into a public street.

40-4-6 GENERAL DESIGN REQUIREMENTS.

(A) Unless no other practicable alternative is available, vehicle accommodation areas shall be designed so that, without resorting to extraordinary movements, vehicles may exit such areas without backing onto a public street. This requirement does not apply to parking

areas consisting of driveways that serve **one (1)** or **two (2)** dwelling units, although backing onto arterial streets is discouraged.

(B) Vehicle accommodation areas of all developments shall be designed so that sanitation, emergency, and other public service vehicles can serve such developments without the necessity of backing unreasonable distances or making other dangerous or hazardous turning movements.

(C) Every vehicle accommodation area shall be designed so that vehicles cannot extend beyond the perimeter of such area onto adjacent properties or public rights of way. Such areas shall also be designed so that vehicles do not extend over sidewalks or tend to bump against or damage any wall, vegetation, or other obstruction.

(D) Circulation areas shall be designed so that vehicles can proceed safely without posing a danger to pedestrians or other vehicles and without interfering with parking areas.

40-4-7 **VEHICLE ACCOMMODATION AREA SURFACES.** Vehicle accommodation area that include lanes for drive-up windows for food services shall be graded and surfaced with asphalt, concrete, chip and seal or other material that will provide equivalent protection against dust.

40-4-8 **JOINT USE OF REQUIRED PARKING SPACES.**

(A) **One (1)** parking area may contain required spaces for several different uses, but except as otherwise provided in this Section, the required spaces assigned to one use may not be credited to any other use.

(B) To the extent that developments that wish to make joint use of the same parking spaces operate at different times, the same spaces may be credited to both uses. For example, if a parking lot is used in connection with an office building on Monday through Friday but is generally **ninety percent (90%)** vacant on weekends, another development that operates only on weekends could be credited with **ninety percent (90%)** of the spaces on that lot. Or, if a church parking lot is generally occupied only to **fifty percent (50%)** of capacity on days other than Sunday, another development could make use of **fifty percent (50%)** of the church lots spaces on those other days.

(C) If the joint use of the same parking spaces by **two (2)** or more principal uses involves satellite parking spaces, then the provisions of **Section 40-4-9** (Satellite Parking) are also applicable.

40-4-9 **SATELLITE PARKING.**

(A) If a number of off-street parking spaces required by this Article cannot reasonably be provided on the same lot where the principal use associated with these parking spaces is located, then spaces may be provided on adjacent or nearby lots in accordance with the provisions of this Section. These off-site spaces are referred to in this Section as satellite parking spaces.

(B) All such satellite parking spaces (except spaces intended for employee use) must be located within **four hundred (400) feet** of a public entrance of a principal building housing the use associated with such parking, or within **four hundred (400) feet** of the lot on which the use associated with such parking is located if the use is not housed within any principal building. Satellite parking spaces intended for employee use may be located within any reasonable distance.

(C) The developer wishing to take advantage of the provisions of this Section must present satisfactory written evidence that he has the permission of the owner or other person in charge of the satellite parking spaces to use such spaces. The developer must also sign an acknowledgement that the continuing validity of his permit depends upon his continuing ability to provide the requisite number of parking spaces.

40-4-10 SPECIAL PROVISIONS FOR LOTS WITH EXISTING BUILDINGS. Notwithstanding any other provisions of this Article, whenever:

(A) there exists a lot with **one (1)** or more structures on it constructed before the effective date of this Article and;

(B) a change in use that does not involve any enlargement of a structure is proposed for such lot and;

(C) the parking requirements contained in the Table of Parking Requirements (**Section 40-4-3**) that would be applicable as a result of the proposed change cannot be satisfied on such lot because there is not sufficient area available on the lot that can practicably be used for parking;

then the developer need only comply with the requirements contained in that table to the extent that:

(D) parking space is practicably available on the lot where the development is located and;

(E) satellite parking space is reasonably available.

However, if satellite parking subsequently becomes reasonably available, then it shall be a continuing condition of the permit authorizing development on such lot that the developer obtain satellite parking when it does become available.

40-4-11 LOADING AND UNLOADING AREAS.

(A) Subject to **Section 40-4-11(E)**, whenever the normal operation of any development requires that goods, merchandise, or equipment be routinely delivered to or shipped from that development, a sufficient off-street loading and unloading area must be provided in accordance with this Section to accommodate the delivery or shipment operations in a safe and convenient manner.

(B) The loading and unloading area must be of sufficient size to accommodate the numbers and types of vehicles that are likely to use this area, given the nature of the development in question. The following table indicates the number and size of spaces that,

presumptively, satisfy the standard set forth in this subsection. However, the Zoning Administrator may require more or less loading and unloading area if reasonably necessary to satisfy the foregoing standard.

Gross Leasable Area of Building (square feet)	Number of Spaces
1,000 – 19,999	1
20,000 – 69,999	2
70,000 – 127,999	3
128,000 – 191,999	4
192,000 – 255,999	5
256,000 – 319,999	6
320,000 – 391,999	7

Plus **one (1) space** for each additional **seventy-two thousand (72,000) square feet** or fraction thereof.

* Minimum dimensions of **twelve (12) feet** by **fifty-five (55) feet** and overhead clearance of **fourteen (14) feet** from street grade required.

(C) Loading and unloading areas shall be so located and designed that the vehicles intended to use them can:

- (1) maneuver safely and conveniently to and from a public right of way, and
- (2) complete the loading and unloading operations without obstructing or interfering with any public right of way or any parking space or parking lot aisle.

(D) No area allocated to loading and unloading facilities may be used to satisfy the area requirements for off-street parking, nor shall any portion of any off-street parking area be used to satisfy the area requirements for loading and unloading facilities.

(E) Whenever there exists a lot with **one (1)** or more structures on it constructed before the effective date of this Article, and a change in use that does not involve any enlargement of a structure is proposed for such lot, and the loading area requirements of this Section cannot be satisfied because there is not sufficient area available on the lot that can practicably be used for loading and unloading, then the developer need only comply with this Section to the extent reasonably possible.

40-4-12 - 40-4-13 RESERVED.

DIVISION II – MOBILE HOME PARK REGULATIONS

40-4-14 REGULATIONS.

(A) In any district in which mobile home parks are permitted, the following regulations and minimum standards shall apply:

- (1) the minimum area of any tract used for a mobile home park shall be **two hundred thousand (200,000) square feet**.
- (2) an entrance shall be provided for the mobile home park with the width of **sixty-five (65) feet** tapered to the mobile home park street with an arc on each side made by striking an arc on each side with a radius of **thirty-two and one-half (32 ½) feet** from a center point at the intersection of **two (2) thirty-two and one-half (32 ½) foot** lines drawn perpendicular to the curb line of the street from which access is made and perpendicular to the curb line of the mobile home park street.
- (3) the minimum width of the tract containing mobile home stands and buildings open to the occupants shall be **one hundred fifty (150) feet**.
- (4) the tract shall comprise a single plot except where the site is divided by public streets or alleys, or where the total property includes separate parcels for necessary utility plants with permanent rights-of-way and easements for connection and access or for other structures necessary to the park, but not open generally to the occupants.

(B) The minimum number of spaces completed and ready for occupancy before first occupancy is permitted shall be **five (5) spaces**.

(C) **Length of Residential Occupancy.** No space shall be rented for residential use of a mobile home in any such park except for periods of **thirty (30) days** or more and no mobile home shall be admitted to the park unless it has facilities for connection to the sanitary sewer service of the City and the water supply of the City.

(D) Convenience establishments of a commercial nature including, stores, coin-operated laundry and dry cleaning establishments and laundry and dry cleaning agencies, and beauty shops and barber shops, may be permitted in mobile home parks subject to the following restrictions: such establishments and the parking areas primarily related to their operations shall not occupy more than **ten percent (10%)** of the area of the park, shall be subordinate to the residential use and character of the park, shall be located, designed and intended to serve frequent trade or service needs of persons residing in the park, and shall present no visible evidence of their commercial character from any portion of any residential district outside the park. The owner/s or operator/s of a mobile home park may maintain, within the confines of the park, an office facility for the purpose of selling and/or purchasing of mobile homes to be used exclusively within the subject mobile home park. Sales or purchases of mobile homes to be used or moved outside of the mobile home park are prohibited unless such sale or purchase is for the sole purpose of immediate removal and demolition of said mobile home. **(Ord. No. 17-7; 03-27-17)**

(E) The minimum lot area shall be **four thousand (4,000) square feet** for each mobile home and off-street parking shall be provided on the premises or adjacent premises for **two (2)** cars for each lot.

40-4-15 - 40-4-16 RESERVED.

DIVISION III – PLANNED UNIT DEVELOPMENT

40-4-17 **PURPOSE.** In any district, in order to permit planned diversification in the location of structures of the same general use and to improve circulation and other site qualities, while insuring adequate standards, **one (1)** or more structures may be erected and maintained on the same lot, or several lots regardless of size in the same ownership may be combined into one special plan covering a planned building group, provided that the tract of land to be included is at least **forty thousand (4,000) square feet** in area, or is bounded on all sides by streets or public open spaces.

40-4-18 **APPLICATION REQUIREMENTS.** All applications for approval of a special plan hereunder shall be filed with the Planning Commission by the owner or owners of the entire land area to be included within the special plan and shall contain such information and representations required by this Code or deemed necessary by the Planning Commission and the City Council, and shall include plats and plans showing at least the following details, where applicable, drawn to scale:

(A) the area which will be included within the special plan and a description thereof.

(B) all public and private rights-of-way and easements bounding and intersecting the planned area which are proposed to be continued, created, relocated or abandoned.

(C) the location of each existing and each proposed structure in the area and approximate location of entrances and loading points thereof.

(D) all curb cuts, driving lands, parking areas, loading areas, public transportation points, street signs and illumination facilities for the same.

(E) all pedestrian walks, malls and open areas.

40-4-19 **HEARING.** The Planning Commission shall fix a time for a public hearing on the special plan and give notice of the hearing in the manner and for the length of time prescribed by **Article V**. At the hearing any interested person or party may appear and be heard either in person or by his agent or attorney. The Planning Commission shall hear evidence and arguments upon each of the following questions:

(A) Will neighboring property be adversely affected by the development of the tract under the plan?

(B) Is there anything in the plan which is inconsistent with the intent and purpose of this Code to promote the public health, safety, morals, and general welfare?

(C) Under the proposed plan, can the tract or any portion of it be used for any purpose other than those permitted in the R-1, R-2 or R-3 districts, provided that the special plan is for a residential development?

(D) Under the proposed plan, can the tract or any portion of it be used for any purpose other than those permitted in the B-1 or B-2 districts, provided that the special plan is for a commercial development?

(E) Under the proposed plan, can the tract or any portion of it be used for any other purpose than those permitted in the I district, provided that the special plan is for an industrial development?

(F) Is the land coverage by buildings, exclusive of streets, under the plan, greater than **fifty percent (50%)** for a business or industrial development?

(G) Does the plan omit any necessary street or street right-of-way?

40-4-20 **ADDITIONAL PROVISIONS.** All special plans submitted hereunder shall also make due provision for:

(A) adequate design of grades, paving, gutters, and drainage to handle storm waters, prevent erosion and formation of dust.

(B) adequate, safe and convenient arrangement of pedestrian circulation facilities, roadways, driveways, off-street parking, loading areas and illumination.

(C) open space at external boundaries which will be landscaped and maintained at least equal to that which is required on abutting property.

(D) in residential groups, an adequate and safe location of play areas for children, and other recreational areas shall be provided.

(E) in business and industrial groups near or abutting residential districts, screening to reduce the visual encroachments on residential privacy.

(F) the placement of residential, business and industrial groups in such a manner so as to produce a compatible arrangement.

(G) accessibility for emergency vehicles.

(H) in buildings containing dwelling units, walls containing main window exposure or main entrance shall be so oriented as to insure adequate light and air.

(I) street improvements and street right-of-way dedications shall be made in conformance with any applicable Subdivision Code.

40-4-21 **PROCEDURE.**

(A) Within **thirty (30) days** after the hearing, the Planning Commission shall submit its finding and recommendation to the City Council.

(B) If the Planning Commission finds from evidence produced at the hearing that the answer to each of the foregoing applicable questions, under **Section 40-4-19** is in the negative, and further, that in its judgment due consideration had been given to the remaining points under **Section 40-4-20**, it shall recommend the approval of the plans.

(C) If it finds that the answer to **one (1)** or more of the applicable questions, under **Section 40-4-19**, is in the affirmative, and, further, that, in its judgment, due consideration had not been given to the remaining points, under **Section 40-4-20**, it shall recommend that the plan be disapproved. The Planning Commission report shall include a specific finding of fact on each of the foregoing applicable questions.

40-4-22 APPROVAL OF PLAN. If the Council, after receiving the report of the Commission, approves the plan, then it may amend this Code and waive regulations in conflict with the plan as to the tract so proposed to be developed.

40-4-23 UNIFORMITY REQUIRED. All special plans approved by the City Council shall limit and control the issuance and validity of building and zoning construction permits and occupancy or use permits and shall restrict and limit construction, location, use and operation of all land conditions and limitations set forth in such plans; all regulations shall, however, be uniform for each class or kind of building throughout each district, provided that upon application for approval to the Planning Commission, based only upon a showing of engineering necessity thereof, minor changes in the location of structures may be permitted if such minor changes will not cause any of the following:

- (A) a change in character of the development;
- (B) an increase in the coverage of structures;
- (C) an increase in the intensity of use;
- (D) an increase in the problems of traffic circulation and public utilities;
- (E) a reduction in approved open space;
- (F) a reduction of off-street parking and loading space.

40-4-24 DEDICATIONS AND CERTIFICATIONS. Prior to the issuance of a building permit by the Zoning Administrator, all required street dedications shall have been made and certification of same shall be made to the Zoning Administrator.

40-4-25 AMENDMENT AND WITHDRAWAL OF PLANS. Pursuant to the same procedure and subject to the same limitations and requirements by which plans were approved, all plans for a planned development unit may be amended or withdrawn.

40-4-26 - 40-4-29 RESERVED.

DIVISION IV – SIGN REGULATIONS

40-4-30 **PURPOSE.** This Section is intended to promote the public safety and welfare by controlling the number of signs in the community, and by insuring adequate spacing of such signs so that confusion is reduced and so that businesses, organizations, and others can more effectively communicate with the public. It is further intended to promote the public safety and welfare by regulating the size, height, location and general characteristics of signs, to protect and enhance the physical appearance of the community and the scenic value of the surrounding area, and by regulating signs located near to or visible from public property such as streets, highways, parks, schools, and hospitals where such signs could jeopardize the public's investment in these facilities.

40-4-31 **DEFINITIONS.** Unless otherwise specifically provided, or unless clearly required by the context, the words and phrases defined in this Section shall have the meaning indicated when used in this Article.

(A) **Sign.** Any device that is sufficiently visible to persons not located on the lot where such device is located to accomplish either of the following objectives:

- (1) to attract the attention of such persons or,
- (2) to communicate information to them.

(B) **Billboard.** An off-premises sign owned by a person, corporation, or other entity that engages in the business of selling the advertising space on that sign.

(C) **Effective Date of this Section.** The effective date of this Section as originally adopted, or the effective date of an amendment to it if the amendment makes a sign nonconforming.

(D) **Freestanding Sign.** A sign that is attached to, erected on, or supported by some structure (such as a pole, mast, frame, or other structure) that is not itself an integral part of, or attached to, a building or other structure whose principal function is something other than the support of a sign. A sign that stands without supporting elements, such as a "sandwich sign", is also a freestanding sign. If the message is removed from a structure that was originally designed and used as a freestanding sign, this structure shall still be considered a sign.

(E) **Internally Illuminated Signs.** Signs where the source of the illumination is inside the sign and light emanates through the message of the sign, rather than being reflected off the surface of the sign from an external source. Without limiting the generality of the foregoing, signs that consist of or contain tubes that:

- (1) are filled with neon or some other gas that glows when an electric current passes through it an
- (2) are intended to form or constitute all or part of the message of the sign, rather than merely providing illumination to other parts of the sign that contain the message, shall also be considered internally illuminated signs.

(F) **Off-Premises Sign.** A sign that draws attention to or communicates information about a business, service, commodity, accommodation, attraction, or other enterprise or activity that exists or is conducted, sold, offered, maintained, or provided at a location other than the premises on which the sign is located.

(G) **On-Premises Sign.** A sign that drawn attention to or communicates information about a business, service, commodity, accommodation, attraction, or other enterprise or activity that exists or is conducted, sold, offered, maintained, or provided on the premises where the sign is located.

(H) **Temporary Sign.** A sign that:

- (1) is used in connection with a circumstance, situation, or event that is designed, intended, or expected to take place or to be completed within a reasonably short or definite period after the erection of such sign, or
- (2) is intended to remain on the location where it is erected or placed for a period of not more than **thirty (30) days**. If a sign display area is permanent but the message displayed is subject to periodic changes, that sign shall not be regarded as temporary.

40-4-32 GENERAL PROHIBITION. Any sign not expressly permitted by this Code is prohibited in the City. In addition, the following prohibitions shall apply to all signs, including those exempted from the permit requirement:

(A) no sign may be located so that it substantially interferes with the view necessary for motorists to proceed safely through intersections or to enter onto or exit from public streets or private roads.

(B) no sign may be erected so that by its location, color, size, shape, nature, or message it would tend to obstruct the view of or be confused with official traffic signs or other signs erected by governmental agencies.

(C) freestanding signs shall be securely fastened to the ground or to some other substantial supportive structure so that there is virtually no danger that either the sign or the supportive structure may be moved by the wind or other forces of nature and cause injury to persons or property.

(D) no sign or supporting structure may be located in or over the traveled portion of any public right of way unless the sign is attached to a structural element of a building and an encroachment permit has been obtained from the City.

(E) no sign may be affixed to public property, including but not limited to: utility poles, street lights, traffic signs, and public buildings without the express authorization of the City.

40-4-33 PERMIT REQUIRED FOR SIGNS.

(A) Signs not approved or exempted may be constructed, erected, moved, enlarged, illuminated or substantially altered only in accordance with a sign permit issued by the Administrator.

- (1) Sign permit applications and sign permits shall be governed by the same provisions of this Code applicable to zoning permits.
- (2) If plans submitted for a zoning permit or special use permit include sign plans in sufficient detail that the permit issuing authority can determine whether the proposed sign or signs comply with the provisions of this Code, then issuance of the requested zoning or special use permit shall constitute approval of the proposed sign or signs.
- (3) In the case of a lot occupied or intended to be occupied by multiple business enterprises (e.g., a shopping center), sign permits shall be issued in the name of the lot owner or his agent rather than in the name of the individual business enterprise requesting a particular sign.

(B) The following operations shall not be considered as creating a sign, and shall not require a sign permit:

- (1) The changing of the advertising copy or message on an approved painted or printed sign, or on changeable letter panels or bulletin boards specifically designed for the use of replaceable copy.
- (2) Painting, repainting, cleaning, and other normal maintenance and repair of a sign or sign structure.

40-4-34 **DETERMINING THE NUMBER OF SIGNS.** For the purpose of determining the number of signs, a sign shall be considered to be a single display surface or display device containing elements organized, related, and composed to form a unit. Where matter is displayed in a random manner without organized relationship of elements, each element shall be considered a single sign.

40-4-35 **COMPUTATION OF SIGN AREA.**

(A) The area of a sign shall be computed as follows:

- (1) **Flat Sign.** The area of the smallest convex geometric figure encompassing the sign.
- (2) **Volumetric Sign.** The area of the smallest convex geometric figure encompassing the maximum projected area of the volume on a flat plane which completely encloses the extreme limits of the sign, including any frame, structural trim, or other material forming an integral part of the display as used to differentiate such sign from the background against which it is placed. Such measurement shall exclude the necessary supports or uprights on which the sign is placed, unless the supports or uprights constitute part of the display.

(B) **Measurement of Freestanding Sign Height.** Freestanding signs shall be measured from the point where the sign is placed in the ground to the uppermost extremity of the sign.

(C) **Measurement of Business Frontage.** Business frontage is the lineal footage of a lot, facing the public right-of-way, owned or rented by a person, business, or enterprise, and intended for business usage.

40-4-36 GENERAL SIGN PROVISIONS FOR SIGNS ALLOWED IN SPECIFIC DISTRICTS WITH A PERMIT. The following tables list the requirements for specific types of signs in particular districts.

Districts Permitted	Maximum Number Permitted	Maximum Area of Sign	Maximum Height of Sign	Location of Sign
B-1	Each business is permitted one sign per business frontage up to 300 feet, and one additional sign for each 300 feet of business frontage thereafter. For a corner lot the frontage on each street shall be counted separately.	300 square feet	35 feet if on highway frontage, 25 feet at minimum setback line and 1 foot per 2 feet additional setback, up to 35 feet maximum.	Signs shall conform to the setback requirements for structures in the applicable district. No freestanding signs permitted within 100 feet of any residential district where the nearest lot contains a dwelling unit, public school, church, park, hospital, or nursing care or similar facility.
B-2		50 square feet	25 feet at minimum setback line and 1 foot per 2 feet additional setback, up to 35 feet maximum.	
I-1 and I-2		150 square feet	25 feet at minimum setback line And 1 foot per 2 feet additional setback up to 40 feet maximum.	

Table 2: On-Premise Wall Signs and Wall Mounted Signs

Districts Permitted	Maximum Number Permitted	Maximum Area of Sign	Maximum Height of Sign	Location of Sign
B-1	No limit	40 % of wall area	N/A	Signs shall not extend beyond the top or ends of the wall surface on which they are placed.
B-2		40 % of wall area		
I-1 and I-2		50% of wall area		

Table 3: On-Premise Roof Signs

Districts Permitted	Maximum Number Permitted	Maximum Area of Sign	Maximum Height of Sign	Location of Sign
B-1	One per premise, except no on-premises roof sign permitted if an on-premise freestanding sign exists on the same premise.	75 square feet	9 feet as measured from that part of the roof immediately below sign.	Sign must be located wholly within the roof area of structure.
B-2		50 square feet	but in no case shall the height exceed maximum height authorized in zoning district.	
I-1 and I-2		100 square feet	11 feet as measured from the part of roof immediately below sign, but in no case shall height exceed maximum height authorized in zoning district.	

Table 4: On-Premise Projecting Signs

Districts Permitted	Maximum Number Permitted	Maximum Area of Sign	Maximum Height of Sign	Location of Sign
B-1	One per business frontage, except that no on-premise projecting sign is permitted if more than one on-premises freestanding or roof sign exists on the same frontage.	32 square feet	9 foot minimum clearance above ground. No sign shall extend above that portion of the roof immediately adjacent to the sign. No sign shall project more than 5 feet from the fact of the building to which it is attached.	Not to extend over any public right of way, except that if a business in the B-2 district is within a building whose face is less than 5 feet from the property line, the projecting sign may extend up to 5 feet over the public right of way.
B-2				

Table 5: Off-Premises Freestanding Signs

Districts Permitted	Maximum Number Permitted	Maximum Area of Sign	Maximum Height of Sign	Location of Sign
B-1*	One per ** Premise, except none permitted if the business or industry	32 square feet (Sign can be shared by more than one business)	20 feet	Signs shall conform to the setback requirements for structures
B-2*	already has their own freestanding sign on premise.	32 square feet (Sign can be shared by more than one business)	20 feet	in the applicable district. No signs can interfere with
I-1 and I-2 *		32 square feet (Sign can be shared by more than one business)	20 feet	the line of sight for traffic

- * For the purposes of this Section, the property where the proposed sign is to be located must currently be used as Business or Industrial. If the lot is vacant, previous use of lot applies. It is the intent of this Section to not allow signs on property used as residential.
- ** It is the intent of the City to limit the number of freestanding off-premise signs in the City, while trying to allow every business to have access to a sign. No business can have more than one off-premise sign in the City.

40-4-37 PERMIT EXEMPTIONS AND REGULATIONS FOR SPECIAL SIGNS NOT PROVIDED FOR IN SECTION 40-4-36.

(A) The signs described in this Section are in addition to the signs permitted in the respective use districts, but do not require a permit and are subject to the conditions and limitations set forth in this Section as well as the general prohibitions on all signs:

- (1) signs not exceeding **four (4) square feet** in area that are customarily associated with residential use and that are not of a commercial nature, such as:
 - (a) signs giving property identification names or numbers or names of occupants,
 - (b) signs on mailboxes or newspaper tubes, and
 - (c) signs posted on private property relating to private parking or warning the public against trespassing or danger from animals;
- (2) signs erected by or on behalf of or pursuant to the authorization of a governmental body, including legal notices, identification and informational signs, and traffic, directional, or regulatory signs;
- (3) official signs of a noncommercial nature erected by public utilities;
- (4) flags, pennants, or insignia of any governmental or nonprofit organization when not displayed in connection with a commercial promotion or as an advertising device;
- (5) integral decorative or architectural features or works do not contain letters, trademarks, moving parts, or lights;
- (6) signs directing and guiding traffic on private property that do not exceed **four (4) square feet** each and that bear no advertising matter;
- (7) church bulletin boards, church identification signs, and church directional signs that do not exceed **one (1)** per abutting street;
- (8) signs painted on or otherwise permanently attached to currently licensed motor vehicles that are not primarily used as signs;
- (9) signs proclaiming religious, political, or other noncommercial messages that do not exceed **one (1)** per abutting street and **sixteen (16) square feet** in area and that are not internally illuminated.

(B) **Temporary Signs.** The following temporary signs do not require a permit:

- (1) signs containing the message that the real estate on which the sign is located (including buildings) is for sale, lease, or rent, together with information identifying the owner or agent. Such signs may not exceed **six (6) square feet** in area and shall be removed immediately after sale, lease, or rental. For lots of less than **five (5) acres**, a single sign on each street frontage may be erected. For lots of **five (5) acres** or more in area

and having a street frontage in excess of **four hundred (400) feet**, a second sign not exceeding **four (4) square feet** in area may be erected;

- (2) **Construction Site Identification Signs.** Not more than **one (1)** such sign may be erected per site, and it may not exceed **thirty-two (32) square feet** in area. Such signs shall not be erected prior to the issuance of a building permit and shall be removed within **ten (10) days** after the issuance of the final occupancy permit;
- (3) **Signs Erected in Connection with Elections or Political Campaigns.** Such signs shall not be erected until **forty-five (45) days** before the election and shall be removed within **three (3) days** following the election or conclusion of the campaign. Signs for political rallies, fund raisers, etc. may be erected **two (2) days** prior to the event and must be removed the following day. No sign may exceed **thirty-two (32) square feet** in surface area;
- (4) signs indicating that a special event such as a grand opening, fair, carnival, circus, festival, or similar event is to take place. Such signs may be erected not sooner than **thirty (30) days** before the event and must be removed not later than **three (3) days** after the event;
- (5) temporary signs not covered in the foregoing categories do not need a permit, so long as such signs meet the following restrictions:
 - (a) not more than **one (1)** such sign may be located on any lot.
 - (b) no such sign may exceed **four (4) square feet** in surface area.
 - (c) such signs may not be displayed for longer than **three (3) consecutive days** nor more than **ten (10) days** out of any **three hundred sixty-five (365) day** period;
- (6) other temporary signs not listed in **Section 40-4-37(B)** shall be regarded and treated in all respects as permanent signs, except that temporary signs shall not be included in calculating the total amount of permitted sign area.

40-4-38 **ILLUMINATED SIGNS AND SIGNS CONTAINING LIGHTS.**

- (A) Unless otherwise prohibited by this Code, signs may be illuminated if such illumination is in accordance with this Section.
- (B) No sign within **one hundred fifty (150) feet** of a residential zone may be illuminated between the hours of **Midnight** and **6:00 A.M.**, unless the impact of such lighting beyond the boundaries of the lot where it is located is entirely inconsequential.
- (C) Lighting directed toward a sign shall be shielded so that it illuminates only the face of the sign and does not shine directly into a public right of way or residential premises.
- (D) Except as herein provided, internally illuminated signs are not permissible in the R-1, R-2, and R-3 zoning districts.
- (E) Except as to temporary signs erected in connection with the observance of holidays;
 - (1) illuminated tubings or strings of lights that outline property lines, sales areas, roof lines, doors, windows, or similar areas are prohibited;
 - (2) no sign may contain or be illuminated by flashing or intermittent lights or lights of changing degrees of intensity, except signs indicating the time, date or weather conditions or public service messages.

40-4-39 **NONCONFORMING SIGNS.**

- (A) Nonconforming signs that were otherwise lawful on the effective date of this Code may be continued.

(B) No person may engage in any activity that causes an increase in the extent of nonconformity of a nonconforming sign. Without limiting the generality of the foregoing, no nonconforming sign may be enlarged or altered in such a manner as to aggravate the nonconforming condition. Nor may illumination be added to any nonconforming sign.

(C) A nonconforming sign may not be moved or replaced except to bring the sign into complete conformity with this Code.

(D) If a nonconforming sign is destroyed by natural causes, it may not thereafter be repaired, reconstructed, or replaced except in conformity with all the provisions of this Code, and the remnants of the former sign structure shall be cleared from the land. For purposes of this Section, a nonconforming sign is "destroyed" if damaged to an extent that the cost of repairing the sign to its former stature or replacing it with an equivalent sign equals or exceeds **fifty percent (50%)** of the value (tax value if listed for tax purposes) of the sign so damaged.

(E) The message of a nonconforming sign may be changed so long as this does not create any new nonconformities (for example, by creating an off-premises sign under the circumstances where such a sign would not be allowed).

(F) Subject to the other provisions of this Section, nonconforming signs may be repaired and renovated so long as the cost of such work does not exceed within any **twelve (12) month** period **fifty percent (50%)** of the value (tax value if listed for tax purposes) of such sign.

(G) If a nonconforming sign other than a billboard advertises a business, service, commodity, accommodation, attraction, or other enterprise or activity that is no longer operating or being offered or conducted, that sign shall be considered abandoned and shall be removed within **thirty (30) days** after such abandonment by the sign owner, owner of the property where the sign is located, or other party having control over such sign.

(H) If a nonconforming billboard remains blank for a continuous period of **one hundred eight (180) days**, that billboard shall be deemed abandoned and shall, within **thirty (30) days** after such abandonment, be altered to comply with this Code or be removed by the sign owner, owner of the property where the sign is located, or other person having control over such sign. For purposes of this Section, a sign is "blank" if:

- (1) it advertises a business, service, commodity, accommodation, attraction, or other enterprise or activity that is no longer operating or being offered or conducted; or
- (2) the advertising message it displays becomes illegible in whole or substantial part; or
- (3) the advertising copy paid for by a party other than the sign owner or promoting an interest other than the rental of the sign has been removed.

40-4-40 MAINTENANCE OF SIGNS.

(A) All signs and all components thereof, including, but not limited to: supports, braces, and anchors, shall be kept in a state of good repair. With respect to freestanding signs, components (supporting structures, backs, etc.) not bearing a message shall be

constructed of materials that blend with the natural environment or shall be painted a neutral color to blend with the natural environment.

(B) If a sign other than a billboard advertises a business, service, commodity, accommodation, attraction, or other enterprise or activity that is no longer operating or being offered or conducted, that sign shall be considered abandoned and shall, within **thirty (30) days** after such abandonment, be removed by the sign owner, owner of the property where the sign is located, or other party having control over such sign.

(C) If the message portion of a sign is removed, leaving only the supporting "shell" of a sign or the supporting braces, anchors, or similar components, the owner of the sign or the owner of the property where the sign is located or other person having control over such sign shall, within **thirty (30) days** of the removal of the message portion of the sign, either replace the entire message portion of the sign or remove the remaining components of the sign. This Section shall not be construed to alter the effect of this Article, which prohibits the replacement of a nonconforming sign. Nor shall this Section be construed to prevent the changing of the message of a sign.

(D) The area within **ten (10) feet** in all directions of any part of a freestanding sign shall be kept clear of all debris and all undergrowth more than **five (5) inches** in height.

40-4-41 UNLAWFUL CUTTING OF TREES OR SHRUBS. No person may, for the purpose of increasing or enhancing the visibility of any sign, damage, trim, destroy, or remove any trees, shrubs, or other vegetation located:

(A) within the right of way of any public street or road, unless the work is done pursuant to the express written authorization of the City;

(B) on property that is not under the ownership or control of the person doing or responsible for such work, unless the work is done pursuant to the express authorization of the person owning the property where such trees or shrubs are located;

(C) in any area where such trees or shrubs are required to remain under a permit issued under this Code.

40-4-42 A-FRAME SIGNS. Notwithstanding any provision to the contrary in this Section A-Frame signs may be permitted in Zoning Districts B1, B2, I1, and I2 on public sidewalks, providing they comply with the following provisions:

(A) **Application.** An application for an A-Frame sign permit shall be submitted and include a plan reasonably depicting the location, size, text, appearance, and method of installation of the proposed sign to be located on the public sidewalk and such additional information as the City Clerk may reasonably require. The City Clerk may approve the application after determining the proposed sign plan will be reasonable, attractive, and promote pedestrian and retail vitality in Zoning Districts B1, B2, I1, and I2, and that there is adequate space remaining on the public sidewalk to facilitate safe circulation of pedestrian traffic. No material change to the approved plan shall be made without the prior written approval of the City Clerk. There shall be no charge to the applicant for said permit. Said permits shall be for a term of **one (1) year**, from **June 1 to May 31**, and must be renewed annually.

(B) **Number of Signs.** A maximum of **one (1)** A-Frame sign is permitted for each eligible business on any eligible block face. **(Ord. No. 17-33; 11-27-17)**

(C) **Eligible Business.** An eligible business shall include restaurants, bars, theatres, and retail oriented businesses including personal service providers. **(Ord. No. 17-33; 11-27-17)**

(D) **Size of Sign.** Signs may not exceed **forty-two (42) inches** in height and **twenty-four (24) inches** in width.

(E) **Illumination or Animation.** Illuminated or animated signs are prohibited.

(F) **Pedestrian Safety.** Pedestrian safety shall be preserved through the placement or securing of the sign so as to permit safe and adequate pedestrian thoroughway along the sidewalk, crossing of streets, entry, lighting from cars and buses, and access to curb ramps.

(1) Signs must be properly weighted against the wind.

(2) A minimum clear sidewalk width of **forty-eight (48) inches** shall be maintained.

(3) Signs may not be placed within **twelve (12) inches** of the curb, which shall be defined as the edge of the street or the top most level edge of the steps.

(4) Signs shall not be placed upon the sidewalk more than **thirty (30) minutes** prior to the beginning of each day's operating hours and shall be removed immediately upon the close of business for the day. **(Ord. No. 17-33; 11-27-17)**

(G) **Temporary Signs.** All signs, including installation materials placed on the public sidewalks, shall be temporary and readily removable without any damage to the surface of the sidewalk.

(H) **Compliance with Law.** All signs shall comply with all applicable City, State, and Federal laws and regulations, including the Americans With Disabilities Act. **(Ord. No. 17-33; 11-27-17)**

(I) **Requirements.** Signs shall comply with such additional reasonable terms and conditions as the City Clerk may require and include in the permit.

(J) **Zoning Administrator.** Copies of the granted permit shall be given to the Zoning Administrator.

(K) **Insurance.** A business owner shall be required to have a **One Million Dollar (\$1,000,000)** liability policy providing coverage for any accident relating to the placement or maintenance of said signs and the City must be named as an additional insured. A copy of said policy shall be delivered to the City annually, at the time application for a permit is made. Failure to submit a certificate of insurance to the City shall be a violation of this Section and the business owner shall be required to remove said merchandise from public property.

(L) **Attachments.** No attachments are permitted on signs such as balloons, menus, and sale notices.

(M) **Penalty.** Violations of the provisions of this Section or failure to comply with any of its requirements shall be subject to the penalties and remedies for violations under the provisions of Article V Division I of the Zoning Code.

(Ord. No. 14-12; 06-23-14)

40-4-43 - 40-4-45 RESERVED.

DIVISION V - FENCES

40-4-46 PURPOSE. It shall be unlawful to erect or construct or cause to be erected or constructed any fence unless said fence shall meet the following requirements or specifications:

(A) fences located within the side and rear areas of a lot must be **seven (7) feet** in height or less;

(B) fences located within the front yard area of a lot must be **three (3) feet** in height or less unless said fence shall be of a see-through type of construction or design (such as chain-link or split rail);

(C) fences meeting the above requirements may be placed at or on a property line and shall not require the obtaining of a permit therefor.

ARTICLE V

ADMINISTRATIVE PROVISIONS

DIVISION I - ENFORCEMENT

40-5-1 **COMPLAINTS REGARDING VIOLATIONS.** Whenever the Zoning Administrator receives a written, signed complaint alleging a violation of this Code, he shall investigate the complaint, take whatever action is warranted, and inform the complainant in writing what actions have been or will be taken.

40-5-2 **PERSONS LIABLE.** The owner of any building or land or part thereof and any architect, builder, contractor, agent, or other person who participates in, assists, directs, creates, or maintains any situation that is contrary to the requirements of this Code may be held responsible for the violation and suffer the penalties and be subject to the remedies herein provided.

40-5-3 **PROCEDURES UPON DISCOVERY OF VIOLATIONS.**
(A) If the Zoning Administrator finds that any provision of this Code is being violated, he shall send a written notice to the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it. Additional written notices may be sent at the Zoning Administrator's discretion.
(B) The final written notice (and the initial written notice may be the final notice) shall state what action the Zoning Administrator intends to take if the violation is not corrected and shall advise that the Zoning Administrator's decision or order may be appealed to the Zoning Board of Appeals.
(C) Notwithstanding the foregoing, in cases when delay would seriously threaten the effective enforcement of this Code or pose a danger to the public health, safety, or welfare, the Zoning Administrator may seek enforcement without prior written notice by invoking any of the penalties or remedies authorized in **Section 40-5-4. Zoning Violation Notice form, See Appendix "T" in the appendix section of the City Code Book. (Ord. No. 04-11; 05-24-04)**

40-5-4 **PENALTIES AND REMEDIES FOR VIOLATIONS.**
(A) Violations of the provisions of this Code or failure to comply with any of its requirements, including violations of any conditions and safeguards established in connection with grants of variations or special use permits, shall constitute a misdemeanor, punishable by a fine of up to **Fifty Dollars (\$50.00)**, or a maximum **thirty (30) days** imprisonment, or both.
(B) Any act constituting a violation of the provisions of this Code or a failure to comply with any of its requirements, including violations of any conditions and safeguards established in connection with the grants of variations or special use permits, shall also subject the offender to a civil penalty of **Twenty-Five Dollars (\$25.00)**. If the offender fails to pay this

penalty within **ten (10) days** after being cited for a violation, the penalty may be recovered by the City in a civil action in the nature of debt. A civil penalty may not be appealed to the Zoning Board of Appeals if the offender was sent a final notice of violation in accordance with **Section 40-5-3** and did not take an appeal to the Zoning Board of Appeals within the prescribed time as described in **Section 40-5-48**.

(C) This Code may also be enforced by any appropriate equitable action.

(D) Each day that any violation continues after notification by the Zoning Administrator that such violation exists shall be considered a separate offense for purposes of the penalties and remedies specified in this Section.

(E) Any one, all, or any combination of the foregoing penalties and remedies may be used to enforce this Code.

40-5-5 PERMIT REVOCATION.

(A) A zoning, sign, or special use permit may be revoked by the Zoning Administrator (in accordance with the provisions of this Section) if the permit recipient fails to develop or maintain the property in accordance with the plans submitted, the requirements of this Code, or any additional requirements lawfully imposed by the Zoning Board of Appeals.

(B) Before a special use permit may be revoked, all of the notice and hearing and other requirements of this Article shall be complied with. The notice shall inform the permit recipient of the alleged grounds for the revocation.

(1) The burden of presenting evidence sufficient to authorize the permit issuing authority to conclude that a permit should be revoked for any of the reasons which allow the revocation of the permit shall be upon the party advocating that position. The burden of persuasion shall also be upon that party.

(2) A motion to revoke a permit shall include, insofar as practicable, a statement of the specific reasons or findings of fact that support the motion.

(C) Before a zoning or sign permit may be revoked, the Zoning Administrator shall give the permit recipient **ten (10) days** notice of intent to revoke the permit and shall inform the recipient of the alleged reasons for the revocation and of his or her right to obtain an informal hearing on the allegations. If the permit is revoked, the Zoning Administrator shall provide to the permittee a written statement of the decision and the reasons therefor.

(D) No person may continue to make use of land or buildings in the manner authorized by any zoning, sign, or special use permit after such permit has been revoked in accordance with this Section.

40-5-6 JUDICIAL REVIEW.

(A) Every final decision of the Zoning Board of Appeals shall be subject to review by the Circuit Court of Moultrie County by proceedings in the nature of certiorari.

(B) The petition for the writ of certiorari must be filed with the Moultrie County Clerk of Court within **thirty (30) days** after the later of the following occurrences:

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- (1) A written copy of the Board's decision has been filed in the office of the Zoning Administrator, and
- (2) A written copy of the Board's decision has been delivered by personal service or certified mail, return receipt requested, to the applicant or appellant and every other aggrieved party who has filed a written request for such copy at the hearing of the case.
- (3) A copy of the writ of certiorari shall be served upon the City.

40-5-7 - 40-5-9 RESERVED.

DIVISION II – PERMITS

40-5-10 PERMITS REQUIRED.

(A) Subject to **Article IV, Division IV (Sign Requirements)**, the use made of property may not be substantially changed, substantial clearing, grading, or excavation may not be commenced, and buildings or other substantial structures may not be constructed, erected, moved, or substantially altered except in accordance with and pursuant to **one (1)** or more of the following permits:

- (1) A zoning permit issued by the Zoning Administrator.
- (2) A special use permit issued by the Zoning Board of Appeals.

(B) Issuance of a special use or zoning permit authorizes the recipient to commence the activity resulting in a change in use of the land to commence work designed to construct, erect, move, or substantially alter buildings or other substantial structures or to make necessary improvements to a subdivision. However, the intended use may not be commenced, no building may be occupied, and in the case of subdivisions, no lots may be sold until all of the requirements of this code and all additional requirements imposed pursuant to the issuance of a special use permit (if applicable) have been complied with.

40-5-11 ZONING PERMITS.

(A) The Zoning Administrator shall issue a zoning permit unless he finds, after reviewing the application and consulting with the applicant:

- (1) the requested permit is not within his or her jurisdiction according to the Table of Permissible Uses or;
- (2) the application is incomplete or;
- (3) if completed as proposed in the application, the development will not comply with one or more requirements of this Code.

(B) In cases when, because of weather conditions or other factors beyond the control of the zoning permit recipient (exclusive of financial hardship), it would be unreasonable to require the zoning permit recipient to comply with all of the requirements of this Code prior to commencing the intended use of the property or occupying any buildings, the Zoning Administrator may authorize the commencement of the intended use or the occupancy of buildings (insofar as the requirements of this Code are concerned) if the permit recipient provides a performance bond or other security satisfactory to the Zoning Administrator to ensure that all of the requirements of this Code will be fulfilled within a reasonable period (not to exceed **twelve (12) months**) as determined by the Zoning Administrator.

(C) An application for a zoning permit shall be made by the owner of the building or the land, or by his or her agent, and shall state the precise purpose or purposes for which the building or land will be used.

(D) No zoning permit shall be issued unless the use or uses set forth in the application are conforming uses and the applicant demonstrates to the satisfaction of the Zoning Administrator that the applicable parking and sign regulations of this Code for that use are fully met.

(E) The permit shall state upon its face the precise purpose or purposes for which the building or land shall be used. Any transfer of ownership of the building or land shall automatically effect a transfer of the zoning permit.

(F) No building or land shall be used for any use other than that specified in the permit.

40-5-12 NONCONFORMING USES.

(A) The application for the permit, and the permit if issued, shall state the precise purpose or purposes for which the building or land was occupied or used on such date, and in the case of buildings other than dwellings, shall state the date that the building was constructed or the date of its last substantial conversion, enlargement or structural alteration.

(B) No change shall be made in a nonconforming use unless:

- (1) Such change is permitted under the provisions of **Division III** of this Article.
- (2) The parking, zoning and sign regulations applicable to the changed use are fully met, and
- (3) A new permit authorizing such change has been issued by the Zoning Administrator.

40-5-13 APPLICATION FORM. An application for a permit shall be submitted in such form as the Zoning Administrator may prescribe.

40-5-14 THOSE AUTHORIZED TO MAKE APPLICATION.

(A) The application shall be made by the owner or lessee, or agent of either, or the architect, engineer or builder employed in connection with the proposed work.

(B) If such application is made by a person other than the owner in fee, it shall be accompanied by an affidavit of the owner in fee, authorizing the application.

40-5-15 AMENDMENTS TO APPLICATION.

(A) Nothing in this Code shall prohibit the filing of amendments to an application or to a plan or other record accompanying same at any time before the completion of the work for which the permit was issued.

(B) Such amendments shall be filed with, and be deemed a part of, the original application if approved before the certificate of occupancy has been issued; otherwise, a new application for the alteration shall be made and a new permit secured.

40-5-16 REPAIRS. Repairs may be made without filing an application or obtaining a permit subject to the provisions in this Code concerning nonconformities.

40-5-17 REDUCING OR DIMINISHING LOT AREA. It shall be unlawful to reduce or diminish the area of a lot or plot on which a plot plan has been filed and has been used as the basis for a permit, unless a revised plot plan showing the proposed changes in conditions shall have been filed and approved; provided that this shall not apply when the lot is reduced by reason of a street opening or widening or other public improvement.

40-5-18 RECORD OF APPLICATIONS AND PERMITS.

(A) The Zoning Administrator shall keep a record of each permit issued by him and shall carefully preserve the original of the following: each application for a zoning, special use, and sign permit, and amendments thereto.

(B) The records and files of the Zoning Administrator shall be open to inspection by any person at all reasonable times.

40-5-19 SIGNATURE TO PERMIT. Every permit issued by the Zoning Administrator under the above provisions shall have his or her signature affixed thereto.

40-5-20 EXPIRATION OF PERMIT. A permit under which no work is commenced within **six (6) months** after issuance shall expire by limitation and a new permit shall be secured before work is started.

40-5-21 POSTING OF PERMIT. A copy of the permit shall be kept on the premises for public inspection until the completion of the work. The Zoning Administrator shall require a certified copy of the approved plans to be kept on the premises at all times until the completion of the work.

40-5-22 FEES. The fee for filing an application for a zoning permit or any amendment thereto shall be set from time to time by the City Council and payable to the City at the time of filing of the application for a zoning permit.

40-5-23 - 40-5-25 RESERVED.

DIVISION III – NONCONFORMITIES

40-5-26 **DEFINITIONS.** Unless otherwise specifically provided or unless clearly required by the context, the words and phrases defined in this Section shall have the meaning indicated when used in this Article.

(A) **Dimensional Nonconformity.** A nonconforming situation that occurs when the height, size, or minimum floor space of a structure or the relationship between an existing building or buildings and other buildings or lot lines does not conform to the regulations applicable to the district in which the property is located.

(B) **Effective Date of this Code.** Whenever any of the provisions of this Section refers to the effective date of this Code, the reference shall be deemed to include the effective date of any amendments to this Code if the amendment, rather than this Code as originally adopted, creates a nonconforming situation.

(C) **Expenditure.** A sum of money paid out in return for some benefit or to fulfill some obligation. The term also includes binding contractual commitments to make future expenditures, as well as any other substantial changes in position.

(D) **Nonconforming Lot.** A lot existing at the effective date of this Code (and not created for the purposes of evading the restrictions of this Code) that does not meet the minimum area requirement of the district in which the lot is located.

(E) **Nonconforming Project.** Any structure, development, or undertaking that is incomplete at the effective date of this Code and would be inconsistent with any regulation applicable to the district in which it is located if completed as proposed or planned.

(F) **Nonconforming Sign.** A sign that, on the effective date of this Code does not conform to **one (1)** or more of the regulations set forth in this Code.

(G) **Nonconforming Use.** A nonconforming situation that occurs when property is used for a purpose or in a manner made unlawful by the use regulations applicable to the district in which the property is located. (For example, a commercial office building in a residential district may be a nonconforming use). The term also refers to the activity that constitutes the use made of the property. (For example, all the activity associated with running a bakery in a residentially zoned area is a nonconforming use).

(H) **Nonconforming Situation.** A situation that occurs when, on the effective date of this Code, an existing lot or structure or use of an existing lot or structure does not conform to **one (1)** or more of the regulations applicable to the district in which the lot or structure is located. Among other possibilities, a nonconforming situation may arise because a lot does not meet minimum acreage requirements, because structures exceed maximum height limitations, because the relationship between existing buildings and the land (in such matters as density and yard requirements) is not in conformity with this Code, or because land or buildings are used for purposes made unlawful by this Code. Nonconforming signs shall not be regarded as nonconforming situations for purposes of this Article but shall be governed by the provisions of **Article IV.**

40-5-27 CONTINUATION OF CERTAIN USES.

(A) Nonconforming uses under the previous Zoning Code which would be permitted as special uses under this amendment shall be regarded as special uses.

(B) Uses authorized as special or conditional uses by action of the City Council prior to this amendment shall be regarded as special uses.

40-5-28 CONTINUATION OF NONCONFORMING SITUATIONS AND COMPLETION OF NONCONFORMING PROJECTS.

Unless otherwise specifically provided for or regulated in this Article, nonconforming situations that were otherwise existing on the effective date of this Code may be continued.

40-5-29 UNDEVELOPED NONCONFORMING LOTS.

(A) **Definition.** A lot is undeveloped if it has no substantial structures upon it.

(B) When a nonconforming lot can be used in conformity with all of the regulations applicable to the intended use, except that the lot is smaller than the required minimum set forth in **Article II**, then the lot may be used as proposed just as if it were conforming.

(C) When the use proposed for a nonconforming lot is one that is conforming in all other respects but the applicable yard requirements cannot reasonably be complied with, then the Zoning Board of Appeals may allow deviations from the applicable setback requirements if it finds that:

- (1) the property cannot reasonably be developed for the use proposed without such deviations;
- (2) these deviations are necessitated by the size or shape of the nonconforming lot and;
- (3) the property can be developed as proposed without any significantly adverse impact on surrounding properties or the public health or safety.

(D) For purposes of the foregoing subsection, compliance with applicable yard requirements is not reasonably possible if a building that serves the minimal needs of the use proposed for the nonconforming lot cannot practicably be construed and located on the lot in conformity with such yard requirements. However, mere financial hardship does not constitute grounds for finding that compliance is not reasonably possible.

(E) Subject to the following sentence, if, on the date this Section becomes effective, an undeveloped nonconforming lot adjoins and has continuous frontage with **one (1)** or more other undeveloped lots under the same ownership, then neither the owner of the nonconforming lot nor his or her successors in interest may take advantage of the provisions of this Section. This Section shall not apply to a nonconforming lot if a majority of the developed lots located on either side of the street where such lot is located and within **five hundred (500) feet** of such lot are also nonconforming. The intent of this Section is to require nonconforming

lots to be combined with other undeveloped lots to create conforming lots under the circumstances specified herein, but not to require such combination when that would be out of character with the way the neighborhood has previously been developed.

40-5-30 EXTENSION OR ENLARGEMENT OF NONCONFORMING SITUATIONS.

(A) Except as specifically provided in this Section, no person may engage in any activity that causes an increase in the extent of nonconformity of a nonconforming situations. In particular, physical alteration of structures or the placement of new structures on open land is unlawful if such activity results in:

- (1) an increase in the total amount of space devoted to a nonconforming use or;
- (2) greater nonconformity with respect to dimensional restrictions such as yard requirements, or height limitations or other requirements such as parking requirements.

(B) Unless specifically authorized by this Code, a nonconforming use of open land may not be extended to cover more land than was occupied by that use when it became nonconforming, except that a use that involves the removal of natural materials from the lot (e.g., a sand pit) may be expanded to the boundaries of the lot where the use was established at the time it became nonconforming if **ten percent (10%)** or more of the earth products had already been removed on the effective date of this Code.

(C) The volume, intensity, or frequency of use of property where a nonconforming situation exists may be increased and the equipment or processes used at a location where a nonconforming situation exists may be changed if these or similar changes amount only to changes in the degree of activity rather than changes in kind and no violations of other portions of this Section occur.

(D) Any structure used only for residential purposes and maintained as a nonconforming use may be enlarged or replaced with a similar structure of a larger size, so long as the enlargement or replacement does not create new nonconformities or increase the extent of existing nonconformities with respect to such matters as yard and parking requirements. The allowance in this paragraph is subject to the limitations stated in this Article concerning abandonment and discontinuance of nonconforming situations.

(E) Multiple structure lots:

- (1) Whenever there exists a lot with **one (1)** or more structures on it, and a change in use that does not involve any enlargement of a structure is proposed for such lot, and the parking or loading requirements of **Article IV** that would be applicable as a result of the proposed change cannot be satisfied on such lot because there is not sufficient area available on the lot that can practicably be used for parking or loading, then the proposed use shall not be regarded as resulting in an impermissible extension or enlargement of a nonconforming situation.

- (2) However, the applicant shall be required to comply with all applicable parking and loading requirements that can be satisfied without acquiring additional land, and shall also be required to obtain satellite parking in accordance with the parking requirements of this Code if:
- (a) parking requirements cannot be satisfied on the lot with respect to which the permit is required and;
 - (b) such satellite parking is reasonably available. If such satellite parking is not reasonably available at the time the zoning or special use permit is granted, then the permit recipient shall be required to obtain it if and when it does become reasonably available. This requirement shall be a continuing condition of the permit.

40-5-31 REPAIR, MAINTENANCE AND RECONSTRUCTION.

(A) Minor repairs to and routine maintenance of property where nonconforming situations exist are permitted and encouraged. Major renovation, i.e., work estimated to cost more than **twenty-five percent (25%)** of the appraised valuation of the structure to be renovated may be done only in accordance with a zoning permit issued pursuant to this Section.

(B) If a structure located on a lot where a nonconforming situation exists is damaged to an extent that the costs of repair or replacement would exceed **seventy-five percent (75%)** of the appraised valuation of the damaged structure, then the damaged structure may be repaired or replaced only in accordance with a zoning permit issued pursuant to this Section. This Section does not apply to structures used only for residential purposes, which structures may be reconstructed pursuant to a zoning permit just as they may be enlarged or replaced.

(C) Specific definitions for purposes of **Section 40-5-31(A)** and **40-5-31(B)**:

- (1) The "cost" of renovation or repair or replacement shall mean the fair market value of the materials and services necessary to accomplish such renovation, repair, or replacement.
- (2) The "cost" of renovation or repair or replacement shall mean the total cost of all such intended work, and no person may seek to avoid the intent of this Section by doing such work incrementally.
- (3) The "appraised valuation" shall mean either **three (3) times** the assessed valuation for property tax purposes, updated as necessary by the increase in the consumer price index since the date of the last valuation, or the valuation determined by a professionally recognized property appraiser.

(D) The Zoning Administrator shall issue a permit authorized by this Section if he finds that, in completing the renovation, repair or replacement work:

- (1) no impermissible violation of this Code will occur and;

- (2) the permittee will comply to the extent reasonably possible with all provisions of this Code applicable to the existing use (except that the permittee shall not lose his or her right to continue a nonconforming use).

(E) Compliance with a requirement of this Code is not reasonably possible if compliance cannot be achieved without adding additional land to the lot where the nonconforming situation is maintained or moving a substantial structure that is on a permanent foundation. Mere financial hardship caused by the cost of meeting such requirements as paved parking does not constitute grounds for finding that compliance is not reasonably possible.

40-5-32 CHANGE TO USE OF PROPERTY WHERE A NONCONFORMING SITUATION EXISTS.

(A) A change in use of property (where a nonconforming situation exists) that is sufficiently substantial to require a new zoning or special use permit, may not be made except in accordance with the provisions of this Section. However, this requirement shall not apply if only a sign permit is needed.

(B) If the intended change in use is to a principal use that is permissible in the district where the property is located, and all of the other requirements of this Code applicable to that use can be complied with, permission to make the change must be obtained in the same manner as permission to make the initial use of a vacant lot. Once conformity with this Code is achieved, the property may not revert to its nonconforming status.

(C) If the intended change in use is to a principal use that is permissible in the district where the property is located, but all of the requirements of this Code applicable to that use cannot reasonably be complied with, then the change is permissible if the Zoning Administrator issues a permit authorizing the change. This permit may be issued if the Zoning Administrator finds, in addition to any other findings that may be required by this Code, that all of the applicable requirements of this Code that can reasonably be complied with. Compliance with a requirement of this Code is not reasonably possible if compliance cannot be achieved without adding additional land to the lot where the nonconforming situation is maintained or moving a substantial structure that is on a permanent foundation. Mere financial hardship caused by the cost of meeting such requirements as paved parking does not constitute grounds for finding that compliance is not reasonably possible. And in no case may an applicant be given permission pursuant to this Section to construct a building or add to an existing building if additional nonconformities would thereby be created.

(D) If the intended change in use is to another principal use that is also nonconforming, then the change is permissible if the Zoning Administrator issues a permit authorizing the change. The Zoning Administrator shall issue the permit if he finds, in addition to other findings that may be required by this Code, that:

- (1) the use requested is one that is permissible in some zoning district with either a zoning or special use permit, and
- (2) all of the conditions applicable to the permit authorized in **Section 40-5-32** are satisfied, and

- (3) the proposed development will have less of an adverse impact on those most affected by it and will be more compatible with the surrounding neighborhood than the use in operation at the time the permit is applied for.

40-5-33 ABANDONMENT AND DISCONTINUANCE OF NONCONFORMING SITUATIONS.

(A) When a nonconforming use is discontinued for a consecutive period of **one hundred eight (180) days**, or discontinued for a period of time without a present intention to reinstate the nonconforming use, the property involved may thereafter be used only for conforming purposes.

(B) If the principal activity on property where a nonconforming situation other than a nonconforming use exists is discontinued for a consecutive period of **one hundred eighty (180) days**, or discontinued for any period of time without a present intention of resuming that activity, then that property may thereafter be used only in conformity with all of the regulations applicable to the preexisting use unless the Zoning Administrator issues a permit to allow the property to be used for this purpose without correcting the nonconforming situation. This permit may be issued if the Zoning Administrator finds that elimination of a particular nonconformity is not reasonably possible (i.e., cannot be accomplished without adding additional land to the lot where the nonconforming situation is maintained or moving a substantial structure that is on a permanent foundation). The permit shall specify which nonconformities need not be corrected.

(C) For purposes of determining whether a right to continue a nonconforming situation is lot pursuant to this Section, all of the buildings, activities, and operations maintained on a lot are generally to be considered as a whole. For example, the failure to rent one apartment in a nonconforming apartment building for **one hundred eighty (180) days** shall not result in a loss of the right to rent that apartment or space thereafter so long as the apartment building as a whole is continuously maintained. But if a nonconforming use is maintained in conjunction with a conforming use, discontinuance of a nonconforming use for the required period shall terminate the right to maintain it thereafter.

(D) When a structure or operation made nonconforming by this Code is vacant or discontinued at the effective date of this Code, the **one hundred eighty (180) day** period for purposes of this Section begins to run on the effective date of this Code.

40-5-34 COMPLETION OF NONCONFORMING PROJECTS.

(A) All nonconforming projects on which construction was begun at least **one hundred eighty (180) days** before the effective date of this Code as well as all nonconforming projects that are at least **ten percent (10%)** completed in terms of the total expected cost of the project on the effective date of this Code may be completed in accordance with the terms of their permits, so long as these permits were validly issued and remain unrevoked and unexpired. If a development is designed to be completed in stages, this Section shall apply only to the particular phase under construction.

(B) Except as provided in the previous section, all work on any nonconforming project shall cease on the effective date of this Code, and all permits previously issued for work on nonconforming projects may begin or any be continued only pursuant to a zoning, special use or sign permit issued in accordance with this Section by the individual or Board authorized by this Code to issue permits for the type of development proposed.

The Zoning Administrator shall issue such a permit if it finds that the applicant has in good faith made substantial expenditures or incurred substantial binding obligations or otherwise changed his or her position in some substantial way in reasonable reliance on the land use law as it existed before the effective date of this Code and thereby would be unreasonably prejudiced if not allowed to complete his or her project as proposed. In considering whether these findings may be made, the permit issuing authority shall be guided by the following, as well as other relevant considerations:

- (1) All expenditures made to obtain or pursuant to a validly issued and unrevoked zoning, sign or special use permit shall be considered as evidence of reasonable reliance on the land use law that existed before this Code became effective.
- (2) Except as provided in the previous section, no expenditures made more than **one hundred eighty (180) days** before the effective date of this Code may be considered as evidence of reasonable reliance on the land-use law that existed before this Code became effective. An expenditure is made at the time a party incurs a bonding obligation to make that expenditure.
- (3) To the extent that expenditures are recoverable with a reasonable effort, a party shall not be considered prejudiced by having made those expenditures. For example, a party shall not be considered prejudiced by having made some expenditure to acquire a potential development site if the property obtained is approximately as valuable under the new classification as it was under the old, for the expenditure can be recovered by a resale of the property.
- (4) To the extent that a nonconforming project can be made conforming and that expenditures made or obligations incurred can be effectively utilized in the completion of a conforming project, a party shall not be considered prejudiced by having made such expenditures.
- (5) An expenditure shall be considered substantial if it is significant both in dollar amount and in terms of:
 - (a) the total estimated cost of the proposed project and;
 - (b) the ordinary business practices of the developer.
- (6) A person shall be considered to have acted in good faith if actual knowledge of a proposed change in the land use law affecting the proposed development site could not be attributed to him.
- (7) Even though a person had actual knowledge of a proposed change in the land use law affecting a development site, the Zoning Administrator may still find that he acted in good faith if he did not

proceed with his or her plans in a deliberate attempt to circumvent the effects of the proposed ordinance. The permit issuing authority may find that the developer did not proceed in an attempt to undermine the proposed ordinance if it determines that:

- (a) at the time the expenditures were made, either there was considerable doubt about whether any ordinance would ultimately be passed, or it was not clear that the proposed ordinance would prohibit the intended development and;
- (b) the developer had legitimate business reasons for making expenditures.

(C) When it appears from the developer's plans or otherwise that a project was intended to be or reasonably could be completed in phases, stages, segments, or other discrete units, the developer shall be allowed to complete only those phases or segments with respect to which the developer can make the showing required under **Section 40-5-34(B)**. In addition to the matters and subject to the guidelines set forth in these previous subdivisions, the Zoning Administrator shall, in determining whether a developer would be unreasonably prejudiced if not allowed to complete phases or segments of a nonconforming project, consider the following in addition to other relevant factors:

- (1) whether any plans prepared or approved regarding uncompleted phases constitute conceptual plans only or construction drawings based upon detailed surveying, architectural, or engineering work.
- (2) whether any improvements, such as streets or utilities, have been installed in phases not yet completed.
- (3) whether utilities and other facilities installed in completed phases have been constructed in such a manner or location or such a scale, in anticipation of connection to or interrelationship with approved but uncompleted phases, that the investment in such utilities or other facilities cannot be recouped if such approved but uncompleted phases are constructed in conformity with existing regulations.

(D) The Zoning Administrator shall not consider any application for the permit authorized by **Section 40-5-34(B)** that is submitted more than **sixty (60) days** after the effective date of this Code. The Zoning Administrator may waive this requirement for good cause shown, but in no case may it extend the application deadline beyond **one (1) year**.

(E) The Zoning Administrator shall send copies of this Section to the persons listed as owners for tax purposes (and developers, if different from the owners) of all properties in regard to which permits have been issued for nonconforming projects or in regard to which a nonconforming project is otherwise known to be in some stage of development. This notice shall be sent by certified mail not less than **fifteen (15) days** before the effective date of this Code.

(F) The Zoning Administrator shall establish expedited procedures for hearing applications for permits under this Section. These applications shall be heard, whenever possible, before the effective date of this Code, so that construction work is not needlessly interrupted.

DIVISION IV – ZONING BOARD OF APPEALS

40-5-41 ZONING BOARD OF APPEALS; MEMBERS AND TERMS OF OFFICE.

(A) There shall be a Zoning Board of Appeals which will consist of **seven (7) members** who shall be appointed by the Mayor and confirmed by the Council.

(B) The original members of the Board shall serve 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; and one (1) for seven (7) years.**

(C) Upon the expiration of the term of an original member of the Board his or her successor shall serve for a term of **five (5) years.**

40-5-42 REMOVAL AND VACANCIES.

(A) The Mayor shall have the power to remove any member of the Board from office for cause and after a public hearing.

(B) Vacancies on the Board shall be filled for the unexpired term of the member whose place has become vacant.

40-5-43 CHAIR AND SECRETARY.

(A) The Mayor, with the consent of the Council, shall designate one of the members of the Board as the Chair.

(B) The Chair shall hold that office until his or her successor is appointed or until the expiration of his or her term as a member of the Board. The Chair, or in his or her absence the acting Chair, may administer oaths and compel the attendance of witnesses.

(C) The Board shall select one of their number as Secretary who shall keep the minutes of the meetings of the Board and keep its records and files. The Board may select or appoint such other officers as it deems necessary.

40-5-44 MEETINGS. All meetings of the Board shall be held at the call of the Chair, or at such other times as the Board may determine. All meetings of the Board shall be held in some public place designated by the board and shall be open to the public. At any meeting of the Board or at any hearing held by the Board any interested person may appear and be heard either in person or by his or her agent or attorney.

40-5-45 OFFICE, MINUTES AND RECORDS.

(A) The Board shall maintain its office and keep its minutes, files and records in the office of the City Clerk.

(B) The minutes of the proceedings of the Board shall show the vote of each member upon every question or indicate that the member was absent or failed to vote. Each rule, regulation, amendment, order, requirement, decision, or determination of the Board shall be signed by the Chair or acting Chair, attested by the Secretary, filed in the office of the Board and copied at length into the minutes.

(C) The minutes, files and records of the Board shall be open to inspection by the public at all reasonable times.

40-5-46 **RULES.** The Board may adopt such rules of procedure as are not in conflict with this Code or in conflict with the laws of the State of Illinois; provided, however, the concurring vote of **four (4) members** of the Board shall be necessary;

(A) to reverse any order, requirement, decision or determination of the Zoning Administrator;

(B) to decide in favor of the applicant in any matter upon which it is required to pass under this Code, or;

(C) to permit any variation in the application of the regulations imposed by this Code.

40-5-47 **JURISDICTION.** The Board shall have the power, and shall be charged with the duty, to hear and decide:

(A) appeals from any order, requirement, decision, or determination made by the Zoning Administrator under this Code;

(B) all matters specifically referred to it by the provisions of this Code;

(C) request for variations in the application of the regulations imposed by this Code, as set forth in **Section 40-5-52**.

40-5-48 **PROCEDURE ON APPEALS.**

(A) An appeal from any order, requirement, decision, or determination made by the Zoning Administrator may be taken to the Board by any person aggrieved by **one (1)** or more of the previously listed actions or by any officer, department, board or bureau of the City.

(B) The appeal shall be taken by filing a notice of appeal with the Zoning Administrator and with the Chair of the Board within **thirty (30) days** of the date of entry of such order, requirement, decision or determination.

(C) The notice of appeal shall describe the order, requirement, decision or determination appealed from and shall specify the grounds for the appeal.

(D) The Zoning Administrator shall, upon receipt of the notice of appeal, as soon as practicable transmit to the Secretary of the Board all the documents and files constituting the record upon which the action appealed from was taken.

(E) The Chair shall fix a reasonable time, not more than **thirty (30) days** in the future, for the hearing on the appeal and inform the Secretary of the time and place that the hearing will be held.

(F) The Secretary shall give due notice of the hearing in writing, to the appellant, to the Zoning Administrator, to the members of the Board and to any other person directly interested in the outcome of the appeal. If shall not be necessary to publish any notice of a hearing on an appeal. The Board shall decide the appeal within a reasonable time after the hearing.

(G) On an appeal the Board shall be limited to a determination of the propriety of the questioned action taken by the Zoning Administrator and it may reverse or affirm the action appealed from or modify the same and to that end the Board has all the powers of the Zoning Administrator under this Code.

(H) The Board shall not by its decision on an appeal permit a variation in the application of the regulations of this Code.

40-5-49 STAY OF PROCEEDINGS. An appeal stays all proceedings in furtherance of the action appealed from, unless the Zoning Administrator certifies to the Board, after the notice of appeal has been filed with him that by reason of the facts stated in the certificate, a stay would, in his or her opinion, cause imminent peril to life or property. In this event, the proceedings shall not be stayed otherwise than by a restraining order which may be granted;

(A) by the Board on application, after notice to the Zoning Administrator, and on due cause shown, or

(B) by order of a court of competent jurisdiction.

40-5-50 PROCEDURE ON MATTERS REFERRED TO BOARD.

(A) Any interested person may request the Board to hear and decide any matter specifically referred to it under this Code. Such request shall be in writing and shall be filed with the Chair of the Board. A copy of the request shall also be served upon the Zoning Administrator.

(B) The Chair shall fix a reasonable tie, not more than **thirty (30) days** in the future, for the hearing on the request and inform the Secretary of the time and place that the hearing will be held. The Secretary shall give due notice of the hearing, in writing, to the person making the request, to the Zoning Administrator, to the members of the Board, and to any other person directly interested in the outcome thereof. It shall not be necessary to publish any notice of a hearing on such a request. The Board shall decide the matter within a reasonable time after the hearing.

40-5-51 VARIATIONS WHICH MAY BE PERMITTED.

(A) The Board may vary the application of the regulations imposed by this Code to permit:

- (1) The reduction of the required parking area or number of parking spaces by not more than **twenty-five percent (25%)**.

- (2) A use in a B-1, B-2, I-1 or I-2 District, even though the proposed use is not specifically mentioned in the list of uses permitted in such districts, if the proposed use is:
 - (a) comparable in general character to a permitted use,
 - (b) is not specifically mentioned in the list of permitted uses in a less restricted district, and
 - (c) is not offensive or obnoxious due to odor, dust, noise, gas, smoke or vibration.
- (3) The reconstruction of a building occupied by a nonconforming dwelling or use if the building has been damaged by fire, explosion or Act of God and the cost of the reconstruction of the building will amount to more than **fifty percent (50%)** but less than **seventy percent (70%)** of the value of the building immediately prior to the occurrence.
- (4) The construction of a building or structure in an R-1, R-2, R-3, B-1, or B-2 District by a public utility, if the building or structure is to serve the section of the City in which it is located, or such section and adjoining areas outside the City, as distinguished from the City at large.

(B) A request for a variation must be based upon practical difficulties and particular hardships in carrying out the strict letter of the regulations relating to the use, erection, or conversion, enlargement, or alteration of buildings or structures or to the use of land.

(C) Before granting any request for a variation, and as a condition precedent to the granting of such request the Board shall hear sworn evidence upon and determine:

- (1) that the property in question cannot be economically used or cannot yield a reasonable return, if permitted to be used only under the conditions allowed by the regulations,
- (2) that the plight of the owner is due to unique circumstances,
- (3) that the variance requested is not a hardship which is self-imposed, and
- (4) that the variation, if granted, will not alter the essential character of the locality, impair an adequate supply of light and air to adjacent property, increase the congestion of traffic, or diminish or impair property values in the locality.

(D) Every decision or order of the Board granting a request for a variation shall include a finding of fact specifying the reason or reasons for granting the request including, specifically, a finding that the evidence adduced at the hearing sustains each of the conditions enumerated above.

40-5-52 PROCEDURE ON REQUEST FOR VARIATION.

(A) A request for a variation in the application of the regulations imposed by this Code shall be made in writing and shall be filed with the Chair of the Board and the Zoning Administrator. Each request shall be accompanied by a receipt showing the payment of the required fee.

(B) The Chair shall fix a reasonable time, not more than **thirty (30) days** in the future, for the hearing on the request and inform the Secretary of the time and place that the hearing will be held. The Secretary shall thereupon cause a notice of hearing to be published at least once, not more than **thirty (30) days** nor less than **fifteen (15) days** prior to the hearing, in a newspaper published in the City. The notice shall contain the time and place of the hearing and the particular location for which the variation is requested, as well as a brief statement as to the nature of the proposed variation. The Board shall act upon the request and either grant or deny the same, in whole or in part, within a reasonable time after the hearing.

40-5-53 PROCEDURE ON REQUEST FOR SPECIAL USE PERMIT.

(A) A request for a special use as provided for in this Code shall be made in writing and shall be filed with the Chair of the Board and the Zoning Administrator. Each request shall be accompanied by a receipt showing the payment of the required fee.

(B) Subject to the provisions in this Code relating to nonconformities, the Zoning Board of Appeals shall issue the requested permit unless it concludes, based upon the information submitted at the hearing, that:

- (1) the requested permit is not within its jurisdiction according to the Table of Permissible Uses, or
- (2) the application is incomplete, or
- (3) if completed as proposed in the application, the development will not comply with one or more requirements of this Code.

(C) Even if the Zoning Board of Appeals finds that the application complies with all other provisions of this Code, it may still deny the permit if it concludes, based upon the information submitted at the hearing, that if completed as proposed, the development, more probably that not:

- (1) will materially endanger the public health or safety, or
- (2) will substantially injure the value of adjoining or abutting property, or
- (3) will not be in harmony with the area in which it is to be located, or
- (4) will not be in general conformity with the land use plan.

(D) In granting a special use permit, the Zoning Board of Appeals may attach to the permit such reasonable requirements in addition to those specified in this Code as will ensure that the development in its proposed location:

- (1) will not endanger the public health or safety,
- (2) will not injure the value of adjoining or abutting property,
- (3) will be in harmony with the area in which it is located, and
- (4) will be in conformity with the land use plan.

(E) The Zoning Board of Appeals may not attach additional conditions that modify or alter the specific requirements set forth in this Code unless the development in question presents extraordinary circumstances that justify the variation from the specified requirements.

40-5-54 **REVIEW.** No decision of the Board shall be subject to review, reversal, modification by the corporate authorities of the City, but shall be subject to judicial review pursuant to the provisions of the Illinois Administrative Review Act.

40-5-55 **COSTS.**

(A) The costs of proceedings before the Zoning Board of Appeals shall be charged to the person seeking the action of the Zoning Board of Appeals.

(B) The costs shall include but not be limited to, fees of members of the Board, reporter's fees and publication costs.

40-5-56 - 40-5-59 **RESERVED.**

DIVISION V – MISCELLANEOUS

40-5-60 AMENDMENTS.

(A) The regulations imposed and the districts created by this Code may be amended by ordinance but no such amendments shall be made without a public hearing before the Sullivan Planning Commission. Notice of the time and place of the hearing shall be published at least once, not more than **thirty (30) days** nor less than **fifteen (15) days** before the hearing, in a newspaper published in the City. The notice shall give the time and place of the hearing and contain a brief description of the proposed amendment.

(B) If the boundaries of a district are proposed to be changed then the notice shall also contain a description of the area for which the change is proposed.

(C) If, prior to the hearing, signed and acknowledged objections protesting the change of the regulations or districts are filed with the City Clerk by the owners of:

- (1) **twenty percent (20%)** or
- (2) the frontage immediately adjoining or across an alley therefrom, or
- (3) the frontage directly opposite the frontage proposed to be altered,

then the amendment shall not be passed except by the favorable vote of **two-thirds (2/3)** of all members of the Council.

40-5-61 FEES. Fees for a change in a zoning, sign, or special use permit and requests for variations and petitions for amendments shall be established by the Council from time to time. Such fees shall be paid to the Zoning Administrator or the City Clerk who shall give a receipt therefor and account for the same to the Council.

40-5-62 PARTIAL INVALIDITY. The invalidity of any provision or section of this Code shall not affect the validity of the balance of this Code.

40-5-63 INTERPRETATION AND CONSTRUCTION OF CODE.

(A) It is not intended by the City Council that this Code is to repeal, abrogate, annul, impair or interfere with any other existing ordinance relating to the use of buildings or land, other than relevant portions of the 1967 Zoning Code. Neither is it intended by this ordinance to abrogate, annul, impair or interfere with any valid private covenants or restrictions on land.

(B) When this Code imposes greater restrictions upon the use of and/or buildings than those imposed by existing ordinance, or by private covenants or restrictions, then the provisions of this Code shall control.

40-5-64 **EFFECTIVE DATE.** This Code is declared to be urgent and necessary for the immediate preservation of the public peace, health and safety, and shall, therefore, take effect and be in full force **ten (10) days** after it is printed in pamphlet form as provided by law.