

## Chapter 38

### ZONING\*

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\* **Cross References:** Any ordinance pertaining to rezoning, § 1-6(11); flood protection, Ch. 14; mobile homes and recreational vehicles, Ch. 17; signs, Ch. 26; soil erosion control, Ch. 27; subdivision regulations, Ch. 30; swimming pools, Ch. 31; waterways, Ch. 37.

**State Law References:** Authority to regulate land use, MCL 125.581 et seq., MSA 5.2931 et seq.

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## **ARTICLE I.**

### **IN GENERAL**

#### **Sec. 38-1. Title.**

An ordinance enacted under Act No. 207 of the Public Acts of Michigan of 1921 (MCL 125.581 et seq., MSA 5.2931 et seq.), as amended, governing the incorporated portions of the city to regulate and restrict the location and use of buildings, structures and land for trade, industry, residence and for public and semi-public or other specified uses; and to regulate and limit the height and bulk of buildings, and other structures; to regulate and to determine the size of yards, courts, and open spaces; to regulate and limit the density of population; and for such purposes to divide the city into districts and establish the boundaries thereof; providing for changes in the regulations, restrictions and boundaries of such districts; defining certain terms used herein; providing for enforcement; establishing a board of appeals; and imposing penalties for the violation of this chapter.  
(Code 1977, § 5.00)

#### **Sec. 38-2. Preamble.**

Pursuant to the authority conferred by the public acts of the state in such case, made and provided and for the purpose of promoting and protecting the public health, safety, peace, morals, comfort, convenience and general welfare of the inhabitants of the city, by protecting and conserving the character and social and economic stability of the residential, commercial, industrial and other use areas; by securing the most appropriate use of land; preventing overcrowding of the land and undue congestion of population; providing adequate light, air and reasonable access; and facilitating adequate and economical provisions of transportation, water, sewers, schools, recreation and other public requirements, and by other means, all in accordance with a comprehensive plan this chapter is adopted.  
(Code 1977, § 5.01)

#### **Sec. 38-3. Short title.**

This chapter shall be known and may be cited as the City of Owosso Zoning Ordinance.  
(Code 1977, § 5.02)

#### **Sec. 38-4. Construction of language.**

The following rules of construction apply to the text of this chapter:

- (1) The particular shall control the general.
- (2) In case of any difference of meaning or implication between the text of this chapter and any caption or illustration, the text shall control.
- (3) The word "shall" is always mandatory and not discretionary. The word "may" is permissive.
- (4) Words used in the present tense shall include the future and words used in the singular number shall include the plural, and the plural the singular, unless the context clearly indicates the contrary.
- (5) A "building" or "structure" includes any part thereof.
- (6) The phrase "used for" includes "arranged for," "designed for," "intended for," "maintained for," or "occupied for."
- (7) The word "person" includes an individual, a corporation, a partnership, an incorporated association, or any other similar entity.
- (8) Unless the context clearly indicates the contrary, where a regulation involves two (2) or more items, conditions, provisions, or events connected by the conjunction "and," "or," "either . . . or," the conjunction shall be interpreted as follows:
  - (a) "And" indicates that all the connected items, conditions, provisions or events shall apply.
  - (b) "Or" indicates that the connected items, conditions, provisions or events may apply singly or in any combination.
  - (c) "Either . . . or" indicates that the connected items, conditions, provisions or events shall apply singly but not in combination.
- (9) Terms not herein defined shall have the meaning customarily assigned to them.

(Code 1977, § 5.03)

### **Sec. 38-5. Definitions.**

*Accessory building.* A building detached from a principal building on the same lot and customarily incidental and subordinate to the principal building or use.

*Accessory use, or accessory.* A use which is clearly incidental to, customarily found in connection with, and (except in the case of accessory off-street parking spaces or loading) located on the same zoning lot as the principal use to which it is related.

When "accessory" is used in this text, it shall have the same meaning as accessory use.

An accessory use includes, but is not limited to, the following:

- (1) Residential accommodations for servants and/or caretakers.
- (2) Swimming pools for the use of the occupants of a residence or their guests.
- (3) Domestic or agricultural storage in a barn, shed, tool room, or similar accessory building or other structure.
- (4) A newsstand primarily for the convenience of the occupants of a building, which is located wholly within such building and has no exterior signs or displays.
- (5) Storage of merchandise normally carried in stock in connection with a business or industrial use, unless such storage is excluded in the applicable district regulations.
- (6) Storage of goods used in or produced by industrial uses or related activities, unless such storage is excluded in the applicable district regulations.
- (7) Accessory off-street parking spaces, open or enclosed, subject to the accessory off-street parking regulations.
- (8) Uses clearly incidental to a main use such as, but not limited to, offices of an industrial or commercial complex located on the site of the commercial or industrial complex.
- (9) Accessory off-street loading, subject to the off-street loading regulations for the district in which the zoning lot is located.
- (10) Accessory signs, subject to the sign regulations for the district in which the zoning lot is located.
- (11) Satellite receiving antennae: An apparatus capable of receiving communications from a transmitter relay located in planetary orbit.
- (12) Usable satellite signal: A satellite signal which when received on a conventional television set is at least equal in picture quality to that received from local commercial television stations or by way of cable television.

*Adult foster care facility.* A governmental or non-governmental establishment having as its principal function the receiving of adults for foster care. It includes facilities and foster care family homes for adults who are aged, emotionally disturbed, developmentally disabled, or physically handicapped who require supervision on an ongoing basis but who do not require continuous nursing care. Beginning March 27, 1984, adult foster care facility shall include home for the aged.

*Adult foster care small group home.* An adult foster care facility with the approved capacity to receive at least seven (7) but not more than twelve (12) adults shall be provided with foster care.

*Alley.* Any dedicated public way affording a secondary means of access to abutting property, and not

intended for general traffic circulation.

*Alterations.* Any change, addition or modification in construction or type of occupancy, or in the structural members of a building, such as walls or partitions, columns, beams or girders, the consummated act of which may be referred to herein as "altered" or "reconstructed."

*Apartment.* A suite of rooms or a room in a multiple-family building arranged and intended for a place of residence of a single family or a group of individuals living together as a single housekeeping unit.

*Auto repair station.* A place where, along with the sale of engine fuels, the following services may be carried out: general repair, engine rebuilding, rebuilding or reconditioning of motor vehicles, collision service, such as body, frame, or fender straightening and repair; overall painting and undercoating of automobiles.

*Basement.* That portion of a building which is partly or wholly below grade but so located that the vertical distance from the average grade to the floor is greater than the vertical distance from the average grade to the ceiling. A basement shall not be counted as a story.

*Bed and breakfast operations.* A use which is subordinate to the principal use of a dwelling unit as a single-family dwelling unit and a use in which transient guests are provided a sleeping room and board in return for payment.

*Block.* The property abutting one (1) side of a street and lying between the two (2) nearest intersecting streets, (crossing or terminating) or between the nearest such street and railroad right-of-way, unsubdivided acreage, lake, river or live stream; or between any of the foregoing and any other barrier to the continuity of development, or corporate boundary lines of the city.

*Building.* Any structure, either temporary or permanent, having a roof supported by columns or walls, and intended for the shelter, or enclosure of persons, animals, chattels or property of any kind.

*Building height.* The vertical distance measured from the established grade to the highest point of the roof surface for flat roofs; to the deck line of mansard roofs; and to the average height between eaves and ridge for gable, hip and gambrel roofs.

*Building line.* A line formed by the face of the building, and for the purposes of this chapter, a minimum building line is the same as a front setback line. See Article XVIII for porches and horizontal projections such as eaves and bay windows.

*Child or adult care center.* A facility other than a private home where one (1) or more persons are received for care and supervision for periods of less than twenty-four (24) hours a day and for four (4) weeks during a calendar year.

*Club.* An organization of persons for special purposes or for the promulgation of sports, arts, sciences, literature, politics or the like, but not operated for profit.

*Convalescent or nursing home.* A structure with sleeping rooms, where persons are housed or lodged and are furnished with meals, nursing and medical care.

*Drive-in.* A business establishment so developed that its retail or service character is dependent on providing a drive-way approach or parking spaces for motor vehicles so as to serve patrons while in the motor vehicle rather than within a building or structure.

*Dwelling unit.* A building, or portion thereof, designed for occupancy by one (1) family for residential purposes and having cooking facilities.

*Dwelling, one-family.* A building designed exclusively for and occupied by one (1) family.

*Dwelling, two-family.* A building designed exclusively for occupancy by two (2) families living independently of each other.

*Dwelling, multiple-family.* A building, or a portion thereof, designed exclusively for occupancy by three (3) or more families living independently of each other.

*Development.* The construction of a new building or other structure on a zoning lot, the relocation of an existing building on another zoning lot, or the use of open land for a new use.

*District.* A portion of the incorporated area of the city within which certain regulations and requirements or various combinations thereof apply under the provisions of this chapter.

*Erected.* Built, constructed, altered, reconstructed, moved upon, or any physical operations on the premises which are required for construction, excavation, fill, drainage, and the like, shall be considered a part of erection.

*Essential services.* The erection, construction, alteration or maintenance by public utilities or city departments of underground, surface or overhead gas, electrical, steam, fuel or water transmission or distribution systems, collection, communication, supply or disposal systems, including towers, poles, wires, mains, drains, sewers, pipes, conduits, cables, fire alarm and police call boxes, traffic signals, hydrants and similar equipment in connection herewith, but not including buildings which are necessary for the furnishing of adequate service by such utilities or city departments for the general health, safety or welfare.

*Excavation.* Any breaking of ground, except common household gardening and ground care.

*Family.* One (1) or two (2) persons or parents, with their direct lineal descendants and adopted children (and including the domestic employees thereof) together with not more than two (2) persons not so related, living together in the whole or part of a dwelling comprising a single housekeeping unit. Every additional group of two (2) or less persons living in such housekeeping unit shall be considered a separate family for the purpose of this chapter.

*Family day care home.* A private home in which one (1) to six (6) children are received for care and supervision for periods of less than twenty-four (24) hours a day and for more than four (4) weeks during a calendar year.

*Farm.* The carrying on of any agricultural activity or the raising of livestock or small animals as a source

of income.

*Floor area, residential.* For the purpose of computing the minimum allowable floor area in a residential dwelling unit, the sum of the horizontal areas of such story of the building shall be measured from the exterior faces of the exterior walls or from the centerline of walls separating two (2) dwellings. The floor area measurement is exclusive of areas of basements, unfinished attics, attached garages, breezeways and enclosed and unenclosed porches.

*Floor area, usable.* (For the purposes of computing parking.) That area used for or intended to be used for the sale of merchandise or services, or for use to serve patrons, clients, or customers. Such floor area which is used or intended to be used principally for the storage or processing of merchandise, hallways, or for the utilities or sanitary facilities, shall be excluded from this computation of "usable floor area": Measurement of usable floor area shall be the sum of the horizontal areas of the several floors of the building, measured from the interior faces of the exterior walls.

*Floor area ratio.* A volume control wherein a building ratio of 1.0 means that the floor area may equal the lot area. An F.A.R. of 5.0 means that the floor area may be up to five (5) times as large as the lot area: and an F.A.R. of 0.5 means that the floor area shall be no more than one-half of the lot area.

*Foster family group home.* A private home in which more than four (4) but less than seven (7) children, who are not related to an adult member of the household by blood, marriage or adoption, are provided care for twenty-four (24) hours a day for four (4) or more days a week, for two (2) or more consecutive weeks, unattended by a parent or legal guardian.

*Foster family home.* A private home in which one (1) but not more than four (4) minor children, who are not related to an adult member of the household by blood, marriage or adoption, are given care and supervision for twenty-four (24) hours a day, for four (4) or more days a week, for two (2) or more consecutive weeks, unattended by a parent or legal guardian.

*Garage, private.* An accessory building or portion of a main building designed or used solely for the storage of motor-driven vehicles, boats and similar vehicles owned and used by the occupants of the building to which it is accessory.

*Garage, service.* Any premises used for the storage or care of motor-driven vehicles, or where any such vehicles are equipped for operation, repaired, or kept for remuneration, hire or sale.

*Gasoline service station.* A place for the dispensing, sale or offering for sale of motor fuels directly to users of motor vehicles, together with the sale of minor accessories and services for motor vehicles, but not including major automobile repair.

*Grade.* The ground elevation established for the purpose of regulating the number of stories and the height of buildings. The building grade shall be the level of the ground adjacent to the walls of the building if the finished grade is level. If the ground is not entirely level, the grade shall be determined by averaging the elevation of the ground for each face of the building.

*Group day care home.* A private home where seven (7) to twelve (12) children are received for care and

supervision for periods of less than twenty-four (24) hours a day and for more than four (4) weeks during a calendar year.

Drawing, ms 2263

Drawing, ms 2264

Drawing, ms 2265

*Hotel.* A building or part of a building, with a common entrance or entrances, in which the dwelling units or rooming units are used primarily for transient occupancy, and in which one (1) or more of the following services are offered: Mail service, furnishing of linen, telephone, secretarial, or desk service, and bellboy service. A hotel may include restaurant or cocktail lounge, public banquet halls, ballrooms or meeting rooms.

*Junkyard.* An area where waste, used or secondhand materials are bought and sold, exchanged, stored, baled, packed, disassembled, or handled including, but not limited to: Scrap iron and other metals, paper, rags, rubber tires and bottles. A "junkyard" includes automobile wrecking yards and includes any open area of more than two hundred (200) square feet for storage, keeping or abandonment of junk.

*Kennel, commercial.* Any lot or premises on which three (3) or more dogs, cats or other household pets are either permanently or temporarily boarded. Kennel shall also include any lot or premises where household pets are bred or sold.

*Loading space.* An off-street space on the same lot with a building, or group of buildings, for the temporary parking of a commercial vehicle while loading and unloading merchandise or materials.

*Local street.* A street that provides frontage and access residential lots but also carries some through traffic to lower ordered cul-de-sac streets and lanes.

*Lot.* A parcel of land occupied, or intended to be occupied, by a main building or a group of such buildings and accessory buildings, or utilized for the principal use and uses accessory thereto, together with such yards and open spaces as are required under the provisions of this chapter. A lot may or may not be specifically designated as such on public records.

*Lot, corner.* A lot where the interior angle of two (2) adjacent sides at the intersection of two (2) streets is less than one hundred thirty-five (135) degrees. A lot abutting upon a curved street or streets shall be considered a corner lot for the purposes of this chapter if the arc is of less radius than one hundred fifty (150) feet and the tangents to the curve, at the two (2) points where the lot lines meet the curve or the straight street line extended from an interior angle of less than one hundred thirty-five (135) degrees.

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

*Lot, through.* Any interior lot having frontage on two (2) more or less parallel streets as distinguished from a corner lot. In the case of a row of double frontage lots, all yards of said lots adjacent to streets shall be considered frontage, and front yard setbacks shall be provided as required.

*Lot, zoning.* A single tract of land, located within a single block, which, at the time of filing for a building permit, is designated by its owner or developer as a tract to be used, developed or built upon as a unit, under single ownership or control.

A zoning lot shall satisfy this chapter with respect to area, size, dimensions and frontage as required in the district in which the zoning lot is located. A zoning lot, therefore, may not coincide with a lot of record as filed with the county register of deeds, but may include one (1) or more lots of record.

*Lot area.* The total horizontal area within the lot lines of the lot.

*Lot coverage.* The part or percent of the lot occupied by buildings including accessory buildings.

*Lot depth.* The horizontal distance between the front and rear lot lines, measured along the median between the side lot lines.

*Lot lines.* The lines bounding a lot as defined herein:

- (1) **Front Lot Line.** In the case of an interior lot, is that line separating said lot from the street. In the case of a through lot, is that line separating said lot from either street. In the case of a corner lot, is that line as designated on the building plans filed for approval with the Building Inspector.
- (2) **Rear Lot Line.** That lot line opposite the front lot line. In the case of lot pointed at the rear, the rear lot line shall be an imaginary line parallel to the front lot line, not less than ten (10) feet long lying farthest from the front lot line and wholly within the lot.
- (3) **Side Lot Line.** Any lot line other than the front lot line or rear lot line. A side lot line separating a lot from a street is a side street lot line. A side lot line separating a lot from another lot or lots is an interior side lot line.

*Lot of record.* A parcel of land, the dimensions of which are shown on a document or map on file with the county register of deeds or in common use by city or county officials, and which actually exists as so shown, or any part of such parcel held in a record ownership separate from that of the remainder thereof.

*Lot width.* The horizontal straight line distance between the side lot lines, measured between the two (2) points where the front setback line intersects the side lot lines.

*Main building.* A building in which is conducted the principal use of the lot upon which it is situated.

*Major thorofare.* An arterial street which is intended to serve as a large volume trafficway for both the immediate municipal area and the region beyond, and is designated as a major thorofare, parkway, freeway, expressway or equivalent term on the major thorofare plan to identify those streets comprising the basic structure of the major thorofare plan.

*Master plan.* The comprehensive community plan, including graphic and written proposals indicating the general location for streets, parks, schools, public buildings and all physical development of the city, and includes any unit or part of such plan, and any amendment to such plan or parts thereof. Such plan may or may

not be adopted by the planning commission and/or the council.

*Mezzanine.* An intermediate floor in any story occupying not to exceed one-third ( 1/3) of the floor area of such story.

*Mobile home (trailer coach).* Any vehicle designed, used, or so constructed as to permit its being used as a conveyance upon the public streets or highways and duly licensable as such, and constructed in such a manner as will permit occupancy thereof as a dwelling or sleeping place for one (1) or more persons.

*Mobile home park (trailer court).* Any plot of ground upon which two (2) or more trailer coaches, occupied for dwelling or sleeping purposes are located.

*Motel.* A series of attached, semi-detached or detached rental units containing a bedroom, bathroom and closet space. Units shall provide for overnight lodging and are offered to the public for compensation, and shall cater primarily to the public traveling by motor vehicle.

*Nonconforming building.* A building or portion thereof lawfully existing at the effective date of the ordinance from which this chapter was derived (December 6, 1970), or amendments thereto, and that does not conform to the provisions of the chapter in the district in which it is located.

*Nonconforming use.* A use which lawfully occupied a building or land at the effective date of the ordinance from which this chapter was derived (December 6, 1970), or amendments thereto, and that does not conform to the use regulations of the district in which it is located.

*Nursery, plant materials.* A space, building or structure, or combination thereof, for the storage of live trees, shrubs or plants offered for retail sale on the premises including products used for gardening or landscaping. The definition of nursery within the meaning of this chapter does not include any space, building or structure used for the sale of fruits, vegetables or Christmas trees.

*Nuisance factors.* An offensive, annoying, unpleasant or obnoxious thing or practice, a cause or source of annoyance, especially a continuing or repeating invasion of any physical characteristics of activity or use across a property line which can be perceived by or affects a human being, or the generation of an excessive or concentrated movement of people or things, such as, but not limited to:

- (1) Noise;
- (2) Dust;
- (3) Smoke;
- (4) Odor;
- (5) Glare;
- (6) Fumes;

- (7) Flashes;
- (8) Vibration;
- (9) Shock waves;
- (10) Heat;
- (11) Electronic or atomic radiation;
- (12) Objectionable effluent;
- (13) Noise of congregation of people, particularly at night;
- (14) Passenger traffic;
- (15) Invasion of nonabutting street frontage by traffic.

*Off-street parking lot.* A facility providing vehicular parking spaces along with adequate drives and aisles, for maneuvering, so as to provide access for entrance and exit for the parking of more than three (3) vehicles.

*Open front store.* A business establishment so developed that service to the patron may be extended beyond the walls of the structure, not requiring the patron to enter the structure. The term "open front store" shall not include automobile repair stations or automobile service stations.

*Parking space.* An area of definite length and width, said area shall be exclusive of drives, aisles or entrances giving access thereto, and shall be fully accessible for the parking of permitted vehicles.

*Plaza.* An open area accessible to the public which is either:

- (1) An open area along the front lot line not less than five (5) feet deep, measured perpendicular to the front lot line; or
- (2) An open area on a through lot, extending from street to street and not less than forty (40) feet wide. Such plaza shall not at any point be more than five (5) feet above the curb level of the nearest adjoining street, and shall be unobstructed from its lowest level up, except for covered pedestrian walks.

*Principal use.* The main use to which the premises are developed and the principal purpose for which the premises exist.

*Public utility.* A person, municipal department, board or commission duly authorized to furnish and furnishing under federal, state or city regulations to the public: Gas, steam, electricity, sewage disposal, communication, telegraph, transportation or water.

*Room.* For the purpose of determining lot area requirements and density in a multi-family district, a room is a living room, dining room or bedroom, equal to at least eighty (80) square feet in area. A room shall not include the area in kitchen, sanitary facilities, utility provisions, corridors, hallways, and storage. Plans presented showing one (1), two (2), or three (3) bedroom units and including a "den," "library" or other extra room shall count such extra room as a bedroom for the purpose of computing density.

*Secondary thoroughfare.* A principal artery within residential or commercial areas that carries relatively high traffic volumes and connects lower ordered streets with major thoroughfares. Its primary function is to promote the free flow of traffic.

*Setback.* The distance required to obtain minimum front, side or rear yard open space provisions of this chapter.

*Sign.* Any device, fixture, placard, or structure that uses any color, form, graphic, illumination, symbol, or writing to advertise, announce the purposes of, or identify the purpose of a person or entity, or to communicate information of any kind to the public.

*Story.* That part of a building, except a mezzanine as defined herein, included between the surface of one floor and the surface of the next floor, or if there is no floor above, then the ceiling next above. A story thus defined shall not be counted as a story when more than fifty (50) percent, by cubic content, is below the height level of the adjoining ground.

*Story, half.* An uppermost story lying under a sloping roof having an area of at least two hundred (200) square feet with a clear height of seven (7) feet six (6) inches. For the purposes of this chapter, the usable floor area is only that area having at least four (4) feet clear height between floor and ceiling.

*Street.* A public dedicated right-of-way, other than an alley, which affords the principal means of access to abutting property.

*Structure.* Anything constructed or erected, the use of which requires location on the ground or attachment to something having location on the ground.

*Temporary use or building.* A use or building permitted by the board of appeals to exist during periods of construction of the main building or use, or for special events.

*Use.* The principal purpose for which land or a building is arranged, designed or intended, or for which land or a building is or may be occupied.

*Wall.* A structure of definite height and location to serve as an obscuring screen in carrying out the requirements of this chapter.

*Yards.* The open spaces on the same lot with a main building unoccupied and unobstructed from the ground upward except as otherwise provided in this chapter (see sections 38-418 and 38-419) and as defined herein:

- (1) *Front yard.* An open space extending the full width of the lot, the depth of which is the minimum

horizontal distance between the front lot line and the nearest point of the main building.

- (2) *Rear yard.* An open space extending the full width of the lot, the depth of which is the minimum horizontal distance between the rear lot line and the nearest point of the main building. In the case of a corner lot, the rear yard may be opposite either street frontage.
- (3) *Side yard.* An open space between the main building and the side lot line, extending from the front yard to the rear, the width of which is the horizontal distance from the nearest point on the side lot line to the nearest point of the main building.

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(Code 1977, § 5.04; Ord. No. 424, § 5.04, 6-18-84; Ord. No. 428, § 1, 9-17-84; Ord. No. 439, § 1, 1-6-86; Ord. No. 477, § 1(1), 11-19-90; Ord. No. 499, 2-16-93; Ord. No. 502, § 1, 3-15-93; Ord. No. 520, § 1, 3-21-94)

**Cross References:** Definitions and rules of construction generally, § 1-2.

#### **Sec. 38-6. Minimal requirements.**

In their interpretation and application, the provisions of this chapter shall be held to be minimum requirements adopted for the promotion of the public health, morals, safety, comfort, convenience or general welfare. It is not intended by this chapter to repeal, abrogate, annul or in any way to impair or interfere with any existing provision of law or ordinance other than the above described zoning ordinance, or with any rules, regulations or permits previously adopted or issued or which shall be adopted or issued pursuant to the law relating to the use of buildings or premises; provided, however, that where this chapter imposes a greater restriction than is required by existing ordinance or by rules, regulations or permits, the provisions of this chapter shall control.

(Code 1977, § 5.125)

#### **Sec. 38-7. Vestment of rights.**

Nothing in this chapter should be interpreted or construed to give rise to any permanent vested rights in the continuation of any particular use, district, zoning classification or any permissible activities therein; and, they are hereby declared to be subject to subsequent amendment, change or modification as may be necessary to the preservation or protection of public health, safety and welfare.

(Code 1977, § 5.127)

#### **Secs. 38-8--38-25. Reserved.**

## **ARTICLE II.**

### **ZONING DISTRICTS AND MAP**

#### **Sec. 38-26. Districts established.**

For the purpose of this chapter, the city is hereby divided into the following districts:

*Residential districts.*

R-1 one-family residential district

R-2 two-family residential district

RT attached one-family residential district

RM-1 multiple-family residential district--Low rise

RM-2 multiple-family residential district--High rise

*Nonresidential districts.*

OS-1 office service district

B-1 local business district

B-2 planned shopping center district

B-3 central business district

B-4 general business district

I-1 light industrial district

I-2 general industrial district

P-1 vehicular parking district

C-OS conservation-open space district

*Combination districts.*

PUD planned unit development district

(Code 1977, § 5.05; Ord. No. 626, § 1, 3-17-03; Ord. No. 700, § 1, 7-21-08)

**Sec. 38-27. District boundaries.**

The boundaries of these districts are hereby established as shown on the zoning map, city of Owosso, zoning ordinance, which is on file in the office of the city clerk, and which map with all notations, references, and other information shown thereon shall be as much a part of this chapter as if fully described herein.

(Code 1977, § 5.06; Ord. No. 707, § 1, 4-20-09; Ord. No. 708, § 1, 4-20-09; Ord. No. 709, § 1, 4-20-09)

**Sec. 38-28. District boundaries interpreted.**

Where uncertainty exists with respect to the boundaries of the various districts as shown on the zoning map, the following rules shall apply:

- (1) Boundaries indicated as approximately following the center lines of streets, highways or alleys shall be construed to follow such center lines.
- (2) Boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines.
- (3) Boundaries indicated as approximately following city limits shall be construed as following city limits.
- (4) Boundaries indicated as following railroad lines shall be construed to be the midway between the main tracks.
- (5) Boundaries indicated as following shore lines shall be construed to follow such shore lines, and in the event of change in the shore line shall be construed as moving with the actual shore line; boundaries indicated as approximately following the center line of streams, rivers, canals, lakes or other bodies of water shall be construed to follow such center lines.
- (6) Boundaries indicated as parallel to or extensions of features indicated in subsections (1) through (5) above shall be so construed.
- (7) Where physical or natural features existing on the ground are at variance with those shown on the official zoning map or where distances are not specifically indicated on the zoning map, or in other circumstances not covered by subsections (1) through (6) above, the board of appeals shall interpret the district boundaries.
- (8) Insofar as some or all of the various districts may be indicated on the zoning map by patterns which, for the sake of map clarity, do not cover public rights-of-way, it is intended that such district boundaries do extend to the center of any public right-of-way.

(Code 1977, § 5.07)

**Sec. 38-29. Zoning of annexed areas.**

Whenever any area is annexed to the city it shall immediately upon such annexation, be automatically classified as an R-1 district until a zoning map for the area has been adopted by the council. The planning commission shall recommend the appropriate zoning districts for such area within three (3) months after the matter is referred to it by the council.

(Code 1977, § 5.08)

**Sec. 38-30. Zoning of vacated areas.**

Whenever any street, alley or other public way, within the city shall be vacated, such street, alley or

other public way or portion thereof, shall automatically be classified in the same zone district as the property to which it attaches.

(Code 1977, § 5.09)

### **Sec. 38-31. District purposes, uses.**

All purposes and uses in any districts shall be subject to the provisions of article XVII, General Provisions, article XVIII, General Exceptions, and article XIX, Special Use Permits. In order to ensure all possible benefits and protection for the zone districts in this chapter, the land uses have been classified in three (3) categories:

- (1) *Principal uses permitted.* The primary uses and structures specified for which the zone district has been established.
- (2) *Principal uses permitted subject to special conditions.* Such use shall be allowed, subject to the specific conditions imposed for such use in the chapter.
- (3) *Uses permitted by issuance of a special use permit.* Uses and structures which have been generally accepted as reasonably compatible with the primary uses and structures within the zone district, but could present potential injurious effects upon the primary uses and structures within the zone district and therefore require special consideration in relation to the welfare of adjacent properties and to the community as a whole. All such proposed uses shall be subject to a public hearing following review by the city planning commission. Refer to article XIX.

(Code 1977, § 5.1; Ord. No. 424, § 5.1, 6-18-84)

### **Sec. 38-32. Historic overlay districts.**

- (a) *Statement of purpose.* The purpose of establishing historic overlay districts within the city is to:
  - (1) Safeguard the heritage of the city by preserving historic districts as well as the individual buildings, structures, sites and objects within the districts in the city which reflect elements of the city's cultural social, economic, political or architectural history.
  - (2) To stabilize and improve property values in the districts.
  - (3) To strengthen the local economy.
  - (4) To promote the use of historic districts for the education, pleasure and welfare of the citizens of the city and of the state.
- (b) As used in this chapter:
  - (1) *Alter* and *alteration* mean work that changes the detail of a resource but does not change the basic size or shape. *Alteration* includes any action requiring a building permit or site modification under all current city ordinances.

- (2) *Destruction* means the razing or demolition, whether entirely or in part, of a resource, and includes, but is not limited to, destruction by neglect.
- (3) *Destruction by neglect* means neglect in maintaining, repairing or securing a resource that results in deterioration of an exterior feature of the resource or the loss of structural integrity of the resource.
- (4) *Historic resource* means a publicly or privately owned building, structure, site, object, feature or open space that is significant in the history, architecture, culture, or beauty of the city.

(c) The city historic overlay districts shall be those areas already designated as national historic districts within the city. The districts are identified on maps maintained in the office of the city clerk and include:

- (1) The Oliver Street Historic District;
- (2) The Westown Historic District;
- (3) The Michigan Avenue Historic District; and
- (4) The Mason Street Historic District.

(d) Although it is not officially registered as a national historic district, downtown Owosso shall also constitute a historic overlay district for the purposes of this section. The downtown historic overlay district is described below:

Beginning at the intersection of the south line of Mason Street and the west line of Washington Street, thence westerly to the east bank of the Shiawassee River, thence southwesterly along the east bank of the river to a point two hundred fifty (250) feet southerly of the Main Street right-of-way, thence northeasterly on a line perpendicular to Water Street and extended to the centerline at Water Street, thence southwesterly along the centerline of Water Street to the intersection of the north line of Comstock Street, thence east to the intersection of the west line of Park Street, thence north to the intersection of the north line of East Exchange Street, thence west to the west line of Washington Street, thence north to the point of beginning.

(e) Whenever this chapter directs the planning commission, city council or zoning board of appeals to engage in a review and approval process of any proposed action to a structure, building or site, whether publicly or privately owned, within the city, the aforementioned public bodies shall consider whether the proposed action poses an adverse impact upon a historic resource located within the historic overlay district or whether the proposed action poses an adverse impact upon the historic overlay district itself. This section specifically includes any review and approval process necessary or ancillary to an expenditure of public funds or capital improvements.

- (1) The standards for judging adverse impact shall include:
  - a. Whether the proposed action involves the destruction or alteration of all or any

significant part of the historic resource.

- b. Whether the proposed action involves the alteration of the surrounding environment when the significance of the historic resource is derived from its relationship to its site.
- c. Whether the proposed action involves the introduction of visual or audio elements that are out of character with the property and its setting.
- d. Whether the proposed action would destroy or erode the integrity or the significance that was the basis for the historic resources designation as a historic resource.

(Ord. No. 584, § 1, 6-21-99)

**Sec. 38-33. Main Street office overlay district.**

(a) *Statement of purpose.* The purpose of this chapter is to permit the creation of an office overlay zoning district along major transportation corridors of the city. The development standards set forth in this chapter are designed to:

- (1) Improve traffic safety and appearance;
- (2) Guide land use so it will be compatible with existing nearby land uses;
- (3) Recognize the value of property for non-residential uses along the corridor due to traffic volumes and accessibility; and
- (4) Permit the redevelopment of existing uses in accordance with the requirements of this chapter.

(b) *Applicability.*

- (1) The development standards contained in this chapter shall apply to the land along both sides of M-21 from the M-21 right-of-way to the rear line of those lots fronting on M-21 for the area between Hickory Street and Gould Street and to the parcel at 106 N. Dewey Street.
- (2) The provisions of this chapter are intended to carry out the recommendations of the 1991 M-21 corridor plan and the findings of the planning commission prior to the adoption of the ordinance amendment. The regulations set forth here are designed to be flexible in order to address the diverse nature of this area yet are based on a number of criteria to ensure appropriate, fair and consistent decision making.
- (3) An office overlay zoning district is applied when a development proposal is submitted for site plan approval to the planning commission, meets the development standards and other pertinent zoning standards, and is approved.
- (4) The overlay district shall not have the affect of rezoning any property described above in subsection (b)(1) in to another zoning district classification. No individual parcel will become nonconforming or any more nonconforming than it is under the current zoning classification.

(c) *Review procedures.* Uses within this zone shall be subject to the review procedures required for the underlying district in which the use is located and as specified in this section. In addition the site plan review shall be conducted in a public hearing format as is provided for in section 38-552.

(d) *Permitted uses.* The overlay zone shall not affect any existing conforming use as is determined by the permitted land use and related standards for the underlying zoning districts. The office overlay district shall permit the uses outlined in section 38-172, principle uses permitted, and section 38-173, principle uses permitted subject to special conditions, except that drive-in or drive-through facilities as a principle use or an accessory use shall not be permitted.

(e) *Development standards.* Whenever the provisions of this section are enacted, a permitted use shall be in accordance with the site development standards of the overlay zone. The site development standards listed herein shall apply to all uses and property in this zone unless otherwise noted.

- (1) Required lot size: The minimum lot width shall be 114 feet except as is provided for in subsection (4)d.3.
- (2) Setbacks for buildings and parking:
  - a. *Front:* There shall be a front yard setback of at least twenty-five (25) feet for buildings. This area shall not contain any parking area except for necessary access drives and vehicle maneuvering area and shall be landscaped according to the requirements of this section. Parking area shall not be located in front of the building(s) on the site.
  - b. *Rear and side:* There shall be setbacks provided in accordance with the requirements of the zoning district in which the use is located.
- (3) Lighting standards: Lighting in this district used to illuminate any off-street parking area shall be arranged to reflect the light away from adjacent property and street. Specifically, lights with no cutoff-type luminaire shall be no higher than 10 feet and shall have a minimum illumination, measured at the lot line at ground level, of .20 candlepower. Lights with a cutoff-type luminaire shall be no higher than twenty (20) feet with a maximum illumination, measured at the lot line ground level, of .30 candlepower. Lights with a luminaire of less than 90° cutoff shall be no higher than twenty (20) feet, with a maximum illumination, measured at the lot line at ground level, of .50 candlepower.
- (4) Access standards: The planning commission shall review site plans according to the following standards relating to vehicle access and circulation. The purpose of specific standards is to increase traffic safety, lessen congestion, provide adequate access, promote community character, and ensure orderly development.
  - a. The planning commission shall have the authority to limit the number of driveways for a site, and to require that parking lots on contiguous parcels be connected, driveways for contiguous parcels be shared, and opposite driveways be directly aligned. In determining whether the above access control measures are necessary, the following criteria shall be

considered:

1. The type and location of uses on the site.
  2. The location, size and design of existing and proposed parking areas.
  3. The existing and projected traffic volume on adjacent roadways.
  4. Compatibility between adjacent land uses.
  5. Land ownership and location of lot lines.
  6. The recommendations of the M-21 corridor study.
  7. Topography and sight distance on-site and along adjacent roadways.
  8. Distance from intersections.
  9. Location of driveways opposite the site.
  10. Width of roadway and number of lanes.
- b. A parcel shall not be denied reasonable access to M-21.
- c. A maximum of one (1) driveway shall be provided to an individual parcel or to a contiguous parcel under the same ownership from M-21 when the property in question has no other reasonable access to another abutting street or access road.
- d. Driveway spacing:
1. Driveways shall be spaced at least one hundred (100) feet apart with measurements taken from the centerline of each driveway. The planning commission shall have the authority to waive, or modify the following spacing requirements when strict adherence to them would result in unreasonable access to the site. This minimum distance may also be decreased in order to provide for a shared driveway arrangement or to provide for safer traffic or pedestrian circulation. In modifying the driveway spacing requirements the criteria of subsection (e)(4)a. shall be used.
  2. Corner clearance. All direct-access driveways shall be constructed such that the point of tangency of the curb return radius closest to a signalized or stop-sign-controlled intersection be at least forty (40) feet from the perpendicular curb face of the intersecting street. Using a 15-foot driveway radius, the edge of the driveway throat shall be fifty (50) feet from the curb face of the perpendicular intersecting street. The driveway radius shall not compound with the intersection corner radius.

3. Bonus for combining access points. When two adjacent property owners agree to combine access points, the site development will be granted an incentive bonus. The road frontage normally required will be reduced to eighty-eight (88) feet for both landowners.
- e. Rear access: When a lot abuts an alley, access to the alley shall be prohibited unless the lot is located adjacent to a side street or the alley no longer serves residential properties.
- (5) To maintain the original character of this residential corridor and to tie the mixed-use district together, each development shall incorporate deciduous hardwood plantings in an area from five (5) to ten (10) feet from the sidewalk in the front yard area. The existing trees and new trees in this area shall maintain a spacing standard of one (1) tree for every thirty (30) feet of frontage. During site plan review the planning commission may revise the spacing to meet sign visibility needs and driveway site clearances. Tree species shall conform to the city arborist's recommended list of street frontage trees as may be amended from time to time and shall conform to the applicable standards of section 38-384.
- (6) No land assembly for the purposes of establishing an overlay district shall result in isolating one interior zoning lot that is less than eighty-eight (88) feet in width. If the development of the overlay district results in a lot less than the required width of one hundred fourteen (114) feet but not less than eighty-eight (88) feet, the planning commission shall authorize an office use if all other standards of this section and chapter are met.

(Ord. No. 610, § 1, 2-19-02)

**Secs. 38-34--38-50. Reserved.**

### **ARTICLE III.**

#### **R-1 ONE-FAMILY RESIDENTIAL DISTRICTS**

##### **Sec. 38-51. Intent.**

The R-1 one-family residential districts are designed to be the most restrictive of the residential districts. The intent of this article is to provide for an environment of predominantly low-density, one-family detached dwellings along with other residentially related facilities which serve the residents in the district.

(Code 1977, § 5.2)

##### **Sec. 38-52. Principal uses permitted.**

In an R-1 district, no building or land shall be used and no building shall be erected except for one (1) or more of the following specified uses unless otherwise provided in this chapter:

- (1) One-family detached dwellings;
- (2) Farms on those parcels of land separately owned outside the boundaries of either a proprietary or

supervisor's plat, having an area of not less than five (5) acres, all subject to the health and sanitation provisions of the city and provided further that no farms shall be operated as piggeries, or for the disposal of garbage, sewage, rubbish, offal or rendering plants, or for the slaughtering of animals except such animals as have been raised on the premises or have been maintained on the premises for at least a period of one (1) year immediately prior thereto and for the use and consumption by persons residing on the premises;

- (3) Publicly owned and operated libraries, parks, parkways and recreational facilities;
- (4) Public, parochial and other private elementary schools offering courses in general education, and not operated for profit;
- (5) Accessory buildings and uses, customarily incident to any of the above permitted uses and subject to the conditions of section 38-379;
- (6) Private pools shall be permitted as an accessory use within the rear yard only, provided they meet the following requirements:
  - a. There shall be a minimum distance of not less than ten (10) feet, between the adjoining property line, or alley right-of-way and the outside of the pool wall.
  - b. There shall be a distance of not less than four (4) feet between the outside pool wall and any building located on the same lot.
  - c. No swimming pool shall be located less than twenty-five (25) feet from any street line.
  - d. No swimming pool shall be located in an easement.
- (7) Bed and breakfast operations as a subordinate use to single-family dwelling units subject to city licensing provisions and a determination by the city planning commission that the applicant has shown proof of historic significance of the dwelling unit. In making the determination, the planning commission shall reference the historic criteria developed and adopted by the commission.
- (8) Family day care home, foster family group homes and foster family homes shall be permitted subject to the following provisions:
  - a. For family day care homes only, a minimum of four hundred (400) square feet of usable outdoor play area in the rear or side yard shall be available on the premises.
  - b. Such uses are duly licensed by the state department of social services or other equivalent public agencies authorized to license these uses.
  - c. Building and lots so used shall conform to all state and local code requirements, except that such uses or structures shall be permitted in buildings and lots which are nonconforming uses or structures as defined in this chapter.

(Code 1977, § 5.3; Ord. No. 428, § 2, 9-17-84; Ord. No. 477, § 1(3), 11-19-90)

**Sec. 38-53. Principal uses permitted subject to special conditions.**

The following uses shall be permitted in R-1 districts, subject to the conditions hereinafter imposed for each use and subject further to the review and approval of the site plan by the planning commission in accordance with section 38-390:

- (1) Churches and other facilities normally incidental thereto provided that: buildings of greater than the maximum height allowed in article XVI, Schedule of Regulations, may be allowed provided front, side and rear yards are increased above the minimum required yards by one (1) foot for each foot of building height that exceeds the maximum height allowed;
- (2) Public, parochial and private intermediate and/or secondary schools offering courses in general education, not operated for profit. Access to the site shall be in accordance with section 38-392;
- (3) Utility and public service buildings and uses (without storage yards) when operating requirements necessitate the locating of the building within the district in order to serve the immediate vicinity;
- (4) Reserved;
- (5) Private noncommercial recreational areas: institutional or community recreation centers; nonprofit swimming pool clubs, all subject to the following conditions:
  - a. The proposed site for any of the uses permitted herein which would attract persons from, or are intended to serve, areas beyond the immediate neighborhood shall have at least one (1) property line abutting a major thoroughfare as designated on the major thoroughfare plan, and the site shall be so planned as to provide all access in accordance with section 38-392.
  - b. Front, side and rear yards shall be at least eighty (80) feet wide, and shall be landscaped in trees, shrubs, and grass. All such landscaping shall be maintained in a healthy condition. There shall be no parking or structures permitted in these yards, except required entrance drives and those walls used to obscure the use from abutting residential districts.
  - c. Off-street parking shall be provided so as to accommodate not less than one-half of the member families and/or individual members. The planning commission may modify the off-street parking requirements in those instances wherein it is specifically determined that the users will originate from the immediately adjacent areas, and will therefore be pedestrian. Prior to the issuance of a building permit or zoning compliance permit, by-laws of the organization shall be provided in order to establish the membership involved for computing the off-street parking requirements. In those cases wherein the proposed use or organization does not have by-laws or formal membership, the off-street parking requirements shall be determined by the planning commission on the basis of usage.

- (6) Golf courses, which may or may not be operated for profit, subject to the following conditions:
  - a. The site shall be so planned as to provide all access in accordance with section 38-392.
  - b. The site plan shall be laid out to achieve a relationship between the major thoroughfare and any proposed service roads, entrances, driveways and parking areas which will encourage pedestrian and vehicular traffic safety.
  - c. Development features including the principal and accessory buildings and structures shall be so located and related as to minimize the possibilities of any adverse effects upon adjacent property. This shall mean that all principal or accessory buildings shall be not less than two hundred (200) feet from any property lines abutting residentially zoned lands; provided that where topographic conditions are such that buildings would be screened from view, the planning commission may modify this requirement.
- (7) Colleges, universities and other such institutions of higher learning, public and private, offering courses in general, technical or religious education and not operated for profit, all subject to the following conditions:
  - a. Any use permitted herein shall be developed only on sites of at least twenty (20) acres in area.
  - b. All access to the site shall be in accordance with section 38-392.
  - c. No building shall be closer than eighty (80) feet to any property line.
  - d. Off-street parking lots shall be set back eighty (80) feet from a major or secondary thoroughfare, fifty (50) feet from a local street and twenty (20) feet from an adjoining residential lot.
- (8) Cemeteries provided that all access to the site is in accordance with section 38-392;
- (9) General hospitals, with no maximum height restrictions, when the following conditions are met:
  - a. All such hospitals shall be developed only on sites consisting of at least five (5) acres in area.
  - b. All access to the site shall be in accordance with section 38-392.
  - c. The minimum distance of any main or accessory building from bounding lot lines or streets shall be at least eighty (80) feet for front, rear and side yards for all two (2) story structures.
  - d. Off-street parking lots shall be set back eighty (80) feet from a major or secondary thoroughfare, fifty (50) feet from a local street and twenty (20) feet from an adjoining

residential lot.

- (10) Accessory buildings and uses customarily incident to any of the above permitted uses;
- (11) Attached one-family dwelling units will be permitted subject to the following conditions following approval by the council. The council, following receipt of a request for attached one family designation, shall direct the petitioner to prepare and submit a formal site plan to the city planning commission in accordance with section 38-390. Following adoption of the final site plan by the commission, the council shall give legal notice to all property owners whose property lies within two hundred (200) feet of the proposed site, and conduct a public hearing on the designation of the site for attached one family development in accordance with the approved site plan. If designation is denied, the site plan shall be null and void.

- a. The maximum number of dwelling units that may be contained within any one (1) building or structure, and joined in any manner, shall not exceed four (4) dwelling units.
- b. The minimum site area required for the attached one family option as herein described and conditioned shall not be less than three (3) acres.
- c. Under this provision, the number of dwelling units per acre that could be built shall not exceed the number of dwelling units that normally could be built in the R-1 one family residential district. For purposes of computing the permitted number of dwelling units, a dwelling unit shall consist of at least one (1) living room, one (1) kitchen, one (1) bedroom, one (1) bathroom and one (1) fully enclosed garage and have a minimum of nine hundred fifty (950) square feet on one (1) floor exclusive of the garage.

Any land area which is not made a part of the land area assigned to a building or structure shall be devoted to open space and recreational purposes for the common use of all owners or tenants in the project area. The planning commission shall require assurances that the common open space areas shall be perpetually maintained. Such assurances may take the form of a homeowners association or other cooperative association with an annual dues assessment sufficient to provide for perpetual maintenance as a precondition to occupancy.

- d. Minimum spacing requirements and setbacks of any one (1) building or structure shall be as follows:

Front yard . . . . . 25'

Rear yard . . . . . 40'

Side yard . . . . . 15'

Side yard next to street . . . . . 25'

Platted lots of lesser width may be combined to establish adequate setbacks for attached one family dwelling units under this section.

- e. Because these provisions permit the developer to take a more cost-effective approach to land development (and are only conditionally permitted), the planning commission as part of its responsibility pursuant to section 38-390, site plan review, is hereby authorized to exercise a high degree of concern with landscaping improvements and screening techniques. The planning commission shall exercise due concern for the following landscaping features:
  - 1. The planning commission may require landscaping, fences, and walls in pursuance of the objectives of the zoning ordinance and same shall be provided and maintained as a condition of the establishment and the continued maintenance of any use to which they are appurtenant.
  - 2. The planning commission shall assess the adequacy of location and number of plant materials shown on the landscape plan which shall include details of planting requirements.
  - 3. Other landscaping treatment shall likewise be depicted on the plan including hard surface or aggregate material used in the landscaping plan.
- f. All improvements shall be completed within eighteen (18) months of the issuance of a building permit. The plans as submitted and approved shall not be otherwise modified unless after application for reconsideration the planning commission agrees to such modifications. Failure to comply with the approved plan is cause for the city to cause said plan to be implemented except as otherwise provided in subsection (11)c., and to make such assessments as are required to pay for the costs of the improvements against the owner.
- g. Phased development: In addition to the above requirements and in the event of expiration of approval with only partial site development completed, the legal applicant-developer shall complete all of the improvements, with the exception of proposed buildings and structures shown on the approved overall development plan and shall landscape the locations where other buildings were to be located.
- h. Site plan revisions: Any substantial modification, revision or change in the site plan from the site plan approved by the planning commission shall be subject to review and reapproval in accordance with the same procedure as required herein.
- i. The maximum height requirement of any building or structure shall be twenty-four (24) feet.
- j. No television receiving antennas shall be located outside the premises.

(Code 1977, § 5.4; Ord. No. 365, § 1, 12-15-80; Ord. No. 447, § 1, 12-15-86; Ord. No. 477, § 1(2), 11-19-90; Ord. No. 516, § 1, 3-14-94)

**Sec. 38-54. Uses permitted by issuance of a special use permit.**

The following uses are permitted in an R-1 district by issuance of a special use permit:

- (1) Adult foster care small group home, in accordance with the provisions of section 38-454(a);
- (2) Child or adult care center, in accordance with provisions of sections 38-454(b);
- (3) Conversion of single family units, in accordance with the provisions of section 38-454(c);
- (4) Private clubs, fraternal organizations, lodge halls, and union halls, in accordance with provisions of section 38-454(d).
- (5) Conversion of school and church buildings to office use in accordance with section 38-454(g).
- (6) Group day care home, in accordance with section 38-454(f).

(Ord. No. 424, § 5.4A, 6-18-84; Ord. No. 444, § 2, 12-1-86; Ord. No. 445, § 1, 12-15-86; Ord. No. 446, § 1, 12-15-86; Ord. No. 447, § 1, 12-15-86; Ord. No. 477, § 1(4), 11-19-90; Ord. No. 512, § 2, 11-15-93; Ord. No. 560, § 1, 12-12-96; Ord. No. 568, § 1, 5-10-98)

**Editors Note:** Ord. No. 560, § 1, adopted December 12, 1996, which amended § 38-54 by adding a subsection (6), was repealed by voters May 6, 1997.

#### **Sec. 38-55. Area and bulk requirements.**

See article XVI, schedule of regulations, limiting the height and bulk of buildings, the minimum size of lot permitted by land use, the maximum density permitted, and providing minimum yard setback requirements for R-1 districts.

(Code 1977, § 5.5)

#### **Sec. 38-56. General provisions.**

See article XVII, general provisions, for requirements governing off-street parking, signs, walks and other provisions for R-1 districts.

(Code 1977, § 5.6)

#### **Secs. 38-57--38-70. Reserved.**

### **ARTICLE IV.**

#### **R-2 TWO-FAMILY RESIDENTIAL DISTRICTS**

#### **Sec. 38-71. Intent.**

The R-2 two-family residential districts are designed to afford a transition of use in existing housing areas by permitting new construction or conversion of existing structures between adjacent residential and commercial, office, thoroughfares or other uses which would affect residential character. This district also recognizes the existence of older residential areas of the city where larger houses have been or can be converted from single-family to two-family residences in order to extend the economic life of these structures and allow

the owners to justify the expenditures for repairs and modernization. This district also allows the construction of new two-family residences where slightly greater densities are permitted, and new semi-detached dwellings. A semi-detached dwelling is a dwelling with no side yard set back on one side lot line. Approval of the site plan by the planning commission is required.

(Code 1977, § 5.7)

### **Sec. 38-72. Principal uses permitted.**

In an R-2 district, no building or land shall be used and no building shall be erected except for one (1) or more of the following specified uses unless otherwise provided in this chapter:

- (1) All uses permitted and as regulated in the one-family residential districts. The standards of the "schedule of regulations" applicable to the R-1 one-family residential district shall apply as minimum standards when one-family detached dwellings are erected;
- (2) Two-family dwellings;
- (3) Accessory buildings and uses customarily incident to any of the above permitted uses and subject to the conditions of section 38-379, accessory buildings;
- (4) A dwelling constituting the home for not more than three (3) aged and physically handicapped persons provided such use is in accordance with all state and local requirements;
- (5) Bed and breakfast operations as a subordinate use to single-family dwelling units subject to city licensing provisions and a determination by the city planning commission that the applicant has shown proof of historic significance of the dwelling unit. In making the determination, the planning commission shall reference the historic criteria developed and adopted by the commission.
- (6) Family day care home, foster family group homes and foster family homes shall be permitted subject to the following provisions:
  - a. For family day care homes only, a minimum of four hundred (400) square feet of usable outdoor play area in the rear or side yard shall be available on the premises.
  - b. Such uses are duly licensed by the state department of social services or other equivalent public agencies authorized to license these uses.
  - c. Building and lots so used shall conform to all state and local code requirements, except that such uses or structures shall be permitted in buildings and lots which are nonconforming uses or structures as defined in this chapter.

(Code 1977, § 5.8; Ord. No. 428, § 3, 9-17-84; Ord. No. 477, § 1(3), 11-19-90)

### **Sec. 38-73. Area and bulk requirements.**

See article XVI, schedule of regulations, limiting the height and bulk of buildings, the minimum size of

lot permitted by land use, the maximum density permitted, and providing minimum yard setback requirements for R-2 districts.  
(Code 1977, § 5.9)

**Sec. 38-74. General provisions.**

See article XVII, general provisions, for requirements governing off-street parking, signs, walls and other provisions for R-2 districts.  
(Code 1977, § 5.10)

**Sec. 38-75. Uses permitted by issuance of a special use permit.**

The following uses are permitted in an R-2 district by issuance of a special use permit:

- (1) Adult foster care small group home, in accordance with section 38-454(a);
- (2) Child or adult care center, in accordance with provisions of section 38-454(b).
- (3) Conversion of school and church buildings to office use in accordance with section 38-454(g).
- (4) Group day care home, in accordance with section 38-454(f).

(Ord. No. 424, § 5.10A, 6-18-84; Ord. No. 446, § 1, 12-15-86; Ord. No. 477, § 1(4), 11-19-90; Ord. No. 512, § 3, 11-15-93; Ord. No. 568, § 1, 5-10-98)

**Secs. 38-76--38-95. Reserved.**

**ARTICLE V.**

**R-T ATTACHED  
ONE-FAMILY RESIDENTIAL DISTRICTS**

**Sec. 38-96. Intent.**

The R-T attached one-family residential district is designed to permit flexibility in the layout and design of single-family units while at the same time maintaining the density of the R-1 one-family residential district so that it is consistent with the plan for single-family areas. The district is specifically intended to prohibit multiple-family buildings where entry to individual dwelling units is from an interior common area or where individual dwelling units are attached in any way other than by their sidewalls.  
(Code 1977, § 5.11)

**Sec. 38-97. Principal uses permitted.**

In an R-T district, no building or land shall be used and no building shall be erected except for one (1) or more of the following specified uses unless otherwise provided in this chapter:

- (1) One-family attached dwellings (townhouses) with not less than three (3) attached units:

- (2) Accessory buildings and uses customarily incident to any of the above permitted uses;
- (3) Bed and breakfast operations as a subordinate use to single-family dwelling units subject to city licensing provisions and a determination by the city planning commission that the applicant has shown proof of historic significance of the dwelling unit. In making the determination, the planning commission shall reference the historic criteria developed and adopted by the commission.
- (4) Family day care home, foster family group homes and foster family homes shall be permitted subject to the following provisions:
  - a. For family day care homes only, a minimum of four hundred (400) square feet of usable outdoor play area in the rear or side yard shall be available on the premises.
  - b. Such uses are duly licensed by the state department of social services or other equivalent public agencies authorized to license these uses.
  - c. Building and lots so used shall conform to all state and local code requirements, except that such uses or structures shall be permitted in buildings and lots which are nonconforming uses or structures as defined in this chapter.

(Code 1977, § 5.12; Ord. No. 428, § 4, 9-17-84; Ord. No. 477, § 1(3), 11-19-90)

#### **Sec. 38-98. Principal uses permitted subject to special conditions.**

In an R-T district the board of appeals may, after a recommendation from the planning commission, permit one-family detached dwellings and one-family attached dwellings of less than three (3) attached units when they are found to be:

- (1) Reasonably necessary or convenient for the satisfactory and efficient development of a complete townhouse district; and
- (2) Necessary for the creation of an effective density development; and
- (3) Necessary for the extension of a single-family character in a single-family residential area.

(Code 1977, § 5.13)

#### **Sec. 38-99. Required conditions.**

(a) All development in an R-T district shall be subject to the review and approval of a site plan by the planning commission in accordance with section 38-390.

(b) The entire area of the site shall be treated to service the residents of the development and any accessory buildings, uses or services shall be developed solely for the use of the residents. Uses considered herein as accessory uses include: swimming pools, recreation areas, pavilions, cabanas and other similar uses.

(Code 1977, § 5.14)

**Sec. 38-100. Area and bulk requirements.**

See article XVI, schedule of regulations, limiting the height and bulk of buildings, the minimum size of lot permitted by land use, the maximum density permitted, and providing minimum yard setback requirements for R-T districts.

(Code 1977, § 5.15)

**Sec. 38-101. General provisions.**

See article XVII, general provisions, for requirements governing off-street parking, signs, walls and other provisions for R-T districts.

(Code 1977, § 5.16)

**Secs. 38-102--38-120. Reserved.**

**ARTICLE VI.**

**RM-1 MULTIPLE-FAMILY  
RESIDENTIAL DISTRICTS**

**Sec. 38-121. Intent.**

The RM-1 multiple-family residential districts are designed to provide sites for multiple-family dwelling structures, and related uses, which will generally serve as zones of transition between the nonresidential districts and lower density one-family districts. The multiple-family district is further provided to serve the needs for the apartment type of unit in the city.

(Code 1977, § 5.17)

**Sec. 38-122. Principal uses permitted.**

In an RM-1 district, no building or land shall be used and no building shall be erected except for one (1) or more of the following specified uses unless otherwise provided in this chapter:

- (1) All uses permitted and as regulated in the R-2 two-family residential district;
- (2) Multiple-family dwellings;
- (3) Accessory buildings and uses customarily incident to any of the above permitted uses;
- (4) Bed and breakfast operations as a subordinate use to single-family dwelling units subject to city licensing provisions and a determination by the city planning commission that the applicant has shown proof of historic significance of the dwelling unit. In making the determination, the planning commission shall reference the historic criteria developed and adopted by the commission.

- (5) Family day care home, foster family group homes and foster family homes shall be permitted subject to the following provisions:
- a. For family day care homes only, a minimum of four hundred (400) square feet of usable outdoor play area in the rear or side yard shall be available on the premises.
  - b. Such uses are duly licensed by the state department of social services or other equivalent public agencies authorized to license these uses.
  - c. Building and lots so used shall conform to all state and local code requirements, except that such uses or structures shall be permitted in buildings and lots which are nonconforming uses or structures as defined in this chapter.

(Code 1977, § 5.18; Ord. No. 428, § 5, 9-17-84; Ord. No. 477, § 1(3), 11-19-90)

### **Sec. 38-123. Required conditions.**

(a) In the case of multiple dwelling developments in an RM-1 district involving more than one (1) building, all site plans shall be submitted to the planning commission for its review and approval prior to issuance of a building permit in accordance with section 38-390.

(b) All access to the site shall be in accordance with section 38-392.

(c) A minimum area of two hundred (200) square feet per dwelling unit shall be provided as open space suitable for recreation, landscaping or similar use area and shall not be located in a front yard. The shape of the area shall be suitable for use by the residents. Residential units in the area described in section 38-380(11) may substitute alternatives to the open space requirement in section 38-243(1).

(Code 1977, § 5.19; Ord. No. 576, § 1, 1-19-99)

### **Sec. 38-124. Principal uses permitted subject to special conditions.**

The following uses shall be permitted in an RM-1 district, subject to the conditions hereinafter imposed for each use and subject further to the review and approval of the site plan by the planning commission in accordance with section 38-390:

(1) Housing for the elderly when the following conditions are met:

- a. All dwellings shall consist of at least three hundred fifty (350) square feet per unit.
- b. Total coverage of all buildings (including dwelling units and related service buildings) shall not exceed twenty-five (25) percent of the total site exclusive of any dedicated public right-of-way.

(2) Convalescent homes and orphanages when the following conditions are met:

- a. There shall be provided on the site, not less than one thousand (1,000) square feet of open space for each bed in the home. The one thousand (1,000) square feet of land area shall

provide for landscape setting, off-street parking, service drives, loading space, yard requirement and accessory uses, but shall not include the area covered by main or accessory buildings.

b. No building shall be closer than forty (40) feet to any property line.

(3) Accessory buildings and uses customarily incident to any of the above permitted uses.  
(Code 1977, § 5.20)

**Sec. 38-125. Uses permitted by issuance of a special use permit.**

The following uses are permitted in an RM-1 district by issuance of a special use permit:

- (1) Adult foster care small group home, in accordance with section 38-454(a);
- (2) Child or adult care center, in accordance with provisions of section 38-454(b).
- (3) Private clubs, fraternal organizations, lodge halls, and union halls in accordance with provisions of section 38-454(d).
- (4) Conversion of school and church buildings to office use in accordance with section 38-454(g).
- (5) Group day care home, in accordance with section 38-454(f).

(Ord. No. 424, § 5.20A, 6-18-84; Ord. No. 446, § 1, 12-15-86; Ord. No. 477, § 1(4), 11-19-90; Ord. No. 512, § 4, 11-15-93; Ord. No. 568, § 1, 5-10-98)

**Sec. 38-126. Area and bulk requirements.**

See article XVI, schedule of regulations, limiting the height and bulk of buildings, the minimum size of lot permitted by land use, maximum density permitted and providing minimum yard setback requirements for RM-1 districts.

(Code 1977, § 5.21)

**Sec. 38-127. General provisions.**

See article XVII, general provisions, for requirements governing off-street parking, signs, walls and other provisions for RM-1 districts.

(Code 1977, § 5.22)

**Secs. 38-128--38-145. Reserved.**

**ARTICLE VII.**

**RM-2 MULTIPLE-FAMILY  
RESIDENTIAL DISTRICTS--HIGH RISE**

**Sec. 38-146. Intent.**

The RM-2 multiple-family residential districts (high rise) are designed to provide sites for high density multiple dwelling structures adjacent to high traffic generators commonly found in the proximity of central business districts and areas abutting major thoroughfares. The district is further designed to provide for the convenience needs of persons living in the apartments with central services. This district is further designed so as to provide a zone of transition between these major thoroughfares and high traffic generators and other residential districts through the requirements of lower coverage which, in turn, will result in more open space. (Code 1977, § 5.23)

**Sec. 38-147. Principal uses permitted.**

In an RM-2 district, no building or land shall be used and no building shall be erected except for one (1) or more of the following specified uses unless otherwise provided in this chapter:

- (1) All principal uses permitted in an RM-1 district meeting the requirements as set forth in the district with the exception of single-family dwellings which shall be expressly prohibited from this district;
- (2) Multiple-family dwellings in structures in excess of two (2) stories;
- (3) Retail and service uses accessory to the principal use in accordance with section 38-148(b);
- (4) Accessory buildings and uses customarily incident to any of the above permitted uses;
- (5) Bed and breakfast operations as a subordinate use to single-family dwelling units subject to city licensing provisions and a determination by the city planning commission that the applicant has shown proof of historic significance of the dwelling unit. In making the determination, the planning commission shall reference the historic criteria developed and adopted by the commission.
- (6) Family day care home, foster family group homes and foster family homes shall be permitted subject to the following provisions:
  - a. For family day care homes only, a minimum of four hundred (400) square feet of usable outdoor play area in the rear or side yard shall be available on the premises.
  - b. Such uses are duly licensed by the state department of social services or other equivalent public agencies authorized to license these uses.
  - c. Building and lots so used shall conform to all state and local code requirements, except that such uses or structures shall be permitted in buildings and lots which are nonconforming uses or structures as defined in this chapter.

(Code 1977, § 5.24; Ord. No. 428, § 6, 9-17-84; Ord. No. 477, § 1(3), 11-19-90)

**Sec. 38-148. Required conditions.**

(a) A site plan shall be submitted for all uses permitted under this article in accordance with section 38-390 only when more than one (1) building is to be constructed.

(b) Any business uses on the site shall be developed as retail or service uses within the walls of the main structure. Such business uses shall not exceed seventy-five (75) percent of the floor area at grade level and shall be prohibited on all floors above the first floor, or grade level.

(c) The entire area of the site shall be treated to service the residents of the apartment and any accessory buildings, uses, or services shall be developed solely for the use of residents of the main building. Uses considered herein as accessory uses include: swimming pools, recreation areas, pavilions, cabanas and other similar uses.

(d) An open space area shall be provided in accordance with the provisions of section 38-123(c). (Code 1977, § 5.25)

**Sec. 38-149. Area and bulk requirements.**

See article XVI, schedule of regulations, limiting the height and bulk of buildings, the minimum size of lot by permitted land use, and providing minimum yard setback requirements for RM-2 districts. (Code 1977, § 5.26)

**Sec. 38-150. General provisions.**

See article XVII, general provisions, for requirements governing off-street parking, signs, walls and other provisions for RM-2 districts. (Code 1977, § 5.27)

**Sec. 38-151. Uses permitted by issuance of a special use permit.**

The following uses are permitted in an RM-2 district by issuance of a special use permit:

- (1) Adult foster care small group home, in accordance with section 38-454(a);
- (2) Child or adult care center, in accordance with provisions of section 38-454(b).
- (3) Private clubs, fraternal organizations, lodge halls, and union halls in accordance with provisions of section 38-454(d).
- (4) Conversion of school and church buildings to office use in accordance with section 38-454(g).
- (5) Group day care home, in accordance with section 38-454(f). (Ord. No. 424, § 5.27A, 6-18-84; Ord. No. 446, § 1, 12-15-86; Ord. No. 477, § 1(4), 11-19-90; Ord. No. 512, § 5, 11-15-93; Ord. No. 568, § 1, 5-10-98)

**Secs. 38-152--38-170. Reserved.**

## **ARTICLE VIII.**

### **OS-1 OFFICE SERVICE DISTRICTS**

#### **Sec. 38-171. Intent.**

The OS-1 districts are designed to accommodate uses such as offices, banks and personal services which can serve as transitional areas between residential and commercial districts and to provide a transition between major thoroughfares and residential districts.

(Code 1977, § 5.28)

#### **Sec. 38-172. Principal uses permitted.**

In an OS-1 office service district, no building or land shall be used and no building shall be erected except for one (1) or more of the following specified uses unless otherwise provided in this chapter:

- (1) Office buildings for any of the following occupations: executive, administrative, professional, accounting, writing, clerical, stenographic, drafting and sales subject to the limitations contained in section 38-174;
- (2) Professional services, including the following: offices of doctors, dentists, osteopaths and similar or allied professions including clinics;
- (3) Facilities for human care such as hospitals, sanitariums, rest and convalescent homes;
- (4) Banks, credit unions, savings and loan associations and similar uses; drive-in facilities as an accessory use only;
- (5) Personal service establishments including barber shops, beauty shops and health salons;
- (6) Photographic studios and interior decorating studios;
- (7) Off-street parking lots;
- (8) Churches;
- (9) Other uses similar to the above uses;
- (10) Accessory structures and uses customarily incident to the above permitted uses.

(Code 1977, § 5.29)

#### **Sec. 38-173. Principal uses permitted subject to special conditions.**

The following uses shall be permitted in an OS-1 district, subject to the conditions hereinafter imposed

for each use and subject further to the review and approval of the site plan by the planning commission in accordance with section 38-390:

- (1) An accessory use customarily related to a principal use authorized by this section, such as, but not limited to: a pharmacy or apothecary shop, stores limited to corrective garments or bandages, or optical service, may be permitted;
- (2) Mortuary establishments, when adequate assembly area is provided off-street for vehicles to be used in funeral processions, provided further that such assembly area shall be provided in addition to any required off-street parking area;
- (3) Publicly owned buildings, telephone exchange buildings, and public utility offices, but not including storage yards, transformer stations, substations, or gas regulator stations;
- (4) One-, two- and multiple-family residential units within an office building subject to the following conditions:
  - a. Dwelling units shall not be located below the second floor.
  - b. Off-street parking shall be provided for each unit in accordance with section 38-380.
  - c. Except for residential units in the downtown area described in section 38-380(11) that also comply with section 38-243(1), a minimum rear yard setback of thirty (30) feet shall be provided.
  - d. An open space area shall be provided in accordance with the provisions of section 38-123(c).

(Code 1977, § 5.30; Ord. No. 576, § 1, 1-19-99)

#### **Sec. 38-174. Required conditions.**

The following conditions are required in an OS-1 district:

- (1) No interior display shall be visible from the exterior of the building.
- (2) The outdoor storage of goods or materials shall be prohibited.
- (3) Warehousing or indoor storage of goods or material, beyond that normally incident to the above permitted uses, shall be prohibited.

(Code 1977, § 5.31)

#### **Sec. 38-175. Area and bulk requirements.**

See article XVI, schedule of regulations, limiting the height and bulk of buildings, the minimum size of lot by permitted land use, and providing minimum yard setback requirements for OS-1 districts.

(Code 1977, § 5.32)

**Sec. 38-176. General provisions.**

See article XVII, general provisions, for requirements governing off-street parking signs, walls and other provisions for OS-1 districts.  
(Code 1977, § 5.33)

**Secs. 38-177--38-195. Reserved.**

**ARTICLE IX.**

**B-1 LOCAL BUSINESS DISTRICT**

**Sec. 38-196. Intent.**

The B-1 local business districts are designed to meet the day-to-day convenience shopping and service needs of persons residing in adjacent residential areas.  
(Code 1977, § 5.34)

**Sec. 38-197. Principal uses permitted.**

In a B-1 district, no building or land shall be used and no building shall be erected except for one (1) or more of the following specified uses unless otherwise provided in this chapter:

- (1) Generally recognized retail businesses which supply commodities on the premises, such as but not limited to, groceries, meats, dairy products, baked goods or other foods, drugs, dry goods, clothing and notions or hardware;
- (2) Personal service establishments which perform services on the premises, such as but not limited to, repair shops (watches, radio, television, shoe, etc.), tailor shops, beauty parlors or barber shops, photographic or interior decorating studios and self-service laundries and drycleaners;
- (3) Office buildings for any of the following occupations: executive, administrative, professional, accounting, writing, clerical, stenographic, drafting and sales;
- (4) Dry cleaning establishments, or pickup stations, dealing directly with the consumer. Central dry cleaning plants serving more than one retail outlet shall be prohibited;
- (5) Business establishments which perform services on the premises, such as but not limited to: banks, loan companies, insurance offices, and real estate offices;
- (6) Professional services including the following: offices of doctors, dentists, osteopaths and similar or allied professions, including clinics;
- (7) Off-street parking;

(8) Other uses similar to the above uses;

(9) Accessory structures and uses customarily incident to the above permitted uses.

(Code 1977, § 5.35)

**Sec. 38-198. Required conditions.**

The following conditions are required in a B-1 district:

(1) All business establishments shall be retail or service establishments dealing directly with customers. All goods produced on the premises shall be sold at retail on the premises where produced.

(2) All business, servicing or processing, except for off-street parking or loading, shall be conducted within a completely enclosed building.

(Code 1977, § 5.36)

**Sec. 38-199. Principal uses permitted subject to special conditions.**

The following uses shall be permitted, subject to the conditions hereinafter imposed for each use and subject further to the review and approval of the site plan by the planning commission in accordance with section 38-390:

(1) Gasoline service station for the sale of gasoline, oil and minor accessories only, and where no repair work is done, other than incidental service, but not including steam cleaning or undercoating, vehicle body repair, painting, tire recapping, engine rebuilding, auto dismantling, upholstery, auto glass work, and such other activities whose external effects could adversely extend beyond the property line.

a. The curb cuts for access to a service station shall not be permitted at such locations that will tend to create traffic hazards in the streets immediately adjacent thereto. Entrances shall be no less than twenty-five (25) feet from a street intersection (measured from the road right-of-way) or from adjacent residential districts.

b. The minimum lot area shall be fifteen thousand (15,000) square feet, and so arranged that ample space is available for motor vehicles which are required to wait. Gasoline service stations which are intended solely for the sale of gasoline, oil and minor accessories and having no facilities for repair or servicing of automobiles (including lubricating facilities) may be permitted on lots of ten thousand (10,000) square feet, subject to all other provisions herein required.

(2) Publicly owned buildings, public utility buildings, telephone exchange buildings; electric transformer stations and substations; gas regulator stations with service yards, but without storage yards; water and sewage pumping stations;

(3) Mortuary establishments subject to the conditions of section 38-173;

- (4) One-, two- and multiple-family residential dwellings within a business structure, subject to the conditions of section 38-173(4).

(Code 1977, § 5.37)

X = Minimum distance a driveway or curb cut, for access, can be located from a street intersection.

Y = Minimum distance a driveway or curb cut, for access, can be located from an adjoining property line.

## LOCATIONS OF DRIVEWAYS FOR GASOLINE SERVICE STATION

### **Sec. 38-200. Area and bulk requirements.**

See article XVI, schedule of regulations, limiting the height and bulk of buildings, the minimum size of lot by permitted land use, and providing minimum yard setback requirements for B-1 districts.

(Code 1977, § 5.38)

### **Sec. 38-201. General provisions.**

See article XVII, general provisions, for requirements governing off-street parking, signs, walls and other provisions for B-1 districts.

(Code 1977, § 5.39)

### **Secs. 38-202--38-215. Reserved.**

## ARTICLE X.

### **B-2 PLANNED SHOPPING CENTER DISTRICTS**

#### **Sec. 38-216. Intent.**

The B-2 planned shopping center districts are designed to cater to the needs of a larger consumer population than is served by the local business districts, and are generally characterized by an integrated or planned cluster of establishments served by a common parking area and generating large volumes of vehicular and pedestrian traffic.

(Code 1977, § 5.40)

#### **Sec. 38-217. Principal uses permitted.**

In a B-2 district, no building or land shall be used and no building shall be erected except for one (1) or more of the following specified uses unless otherwise provided in this chapter:

- (1) Any retail business or service establishment permitted in B-1 districts as principal uses permitted;
- (2) All retail business, service establishments or processing uses as follows:

- a. Any retail business whose principal activity is the sale of merchandise in an enclosed building;
- b. Any service establishment of an office, showroom or workshop nature of a decorator, dressmaker, tailor, baker, painter, upholsterer or an establishment doing radio or home appliance repair, photographic reproduction, and similar service establishments that require a retail adjunct;
- c. Private clubs, fraternal organizations and lodge halls;
- d. Restaurants or other places serving food or beverage, except those having the character of a drive-in;
- e. Theaters, assembly halls, concert halls or similar places of assembly when conducted completely within enclosed buildings;
- f. Business schools and colleges or private schools operated for profit;
- g. Other uses similar to the above uses;
- h. Accessory structures and uses customarily incident to the above permitted uses.

(Code 1977, § 5.41)

**Sec. 38-218. Required conditions.**

The following conditions are required in a B-2 district:

- (1) All business establishments shall be retail or service establishments dealing directly with consumers. All goods provided on the premises shall be sold at retail on the premises where produced.
- (2) All business, servicing or processing, except for off-street parking, loading and those open air uses indicated as being subject to special conditions in section 38-219 below, shall be conducted within completely enclosed buildings.
- (3) All uses permitted in the B-2 district shall be subject to the review and approval of the site plan by the planning commission in accordance with section 38-390.

(Code 1977, § 5.42)

**Sec. 38-219. Principal uses permitted subject to special conditions.**

The following uses shall be permitted, subject to the conditions hereinafter imposed for each use and subject further to the review and approval of the site plan by the planning commission in accordance with section 38-390:

- (1) Open air business uses when developed in planned relationship with the B-2 district as follows:
  - a. Retail sales of plant material not grown on the site, and sales of lawn furniture, playground equipment and garden supplies provided further that such uses shall be located at the exterior of the building mass located in a B-2 district;
  - b. Recreational space providing children's amusement park and other similar recreation when part of a planned development, provided further that such use be located at the exterior end of the building mass located in a B-2 district, but not at the intersection of two major thorofares. Such recreation space shall be fenced on all sides with a four (4) foot chain link type fence; provided further that such uses shall not be located closer than four hundred (400) feet to a residential district.
- (2) Bowling alley, billiard hall, indoor archery range, indoor tennis courts, indoor skating rink, or similar forms of indoor commercial recreation when located at least one hundred (100) feet from any front, rear or side yard of any residential lot in an adjacent residential district;
- (3) Automobile service centers, when developed as part of a larger planned shopping center designed so as to integrate the automobile service center within the site plan and architecture of the total shopping center, and provided further that a building permit shall not be issued separately for the construction of any automobile service center within the B-2 district;
- (4) Publicly owned buildings, telephone exchange buildings and public utility offices, but not including storage yards, transformer stations, substations or gas regulator stations.

(Code 1977, § 5.43)

**Sec. 38-220. Area and bulk requirements.**

See article XVI, schedule of regulations, limiting the height and bulk of buildings, the minimum size of lot by permitted land use, and providing minimum yard setback requirements for B-2 districts.

(Code 1977, § 5.44)

**Sec. 38-221. General provisions.**

See article XVII, general provisions, for requirements governing off-street parking, signs, walls and other provisions for B-2 districts.

(Code 1977, § 5.45)

**Secs. 38-222--38-240. Reserved.**

**ARTICLE XI.**

**B-3 CENTRAL BUSINESS DISTRICT**

**Sec. 38-241. Intent.**

The B-3 central business district is designed to provide for office buildings and the great variety of retail stores and related activities which occupy the prime retail frontage by serving the comparison, convenience and service needs of the entire municipal area as well as a substantial area of the adjacent and surrounding residential developments beyond the limits of the municipality. The district regulations are designed to promote convenient pedestrian shopping and stability of retail development by encouraging a continuous retail frontage and by prohibiting automobile related services and nonretail uses which tend to break up such continuity. (Code 1977, § 5.46)

**Sec. 38-242. Principal uses permitted.**

In a B-3 district, no building or land shall be used and no building shall be erected except for one (1) or more of the following specified uses unless otherwise provided in this chapter:

- (1) Any retail business or service establishment permitted in the B-2 district as principal uses permitted;
- (2) Offices and showrooms of plumbers, electricians, decorator or similar trades, in connection with which not more than twenty-five (25) percent of the floor area of the building or part of the building occupied by said establishment is used for making, assembling, remodeling, repairing, altering, finishing or refinishing its product or merchandise, and provided that, the ground floor premises facing upon, and visible from, any abutting street shall be used only for entrances, offices, or display. All storage of materials of any kind shall be within the confines of the building or part thereof occupied by said establishment;
- (3) Newspaper offices and printing plants;
- (4) Storage facilities when incident to and physically connected with any principal use permitted, provided that such facility be within the confines of the building or part thereof occupied by said establishment;
- (5) Hotels;
- (6) Other uses similar to the above uses;
- (7) Accessory structures and uses customarily incident to the above permitted uses.

(Code 1977, § 5.47)

**Sec. 38-243. Uses permitted subject to special conditions.**

The following uses shall be permitted in a B-3 district subject to the conditions hereinafter imposed for each use and subject further to the review and approval of the site plan by the planning commission in accordance with section 38-390:

- (1) One-, two- and multiple-family residential dwelling units within a business structure subject to the conditions of section 38-173(4). For dwelling units located in the area described in section 38-380(11), these additional development standards shall apply:

- a. The owner of the dwelling unit shall be responsible for providing area for trash disposal adequate to service each dwelling unit.
- b. If the open space standard for dwelling units specified in section 38-123(c) are not met, the owner of the dwelling unit may substitute any combination of these open space equivalents per unit to meet the section 38-123(c) standard:
  1. Ground floor bicycle storage at twenty-five (25) square foot per apartment, fifty (50) square foot credit.
  2. Central air conditioning, one hundred fifty (150) square foot credit per unit.
  3. Laundry hook-ups/laundry room, fifty (50) square foot credit.
  4. Rooftop garden or patio (minimum one hundred fifty (150) square feet), two hundred (200) square foot credit.
  5. Indoor stove top grill, fifty (50) square foot credit.
  6. Minimum eight (8) square feet of skylight windows, fifty (50) square foot credit.
  7. Minimum four-foot by ten-foot rear yard balcony with wrought iron railing, two hundred (200) square foot credit.
  8. Whirlpool or Jacuzzi tub, one hundred fifty (150) square foot credit.

(Code 1977, § 5.48; Ord. No. 576, § 1, 1-19-99)

#### **Sec. 38-244. Required conditions.**

The following conditions are required in a B-3 district:

- (1) All business establishments shall be retail or service establishments dealing directly with consumers. All goods provided on the premises shall be sold at retail on the premises where produced.
- (2) All business, servicing or processing, except for off-street parking, or loading, shall be conducted within completely enclosed buildings.

(Code 1977, § 5.49)

#### **Sec. 38-245. Area and bulk requirements.**

See article XVI, schedule of regulations, limiting the height and bulk of buildings, the minimum size of lot by permitted land use, and providing minimum yard setback requirements for B-3 districts.

(Code 1977, § 5.50)

**Sec. 38-246. General provisions.**

See article XVII, general provisions, for requirements governing off-street parking, signs, walls and other provisions for B-3 districts.  
(Code 1977, § 5.51)

**Sec. 38-247. Uses requiring a special use permit.**

The following uses are permitted in the B-3 District by issuance of a special use permit:

- (1) Commercial recreation operations in upper stories of commercial buildings in accordance with section 38-454(i).

(Ord. No. 553, § 1, 3-18-96)

**Secs. 38-248--38-265. Reserved.**

**ARTICLE XII.**

**B-4 GENERAL  
BUSINESS DISTRICTS**

**Sec. 38-266. Intent.**

The B-4 general business districts are designed to provide sites for more diversified business types which would often be incompatible with the pedestrian movement to the local planned shopping center or central business districts.  
(Code 1977, § 5.52)

**Sec. 38-267. Principal uses permitted.**

In a B-4 district, no building or land shall be used and no building shall be erected except for one (1) or more of the following specified uses unless otherwise provided in this chapter:

- (1) Any retail business or service establishment permitted in the B-1, B-2 and B-3 districts as principal uses permitted;
- (2) Mortuary establishments subject to the conditions of section 38-173;
- (3) Bowling alley, billiard hall, indoor archery range, indoor tennis courts, or other commercial recreation operation when completely enclosed in a building;
- (4) New and used motor vehicle salesroom, showroom, or office;
- (5) Public utility offices, exchanges, transformer stations and substations, pump stations but not including outdoor storage;

(6) Establishments of plumbers, heating contractors, decorators and electricians or similar trades;

(7) Other uses similar to the above uses;

(8) Accessory structures and uses customarily incident to the above permitted uses.

(Code 1977, § 5.53)

**Sec. 38-268. Principal uses permitted subject to special conditions.**

The following uses shall be permitted in a B-4 district subject to the conditions hereinafter imposed for each use and subject further to the review and approval of the site plan by the planning commission in accordance with section 38-390:

- (1) Gasoline service stations including rustproofing/undercoating as an incidental use, subject further to the conditions of section 38-199;
- (2) Outdoor sales for exclusive sale of new and secondhand automobiles, housetrailers, or rental of trailers and/or automobiles, and undercoating/rustproofing as an incidental use, all subject to the following:
  - a. The lot or area used for sales or display shall be provided with a permanent, durable and dustless surface, and shall be graded and drained so as to dispose of all surface water accumulated within the area in such a way as to preclude drainage of water onto adjacent property or toward buildings.
  - b. Access to the outdoor sales area shall be at least sixty (60) feet from the intersection of any two (2) streets.
  - c. No major repair or major refinishing shall be done on the lot.
  - d. All lighting shall be shielded from adjacent residential districts.
- (3) Motel, subject to the following conditions:
  - a. Access shall be provided so as not to conflict with the adjacent business uses or adversely affect traffic flow on a major thoroughfare.
  - b. Each unit shall contain not less than two hundred fifty (250) square feet of floor area.
  - c. No guest shall establish residence at a motel for more than thirty (30) days within any calendar year.
- (4) Business in the character of a drive-in or open front store, subject to the following conditions:
  - a. A setback of at least sixty (60) feet from the right-of-way of any existing or proposed street must be maintained.

- b. Access points shall be located at least sixty (60) feet from the intersection of any two (2) streets.
  - c. All lighting shall be shielded from adjacent residential districts.
  - d. A six-foot high, completely obscuring wall shall be provided when abutting or adjacent districts are zoned for any residential, OS-1, B-1, B-2, B-3 or B-4 districts. The wall shall further meet the requirements of article XVII, general provisions.
- (5) Veterinary hospitals or clinics, provided all activities are conducted within a totally enclosed main building and provided further that all buildings are set back at least two hundred (200) feet from abutting residential districts on the same side of the street;
  - (6) Plant materials nursery for the retail sale of plant materials not grown on the site, and sales of lawn furniture, playground equipment and garden supplies subject to the following conditions:
    - a. The storage and/or display of any materials and/or products shall meet all setback requirements of a structure.
    - b. All loading and parking shall be provided off-street.
    - c. The storage of any soil, fertilizer, or other loose unpackaged materials shall be contained so as to prevent any effects on adjacent uses.
  - (7) Auto wash when completely enclosed in a building. Drainage of water onto adjacent property or toward buildings shall be precluded through the proper grading of the site;
  - (8) Bus passenger station;
  - (9) Public buildings;
  - (10) One-, two-, and multiple-family dwelling units within a business structure with frontage on Main Street from Chipman Street intersection east to Water Street and the Dutchtown area for land within Stewart Street, Chipman Street, and the Huron Eastern Railroad and subject to conditions of section 38-173.

(Code 1977, § 5.54; Ord. No. 395, § 1, 8-16-82; Ord. No. 507, § 1, 4-19-93; Ord. No. 677, § 1, 8-21-06)

**Sec. 38-269. Area and bulk requirements.**

See article XVI, schedule of regulations, limiting the height and bulk of buildings, the minimum size of lot by permitted land use, and providing minimum yard setback requirements for B-4 districts.  
(Code 1977, § 5.55)

**Sec. 38-270. General provisions.**

See article XVII, general provisions, for requirements governing off-street parking, signs, walls and other provisions for B-4 districts.  
(Code 1977, § 5.56)

**Sec. 38-271. Uses permitted by issuance of a special use permit.**

The following uses are permitted in a B-4 District by issuance of a special use permit:

- (1) Ground floor apartments in accordance with section 38-454(h).  
(Ord. No. 533, § 1, 6-19-95)

**Secs. 38-272--38-290. Reserved.**

**ARTICLE XIII.**

**I-1 LIGHT  
INDUSTRIAL DISTRICTS**

**Sec. 38-291. Intent.**

The I-1 light industrial districts are designed so as to primarily accommodate wholesale activities, warehouses and industrial operations whose external, physical effects are restricted to the area of the district and in no manner affect in a detrimental way any of the surrounding districts. The I-1 districts are so structured as to permit, along with any specified uses, the manufacturing, compounding, processing, packaging, assembly and/or treatment of finished or semi-finished products from previously prepared material. It is further intended that the processing of raw material for shipment in bulk form, to be used in an industrial operation at another location, not be permitted. The general goals of these use districts include, among others, the following specific purposes:

- (1) To provide sufficient space, in appropriate locations, to meet the needs of the city's expected future economy for all types of manufacturing and related uses;
- (2) To protect abutting residential districts by separating them from manufacturing activities, and by prohibiting the use of such industrial areas for new residential development;
- (3) To promote manufacturing development which is free from danger of fire, explosions, toxic and noxious matter, radiation and other hazards, and from offensive noise, vibration, smoke, odor and other objectionable influences;
- (4) To promote the most desirable use of land in accordance with a well considered plan. To protect the character and established pattern of adjacent development, and in each area to conserve the value of land and buildings and other structures, and to protect the city's tax revenue.

(Code 1977, § 5.57)

**Sec. 38-292. Principal uses permitted.**

In an I-1 district, no building or land shall be used and no building shall be erected except for one (1) or more of the following specified uses unless otherwise provided in this chapter and subject further to the review and approval of the site plan by the planning commission in accordance with section 38-390:

- (1) Any use charged with the principal function of basic research, design and pilot or experimental product development when conducted within a completely enclosed building;
- (2) Any of the following uses when the manufacturing, compounding or processing is conducted wholly within a completely enclosed building. That portion of the land used for open storage facilities for materials or equipment used in the manufacturing, compounding, or processing shall be totally obscured by a wall on those sides abutting any residential, office or business districts, and on any front yard abutting a public thoroughfare except as otherwise provided in section 38-289. In I-1 districts, the extent of such a wall may be determined by the planning commission on the basis of usage. Such a wall shall not be less than four (4) feet six (6) inches in height and may, depending upon land usage, be required to be eight (8) feet in height, and shall be subject further to the requirements of article XVII, general provisions. A chain link fence, with intense evergreen shrub planting, shall be considered an obscuring wall. The height shall be determined in the same manner as the wall height as above set forth.
  - a. Warehousing and wholesale establishments, and trucking facilities;
  - b. The manufacture, compounding, processing, packaging or treatment of such products such as, but not limited to, bakery goods, candy, cosmetics, pharmaceuticals, toiletries, food products, hardware and cutlery, tool, die, gauge and machine shops;
  - c. The manufacture, compounding, assembling, or treatment of articles or merchandise from previously prepared materials: bone, canvas, cellophane, cloth, cork, elastomers, feathers, felt, fibre, fur, glass, hair, horn, leather, paper, plastics, rubber, precious or semi-precious metals or stones, sheet metal, shell, textiles, tobacco, wax, wire, wood and yarns;
  - d. The manufacture of pottery and figurines or other similar ceramic products using only previously pulverized clay, and kilns fired only by electricity or gas;
  - e. Manufacture of musical instruments, toys, novelties and metal or rubber stamps, or other molded rubber products;
  - f. Manufacture or assembly of electrical appliances, electronic instruments and devices, radios and phonographs;
  - g. Laboratories--experimental, film or testing;
  - h. Manufacturing and repair of electric or neon signs, light sheet metal products, including heating and ventilating equipment, cornices, eaves and the like;
  - i. Central dry cleaning plants or laundries provided that such plants shall not deal directly with consumer at retail;

j. All public utilities, including buildings, necessary structures, storage yards and other related uses.

- (3) Warehouses, storage and transfer and electric and gas service buildings and yards; public utility buildings, telephone exchange buildings, electrical transformer stations and substations, and gas regulator stations; water supply and sewage disposal plants; water and gas tank holders; railroad transfer and storage tracks; railroad rights-of-way; freight terminals;
- (4) Storage facilities for building materials, sand, gravel, stone, lumber, storage of contractor's equipment and supplies, provided such is enclosed within a building or within an obscuring wall or fence on those sides abutting all residential, office, or business districts, and on any yard abutting a public thoroughfare. In any "I-1" district, the extent of such fence or wall may be determined by the planning commission on the basis of usage. Such fence or wall shall not be less than five (5) feet in height, and may, depending on land usage, be required to be eight (8) feet in height. A chain link type fence, with heavy evergreen shrubbery inside of said fence, shall be considered to be an obscuring fence;
- (5) Municipal uses such as water treatment plants, and reservoirs, sewage treatment plants, and all other municipal buildings and uses, including outdoor storage;
- (6) Commercial kennels;
- (7) Greenhouses;
- (8) Reserved.
- (9) Other uses of a similar and no more objectionable character to the above uses;
- (10) Accessory buildings and uses customarily incident to any of the above permitted uses.

(Code 1977, § 5.58; Ord. No. 499, 2-16-93)

**Sec. 38-293. Principal uses permitted subject to special conditions.**

The following uses shall be permitted in an I-1 district, subject to the conditions hereinafter imposed for each use and subject further to the review and approval of the council:

- (1) Auto engine and body repair, and undercoating shops when completely enclosed;
- (2) Lumber and planing mills when completely enclosed and when located in the interior of the district so that no property line shall form the exterior boundary of the I-1 district;
- (3) Metal plating, buffing and polishing, subject to appropriate measures to control the type of process to prevent noxious results and/or nuisances;
- (4) Business uses which have an industrial character in terms of either their outdoor storage

requirements or activities (such as, but not limited to, lumber yard, building materials, outlet, upholsterer, cabinet maker, outdoor boat, house trailer, automobile garage or agricultural implement sales) or serve convenience needs of the industrial district (such as, but not limited to, eating and drinking establishments, bank, savings and loan association, credit union, automobile service station, motel or bowling alley, trade or industrial school or industrial clinic);

(5) Other uses of a similar character to the above uses.

(Code 1977, § 5.59)

#### **Sec. 38-294. Area and bulk requirements.**

See article XVI, schedule of regulations, limiting the height and bulk of buildings, the minimum size of lot by permitted land use and providing minimum yard setback requirements for I-1 districts.

(Code 1977, § 5.60)

#### **Sec. 38-295. General provisions.**

See article XVII, general provisions, for requirements governing off-street parking, signs, walls and other provisions for I-1 districts.

(Code 1977, § 5.61)

#### **Secs. 38-296--38-310. Reserved.**

### **ARTICLE XIV.**

#### **I-2 GENERAL INDUSTRIAL DISTRICTS**

#### **Sec. 38-311. Intent.**

General industrial districts are designed primarily for manufacturing, assembling, and fabrication activities including large scale or specialized industrial operations, whose external physical effects will be felt to some degree by surrounding districts. The I-2 districts are so structured as to permit the manufacturing, processing and composing of semifinished or finished products from raw materials as well as from previously prepared material.

(Code 1977, § 5.62)

#### **Sec. 38-312. Principal uses permitted.**

In an I-2 district, no building or land shall be used and no building shall be erected except for one (1) or more of the following specified uses unless otherwise provided in this chapter:

- (1) Any principal use first permitted in an I-1 district;
- (2) Grain elevators;
- (3) Heating and electric power generating plants, and all necessary uses;

- (4) Gasoline or petroleum storage;
- (5) Railroad yards;
- (6) Any of the following production or manufacturing uses (not including storage of finished products) provided that they are located not less than eight hundred (800) feet distant from any residential district and not less than three hundred (300) feet distant from any other district:
  - a. Incineration of garbage or refuse when conducted within an approved and enclosed incinerator plant;
  - b. Blast furnace, steel furnace, blooming or rolling mill;
  - c. Manufacture of corrosive acid or alkali, cement, lime, gypsum or plaster of Paris;
  - d. Petroleum or other inflammable liquids, production or refining;
  - e. Smelting of copper, iron or zinc ore;
  - f. Junkyards, provided such are entirely enclosed within a building or within an eight (8) foot obscuring wall and provided further that one property line abuts a railroad right-of-way.
- (4) Any other use which shall be determined by the council after recommendation from the planning commission, to be of the same general character as the above permitted uses in this section. The council may impose any required setbacks and/or performance standards so as to insure public health, safety and general welfare;

(5) Accessory buildings and uses customarily incident to any of the above permitted uses.

(Code 1977, § 5.63)

### **Sec. 38-313. Area and bulk requirements.**

See article XVI, schedule of regulations, limiting the height and bulk of buildings, the minimum size of lot by permitted land use, and providing minimum yard setback requirements for I-2 districts.

(Code 1977, § 5.64)

### **Sec. 38-314. General provisions.**

See article XVII, general provisions, for requirements governing off-street parking, signs, walls and other provisions for I-2 districts.

(Code 1977, § 5.65)

### **Secs. 38-315--38-330. Reserved.**

## ARTICLE XV.

### P-1 VEHICULAR PARKING DISTRICTS\*

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\* **Cross References:** Parking, stopping and standing generally, § 33-36 et seq.

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#### **Sec. 38-331. Intent.**

The P-1 vehicular parking districts are intended to permit the establishment of areas to be used solely for off-street parking of private passenger vehicles as a use incidental to a principal use. These districts will generally be provided by petition or request to serve a use district which has developed without adequate off-street parking facilities.

(Code 1977, § 5.66)

#### **Sec. 38-332. Principal uses permitted.**

Premises in P-1 districts shall be used only for an off-street vehicular parking area and shall be developed and maintained subject to such regulations as are provided in this article.

(Code 1977, § 5.67)

#### **Sec. 38-333. Required conditions.**

The following conditions are required in a P-1 district:

- (1) The parking area shall be accessory to, and for use in connection with one (1) or more businesses, or industrial establishments, located in adjoining business or industrial districts, or in connection with one (1) or more existing professional or institutional office buildings or institutions.
- (2) Such parking lots shall be contiguous to a multiple-family residential or nonresidential district. Parking areas may be approved when adjacent to the districts, or on the end of a block where such areas front on a street which is perpendicular to that street servicing the district. There may be a private driveway or public street or public alley between such P-1 district and above listed districts.
- (3) Parking areas shall be used solely for parking of private passenger vehicles, for periods of less than one (1) day and shall not be used as an off-street loading area.
- (4) No commercial repair work or service of any kind, or sale or display thereof, shall be conducted in such parking area.
- (5) No signs of any kind, other than signs designating entrances, exits and conditions of use, shall be maintained on such parking area.
- (6) No building other than those for shelter or attendants shall be erected upon the premises and they

shall not exceed fifteen (15) feet in height.

- (7) Applications for P-1 district rezoning shall be made by submitting to the planning commission a dimensional layout of the area requested showing the intended parking plans in accordance with sections 38-381 and 38-390.

(Code 1977, § 5.68)

**Sec. 38-334. Minimum distances and setbacks.**

(a) *Side and rear yards.* Where the P-1 district is contiguous to the side and/or rear lot lines of premises within a residentially zoned district, the required wall shall be located along the lot line.

(b) *Front yards.* Where the P-1 district is contiguous to a residentially zoned district which has a common frontage in the same block with residential structures, or wherein no residential structures have been yet erected, there shall be a setback equal to the required residential setback for the residential district, or a minimum of twenty-five (25) feet, or whichever is the greater. The required wall shall be located on this minimum setback line unless, under unusual circumstances, the planning commission finds that no good purpose would be served. The land between setback and street right-of-way line shall be kept free from refuse and debris and shall be planted with shrubs, trees or lawn and shall be maintained in a healthy-growing condition, neat and orderly in appearance.

(Code 1977, § 5.69)

**Sec. 38-335. Parking space layout, standards, construction and maintenance.**

P-1 vehicular parking districts shall be developed and maintained in accordance with the requirements of Article XVII, general provisions for P-1 districts.

(Code 1977, § 5.70)

**ARTICLE XV.1.**

**C-OS CONSERVATION/OPEN SPACE DISTRICT**

**Sec. 38-336. Intent.**

The C-OS conservation/open space districts are intended to permit maintenance and management of natural areas, to protect lands under public ownership, under permanent conservation organization or of high public value due either to their uniqueness or to their potential hazards to the public.

(Ord. No. 626, § 1, 3-17-03)

**Sec. 38-337. Principal uses permitted.**

In the C-OS district, no building or land shall be used and no building shall be erected except for one (1) or more of the following specified uses unless otherwise provided in this chapter:

- (1) Farms on those parcels of land separately owned outside the boundaries of either a proprietary or supervisor's plat, having an area of not less than five (5) acres, all subject to the health and

sanitation provisions of the city and provided further that no farms shall be operated as piggeries, or for the disposal of garbage, sewage, rubbish, offal or rendering plants, or for the slaughtering of animals except such animals as have been raised on the premises or have been maintained on the premises for at least a period of one (1) year immediately prior thereto and for the use and consumption by persons residing on the premises.

- (2) Forestry.
- (3) Natural areas.
- (4) Public outdoor recreation facilities over one (1) acre.
- (5) Stormwater management and water supply facilities.

(Ord. No. 626, § 1, 3-17-03)

**Sec. 38-338. Permitted uses permitted subject to special conditions.**

The following uses shall be permitted in the C-OS districts, subject to the conditions hereinafter imposed for each use and subject further to the review and approval of the site plan by the planning commission in accordance with section 38-390.

- (1) Park structures and playground facilities.
- (2) Service roads.
- (3) Parking lots not associated with a structure.
- (4) Private recreation areas.
- (5) Plant nurseries and horticultural activities.

(Ord. No. 626, § 1, 3-17-03)

**Sec. 38-339. Area and bulk requirements.**

See article XVI, schedule of regulations, limiting the height and bulk of buildings, the minimum size of lot permitted by land use, the maximum density permitted, and providing minimum yard setback requirements for the C-OS districts.

(Ord. No. 626, § 1, 3-17-03)

**Sec. 38-340. General provisions.**

(a) See article XVII, general provisions, for requirements governing off-street parking, signs, walls and other provisions for C-OS districts.

(b) Lots that are zoned C-OS district are exempt from the provisions of section 18-122(2) and (3).  
(Ord. No. 626, § 1, 3-17-03)

## **ARTICLE XV.2.**

### **PUD PLANNED UNIT DEVELOPMENT DISTRICT**

#### **Sec. 38-341. Intent.**

The purpose of this district is to permit flexibility in the regulation of land development; to encourage innovation in land use and variety in design, layout and type of structures constructed; to achieve economy and efficiency in the use of land, natural resources, energy and the provision of public services and utilities; to encourage provision of usable open space and protection of natural features; to provide adequate housing, employment and shopping opportunities particularly suited to the needs of the residents of the city; and to encourage the use, reuse and improvement of existing sites and buildings which will be developed in a compatible way with surrounding uses but where the uniform regulations contained in other zoning districts do not provide adequate protections and safeguards for the site or surrounding area. The district is intended to accommodate developments with one (1) or more land uses, sites with unusual topography or unique settings within the community or sites that exhibit difficult or costly development problems or any combination of these factors. This zoning district shall not be allowed where this zoning classification is sought primarily to avoid the imposition of standards and requirements of other zoning classifications or other city regulations rather than to achieve the stated purposes above.

(Ord. No. 662, § 1, 10-18-04)

#### **Sec. 38-342. Principle uses permitted.**

Any use or combination of uses and accessory uses permitted in the supplemental regulations for the PUD zoning district adopted pursuant to section 38-395.

(Ord. No. 662, § 1, 10-18-04)

#### **Sec. 38-343. Area and bulk requirements.**

See article XVI, schedule of regulations, limiting the height and bulk of buildings, the minimum size of lot by permitted land use, and providing minimum yard setback requirements for the PUD district.

(Ord. No. 662, § 1, 10-18-04)

#### **Sec. 38-344. General provisions.**

(a) See article XVII, general provisions, for requirements governing off-street parking, signs, walls, and other provisions for PUD Districts.

(b) See article XVII, section 38-395, planned unit development regulations and standards for approval.

(c) See article XVII, section 38-390, for specific procedures for site plan review of planned unit developments.

(Ord. No. 662, § 1, 10-18-04)

Secs. 38-345--38-350. Reserved.

**ARTICLE XVI.**

**SCHEDULE OF REGULATIONS**

**Sec. 38-351. Schedule limiting height, bulk, density and area by zoning district.**

The following is a schedule limiting height, bulk, density and area by zoning district:

ZONING DISTRICT	MINIMUM ZONING		MAXIMUM				MINIMUM	MAXIMUM
	LOT SIZE PER		HEIGHT OF	MINIMUM YARD SETBACK			FLOOR	OF LOT
	DWELLING UNIT		STRUCTUR	(PER LOT IN FEET)			AREA	COVERED
	AREA IN	WIDTH	ES		EACH		PER UNIT	(BY
	SQ. FT.	IN FEET	IN FEET	FRONT	SIDE	REAR	(SQ. FT.)	ALL
								BUILDINGS)
R-1 One-Family Res.	7,200(a)	60	30	25(b, t)	8(b, c)	35(b)	864(u, v)	25%
R-2 Two-Family Res.	4,000	33	30	25(b, t)	8(b, c)	35(b)	750	25%
RT-1 Attached One-Family	4,000	--	30	30(d)	20(d)	35(d)	(i)	25%
RM-1 Multiple Family	(e, f)	(e, f)	35	30(d, h)	20(d, h)	30(d, h)	(i)	25%
RM-2 Multiple Family	(f, g)	(f, g)	70	30(d, h)	20(d, h)	30(d, h)	(i)	25%
OS-1 Office Service	--	--	35	15(j, k)	10(l)	10(m, n)	--	--
B-1 Local Business	--	--	35	15(k)	10(l)	10(m, n)	--	--
B-2 Planned Shopping Center	--	--	35	75(k, o)	20(o)	30(m, o)	--	--
B-3 Central Business	--	--	(p)	none(p)	none	none(m)	--	--
B-4 General Business	--	--	35	15(k)	(l)	10(m, n)	--	--
I-1 Light Industrial	--	--	40	40(q)	20(r)	(r, s)	--	--
I-2 General Industrial	--	--	60	60(q)	30(r)	(r, s)	--	--
C-OS Conservation/Open Space	43,560	66	35	50	50	(r)	--	--
PUD Planned Unit Development	(w)	(w)	(w)	(w)	(w)	(w)	(w)	(w)

(Code 1977, § 5.71; Ord. No. 454, § 1, 8-15-88; Ord. No. 478, § 1, 11-19-90; Ord. No. 626, § 1, 3-17-03; Ord. No. 662, § 1, 10-18-04)

**Sec. 38-352. Notes to schedule.**

The following are notes to the schedule in section 38-351:

- (a) See section 38-353, average lot size, and section 38-354, subdivision open space plan, regarding flexibility allowances.
- (b) For all uses permitted other than one-family residential, the setback shall be governed by the formula in footnote (d) below, or by the setback required in section 38-53 or by 38-351, whichever is greater.
- (c) In the case of a rear yard abutting a side yard, the side yard setback abutting a street shall not be less than the minimum front yard setback of the district in which located and all regulations applicable to a front yard shall apply.
- (d) Along those property lines which abut a one-family residential district, the minimum required yard shall be determined by the following formula:

$$Y = L + 2H/4$$

Along those property lines which do not have the above described relationship to property zoned in a one-family residential district classification, the minimum required yard shall be determined by the following formula:

$$Y = L + 2H/6$$

The symbols used above shall be defined as follows:

Y = required yard.

L = the total length of that portion of a lot line from which, when viewed directly from above, lines drawn perpendicular from the lot line will intersect any part of the building other than permitted yard encroachments.

H = height of building as defined in section 38-5.

Where a lot line abuts a street, one-third the width of the right-of-way of the street may be considered as yard setback; but in no instance including the above, shall any yard be less than those indicated in section 38-351.

In the RM-2 districts, not more than fifty (50) percent of any required front yard shall be used for vehicular parking or driveways.

- (e) In the RM-1 district, the total number of rooms of eighty (80) square feet or more (not including kitchen, dining or sanitary facilities) shall not be more than the area of the parcel in square feet, divided by twelve hundred (1200) for any buildings of two (2) stories or less and eight hundred fifty (850) for buildings of

two and one-half (2 1/2) or three (3) stories.

(f) The minimum zoning lot in an RM district shall be ten thousand (10,000) square feet in area. In all the RM districts, for the purposes of computing the permitted number of dwelling units per acre, the following room assignments shall control:

Efficiency = 1 room

One bedroom = 2 rooms

Two bedroom = 3 rooms

Three bedroom = 4 rooms

Four bedroom = 5 rooms

Plans presented showing 1, 2 or 3 bedroom units and including a "den," "library" or other extra room shall count such extra room as a bedroom for the purpose of computing density.

The area used for computing density shall be the total site area exclusive of any dedicated public right-of-way of either interior or bounding roads. All units shall have at least one (1) living room and one (1) bedroom, except that not more than twenty (20) percent of the units may be of an efficiency apartment type.

(g) In the RM-2 districts, the total number of rooms of eighty (80) square feet or more (not including kitchen, dining or sanitary facilities) shall not be more than the area of the parcel in square feet divided by seven hundred (700) for any buildings of two and one-half (2 1/2) to four (4) stories and four hundred (400) for buildings of four and one-half (4 1/2) or more stories. For buildings of two (2) stories or less in height, the requirements of the RM-1 district shall apply.

(h) In all the RM districts, the minimum distance between any two (2) buildings shall be regulated according to the length and height of such buildings, and in no instance shall this distance be less than twenty (20) feet in an RM-1 district and thirty (30) feet in an RM-2 district. Parking may be permitted within a required side or rear yard but shall not cover more than thirty (30) percent of the area of any required yard, or any minimum distance between buildings. A minimum fifteen (15) foot strip of lawns or walks shall be maintained between buildings and parking lots. The formula regulating the required minimum distance between two (2) buildings in all RM-1 and RM-2 districts is as follows:

$$S = L_A + L_B + \frac{2(H_A + H_B)}{6}, \text{ where}$$

S = Required minimum horizontal distance between any wall of building A and any wall of building B or the vertical prolongation of either.

L<sub>A</sub> = Total of building A.

The total length of building A is the length of that portion or portions of a wall or walls of building A

from which, when viewed directly from above, lines drawn perpendicular to building A will intersect any wall of building B.

$L_B$  = Total length of building B.

The total length of building B is the length of that portion or portions of a wall or walls of building B from which, when viewed directly from above, the lines drawn perpendicular to building B will intersect any wall of building A.

$H_A$  = Height of building A.

The height of building A at any given level is the height above natural grade level of any portion or portions of a wall or walls along the length of building A. Natural grade level shall be the mean level of the ground immediately adjoining the portion or portions of the wall or walls along the total length of the building.

Drawing, ms 2293

$H_B$  = Height of building B.

The height of building B at any given level is the height above natural grade level of any portion or portions of a wall or walls along the length of building B. Natural grade level shall be the mean level of the ground immediately adjoining the portion or portions of the wall or walls along the total length of the building.

(i) The minimum floor area per unit shall be as follows:

(1) Efficiency unit - 350 sq. ft.

(2) One bedroom - 450 sq. ft.

(3) Two bedroom - 600 sq. ft.

(4) Three bedroom - 800 sq. ft.

(5) Four bedroom - 1,000 sq. ft.

(j) The front yard shall be a minimum of fifteen (15) feet or fifteen (15) percent of the depth of the lot, whichever is greater, provided that the maximum setback so required shall be sixty (60) feet.

(k) Off-street parking shall be permitted within the front yard.

(l) No side yards are required along the interior side lot lines of the district, except as otherwise specified in the building code. On a corner lot which borders on a residential district to the rear, there shall be provided a setback of twenty (20) feet on the side or residential street. On an exterior side yard abutting a residential district or abutting a street, there shall be provided a setback of ten (10) feet in width.

(m) Loading space shall be provided in the rear yard in the ratio of at least ten (10) square feet per front foot of building and shall be computed separately from the off-street parking requirements; except in the instance of O-1 districts, loading space shall be provided in the ratio of five (5) square feet per front foot of building. Where an alley exists or is provided at the rear of buildings, the rear building setback and loading requirements may be computed from the center of said alley.

(n) When adjacent to a R-1, R-2 or RT-1 district, the minimum rear yard setback shall be ten (10) feet or ten (10) percent of the depth of the lot, whichever is greater, provided that the maximum setback so required shall be sixty (60) feet.

(o) No building shall be closer than seventy-five (75) feet to any adjacent residential district or to any public street.

(p) There shall be no specific height limitation in a CBD district; provided, however, that prior to the issuance of a building permit for any structure over thirty-five (35) feet in height, the council, after recommendation of the planning commission, shall make a finding that any such excessive height will not be detrimental to the light, air or privacy of any other structure or use currently existing or approved for construction and that fire protection can be provided by the city. In approving a height in excess of thirty-five (35) feet, the council may follow the standard in floor area ratio set forth below:

(1) In the CBD district, the maximum floor area ratio for a zoning lot shall not exceed 4.0.

(2) For each square foot of plaza provided on a zoning lot, the total area permitted by the floor area ratio, set forth above, may be increased by three (3) square feet.

(q) Off-street parking for visitors, over and above the number of spaces required under section 38-380, may be permitted within the required front yard provided that such off-street parking spaces are not located within twenty (20) feet of the front lot line.

(r) No building shall be located closer than fifty (50) feet to the outer perimeter (property line) of such district when said property line abuts any residential district.

(s) All storage shall be in the rear yard and shall be completely screened with an obscuring wall or fence, not less than six (6) feet high, or with a chain link type fence and a greenbelt planting so as to obscure all view from any adjacent residential, office or business district or from a public street. Loading areas shall be provided in accordance with section 38-382.

(t) Where there exists in any city block in the R-1 and R-2 districts the setting of over fifty-one (51) percent of the dwelling units with legal nonconforming front yard setbacks less than twenty-five (25) feet, a building permit may be issued for a one-family or two-family dwelling unit or an addition to an existing unit for a proposed setback that is equivalent to the setback of over fifty-one (51) percent of the dwelling units in said city block, provided that no setback on a corner lot will be less than that required for corner clearance as specified in section 38-388.

(u) The ground floor area shall not be less than seven hundred fifty (750) square feet.

(v) In order to compare favorably with existing housing within the city, the minimum width of a new dwelling unit not located in a mobile home park shall be twenty-four (24) feet for a core area of seven hundred twenty (720) square feet; furthermore, said unit shall be placed on a full perimeter foundation.

(w) See section 38-395(2) for regulation of height, bulk, setback, density and area.  
(Code 1977, § 5.72; Ord. No. 454, § 2, 8-15-88; Ord. No. 478, § 1, 11-19-90; Ord. No. 662, § 1, 10-18-04)

**Sec. 38-353. Average lot size.**

The intent of this section is to permit the subdivider or developer to vary his or her lot sizes and lot widths so as to average the minimum size of lot per unit as required in Article XVI, schedule of regulations, for each R-1 district. If this option is selected, the following conditions shall be met:

- (1) In meeting the average minimum lot size, the subdivision shall be so designed as not to create lots having an area or width greater than ten (10) percent below that area or width required in the schedule of regulations and shall not create an attendant increase in the number of lots. The following gross densities (including roads) shall be maximum:

$$R-1 = 4.4 \text{ lots per acre}$$

- (2) Each final plat submitted as part of a preliminary plat shall average the minimum required for the district in which it is located.
- (3) All computations showing lot area and the average resulting through this technique shall be indicated on the print of the preliminary plat.

(Code 1977, § 5.74)

**Sec. 38-354. Subdivision open space plan.**

- (a) The intent of the subdivision open space plan is to promote the following objectives:
  - (1) Provide a more desirable living environment by preserving the natural character of open fields, stands of trees, brooks, hills and similar natural assets;
  - (2) Encourage developers to use a more creative approach in the development of residential areas;
  - (3) Encourage a more efficient, aesthetic and desirable use of open area while recognizing a reduction in development costs and by allowing the developer to by-pass natural obstacles on the site;
  - (4) Encourage the provision of open space within reasonable distance to all lot development of the subdivision and to further encourage the development of recreational facilities.

(b) Modifications to the standards as outlined in Article XVI, schedule of regulations, may be made in the R-1 district when the following conditions are met:

- (1) The lot area and width in all R-1 districts, which are served by a public sanitary sewer system, may be reduced up to ten (10) percent. These lot area and width reductions shall be permitted, provided that the dwelling unit density shall be no greater than if the land area to be subdivided were developed in the minimum square foot lot areas as required for the one-family district under Article XVI, schedule of regulations. All calculations shall be predicated upon the R-1 districts having the following gross densities (including roads):

R-1 = 4.4 dwelling units per acre

- (2) Under the provisions of subsection (b)(1), for each square foot of land gained within a residential subdivision through the reduction of lot size below the minimum requirements as outlined in Article XVI, schedule of regulations, at least equal amounts of land shall be dedicated to the common use of the lot owners of the subdivision or to the city in a manner approved by the city.
- (3) The area to be dedicated for subdivision open space purposes shall in no instance be less than two (2) acres and shall be in a location and shape approved by the planning commission.
- (4) The land area necessary to meet the minimum requirements of this section shall not include bodies of water, swamps or land with excessive grades making it unsuitable for recreation. All land dedicated shall be so graded and developed as to have natural drainage. The entire area may, however, be located in a floodplain.
- (5) This plan, for reduced lot sizes, shall be permitted only if it is mutually agreeable to the council and the subdivider or developer.
- (6) This plan, for reduced lot sizes, shall be started within six (6) months after having received approval of the final plat, and must be completed in a reasonable time. Failure to start within this period shall void all previous approval.
- (7) Under this subdivision open space approach, the developer or subdivider shall dedicate the total park area (see subsection (b)(1)) at the time of filing of the final plat on all or any portion of the plat.

(Code 1977, § 5.75)

**Secs. 38-355--38-375. Reserved.**

## **ARTICLE XVII.**

### **GENERAL PROVISIONS**

**Sec. 38-376. Conflicting regulations.**

Whenever any provision of this chapter imposes more stringent requirements, regulations, restrictions or limitations than are imposed or required by the provisions of any other law or ordinance, then the provisions of this chapter shall govern. Whenever the provisions of any other law or ordinance impose more stringent

requirements than are imposed or required by this chapter, then the provisions of such ordinance shall govern. (Code 1977, § 5.76)

**Sec. 38-377. Scope.**

No building or structure, or part thereof, shall hereafter be erected, constructed or altered and maintained, and no new use or change shall be made or maintained of any building, structure or land, or part thereof, except in conformity with the provisions of this chapter. (Code 1977, § 5.77)

**Sec. 38-378. Nonconforming uses.**

(a) *Intent.* It is the intent of this section to permit the continuance of a lawful use of any building or land existing at the effective date of this section, although such use of land or structures may not conform with the provisions of this chapter.

There are two (2) types of nonconforming uses, Class A and Class B.

*Class A nonconforming uses* or structures are those which have been so designated by the zoning board of appeals, after application by the person having interest in the property or the zoning administrator. Where Class A nonconforming uses are identified, it is the intent of this section to provide for their continuance, so long as they fulfill the requirements in this section.

*Class B nonconforming uses* or structures are all nonconforming uses or structures not designated as Class A. It is the intent of this section not to encourage the survival of Class B nonconforming uses or structures. Class B nonconforming uses or structures shall not be enlarged upon, expanded or extended, nor be used as grounds for adding other uses or structures prohibited elsewhere in the same district.

The continuance of all nonconforming uses and structures within the city shall be subject to the conditions and requirements set forth in this section.

(b) *Procedures for obtaining Class A designation.* Any application for a Class A designation for a nonconforming use permit for any land or structural use permitted under this article shall be submitted and processed under the following procedures:

- (1) A written application shall be filed with the zoning board of appeals setting forth the name and address of the applicant, giving a legal description of the property to which the application pertains and including such other information as may be necessary to enable the board of appeals to make a determination of the matter.
- (2) The zoning board of appeals may require the furnishing of such additional information as it considers necessary.
- (3) A notice of hearing and subsequent hearing procedures shall be given in accordance with the procedures outlined in section 38-502(e).

Before an application for Class A designation for a nonconforming use can be processed, the zoning board of appeals shall review each application to ensure, beyond a reasonable doubt, that the following standards are met:

- (4) That the continuance of the use would not be contrary to the public health, safety or welfare or the spirit of this chapter.
- (5) That the use or structure does not and is not likely to significantly decrease the value of nearby properties.
- (6) That the use or structure was lawful at the time of its inception and that no useful purpose would be served by strict application of the provisions or requirements of this chapter with which the use or structure does not conform.

(c) *Approval of Class A designation.* The zoning board of appeals shall approve Class A designation for nonconforming uses that comply with the standards and procedures of this section. The decision of the board of appeals shall be in writing and shall set forth the findings and reasons on which it is based. The board of appeals shall attach conditions, where necessary, to assure that the use or structure does not become contrary to the public health, safety or welfare or the spirit and purpose of this chapter. In addition, no vested interest shall arise out of a Class A designation.

(d) *Revocation of Class A designation.* Any Class A designation shall be revoked, following the same procedure required for designation, upon a finding that as a result of any change of conditions or circumstances the use or structure no longer qualifies for Class A designation.

(e) *Regulations pertaining to Class A nonconforming uses and structures.* A Class A nonconforming use or structure shall not be repaired, restored, extended, enlarged, moved or substituted for except in accord with the following requirements:

- (1) This chapter shall not prohibit the repair, improvement or modernization of a Class A nonconforming structure to correct deterioration, obsolescence, depreciation and wear, provided that such repair does not exceed an aggregate cost of fifty (50) percent of the structure's replacement cost. Repairs, improvements or modernization in excess of fifty (50) percent of the structure's replacement cost may be permitted by the zoning board of appeals, provided the structure will still meet the qualifications of a Class A nonconforming use or structure.
- (2) Any Class A nonconforming use or structure damaged by fire, explosion, flood, erosion or other means may be restored, rebuilt or repaired, provided that such restoration does not exceed fifty (50) percent of the structure's pre-catastrophe replacement cost as determined by a qualified appraiser. Restoration of a Class A nonconforming use or structure damaged in excess of fifty (50) percent of the structure's pre-catastrophe replacement cost may be permitted by the zoning board of appeals, provided the restored structure would still meet the qualifications of a Class A nonconforming use or structure. However, no Class A nonconforming structure damaged in a floodplain or other areas of recurring natural hazards in excess of fifty (50) percent of the structure's pre-catastrophe replacement shall be rebuilt except in full compliance with this chapter.

(3) Structural changes, including enlargement or extension of a Class A nonconforming structure or use, may be permitted by the zoning board of appeals, except when such extension or enlargement would be incompatible with surrounding land uses or when the structural change would be inconsistent with the intent of this chapter. No extension or enlargement of a Class A nonconforming use or structure shall be approved if approval would result in violation of the setback, side yard or bulk requirements of this chapter.

(4) A Class A nonconforming use may be substituted for a similar nonconforming use or structure when the zoning board of appeals determines that the substitution would improve the property, would not increase the structure's or use's nonconformity, or when the substitution would not be contrary to the intent of this chapter.

(f) *Regulations pertaining to Class B nonconforming uses and structures.* It is a purpose of this chapter to eliminate Class B nonconforming uses and structures as rapidly as is permitted by law without payment of compensation. A Class B nonconforming use or structure shall not be repaired, restored, extended, enlarged or substituted for except in accord with the following requirements:

(1) Minor repairs or maintenance of a Class B nonconforming use or structure in order to keep it structurally safe and sound are permitted. A Class B nonconforming use or structure shall not be repaired, improved or remodeled when such repair or improvement exceeds twenty-five (25) percent of the structure's replacement cost. The replacement cost shall be determined, prior to any repairs or improvements, by a qualified appraiser. If a Class B nonconforming use or structure is changed to conform with this chapter, the limitations on repairs or improvements shall not apply.

(2) Any Class B nonconforming use or structure damaged by fire, explosion, flood, erosion or other means shall not be rebuilt, repaired or reconstructed if damaged in excess of fifty (50) percent of the structure's pre-catastrophe replacement cost, except when the use or structure would fully comply with the requirements of this chapter.

(3) No Class B nonconforming use or structure shall be enlarged, extended or structurally altered, nor shall the nonconforming use be changed to a substantially different nonconforming use.

(4) No such nonconforming use shall be moved in whole or in part to any other portion of the lot or parcel occupied by such use at the effective date of adoption or amendment to this chapter.

(5) No Class B nonconforming use or structure shall be permitted to continue in existence if it was unlawful at the time it was established.

(6) A Class B nonconforming structure or use may be substituted for by a conforming use or structure, or by a use or structure which meets the requirements of a Class A nonconforming use, when the zoning board of appeals determines that the substitution would not increase the nonconformity of the use or structure or be contrary to the public health, safety and welfare and the intent of this chapter.

(g) *Determination of replacement cost.* The replacement cost of repairing, restoring or improving a Class A or B nonconforming use or structure, excluding contents, damaged by fire, explosion, flood, erosion or other means, shall be made on the basis of an appraisal by a qualified individual designated by the zoning board of appeals. The cost of such determination shall be borne by the zoning administrator after:

- (1) Receiving an estimate of the structural damage from the city fire chief;
- (2) Receiving a figure representing the difference between the pre-catastrophe market value of the structure and the post-catastrophe value, as determined by the assessing officer for the city;
- (3) Dividing the sum of the figures derived in subsection (1) from the fire chief and subsection (2) from the assessing officer by two (2).

(h) *Nonconforming lots of record.* Any nonconforming lot of record or nonconforming lot described in a deed or land contract executed and delivered prior to the effective date of this chapter or an amendment thereto shall be used only for a use permitted in this chapter. If the use of a nonconforming lot requires a variation of the setback or yard requirements of this chapter in excess of fifteen (15) percent of the requirement, then such use shall be permitted after review of a site plan by the zoning board of appeals under the terms of this chapter. The board may amend the site plan to achieve an objective for reasonableness of the fit of the land use on the available land. The zoning board of appeals shall have the authority to amend structural dimensions and site layout to achieve this objective. The standards to be applied by the zoning board of appeals, in reviewing the site plan, shall be the applicable standards stated in section 38-504(3). The reduction by fifteen (15) percent or less of dimensional requirements for lawful nonconforming lots may be granted by the zoning administrator. When the minimum dimensional requirements of this chapter can be met by the combination of two (2) or more nonconforming contiguous lots owned by the same person, said lots may be combined for use and no variance is necessary.

(i) *Discontinuance or abandonment.* Whenever a nonconforming use has been discontinued for twelve (12) consecutive months, or for eighteen (18) months during any three-year period, such discontinuance shall be considered conclusive evidence of an intention to abandonment; the nonconforming use shall not be reestablished, and any future use shall be in conformity with the provisions of this chapter.

(j) *Changing uses.* If no structural alterations are made, the board of appeals may, upon an appeal, authorize a change from one (1) nonconforming use to another nonconforming use, provided the proposed use would be more suitable to the zoning district in which it is located than the nonconforming use which is being replaced. Whenever a nonconforming use has been changed to a more nearly conforming use or to a conforming use, such use shall not revert or be changed back to a nonconforming or less conforming use.

(k) *Termination of nonconforming land use.* Class B nonconforming uses of land existing at the effective date of this chapter, where no building is located, may be continued, provided that the nonconforming land use shall be terminated and converted to conform with the provisions of this chapter within three (3) years after the effective date of this section, and provided further that the nonconforming land use shall not in any way be expanded or extended during this three-year interval, either on the same property or adjoining property.

(l) *Illegal nonconforming uses.* Nonconforming uses of buildings or land existing at the effective date of this section established without a building permit, or those nonconforming uses which cannot be proved

conclusively as existing prior to the effective date of this section shall be declared illegal nonconforming uses and shall be discontinued within a period of three (3) years following the effective date of this section, subject to the review and approval of the city council.

(m) *District changes.* Whenever the boundaries of a district shall be changed so as to transfer an area from one (1) district to another district of another classification, the provision of this section shall also apply to any existing uses that become nonconforming as a result of the boundary changes.

(n) *Elimination of nonconforming uses.* In accordance with Act 207, Public Acts of the State of Michigan of 1921, as amended, the city council may acquire properties on which nonconforming buildings or uses are located, by condemnation or other means, and may remove such uses or such uses may be used by the city for a public use. The net cost of such acquisition may be assessed against a benefiting district or may be paid from other sources of revenue.

(o) *Uses under exception provisions not nonconforming uses.* Any use for which a special exception is permitted as provided in this chapter shall not be deemed a nonconforming use but shall, without further action, be deemed a conforming use in such district.

(p) *Change of tenancy or ownership.* There may be a change of tenancy, ownership or management of any existing nonconforming uses of land, structures and land in combination.  
(Code 1977, § 5.78; Ord. No. 459, § 1, 4-3-89; Ord. No. 619, § 1, 9-16-02)

**State Law References:** Nonconforming uses and structures, MCL 125.583a, MSA 5.2993(1).

### **Sec. 38-379. Accessory buildings.**

Accessory buildings, except as otherwise permitted in this chapter, shall be subject to the following regulations:

- (1) Where the accessory building is structurally attached to a main building, it shall be subject to, and must conform to, all regulations of this chapter applicable to main building.
- (2) Accessory buildings shall not be erected in any required yard, except a rear yard.
- (3) An accessory building shall not occupy more than twenty-five (25) percent of a required rear yard, plus forty (40) percent of any nonrequired rear yard, provided that in no instance shall the accessory building(s) exceed the ground floor area of the main building.
- (4) No detached accessory building shall be located closer than ten (10) feet to any main building nor shall it be located closer than three (3) feet to any side or rear lot line.

In those instances where the rear lot line is coterminous with an alley right-of-way the accessory building shall not be closer than one (1) foot to such rear lot line. In no instance shall an accessory building be located within a dedicated easement right-of-way.

- (5) No detached accessory building in R-1, R-2, RT-1, RM-1, RM-2, OS-1, B-1 and P-1 districts shall exceed one (1) story or fourteen (14) feet in height.

Accessory buildings in all other districts may be constructed to equal the permitted maximum height of structures in said districts, subject to board of appeals review and approval if the building exceeds one (1) story or fourteen (14) feet in height.

- (6) When an accessory building is located on a corner lot, the side lot line of which is substantially a continuation of the front lot line of the lot to its rear, the building shall not project beyond the front yard setback required on the lot in rear of such corner lot. In no instance shall an accessory building be located nearer than nineteen (19) feet to a street right-of-way line.
- (7) On residential lots of less than seventeen thousand five hundred (17,500) square feet, only two (2) accessory buildings shall be permitted. On residential lots seventeen thousand five hundred (17,500) square feet or greater, only three (3) accessory buildings shall be permitted. These limits shall not apply to satellite dishes or dog pens.
- (8) All recreational vehicles, boats, snowmobiles, jet skis and comparable devices along with the trailers for these items stored on individual lots shall respect the requirements of this section applicable to accessory buildings, except that side yard storage is permitted against the wall of a principal structure when these items are beneath a legal conforming carport structure or are setback at least three (3) feet from the property line and eleven (11) feet from a principal building of an adjoining parcel. Storage in a driveway is permitted when the stored item can be placed entirely behind the front wall of the principal structure.
- (9) Regulations for dish-type satellite receiving antennae and similar structures (hereinafter referred to as satellite dishes):
  - a. *Ground mounted:*
    1. In residential districts a satellite dish must be located in the rear yard. If a usable satellite signal cannot be obtained in a rear yard then a side yard location may be selected if all other provisions of this section are able to be enforced.
    2. In all commercial and industrial districts, a satellite dish may be located on a rear or side lot if all other conditions of the ordinance can be followed, and if the side yard of the commercial or industrial lot is not adjacent to a residential district or detached single family use.
    3. No satellite dish including its concrete base, slab, a similar substructure or projected portion shall be constructed less than eight (8) feet from any property line or easement of the rear or side yard, or be within twenty-five (25) feet from a right-of-way line of a public street.
    4. In residential districts no satellite dish shall be constructed without appropriate evergreen landscaping to reasonably conceal said satellite dish from view. The planting shall be completed prior to final approval by the building inspector. Vegetative screening shall not be required where reception of a usable satellite signal would be adversely affected.

5. In residential districts a satellite dish shall not exceed a grade height of fourteen (14) feet. In all other districts the grade height limit is twenty (20) feet.
6. All structural support shall be of corrosion resistant metal.
7. A satellite dish shall be designed to withstand a wind force of seventy-five (75) miles per hour without the use of supporting guy wires.
8. The color of the satellite dish cannot be contrasting with its surroundings or setting. A contrasting color is one that does not blend with the background as defined by the normal senses.
9. In residential districts a satellite dish cannot be used as a sign.
10. The number of satellite dishes over four (4) feet in diameter is limited to one (1) on residential lots under one (1) acre in size.
11. No satellite dish (ground or roof mounted) shall be linked physically or electronically to a receiver which is not located on the same lot, premises, or parcel of land as is the satellite dish.
12. Wiring beneath a satellite dish and receiver shall be installed according to the specifications of the National Electrical Code.
13. A satellite dish must be bonded to a grounding rod.
14. Any driving motor exceeding fifty (50) volt power design shall require an electrical permit.

b. *Roof-mounted:*

1. In the event that a usable satellite signal cannot be obtained by locating the antennae in the rear or side yard, such antennae may be placed on the roof of a primary or accessory structure.
2. Satellite dishes shall be mounted directly upon the roof of a primary or accessory structure or on a ground anchored pole projecting through an eave of the structure. Satellite dishes shall not be mounted upon appurtenances such as chimneys, trees, or spires.
3. For residential uses, a satellite dish shall not exceed a height of more than three (3) feet above the roof upon which it is mounted.
4. In residential uses, a satellite dish shall not exceed eight (8) feet in diameter.

5. A satellite dish shall be designed to withstand a wind force of eighty-five (85) miles per hour without the use of supporting guy wires.
6. Any driving motor exceeding fifty (50) volt power design shall require an electrical permit.
7. A satellite dish must be bonded to a grounding rod.

(Code 1977, § 5.79; Ord. No. 435, 9-16-85; Ord. No. 439, § 1, 1-6-86; Ord. No. 503, § 1, 3-15-93; Ord. No. 572, § 1, 9-6-98)

### **Sec. 38-380. Off-street parking requirements.**

There shall be provided in all districts at the time of erection or enlargement of any main building or structure, automobile off-street space with adequate access to all spaces. The number of off-street parking spaces, in conjunction with all land or building uses shall be provided, prior to the issuance of a certificate of compliance and occupancy, as hereinafter prescribed:

- (1) Off-street parking spaces may be located within a side or rear yard unless otherwise prohibited in this chapter. Off-street parking will not be permitted between the surfaced area of a street and the property line of the street right-of-way. Off-street parking will not be permitted within a front yard setback, or a side yard regulated by the front yard setback provisions of section 38-352(c), unless approval is secured from the building inspector, whose determination shall be made upon the following criteria:
  - a. That an application has been made to the building department with a drawing of the entire front yard area including the home, yard, sidewalk, street, drives, and proposed parking area with dimensions of each.
  - b. The intent being to prohibit parking, parking will be permitted only when no other space is available, and shall be limited to the occupant's licensed and operable vehicles only, and must be adjacent to the main driveway to the premises, and must be surfaced with an approved concrete, asphalt, gravel, or other aggregate.
  - c. The decision of the building inspector to grant or not grant the permit shall be appealable to the board of zoning appeals of the city.
- (2) Off-street parking for other than residential use shall be either on the same lot or within three hundred (300) feet of the building it is intended to serve, measured from the nearest point of the building to the nearest point of the off-street parking lot. Ownership shall be shown of all lots or parcels intended for use as parking by the applicant.
- (3) Required residential off-street parking spaces shall consist of a parking strip, parking bay, driveway, garage or combination thereof and shall be located on the premises they are intended to serve.
- (4) Off-street parking existing at the effective date of this chapter, in connection with the operation

of an existing building or use shall not be reduced to an amount less than hereinafter required for a similar new building or new use.

- (5) Two (2) or more buildings or uses may collectively provide the required off-street parking in which case the required number of parking spaces shall not be less than the sum of the requirements for the several individual uses computed separately.
- (6) In the instance of dual function of off-street parking spaces where operating hours of buildings do not overlap, the board of appeals may grant an exception.
- (7) The storage of merchandise, motor vehicles for sale, trucks, or the repair of vehicles is prohibited in off-street parking area.
- (8) For those uses not specifically mentioned, the requirements for off-street parking facilities shall be in accord with a use which the building inspector considers is similar in type.
- (9) When units or measurements determining the number of required parking spaces result in the requirements of a fractional space, any fraction up to and including one-half shall be disregarded and fractions over one-half shall require one (1) parking space.
- (10) For the purpose of computing the number of parking spaces required, the definition of "usable floor area" in section 38-5 shall govern.
- (11) The requirements of subsection (12) shall not apply to the erection, alteration or extension of any building or structure, with the exception of those to be used for residential purposes, including transients, within the developed portion of the central business district (except as required by the subsection (5) within the following boundary):

Beginning at the center of the intersection of Main Street and the Shiawassee River, thence northerly along the Shiawassee River to the imaginary north right-of-way line of Exchange Street extended to the River, thence east along said imaginary line to the center of Water Street, thence north along Water Street to Mason Street, thence east along Mason Street to Park Street, thence south along Park Street to Exchange Street, thence east along Exchange Street to Saginaw Street, thence south along Saginaw Street and continuing south along the imaginary west right-of-way line of Saginaw Street extended to Comstock Street, thence west along Comstock Street to Park Street, thence south along Park Street approximately one hundred twenty (120) feet to the alley right-of-way, thence west along the alley right-of-way to the alley running north and southwest of Park Street, thence south along said alley to Jerome Street and the Shiawassee River, thence northwesterly along said Shiawassee River to the Point of Beginning. Also to include Block fourteen (14), Lots three (3) through fourteen (14) including South six (6) feet of the alley on the north; Block 15, Lots three (3) through ten (10) and Lot fourteen (14) including South six (6) feet of the alley on the North, of the A. L. & B. O. Williams Addition to City of Owosso. Also Lots one (1) through eleven (11) of the Eratus Barnes Addition to the City of Owosso.

- (12) The minimum number of off-street parking spaces by type of use shall be determined in

accordance with the following schedule:

USE  
NUMBER OF MINIMUM PARKING SPACES PER UNIT OF MEASURE

a. *Residential:*

1. Residential, single-family and two-family--Two (2) for each dwelling unit.
2. Residential, multiple-family--One and one-half (1 1/2) for each dwelling unit; one (1) for each dwelling unit located in the area described in section 38-380(11).
3. Housing for the Elderly--One (1) for each two (2) units and one (1) for each employee. Should units revert to general occupancy, then one and one-half (1 1/2) spaces per unit shall be provided.
4. Mobile Home Court--Two (2) for each mobile home site (see section 38-383(3)g.).

b. *Institutional:*

1. Churches or temples--One (1) for each four (4) seats or seven and one-half (7 1/2) feet of pews in the main unit of worship.
2. Hospitals--One (1) for each one (1) bed.
3. Homes for the aged and convalescent homes--One (1) for each four (4) beds.
4. Elementary and junior high schools--One (1) for each one (1) teacher, employee or administrator, in addition to requirements of the auditorium.
5. Senior high schools--One (1) for each one (1) teacher, employee or administrator, and in addition to the requirements of the auditorium or gymnasium, whichever is greater.
6. Private clubs or lodge halls--One (1) for each three (3) persons allowed within the maximum occupancy load as established by local, county or state fire building or health codes.
7. Private golf clubs, tennis clubs or other similar recreational uses--One (1) for each two (2) member families or individuals plus spaces required for each accessory use, such as restaurant or bar.
8. Golf courses open to the general public, except miniature or "par-3" courses--Three (3) for each one (1) golf hole.

9. Fraternity or sorority--One (1) for each five (5) permitted active members, or one (1) for each two (2) beds, whichever is greater.
10. Stadium, sports arena, or similar place of outdoor assembly--One (1) for each five (5) seats or nine (9) feet of benches.
11. Theaters, auditoriums and gymnasiums--One (1) for each four (4) seats or seven and one-half (7 1/2) feet of bleachers or benches.
12. Nursery schools--One (1) for each three hundred fifty (350) square feet of usable floor space.
13. Private noncommercial recreation areas; institutional or community recreation centers; nonprofit swimming pool clubs--See section 38-53(5)c.

c. *Business and commercial:*

1. Planned commercial or shopping center with specific uses not designated--One (1) for each one hundred (100) square feet of usable floor area.
2. Auto wash--One (1) for each one (1) employee. In addition, reservoir parking spaces equal in number to five (5) times the maximum capacity of the auto wash. Maximum capacity of the auto wash shall mean the greatest number of automobiles possible undergoing some phase of washing at the same time, which shall be determined by dividing the length in feet of each wash line by twenty (20).
3. Beauty parlor or barber shop--Three (3) spaces for each of the first two (2) beauty or barber chairs, and one and one-half (1 1/2) spaces for each additional chair.
4. Bowling alleys--Five (5) for each one (1) bowling lane.
5. Dance halls, pool or billiard parlors, roller or skating rinks, exhibition halls, and assembly halls without fixed seats--One (1) for each five (5) persons allowed within the maximum occupancy load as established by local, county or state fire, building or health codes.
6. Establishments for sale and consumption on the premises, of beverages, food or refreshments--One (1) for each seventy-five (75) square feet of usable floor area.
7. Furniture and appliance, household equipment, repair shops, showroom of a plumber, decorator, electrician or similar trade, show repair and other similar uses--One (1) for each eight hundred (800) square feet of usable floor area. (For that floor area used in processing, one (1) additional space shall be provided for each two (2) persons employed therein.)

8. Gasoline service stations--Two (2) for each lubrication stall, rack, or pit; and two (2) for each gasoline pump.
9. Laundromats and coin operated dry cleaners--One (1) for each two (2) washing and/or dry cleaning machines.
10. Miniature or "par-3" golf courses--Three (3) for each one (1) hole.
11. Mortuary establishments--One (1) for each fifty (50) square feet of assembly room usable floor space, parlors and slumber rooms.
12. Motel, hotel, or other commercial lodging establishments--One (1) for each one (1) occupancy unit plus one (1) for each one (1) employee.
13. Motor vehicle sales and service establishments--One (1) for each two hundred (200) square feet of usable floor space of sales room and one (1) for each one (1) auto service stall in the service room.
14. Retail stores except as otherwise specified herein--One (1) for each two hundred (200) square feet of usable floor space or a minimum of six (6) spaces.

d. *Offices:*

1. Banks--One (1) for each one hundred (100) square feet of usable floor space.
2. Drive-in Banks--Same as above plus reservoir parking space of five (5) vehicles per window.
3. Business offices or professional offices except as indicated in the following item 4.--One (1) for each two hundred (200) square feet of usable floor space or a minimum of four (4) spaces.
4. Professional offices--doctors, dentists, attorneys, or similar professions dealing directly with the public--One (1) for each one hundred (100) square feet of usable floor area or a minimum of four (4) spaces.

e. *Industrial:*

1. Industrial or research establishments--A minimum of five (5), plus one (1) for each 1.2 office employees and one (1) for each 2.3 factory employees in the largest working shift or one (1) for every five hundred fifty (550) square feet of usable floor space, or whichever is determined to be the greater. Space on site shall also be provided for all construction workers during periods of plant construction.
2. Wholesale establishments--A minimum of five (5) plus one (1) for every one (1)

employee in the largest working shift, or one (1) for every seventeen hundred (1700) square feet of usable floor space, whichever is greater.

(Code 1977, § 5.80; Ord. No. 400, § 1, 1-4-83; Ord. No. 576, § 1, 1-19-99)

**Cross References:** Parking requirements for bed and breakfast operations, § 7-6; parking, stopping and standing generally, § 33-36 et seq.

**Sec. 38-381. Off-street parking space layout, standards, construction and maintenance.**

Wherever the off-street parking requirements in section 38-380 above require the building of an off-street parking facility, such off-street parking lots shall be laid out, constructed and maintained in accordance with the following standards and regulations:

(1) No parking lot of more than three thousand (3,000) square feet in area shall be constructed unless and until a permit therefor is issued by the city building inspector and approved by the city engineer. Applications for a permit shall be submitted in such form as may be determined by the city engineer and shall be accompanied with two (2) sets of plans for the development and construction of the parking lot showing that the provisions of this section will be fully complied with.

(2) Plans for the layout of off-street parking facilities shall be in accord with the following minimum requirements. Level of service "A" shall be used except as noted below. Level of service "A" is intended for shorter term uses such as shopping centers, retail services, medical office buildings, hospital visitor parking, restaurant, movies or theater facilities and for hotels/motels and other facilities servicing travelers or others who normally load or unload luggage or packages. Level of service "B" may be used for churches, staff parking areas (as long as an appropriate number of signed visitor spaces are available) and other locations as approved by the planning commission.

	Level of Service A		Level of Service B	
Parking stall width	9'0"		8'6"	
Parking stall length <sup>1</sup>	18'4"		17'5"	
Parking stripe length	17'0"		16'0"	
<i>Angle<sup>2</sup></i>	<i>Bay Width Between Walls or in Parking Structure</i>	<i>Bay Width Multiple Bays</i>	<i>Bay Width Between Walls or in Parking Structure</i>	<i>Bay Width Multiple Bays</i>
90	62'0"	62'0"	60'10"	60'10"
75	60'2"	58'4"	57'5"	55'7"
70	59'0"	56'6"	56'3"	53'9"
65	57'10"	54'10"	55'0"	52'0"
60	56'8"	53'0"	53'10"	50'2"
55	55'0"	50'10"	52'2"	48'0"
50	53'3"	48'7"	50'7"	45'11"
45	51'7"	46'5"	48'11"	43'9"
Parallel	9'0" by 22'4" parking space		8'6" by 21'5"	
43'0"	43'0"	40'0"	40'0"	
Two-way end aisles	31'0"		28'0"	
One-way end aisles	19'0"		17'6"	

<sup>1</sup> Bay widths may be reduced by one parking stall length when parking is provided on only one side of the drive aisle.

<sup>2</sup> Gravel parking lots are to meet ninety-degree parking requirements.

- (3) All spaces shall be provided adequate access to means of maneuvering lanes. Backing directly onto a street or public right-of-way shall be prohibited.
- (4) Adequate ingress and egress to the parking lot by means of clearly limited and defined drives shall be provided for all vehicles. Ingress and egress to a parking lot lying in an area zoned for other than a single-family residential use shall not be across land zoned for single-family residential use.
- (5) All maneuvering lane widths shall permit one-way traffic movement except that the ninety (90) degree pattern may permit two-way movement.
- (6) Each entrance and exit to and from any off-street parking lot located in an area zoned for other than single-family residential use shall be at least twenty-five (25) feet distant from any adjacent property located in any single-family residential district.
- (7) The off-street parking area shall be provided with a continuous and obscuring wall not less than four (4) feet, six (6) inches in height measured from the surface of the parking area. This wall shall be provided on all sides where the next zoning district is designated as a residential district.

When a front yard setback is required, all land between said wall and the front property line or street right-of-way line shall be kept free from refuse and debris and shall be landscaped with deciduous shrubs, evergreen material and ornamental trees. The ground area shall be planted and kept in lawn. All such landscaping and planting shall be maintained in a healthy growing condition, neat and orderly in appearance.

- (8) Off-street parking areas shall be drained so as to dispose of all surface water accumulated in the parking area in such a way as to preclude drainage of water onto adjacent property or toward buildings, and plans shall meet the approval of the city engineer.
- (9) All lighting used to illuminate any off-street parking area shall be so installed as to be confined within and directed onto the parking area only.
- (10) In all cases where a wall extends to an alley which is a means of ingress and egress to an off-street parking area, it shall be permissible to end the wall not more than ten (10) feet from such alley line in order to permit a wider means of access to the parking area.
- (11) The board of appeals upon application by the property owner of the off-street parking area, may modify the yard or wall requirements where, in unusual circumstances, no good purpose would be served by compliance with the requirements of this section; provided, however, that where site plan approval of the planning commission is required, the commission may modify these requirements.

(Code 1977, § 5.81; Ord. No. 575, § 1, 1-19-99)

**Sec. 38-382. Off-street loading and unloading.**

On the same premises with every building, structure, or part thereof, involving the receipt or distribution of vehicles or materials or merchandise, there shall be provided and maintained on the lot, adequate space for standing, loading and unloading in order to avoid undue interference with public use of dedicated rights of way. Such space shall be provided as follows:

- (1) All spaces shall be provided as required in article XVI, schedule of regulations, under minimum rear yards (footnote h), except as hereinafter provided for I districts.
- (2) Within an I district, all spaces shall be laid out in the dimension of at least ten (10) by fifty (50) feet, or five hundred (500) square feet in area, with a clearance of at least fourteen (14) feet in height. All spaces in I-1 and I-2 districts shall be provided in the following ratio of spaces to floor area.

**GROSS FLOOR AREA (IN SQUARE FEET) LOADING AND UNLOADING SPACE REQUIRED**

0--1,400: None

1,401--20,000: One (1) space

20,001--100,000: One (1) space plus one (1) space for each twenty thousand (20,000) square feet in excess of twenty thousand and one (20,001) square feet.

100,001 and over: Five (5) spaces

- (3) All loading and unloading in an I district shall be provided off-street in the rear yard or interior side yard, and shall in no instance be permitted in a front yard. In those instances where exterior side yards have a common relationship with an industrial district across a public thoroughfare, loading and unloading may take place in such exterior yard when the setback is equal to at least fifty (50) feet.

(Code 1977, § 5.82)

**Sec. 38-383. Uses not otherwise included within a specific use district.**

(a) Because the uses hereinafter referred to possess unique characteristics making it impractical to include them in a specific use district classification, they may be permitted by the council under the conditions specified, and after public hearing, and after a recommendation has been received from the planning commission. In every case, the uses hereinafter referred to shall be specifically prohibited from any R-1, R-2 and RT-1 districts.

(b) These uses require special consideration since they service an area larger than the city or require sizeable land areas, creating problems of control with reference to abutting use districts. Reference to those uses falling specifically within the intent of this section is as follows:

- (1) *Outdoor theaters.* Because outdoor theaters possess the unique characteristics of being used only

after darkness and since they develop a concentration of vehicular traffic in terms of ingress and egress from their parking area, they shall be permitted in I-2 districts only. Outdoor theaters shall further be subject to the following conditions:

- a. The proposed internal design shall receive approval from the building inspector and the city engineer as to adequacy of drainage, lighting and other technical aspects.
  - b. Outdoor theaters shall abut a major thoroughfare and points of ingress and egress shall be available only from such major thoroughfare.
  - c. All vehicles, waiting or standing to enter the facility, shall be provided off-street waiting space. No vehicle shall be permitted to wait or stand within a dedicated right-of-way.
  - d. The area shall be so laid out as to prevent the movie screen from being viewed from residential areas or adjacent major thoroughfares. All lighting used to illuminate the area shall be so installed as to be confined within, and directed onto, the premises of the outdoor theater site.
- (2) *Commercial television and radio towers and public utility microwaves, and public utility TV transmitting towers.* Radio and television towers, public utility microwaves and public utility TV transmitting towers, and their attendant facilities may be permitted in I-1 and I-2 districts provided said use shall be located centrally on a continuous parcel of not less than one and one-half (1 1/2) times the height of the tower measured from the base of said tower to all points on each property line.
- (3) *Mobile home park.* Mobile home parks possess site characteristics similar to multiple-family residential development. They are, in this chapter, used to provide for transition between nonresidential development and residential districts. Mobile home parks may, therefore, be permitted within the I-1 and RM-1 districts subject to the following conditions:
- a. Locational requirements:
    1. Mobile home parks located in an RM-1 district shall abut nonresidential districts on at least two (2) sides.
    2. Parcels being proposed for mobile home parks in the I-1 districts shall not be surrounded on more than three (3) sides by the I-1 districts, provided further that the mobile home site shall have one (1) entire side abutting a residential district.
    3. Parcels being proposed for mobile home parks in RM-1 districts may be permitted when the mobile home park generally provides a buffer between a residential district and nonresidential districts. Mobile home parks shall not, therefore, be permitted as a principal use in any RM-1 district which does not directly abut a nonresidential district.
    4. Access from the mobile home park to the nearest major thoroughfare shall be by

means of a public right-of-way of not less than sixty (60) feet in width. No access shall be permitted through a one-family residential district.

- b. Height regulations. In the MH mobile home district, no structure shall exceed a height of twenty-five (25) feet or two and one-half (2 1/2) stories.
- c. Area regulations. In a mobile home park, the minimum dimensions of yards and the minimum lot area per home, shall be as follows:
  - 1. The mobile home park shall be permitted only on parcels of the five (5) acres or more.
  - 2. An open area shall be provided on each mobile home lot to insure adequate natural light and ventilation to each mobile home and to provide sufficient area for outdoor uses essential to the occupants of the mobile home. Mobile home lots shall have not less than three thousand (3,000) square feet in area exclusive of drives, open space in the mobile home court or other open area not specifically for mobile home occupancy. The minimum width for mobile home lots shall be thirty-five (35) feet.
- d. Setback:
  - 1. No mobile home shall be located closer than twenty-five (25) feet from any building within the park or any property line bounding the park. No building or mobile home shall be located closer than twenty-five (25) feet from any public street right-of-way nor less than forty (40) feet from any major or secondary thoroughfare.
  - 2. The mobile home park site shall be enclosed by a fifteen (15) foot greenbelt adjacent to all abutting properties and public rights-of-way. The greenbelt shall be located within the mobile home park site and shall provide a continuous year-around obscuring screen.
- e. Yards. Each mobile home site shall have the following minimum yard requirements:
  - Front yard ten (10) feet
  - Side yard ten (10) feet
  - Rear yard eight (8) feet
- f. Service drives and sidewalks:
  - 1. The mobile home park shall have direct access to a major thoroughfare by directly abutting thereon.

2. Mobile home lots shall abut a service drive. All service drives shall have widths as scheduled below and shall be designed and graded for proper drainage according to standard road building practice and be approved by the city engineer prior to opening of the mobile home park. All service drives shall be constructed of black top or poured concrete within one (1) year after issuance of permit. A cash security guaranteeing monies for such work will be issued to the city in the amount of a bona fide bid from parties performing such work.
3. Mobile home courts shall provide an approved hard surface entrance road not less than thirty (30) feet wide, also contingent upon city engineer approval.
4. Schedule of service drive widths.
  - i. Two-way traffic street with no parking--minimum 24 feet.
  - ii. One-way traffic street with parallel parking one side--minimum 22 feet.
  - iii. Two-way traffic street with parallel parking one side--minimum 32 feet.
  - iv. One-way traffic street with parallel parking two sides--minimum 32 feet.
  - v. Two-way traffic with parallel parking two sides--minimum 40 feet.
5. Parking spaces on service drives shall be clearly marked.
6. All service drives shall be provided with curbs and gutters and be properly drained.
7. The mobile home park shall be designed to provide a concrete walk at least forty-eight (48) inches wide from entrance of park to all mobile home sites and all required service facilities.
8. Street and yard lights sufficient to permit safe movement of vehicles and pedestrians at night shall be provided, and shall be so located and shaded as to direct the light away from adjacent properties.
- g. Off-street parking. Two (2) hard surface automobile parking spaces shall be required for each mobile home site. One (1) such space may be placed in the service drive provided parking is permitted on said service drive in accordance with paragraph (f)(4) above and further provided that each space so provided shall be a minimum of twenty-three (23) feet in length. Off-street spaces shall meet the minimum requirements of section 38-381 where applicable.
- h. Underground wiring:
  1. Arrangements shall be made for all local distribution lines for telephone or

electric services, exclusive of main supply and perimeter feed lines when located on section or quarter section lines, to be placed entirely underground throughout the mobile home court area, provided, however, that when a mobile home park overlaps a section or quarter section line, main supply and perimeter feed lines located on such section or quarter section line shall be placed underground. The planning commission may waive or modify this requirement where, in its judgment, circumstances exist which render compliance impractical.

2. Conduits or cables shall be placed within private easements provided to the service companies by the proprietor, developer or within public ways. Those telephone and electrical facilities placed in dedicated public ways shall be planned so as not to conflict with other underground utilities. All telephone and electrical facilities shall be constructed in accordance with standards of construction approved by the state public service commission.

i. Required conditions.

1. All mobile home park development shall further comply with Act No. 419 of the Public Acts of Michigan of 1976 (MCL 125.1101 et seq., MSA 19.885(1) et seq.), as amended.
2. There shall not be less than three hundred sixty (360) square feet of floor space within each mobile home for the first two (2) occupants, and an additional one hundred (100) square feet of floor space for each occupant over two (2).
3. There shall be provided for each mobile home park a recreation area equal in size to at least two hundred (200) square feet per mobile home site. Said recreation area shall be no longer than one and one-half (1 1/2) times its width. Such area shall be graded, developed, and maintained by the management, so as to provide recreation for the residents of the mobile home park.
4. The front yard, and any side yard adjacent to a street shall be landscaped within one (1) year, and the entire mobile home court shall be maintained in a good, clean, presentable condition at all times.
5. No business of any kind shall be conducted in any mobile home park except for separate, permanent structures which contain facilities such as the management's office, laundry and dry cleaning facilities or similar uses which are designed to serve only the residents of the mobile home park.
6. There shall be no storage of any kind under mobile homes, unless skirted.
7. All fences, other than the greenbelt surrounding the park, shall be uniform in height, and shall not exceed thirty (30) inches in height, and shall be constructed in such a manner as to provide firemen access to all sides of each mobile home.

8. Mobile home sites shall be provided with a concrete apron of suitable width and length to park and support a mobile home.
- j. Site plan review. Prior to the issuance of a permit for construction on a mobile home park site, a site plan shall be submitted to the planning commission for approval and in accordance with the following:
  1. Every site plan submitted to the planning commission shall be in accordance with the requirements of this chapter. No site plan shall be approved until same has been reviewed by the building department, fire department, police department and city engineer for compliance with the standards of their respective departments.
  2. The site plan shall be submitted in accordance with section 38-390 of this chapter.
  3. Actual construction of the mobile home park shall be in accordance with the site plan. Any minor deviation from said site plan shall require the approval of the city engineer. Any change which in the opinion of the city engineer constitutes a major change in the site plan shall be resubmitted to the planning commission.

(Code 1977, § 5.83)

#### **Sec. 38-384. Plant materials.**

Whenever in this chapter a greenbelt or planting is required, it shall be planted within six (6) months from the date of issuance of a certificate of occupancy and shall thereafter be reasonably maintained with permanent plant materials to provide a screen to abutting properties. Suitable materials equal in characteristics to the plant materials listed with the spacing as required shall be provided:

(1) *Plant material spacing:*

- a. Plant materials shall not be placed closer than four (4) feet from the fence line or property line.
- b. Where plant materials are placed in two (2) or more rows, plantings shall be staggered in rows.
- c. Evergreen trees shall be planted not more than thirty (30) feet on centers, and shall be not less than five (5) feet in height.
- d. Narrow evergreens shall be planted not more than six (6) feet on centers, and shall be not less than three (3) feet in height.
- e. Tree-like shrubs shall be planted not more than ten (10) feet on centers, and shall be not less than four (4) feet in height.
- f. Large deciduous shrubs shall be planted not more than four (4) feet on centers, and shall not be less than six (6) feet in height.

- g. Large deciduous trees shall be planted not more than thirty (30) feet on centers, and shall not be less than eight (8) feet in height.

#### SUGGESTED PLANT MATERIALS

Evergreen trees.

Minimum five (5) feet in height.

Column Hinoki Cypress

Blue Columnar Chinese Juniper

Pyramidal Red Cedar

Swiss Stone Pine

Pyramidal White Pine

Irish Yew

Douglas Arborvitae

Columnar Giant Arborvitae

Tree Like Shrubs

Minimum four (4) feet in height.

Flowering Crab

Mountain Ash

Redbud

Hornbeam

Magnolia

Russian Olive

Dogwood

Rose of Sharon

Hawthorn

Large Deciduous Shrubs

Minimum six (6) feet in height.

Honeysuckle

Mock-Orange

Lilac

Cotoneaster

Euonymus

Buckthorn

Viburnum

Forsythia

Ninebark

Hazelnut

Privet

Sumac

Large Deciduous Trees

Minimum eight (8) feet in height.

Oak

Hackberry

Planetree (Sycamore)

Ginkgo

Sweet-Gum

Linden

Hard Maple  
Birch  
Beech  
Honeylocust  
Hop Hornbeam

(1) *Trees not permitted.*

- a. Box Elder
- b. Soft Maples (Red-Silver)
- c. Elms
- d. Poplars
- e. Willows
- f. Horse Chestnut (nut bearing)
- g. Tree of Heaven
- h. Catalpa

(Code 1977, § 5.84)

**Cross References:** Vegetation generally, Ch. 35.

**Sec. 38-385. Signs.**

Signs shall be permitted in conformance with the provisions of this chapter and Chapter 26, Signs, of the City Code of the City of Owosso.

(Code 1977, § 5.85; Ord. No. 499, 2-16-93)

**Cross References:** Signs generally, Ch. 26.

**Sec. 38-386. Exterior lighting.**

Exterior lighting shall be subject to the following regulations:

- (1) All outdoor lighting in all use districts used to light the general area of a specific site shall be shielded to reduce glare and shall be so arranged as to reflect lights away from all adjacent residential districts or adjacent residences.
- (2) All outdoor lighting in all use districts shall be directed toward and confined to the ground areas of lawns or parking lots.

- (3) All lighting in nonresidential districts used for the external illumination of buildings, so as to feature said buildings, shall be placed and shielded so as not to interfere with the vision of persons on adjacent highways or adjacent property.
- (4) Illumination of signs shall be directed or shaded downward so as not to interfere with the vision of persons on the adjacent highways or adjacent property.
- (5) Except as provided for in Chapter 26, Signs, of the City Code, all illumination of signs and any other outdoor feature shall not be of a flashing, moving or intermittent type. Artificial light shall be maintained stationary and constant in intensity and color at all times when in use.

(Code 1977, § 5.86; Ord. No. 499, 2-16-93)

**Sec. 38-387. Residential entranceway.**

In all residential districts, so called entranceway structures including but not limited to, walls, columns and gates marking entrances to single-family subdivisions or multiple housing projects may be permitted and may be located in a required yard, except as provided in section 38-388, corner clearance, provided that such entranceway structures shall comply to all codes of the city, and shall be approved by the building department and a permit issued.

(Code 1977, § 5.87)

**Sec. 38-388. Corner clearance.**

No fence, wall, shrubbery, sign or other obstruction to vision above a height of thirty (30) inches from the curb or centerline of the street pavement shall be permitted within the triangular area formed at the intersection of any street right-of-way lines by a straight line drawn between the right-of-way lines at a distance along each line of twenty-five (25) feet from their point of intersection.

(Code 1977, § 5.88)

**Cross References:** Visibility at street intersections concerning fences, § 38-393(c).

**Sec. 38-389. Walls.**

(a) For those use districts and uses listed below, there shall be provided and maintained on those sides abutting or adjacent to a residential district, or a single-family detached residential use, an obscuring wall as required below, except otherwise required in subsection (d):

Use Requirements

- (1) P-1 Vehicular parking district--Four (4) foot six (6) inch high wall. Off-street parking area (other than P-1 districts) four (4) foot six (6) inch high wall.
- (2) B-1, B-2, B-3, B-4, and OS-1 districts--Four (4) foot, six (6) inch high wall.
- (3) I-1 and I-2 districts--Open storage areas, loading or unloading areas, service areas--Four (4) foot, six (6) inch to eight (8) foot high wall or fence. Height shall provide the most complete obscuring possible. See subsection (d) of this section.

(4) Auto wash. Drive-in restaurants--Six (6) foot high wall.

(5) Utility buildings, stations and/or substations--Six (6) foot high wall.

(b) Required walls shall be located on the lot line except where underground utilities interfere and except in instances where this chapter requires conformance with front yard setback lines in abutting residential districts. Upon review of the site plan, the board of appeals or planning commission may approve an alternate location for the wall or may waive the wall requirement if in specific cases it would not serve the purposes of screening the area effectively. Required walls may, upon approval of the board of appeals, be located on the opposite side of an alley right-of-way from a nonresidential zone that abuts a residential zone when mutually agreeable to affected property owners. The continuity of the required wall on a given block will be a major consideration of the board of appeals in reviewing such request.

(c) Such walls and screening barrier shall have no openings for vehicular traffic or other purposes, except as otherwise provided in this chapter and except such openings as may be approved by the police chief and the building inspector. All walls herein required shall be constructed of materials approved by the building inspector to be durable, weather resistant, rust proof and easily maintained. Masonry walls may be constructed with openings which do not in any square section (height and width) exceed twenty (20) percent of the surface. Where walls are so pierced, the openings shall be so spaced as to maintain the obscuring character required, and shall not reduce the minimum height requirement. The arrangement of the openings shall be reviewed and approved by the building inspector.

(d) The requirement for an obscuring wall between off-street parking areas, outdoor storage areas, and any abutting residential district, or single family detached residential use, shall not be required when such areas are located more than two hundred (200) feet distant from such abutting residential district.

(e) The board of appeals or planning commission may waive or modify the foregoing requirements where cause can be shown that no good purpose would be served, provided that in no instance shall a required wall be permitted to be less than four (4) feet six (6) inches in height, except where section 38-388 applies. In certain consideration of request to waive wall requirements between nonresidential and residential districts, or single-family detached residential use, the planning commission shall determine or the board shall refer the request to the planning commission to determine whether or not the residential district or single-family detached residential use, is considered to be an area in transition and will become nonresidential in the future. In such cases as the planning commission determines the residential district or single-family detached residential use, to be a future nonresidential area, the board or commission may temporarily waive wall requirements for an initial period not to exceed twelve (12) months. Granting of subsequent waivers shall be permitted, provided that the planning commission shall make a determination as hereinbefore described, for each subsequent waiver prior to the granting of such waiver.

(Code 1977, § 5.89; Ord. No. 440, § 1, 1-6-86)

### **Sec. 38-390. Site plan review.**

When provisions of this chapter require submission of a site plan to the planning commission, it shall be submitted in accordance with the provisions of this section.

- (1) A site plan shall be submitted to the planning commission for approval of:
  - a. Any use or development for which the submission of a site plan is required by any provision of this chapter;
  - b. Any development, except single-family and two-family residential, for which off-street parking areas are provided as required in section 38-380, off-street parking requirements;
  - c. Any use in an RM-1, RM-2, OS-1, B-1, B-2, B-3, B-4, I-1, I-2, P-1 or PUD district;
  - d. Any use except single- or two-family residential which lies contiguous to a major thoroughfare or collector street;
  - e. All residentially related uses permitted in single-family districts such as, but not limited to, churches, schools, colleges, institutions, and public facilities;
  - f. Building additions or accessory buildings shall not require planning commission review unless off-street parking, in addition to that already provided on the site is required.
- (2) Preliminary site plan review. The planning commission shall review site plans required by this chapter and may grant preliminary approval to the petitioner, if the site plan conforms to the provisions of this chapter. The following information shall be so included on the site plan:
  - a. A scale of not less than one (1) inch equals fifty (50) feet if the subject property is less than three (3) acres and one (1) inch equals one hundred (100) feet if three (3) acres or more;
  - b. Date, northpoint, scale, and area of the site in acres;
  - c. The dimensions of all lot and property lines, showing the relationship of the subject property to the abutting properties;
  - d. The location of all existing and proposed structures and utilities on the subject property and all existing structures within one hundred (100) feet to the subject property;
  - e. The location and layout of all existing and proposed drives and parking areas;
  - f. The location and right-of-way widths of all abutting streets and alleys;
  - g. The names and addresses of the architect, planner, designer, engineer, or person responsible for the preparation of the site plan.
- (3) Final approval of site plan. Every site plan submitted to the planning commission shall be in accordance with the requirements of this chapter. Three (3) copies of the site plan shall be submitted to the building department ten (10) days prior to the city planning commission's regular meeting. No site plan shall be approved until and unless a letter of assurance has been

received from the building inspector, that the site plan has been reviewed by and is in conformance with all applicable standards of the building department, police department, fire department, engineering department, and city utility department. Further, no construction, reconstruction, demolition, or other site work may progress during the interim, and no building permit(s) shall be issued prior to the final approval of the site plan by the planning commission. Upon granting final approval of a site plan, the chairman of the planning commission shall sign all three (3) copies of the site plan, return one (1) copy to the petitioner, and deliver two (2) copies to the building inspector. The site plan submitted for final approval by the planning commission shall include:

- a. The number, location, and layout of off-street parking spaces to include all access roads and the manner in which they are to be surfaced;
- b. The provision of internal site drainage and necessary city utilities complete with existing and proposed elevations;
- c. The proposed site landscaping complete with a planting plan to include all proposed walls, fences, and screening in compliance with the provisions of this chapter;
- d. The elevation of the site in relation to the identified flood hazard area. All proposed construction, reconstruction, or demolition shall be in compliance with local, state, and federal ordinances, laws, or regulations with regard to flood hazard areas;
- e. A copy of the permit from the local enforcing agency on soil erosion and sedimentation control if the earth change activity involves more than one (1) acre or is within five hundred (500) feet of a lake or stream.

(4) In the process of reviewing the site plan, the planning commission shall consider:

- a. The location and design of driveways providing vehicular ingress to and egress from the site, in relation to streets giving access to the site, and in relation to pedestrian traffic;
- b. The traffic circulation features within the site and location of automobile parking areas; and may make such requirements with respect to any matters as will assure:
  1. Safety and convenience of both vehicular and pedestrian traffic both within the site and in relation to access streets;
  2. Satisfactory and harmonious relationships between the development on the site and the existing and prospective development of contiguous land and adjacent neighborhoods;
- c. The planning commission may further require landscaping, fences, and walls in pursuance of these objectives and same shall be provided and maintained as a condition of the establishment and the continued maintenance of any use to which they are appurtenant;

- d. In those instances wherein the planning commission finds that an excessive number of ingress and/or egress points may occur with relation to major or secondary thoroughfares, thereby diminishing the carrying capacity of the thoroughfares, the planning commission may recommend marginal access drives. For a narrow frontage, which will require a single outlet, the planning commission may recommend that money in escrow be placed with the city so as to provide for a marginal service drive equal in length to the frontage of the property involved. Occupancy permits shall not be issued until the improvement is physically provided, or moneys have been deposited with the clerk.
  - e. Whether the site is located within a designated historic overlay district, and whether the proposed action would have an adverse impact on the resources of the historic overlay district, as defined in subsection 38-32(b)(4). The planning commission may deny the proposed action if the action would have an unacceptable adverse impact on the historic resource or the historic overlay district itself. The planning commission may also require landscaping or other reasonable methods to minimize the adverse impact any proposed action may have on a historic resource or on the historic overlay district itself.
- (5) An approved PUD site plan shall be required before applicable permits may be issued for any form of construction or removal or disturbance of any natural feature for all planned unit developments.
- a. *Procedure for PUD site plan review.*
    - 1. The applicant for PUD site plan approval shall file with the community development director (hereinafter "director") all drawings and other materials required for site plans in this chapter, all drawings and other materials required in Section 38-395 for PUD zoning district approval, and the additional information listed below. A PUD site plan application shall not be considered filed until all drawings and other required materials have been submitted and may be rejected if the materials submitted are inadequate to make the foregoing determinations.
    - 2. If requested by the planning commission or city council, additional graphics, models, three-dimensional or electronic, or written materials shall be submitted to assist the city in visualizing and understanding the proposal. Additional detailed information, including but not limited to plans, elevations, building and site sections, or existing and proposed building materials, if submitted, shall become a part of the PUD site plan.
    - 3. The director will distribute these materials to the appropriate city departments and other reviewing agencies for review and comment regarding compliance with the PUD zoning district supplemental regulations and conceptual PUD plan, and compliance with all applicable local, state, or federal laws, ordinances, standards and regulations and to determine the need for a development agreement as provided in this chapter. The director will notify the applicant of any questions raised by the city departments and other reviewing agencies and negotiate a

development agreement with the applicant if it is determined that such an agreement is needed. The director shall submit a report and recommendation to the planning commission based on this review.

4. The planning commission, after holding a public hearing on the PUD site plan with notification as required by this chapter, shall transmit its recommendation based on the standards below, together with any recommended conditions of approval and all related reports and minutes to city council.
- b. *Standards for PUD site plan review.* City council, after holding a public hearing on the PUD site plan with notification as required by this chapter, and after receiving all related reports and minutes and a recommendation from the commission, shall approve, with conditions, or deny a PUD site plan. A PUD site plan shall be approved by city council only after it determines that:
1. The development would comply with the PUD zoning established pursuant to the requirements of section 38-395, and with all applicable local, state, or federal laws, ordinances, standards and regulations; and
  2. The development would limit the disturbance of natural features to the minimum necessary to allow a reasonable use of the land, applying criteria for reviewing a natural features statement of impact set forth in this chapter; and
  3. The development would not cause a public or private nuisance and would not have a detrimental effect on the public health, safety or welfare.
- c. *Development agreement.*
1. Upon obtaining approval of a site plan, the applicant and the city council may enter into a development agreement that describes the terms and conditions of the approval and the rights and obligations of each party. The city council may approve the development agreement immediately following approval of a site plan or it may be placed on a subsequent agenda of the city council. The applicant shall reimburse the city for all fees for city legal counsel and consultant participation in the development agreement.
  2. The approved development agreement shall be recorded with the county register of deeds.
  3. In the event the site plan requires a major amendment, the development agreement shall be amended to reflect the approved changes and recorded as provided in subsection (5)c.2. above.
- d. *Effect of PUD site plan approval.* For three (3) years from the date of approval of a PUD site plan, permits may be issued and the land developed consistent with the PUD site plan and the regulations, laws and ordinances in effect as the time of approval, unless new

regulations, laws and ordinances have been made applicable to previously approved developments. After three (3) years from PUD site plan approval, no permits shall be issued unless the PUD site plan is reconsidered in the manner provided for new PUD site plans and is determined to meet the standards of the PUD zoning district or has been extended as provided under administrative amendments to approved PUD site plans.

- e. *PUD site plan amendments.* A minor change to an approved PUD site plan may be approved by the planning commission as provided in this chapter except that the proposed changes shall not alter the fundamental design, conceptual integrity, natural features shown to be preserved, any specific conditions of the PUD development program, the conceptual PUD plan or the supplemental regulations. The following restrictions shall also apply:
1. Adjustment in approved phases of development shall not result in a change greater than ten percent of the total gross area in any phase, or ten percent of the number of approved lots, or ten percent of the approved maximum building square footage.
  2. For residential buildings the size may be reduced or increased by five percent, provided the overall density of units does not increase and the minimum square footage requirements are met.
  3. Gross floor area of non-residential buildings may be decreased or increased by up to five (5) percent or ten thousand (10,000) square feet whichever is smaller.
  4. Floor plans may be changed if consistent with the character of the use.
  5. Horizontal and/or vertical elevations may be altered by up to five (5) percent.
  6. Relocation of a building is permitted by up to ten (10) feet, if consistent with required setbacks and other standards.
  7. Designated "areas not to be disturbed" may be increased.
  8. Plantings approved in the final PUD site plan may be replaced by similar types of landscaping on a one-to-one or greater basis. Any trees to be preserved, which are lost during construction, may be replaced by at least two (2) trees of the same or similar species.
  9. Improvements or slight relocation of site access or circulation patterns are minor changes, such as inclusion of deceleration lanes, boulevards, curbing, and pedestrian or bicycle paths.
  10. Changes of building materials to another of higher quality can be made, with determined of quality a judgment of the building inspector.

11. Slight modification of sign placement or reduction of size may be made.
12. Internal rearrangement of a parking lot is possible if the change does not affect the number of parking spaces or alter access locations or design.
13. Changes required by the city, county or state for safety reasons are a basis for a minor change.

(6) It shall be understood that the petitioner agrees to install and/or construct all improvements in the approved site plan within twelve (12) months from the initiation of on-site construction, and to provide for their continued maintenance.

(7) The planning commission may modify the foregoing requirements or waive them if it can be shown that no good purpose would be served in the preparation of a site plan.

(8) The planning commission may require that a bond be posted by a developer(s) to assure that improvements connected with an approved site plan are made as proposed.

(Code 1977, § 5.90; Ord. No. 585, § 1, 6-21-99; Ord. No. 662, § 1, 10-18-04)

**State Law References:** Site plan, MCL 125.584d, MSA 4.2934(4).

#### **Sec. 38-391. Frontage on a public street.**

Unless otherwise provided for in this chapter, no lot shall be used for any purpose permitted by this chapter unless the lot abuts a public street.

(Code 1977, § 5.91)

#### **Sec. 38-392. Access to major or secondary thoroughfare.**

For uses making reference to this section, vehicular access shall be provided only to an existing or planned major or secondary thoroughfare; provided, however, that access driveways may be permitted to other than a major or secondary thoroughfare when such access is provided to a street where the property directly across the street from such driveway and all property abutting such street between the driveway and the major or secondary thoroughfare is zoned for multiple-family use or any nonresidential uses, is developed with permanent uses other than single-family residences or is an area which, in the opinion of the planning commission, will be used for other than single-family purposes in the future. This exception shall only apply if the planning commission finds that there are special circumstances which indicate that there will be a substantial improvement in traffic safety by reducing the number of driveways to a thoroughfare.

(Code 1977, § 5.92)

#### **Sec. 38-393. Fences, walls, or screens.**

(a) *Definition.* "Required yard" means that portion of any lot on which the erection of a main building is prohibited.

(b) *Where permitted; height.*

(1) In the residential districts; also the OS-1, B-1, B-2, B-3, B-4, C-OS, and P-1 districts: Fences,

walls or screens are permitted on all lots of record within required side or rear yards, provided they do not exceed six (6) feet in height, measured from the surface of the ground, and are permitted in front required yards provided they do not exceed three (3) feet if of such a nature to obstruct vision; where fencing is open weave or chain link and does not obstruct vision, the permitted height shall be four (4) feet, measured from the ground surface except as otherwise provided in this chapter.

(2) In the I-1 and I-2 districts:

- a. Fences, walls and screens are permitted in the required front, side and rear lots provided they do not exceed six (6) feet in the front yard and eight (8) feet in the side and rear lots. To preserve open space character in the front yard, fences higher than four (4) feet must be setback two (2) feet for each additional foot above four (4) feet.
- b. Except as provided below, barbed wire strands are permitted on fences six (6) feet or higher on industrial parcels with the barbed wire tilted in toward the fenced parcel. Barbed wire is not permitted in the front yard on major streets.

(c) *Visibility at street intersections.* On any corner lot, no fence, wall or screen, whether structural or botanical, shall be more than thirty (30) inches above the curb or the centerline of the street pavement, or within twenty-five (25) feet of the intersection of the two (2) right-of-way lines, so as to interfere with motorists' vision across the corner.

(d) *Visibility at intersections of driveways or alleys with streets.* No fence, wall or screen, whether structural or botanical, may obstruct vision within twenty (20) feet in any direction of the intersection of the edge of a driveway with the right-of-way line. The area of non-obstructed vision shall be between the heights of three (3) feet and ten (10) feet measured from the centerline of the street pavement.

(e) *Prohibited fences.* Except for the provisions of (b)(2)b. above and (f) below, fences, walls or structural screens may not contain barbed wire, electric current, charges of electricity or any wire fence other than a chain link fence.

(f) *Essential services and school off-campus facilities and bus garages.* For essential services and off-campus school facilities and bus garages, the use of barbed wire atop fences six (6) feet in height is permitted in all zoning districts with the barbed wire tilted in toward the fenced parcel.

(g) *Installation.* Any fence with an unfinished side, e.g. stockade fence, shall be installed along or about a lot line so that the finished side of the fence faces the exterior of the lot.

(h) *Permit fee.* A permit shall be required with a fee to be prescribed by resolution of the council and paid to the city treasurer.  
(Code 1977, §§ 8.202--8.207; Ord. No. 436, § 1(5.92(a)), 9-16-85; Ord. No. 524, § 1, 3-20-95; Ord. No. 626, § 1, 3-17-03)

**Cross References:** Corner clearance, § 38-388.

## **Sec. 38-394. Home occupations.**

(a) *Definitions.* "Home occupation" [is defined as] an occupation or business activity which results in a product or service for financial gain and is conducted in whole or part in the dwelling unit or accessory building and is clearly an accessory or incidental use and subordinate to the residential use of the dwelling unit.

(b) *Permitted conditions.* Home occupations are permitted in any dwelling unit, subject to the conditions in this section and the related provisions of chapter 38, zoning, of this Code.

(1) These provisions are not intended to regulate typical family or personal activities or occasional visits by business associates and outside service providers, except as otherwise provided.

(2) It is not the intent of this chapter to involve the city in the enforcement of private restrictive covenants.

(c) *Purpose.* The home occupation is provided in this chapter as an accessory use to the principal use of a residence. The provisions are herein detailed to the extent that the neighborhood, under normal circumstances, would not be aware of their existence.

(d) *Performance standards for home occupations.*

(1) Employees: No more than one person who is not a resident of the dwelling shall be engaged in a home occupation.

(2) Appearance: In no way shall the appearance of the structure be altered or the occupation within the residence be conducted in a manner which would cause the premises to differ from its residential character, either by the use of colors, materials, construction, lighting, or by the emission of sounds, noises or vibrations.

(3) The home occupation shall not occupy a portion of the dwelling unit or associated accessory buildings, which is greater than twenty-five (25) percent of the usable floor area of the dwelling unit. If more than one (1) home occupation is conducted within a particular dwelling unit or associated accessory buildings, the total of all space devoted to said home occupations shall not exceed twenty-five (25) percent of the usable floor area of the dwelling unit.

(4) There shall be no outside or visible storage of any kind related to the home occupation. There shall be no use of refuse service beyond that normal to the use of the property for residential purposes.

(5) Nuisance controls: No equipment or process shall be used in a home occupation which creates noise, vibration, glare, fumes, heat, dust, odors or electrical interference detectable to the normal senses off the lot. The production, storage or dumping of combustible or toxic substances on the property is prohibited.

(6) No use shall require internal or external alterations or involve construction features or the use of electrical or mechanical equipment that would change the fire rating of the structure or the fire district in which the structure is located.

- (7) In order to preserve the residential appearance and character of a neighborhood, window or yard displays of merchandise for sale or trade shall not be permitted. One unanimated, unilluminated, flat sign having an area of one and one-half (1 1/2) square feet shall be permitted on the wall of the house and not more than two (2) feet from the main entrance.
  - (8) The operator of a home occupation shall reside within the same dwelling unit in which the activity is conducted.
  - (9) The home occupation shall not create any greater vehicle or pedestrian traffic than is usual and normal for the residence in which the home occupation is located. Up to six customers may visit the site in a day between the hours of 7:00 a.m. and 7:00 p.m. No retail activity is permitted except those products that are not marketed and sold in a wholesale or retail outlet or for merchandise or hand-crafted items clearly accessory to a service (e.g., sales of paintings, horticultural products, and crafts or art work.)
  - (10) The pickup and delivery of goods in connection with the home occupation shall not exceed one (1) pickup and one (1) delivery per day and shall be restricted to the use of a vehicle having a gross vehicle weight of fourteen thousand (14,000) pounds or less. Truck deliveries of supplies or products are allowed only between 8:00 a.m. and 6:00 p.m.
  - (11) A home occupation shall not cause the elimination of any required off-street parking for the main dwelling. Off-street parking for an additional employee shall be provided and shall conform to all applicable regulations. Nothing within these provisions shall be interpreted to condone the use of shared driveways for parking purposes.
  - (12) In addition to parking required for the residents, there are no more than two vehicles parked on or in the vicinity of the property as a result of the business at any one time.
  - (13) There shall be a limit of one commercial vehicle and it shall not exceed the size of a 1 3/4-ton pick-up truck.
- (e) *Home occupations specifically not permitted.*
- (1) Stables or kennels;
  - (2) Automobile body or large engine repair or any similar business;
  - (3) Upholstery; furniture stripping;
  - (4) Animal hospitals;
  - (5) Welding service;
  - (6) Beauty salons or barbershops;
  - (7) Real estate or development sales office, banks or credit unions;

- (8) Taxi services, ambulance services, vehicles leases or sales;
- (9) Medical, dental/optical offices or clinics;
- (10) Taxidermy.

(f) *Home occupations not regulated.* The following uses shall not be regulated as home occupations:

- (1) Tutoring for six (6) or fewer persons at one (1) time;
- (2) Economic enterprises conducted by minor children who are occupants of the dwelling unit, provided that no adult occupants are employed in the enterprises and the gross income from such enterprise does not exceed five hundred dollars (\$500.00) annually for all such enterprises conducted on that property.
- (3) Bed and breakfast operations; see chapter 7 for licensing and standards.
- (4) Various arrangements for day care and foster care permitted elsewhere in this chapter.

(g) *Permit required.* No home occupation shall be operated within the city except in accordance with the provisions of this chapter. A home occupation permit is required for all home occupations except those exempted pursuant to section 38-394(f) and except where there are less than five customers per week or no employees. Those home occupations that do not require a permit shall be classified as a type A home occupation but a type A home occupation is still required to comply with the standards of this chapter.

- (1) Type B home occupations exist where there are more than five (5) customers per week or there is an employee.
- (2) A type B permit shall be obtained from the department of building and zoning. Prior to the issuance of the home occupation permit, the applicant for such permit shall submit to the department written and graphic documentation demonstrating compliance with the rules and regulations of this chapter. A permit may be issued by the building official or his agent upon proof of compliance with the provisions of the chapter.
- (3) The applicant shall be the owner of the property for which the permit is applied; except that if the applicant is not the owner, then an affidavit executed by the owner shall be submitted which clearly gives the owner's permission to utilize the residence for a home occupation.
- (4) A type B permit shall not be issued for a two-family dwelling unit or multiple-family dwelling units. Attached single-family units may obtain a type B permit.
- (5) Transferability. Permits shall not run with the land and shall not be transferable. All home occupation permits shall automatically and immediately terminate when the permittee no longer resides in the subject residence.

- (6) Renewal. A home occupation permit shall have a term of five years, provided no provisions of this chapter have been violated.
- (7) Permit revocation. A violation of any part of this section by a permit holder shall be grounds for the revocation of the permit. A renewal applicant will need to wait two (2) years from the date of revocation before a new permit can be issued.
- (8) Process for permit revocation. Upon determination that there has been a violation of any decision criteria or condition of approval, the building official may give written notice to the permit holder describing the alleged violation. Within fourteen (14) days of the mailing of notice of violation, the permit holder shall show cause why the permit should not be revoked. At the end of the 14-day period, the building official shall sustain or revoke the permit. When a home occupation permit is revoked, the building official shall notify the permit holder by certified mail of the revocation and the findings upon which revocation is based. Appeals of decisions to revoke a home occupation permit will be processed using the zoning board of appeals procedures in article XXI of this chapter.
- (9) Renewal of permits. Following a permit expiration or revocation, an applicant shall not have a vested right to a permit renewal by reason of having obtained a previous permit. In applying for and accepting a permit, the holder agrees that his monetary investment in the home occupation will be fully amortized over the life of the permit and that a permit renewal will not be needed to amortize the investment. Each application for the renewal of a permit will be reviewed without taking into consideration that a previous permit has been granted. The previous granting or renewal of a permit shall not constitute a precedent or basis for the renewal of a permit.

(Ord. No. 465, § 1, 12-18-89; Ord. No. 637, § 1, 8-18-03)

### **Sec. 38-395. PUD planned unit development regulations and standards for approval.**

The provisions of this section shall apply to all PUD zoning districts:

- (1) *Definitions.*
  - a. *Conceptual PUD plan:* A graphic depiction in plan form of the elements of a planned unit development district, which illustrates the PUD development program and the district's supplemental regulations.
  - b. *PUD development program:* A written document describing the objectives, purposes, and beneficial effect for the city proposed to be achieved by the PUD zoning district.
  - c. *Supplemental regulations:* A written document which contains the zoning and site development requirements which, once approved, become part of the ordinance establishing the PUD zoning district, and, in addition to current city regulations and ordinances, will be in effect for the district.
- (2) *Modifications permitted.* In order to achieve a beneficial effect for the city, the planning commission may recommend and city council may approve, as part of the supplemental

regulations, modifications that increase, decrease, or eliminate the requirements listed below for equivalent land uses and intensities:

- a. Use regulations, and area, height and placement regulations as provided in section 38-351.
  - b. Off-street parking requirements as provided in this chapter, section 38-380.
  - c. Landscaping, screening, and buffer requirements as provided in this chapter, section 38-384 and section 38-389.
- (3) *The PUD process.* The PUD process shall involve three (3) consecutive steps: pre-application conference, PUD zoning district review, and PUD site plan review. The pre-application conference occurs before the applicant has submitted a formal application; zoning district and site plan reviews occur after the applicant has submitted a formal petition. The PUD site plan review may occur only if the PUD zoning district has been approved as required by this chapter.
- a. *Pre-application conference.* Before submitting an application, the applicant shall contact the community development director (hereinafter "director") to schedule a pre-application conference with city staff that shall include the city manager, the building official, the city engineer, the director and other city personnel and consultants as deemed appropriate. At the conference, the applicant shall present the proposed conceptual PUD plan and PUD development program with emphasis on timing, open space and residential density. The staff will take no official action, but may provide the applicant with their comments regarding the appropriateness of the proposed land uses, the proposal's conformance with adopted master plan and policies, the necessity of a traffic impact study, the beneficial effects to be achieved, whether or not a model may be required and whether applicant's requests for zoning district approval and PUD site plan approval should be presented together at the same meeting or independently at separate meetings. No fees will be charged for the preliminary review.
  - b. *PUD zoning district review.* PUD zoning district review involves departmental and commission review of the conceptual PUD plan, the PUD development program, and supplemental regulations to determine consistency with or the appropriateness for deviating from the city's adopted plans and policies and its suitability for inclusion in the land use and zoning plans of the city and adoption by city council as part of the zoning ordinance. Once approved by the city council, the property shall be zoned to a PUD zoning district, and use of the property shall be regulated by the supplemental regulations and all other applicable code requirements.
  - c. *PUD site plan review.* Review and approval of a PUD site plan consistent with the requirements of this chapter is required prior to the issuance of permits. If the PUD zoning district provides that a PUD may be developed in phases, as shown on the conceptual PUD plan, approval of a PUD site plan for each phase is required prior to the issuance of permits for that phase.

- (4) *PUD zoning district review submittal requirements.* The applicant for any PUD zoning district shall submit a complete application together with the following materials:
- a. Information that indicates the entire parcel or parcels for which application is made is under one (1) ownership, or the application shall be made with the written authorization of all property owners who have a legal or equitable ownership interest in the property or properties. Application for a PUD zoning district may be made only by or with the written authorization of the owner(s) of the parcel(s) involved. All property that is proposed to be part of the development shall be included in the PUD zoning.
  - b. The planning commission may request that the applicant provide a market study demonstrating the market demand and feasibility of a proposed PUD project.
  - c. Sheet size of conceptual drawings shall be at least 24 inches by 36 inches, with graphics at an engineer's scale. The applicant shall also submit a set of plans on 11" × 17" sheets, with at least one (1) sheet in color, highlighting landscaped and open space areas.
  - d. A conceptual PUD plan containing the information required in this chapter for site plan reviews. In addition such plan shall include, but not be limited to: criteria of area, height, and placement standards; the location and relationships of permitted land uses; parking and circulation systems; landscape features; preserved natural features; architectural design components and use of building materials, proposed phasing, and any other unique physical characteristics which warrant the PUD zoning.
  - e. A boundary survey and legal description of the parcel(s) to be zoned.
  - f. A PUD development program describing the objectives, purposes, and beneficial effect for the city proposed to be achieved by the PUD zoning district; why this beneficial effect cannot be achieved under any other zoning designation; and its conformity to the adopted master plan and policies of the city or detailed compelling justification for departures from the plan and policies.
  - g. Proposed supplemental regulations for the PUD zoning district which shall include, but not be limited to permitted land uses; accessory uses; minimum and maximum standards of lot area and lot area per dwelling unit, if applicable; minimum usable open space in percentage of lot area; minimum required front, side and rear setbacks; maximum height and number of stories. The supplemental regulations shall include sufficient analysis and justification for the beneficial effect and detailed performance standards by which the development will be evaluated and the beneficial effect achieved. Such analysis and justification may include, but are not limited to:
    1. A comprehensive analysis of the surrounding neighborhood, providing such details as scale of structures, minimum and maximum height and number of stories, minimum and maximum setbacks, historic or architectural styles or features, building materials and colors, and other unique features and a detailed analysis of how the PUD site plan and design contribute to the neighborhood.

2. A comprehensive analysis of the unique features of the site, including such components as topography, site orientation, circulation, or special condition and a detailed analysis of how the PUD site plan and design contribute to the preservation, protection, utilization, and enhancement of the site's unique features.
  - h. A study model, indicating the three-dimensional character of the proposal, unless determined by the planning commission during its preliminary review that one is unnecessary. With the approval of the director, other visual representations such as computer-enhanced photography or video may be substituted.
  - i. Any additional graphics, photographs, traffic impact studies, or written materials requested by the director, commission or city council to assist the city in visualizing and understanding the proposal and assessing the possible benefits and impacts.
- (5) *Procedure for PUD zoning district review.* A PUD zoning district is established as follows:
- a. All required materials with sufficient number of copies, together with appropriate fees as established by city council, shall be filed with the community development director. Copies of the materials will be distributed by the director to the appropriate city departments and other reviewing agencies for review to determine the following:
    1. If the development can be accommodated by the existing public utility, street, and general city service facilities, or if any additions to, or extension of facilities are necessary for the project.
    2. If the proposal meets the standards for PUD zoning district approval listed below.
    3. If the development will comply with all applicable local, state, or federal laws, ordinances, standards, and regulations or provides sufficient compelling justification for modifications of those local ordinances, standards or regulations as permitted for PUDs, and
    4. If the proposal conforms to the adopted master plan and policies, or provides sufficient compelling justification for departure from the adopted plan and policies.
  - b. The director will notify the applicant of any questions raised by the city departments and other reviewing agencies and shall submit a report to the commission for its consideration including an evaluation of the planning aspects of the project and its impact on the present and future development of the city.
  - c. The commission shall hold a public hearing with notification as required by this chapter for zoning ordinance amendments.
  - d. The commission shall recommend to city council an action as it deems proper and shall

transmit its recommendation together with any recommended conditions of approval and all related reports and minutes to city council.

- e. Before taking final action on the petition, the city council shall hold a public hearing with notification as required by this chapter for zoning ordinance amendments.
- f. A protest of a proposed PUD zoning district may be presented as provided in this chapter for zoning ordinance amendments.
- g. The director shall keep a record of all approved PUD zoning districts and supplemental regulations. Notice of approvals shall be published as required by this chapter for zoning ordinance amendments.

(6) *Standards for PUD zoning district review.* The commission shall recommend approval, approval with conditions, or denial, and city council shall approve, approve with conditions, or deny the proposed PUD zoning district based on the following standards:

- a. The use or uses, physical characteristics, design features, or amenities proposed shall have a beneficial effect for the city, in terms of public health, safety, welfare, aesthetics, or convenience, or any combination thereof, on present and potential surrounding land uses. The beneficial effects for the city, which warrant the zoning, include, but are not limited to, features such as:
  - 1. Innovation in land use and variety in design, layout and type of structures that furthers the stated design goals and physical character of adopted land use plans and policies;
  - 2. Economy and efficiency of land use, natural resources, energy, and provision of public services and utilities;
  - 3. Provision of usable open space;
  - 4. Preservation and protection of natural features that exceeds ordinance requirements, especially for those features prioritized in the land development regulations as being of highest concern, or that preserves existing conditions instead of merely providing mitigation;
  - 5. Employment and shopping opportunities particularly suited to the needs of the residents of the city;
  - 6. Expansion of the supply of affordable housing; and
  - 7. The use and reuse of existing sites and buildings that contributes to the desired character and form of an established neighborhood.
  - 8. The reduction, to a significant extent, the nonconformity of a nonconforming use

or structure so that the site is rendered nonconforming or less offensive to the character of the neighborhood and the health, safety and general welfare of the vicinity.

- b. This beneficial effect for the city shall be one which could not be achieved under any other zoning classification and shall be one which is not required to be provided under any existing standard, regulation or ordinance of any local, state or federal agency.
- c. The use or uses proposed shall not have a detrimental effect on public utilities or surrounding properties.
- d. The use or uses proposed shall be consistent with the master plan and policies adopted by the city or the applicant shall provide adequate justification for departures from the approved plans and policies.
- e. If the proposed district allows residential uses, the residential density proposed shall be consistent with the plans and policies adopted by the city.
- f. The supplemental regulations shall include analysis and justification sufficient to determine what the purported benefit is, how the special benefit will be provided, and performance standards by which the special benefit will be evaluated.
- g. Safe, convenient, uncongested, and well-defined vehicular and pedestrian circulation within and to the district shall be provided and, where feasible, the proposal shall encourage and support the use of alternative methods of transportation.
- h. Disturbance of existing natural features, historical features and historically significant architectural features of the district shall be limited to the minimum necessary to allow a reasonable use of the land and the benefit to the community shall be substantially greater than any negative impacts.

(7) *Effect of PUD zoning district approval.*

- a. Approval of the PUD zoning district by city council shall rezone the property to a "PUD" zoning classification for the land uses, the area, height, and placement standards, and the objectives, purposes, beneficial effects, and special conditions provided in the PUD development program, the conceptual PUD plan, and supplemental regulations for the zoning district. In the case of differences between plans and written documents, written documents shall govern.
- b. The approval shall confer upon the owner or subsequent owners the right to seek PUD site plan approval for the proposal or for any of its approved phases in accordance with the site plan, the approved PUD zoning district and supplemental regulations and city regulations and ordinances.
- c. A PUD zoning district and its supplemental regulations shall remain in effect as approved

until a change to the PUD zoning district has been approved.

- (8) *Changes to a PUD zoning district.* A change to a PUD zoning district may be accomplished by amending the PUD zoning district by the process provided for establishment of a PUD zoning district or by rezoning to a different zoning district pursuant to the procedures of this chapter for zoning ordinance amendments.
- (9) Any deviation from the approved PUD zoning district or PUD site plan, except as authorized in this chapter, shall be considered a violation of this chapter and subject to the penalties stated herein.

(Ord. No. 662, § 1, 10-18-04)

**Secs. 38-396--38-410. Reserved.**

## **ARTICLE XVIII.**

### **GENERAL EXCEPTIONS**

**Sec. 38-411. Area, height and use exceptions.**

The regulations in this chapter shall be subject to the interpretations and exceptions of this article.  
(Code 1977, § 5.93)

**Sec. 38-412. Essential services.**

Essential services shall be permitted as authorized and regulated by law and other ordinances of the city, it being the intention hereof to exempt such essential services from the application of this chapter.  
(Code 1977, § 5.94)

**Sec. 38-413. Voting place.**

The provisions of this chapter shall not be so construed as to interfere with the temporary use of any property as a voting place in connection with a city or other public election.  
(Code 1977, § 5.95)

**Sec. 38-414. Height limit.**

The height limitations of this chapter shall not apply to farm buildings, chimneys, church spires, flag poles, public monuments or wireless transmission towers; provided, however, that the board of appeals may specify a height limit for any such structure when such structure requires authorization as a conditional use.  
(Code 1977, § 5.96)

**Sec. 38-415. Lot area.**

Any lot existing and of record on the effective date of this chapter may be used for any principal use permitted other than conditional uses for which special lot area requirements are specified in this chapter,

permitted in the district in which such lot is located whether or not such lot complies with the lot area and width requirements of this chapter. Such use may be made provided that all requirements other than lot area requirements prescribed in this chapter are complied with, and provided that not more than one (1) dwelling unit shall occupy any lot except in conformance with the provisions of this chapter for required lot area for each dwelling unit.

(Code 1977, § 5.97)

**Sec. 38-416. Lots adjoining alleys.**

In calculating the area of a lot that adjoins an alley for the purpose of applying lot area and setback requirements of this chapter, one-half the width of such alley abutting the lot shall be considered as part of such lot.

(Code 1977, § 5.98)

**Sec. 38-417. Yard regulations.**

When yard regulations cannot reasonably be complied with, or where their application cannot be determined on lots of peculiar shape, topography or due to architectural or site arrangement, such regulations may be modified or determined by the board of appeals.

(Code 1977, § 5.99)

**Sec. 38-418. Porches.**

An open, unenclosed and uncovered porch or paved terrace may project into a front yard for a distance not exceeding ten (10) feet, but this shall not be interpreted to include or permit fixed canopies.

(Code 1977, § 5.100)

**Sec. 38-419. Projections into yards.**

Architectural features, not including vertical projections, may extend or project into a required side yard not more than two (2) inches for each one (1) foot of width of such side yard; and may extend or project into a required front yard or rear yard not more than three (3) feet.

(Code 1977, § 5.101)

**Sec. 38-420. Access through yards.**

For the purpose of this chapter, access drives may be placed in the required front or side yards so as to provide access to rear yards or accessory or attached structures. These drives shall not be considered as structural violations in front and side yards. Further, any walk, terrace or other pavement servicing a like function, and not in excess of nine (9) inches above the grade upon which placed, shall for the purpose of this chapter, not be considered to be a structure, and shall be permitted in any required yard.

(Code 1977, § 5.102)

**Sec. 38-421. Lots having water frontage.**

- (a) Those residential lots or parcels having a water frontage, and abutting a public thoroughfare shall

maintain the yard on the water side as an open unobscured yard, excepting that a covered boat well shall be permitted after review and approval of plans by the board of appeals. Accessory structures shall be permitted in the setback between the abutting road right-of-way and the main building providing the minimum front yard setback required in section 38-352 of this chapter is met.

(b) For any development of land that includes a parking lot of three thousand (3,000) square feet or more adjacent to the Shiawassee River, no portion of the said parking lot shall be less than thirty-five (35) feet from the mean high level water mark of the flow of the river. The area between the parking lot and the river must be maintained as a greenbelt of natural plantings and include grass if necessary as a stormwater filter. (Code 1977, § 5.103; Ord. No. 517, § 1, 2-22-94)

**Secs. 38-422--38-450. Reserved.**

## **ARTICLE XIX.**

### **SPECIAL USE PERMITS**

**Sec. 38-451. Intent and purpose.**

(a) Rather than permitting all of the many and varied land use activities within individual and limited zoning districts, it is the intent of this article to provide a set of procedures and standards for specific uses of land or structures that will allow, on one hand, practical latitude for the investor or developer, but that will, at the same time, promote the intent and purpose of this chapter, and insure that the land use or activity authorized shall be compatible with adjacent uses of land, the natural environment, and the capacities of public services and facilities affected by the land uses. In order to provide controllable and reasonable flexibility, this article permits detailed review of certain specified types of land use activities which, because of their particular and unique characteristics, require special consideration in relation to the welfare of adjacent properties and to the community as a whole. Land and structure uses possessing these characteristics are designated special uses and may be authorized within certain zone districts by the issuance of a special use permit. By such a procedure, the planning commission and the council have the opportunity to impose conditions and safeguards upon each use which are deemed necessary for the protection of the public welfare.

(b) The following sections, together with previous references in other articles of this chapter, designate specific uses that require a special use permit and, in addition, specify the procedures and standards which must be met before such a permit can be issued. (Ord. No. 424, § 19A1.1, 6-18-84)

**Sec. 38-452. Permit procedures.**

An application for a special use permit for any land or structure use permitted under this article shall be submitted and processed under the following procedures:

- (1) *Submission of application.* Any application shall be submitted through the building inspector on a special form for that purpose. Each application shall be accompanied by the payment of a fee as established by the council to cover costs of processing the application. No part of any fee shall be refundable.

- (2) *Data required.* Every application shall be accompanied by the following information and data:
  - a. The special form supplied by the building inspector, filled out in full by the applicant, including a statement of supporting evidence concerning the required findings specified in section 38-453.
  - b. Site plan, plot plan, or development plan according to the provisions of section 38-390.
- (3) *Planning commission review.* The application, along with all required data, shall be transmitted to the planning commission for review. After adequate review and study of the application, one (1) notice that a request for special land use approval has been received shall be published in a newspaper of general circulation in the city and shall be sent by mail or personal delivery to the owners of property for which approval is being considered, to all persons whom real property is assessed within three hundred (300) feet of the boundary of the property in question, and to the occupants of all structures within three hundred (300) feet, except that the notice shall be given not less than five (5) and not more than fifteen (15) days before the application will be considered. If the name of the occupant is not known, the term "occupant" may be used in making notification. Notification need not be given to more than one (1) occupant of a structure, except that if a structure contains more than one (1) dwelling unit or spatial area owned or leased by different individuals, partnerships, businesses or organizations, one (1) occupant of each unit or spatial area shall receive notice. In the case of a single structure containing more than four (4) dwelling units or other distinct spatial areas owned or leased by different individuals, partnerships, businesses, or organizations, notice may be given to the manager or owner of the structure who shall be requested to post the notice at the primary entrance to the structure. The notice shall:
  - a. Describe the nature of the special land use request;
  - b. Indicate the property which is the subject of the special land use request;
  - c. State when and where the special land use request will be considered;
  - d. Indicate when and where written comments will be received concerning the request;
  - e. Indicate that a public hearing on the special land use request may be requested by a property owner of the occupant of a structure located with three hundred (300) feet of the boundary of the property being considered for a special use.
- (4) *Discretionary public hearing.* At the initiative of the planning commission, or upon the request of the applicant for special land use authorization, or a property owner or the occupant of a structure located within three hundred (300) feet of the boundary of the property being considered for a special land use, a public hearing with notification as required for a notice of a request for special land use approval as provided in this section shall be held before a decision on the special land use request which is based on discretionary grounds is made. If the applicant or the planning commission requests a public hearing, only notification of the public hearing need

be made. A decision on a special land use request which is based on discretionary grounds shall not be made unless notification of the request for special land use approval, or notification of a public hearing on a special land use request is given as required. Such notice shall indicate the place, time and purpose of the hearing. Upon conclusion of the hearing procedures, the planning commission shall transmit a written recommendation within sixty (60) days to the council setting forth the reasons for the acceptance, denial or modification of the special use permit application.

- (5) *Council.* Upon receipt of the planning commission's recommendation, the council shall consider the special use permit application at its next regular meeting. The council shall approve or disapprove the recommendations of the planning commission; or if the council deems any changes, additions or departures are advisable to the proposed conditions of the proposed permit or it is felt additional study is necessary, it shall refer the same back to the planning commission for a report thereon within a time specified by the council. The council decision rendered on the special use permit application shall be accompanied with a clear explanation of the reason for the action taken. Any permit issued shall contain all the specified conditions under which the use is allowed. Only in the event of an appeal, shall a special use permit be issued by the city clerk. The special use permit shall become effective when the application has been approved by the council or the board of appeals in the event of an appeal.
- (6) *Permit expiration.* A special use permit issued under this section shall be valid for a period of one (1) year from the date of the issuance of the permit. If construction has been commenced and proceeded meaningfully toward completion by the end of this one-year period, the zoning administrator shall notify the applicant in writing of the expiration or the revocation of the permit. The planning commission shall review every special use permit and the associated land use prior to the expiration of the permit and shall recommend continuance or discontinuance of the permit based on whether the activities, structures and other site characteristics satisfactorily comply with the conditions stipulated in the special use permit. This determination of the planning commission shall be forwarded to the council with a recommended action. After the first year review the council may extend the permit for periods of longer than one (1) year.
- (7) *Permit revocation.* The council shall have the authority to revoke any special use permit after it has been proved that the holder of the permit has failed to comply with all of the applicable conditions specified in the permit. After a revocation notice has been given, the use for which the permit was granted must cease within sixty (60) days.
- (8) *Violation and penalties.* Failure to terminate the use for which the permit was granted within sixty (60) days is declared to be nuisance per se and a violation of this article. The violation shall be reported to the city attorney who is hereby authorized to and shall initiate procedures to eliminate such violations. For each and every day the violations continues beyond the aforementioned sixty (60) days, a separate offense shall be declared.
- (9) *Appeal.* Recourse by a person considering himself/herself aggrieved by a decision of the council in the granting or denial of a special use permit shall be to the county circuit court, as provided by law.
- (10) *Reapplication.* No application for a special use permit which has been denied wholly or in part

by the council shall be resubmitted until the expiration of one (1) year or more from the date of such denial, except on the grounds of newly-discovered evidence or proof of changed conditions.

- (11) *Fees.* The council may from time to time prescribe and amend by resolution a reasonable schedule of fees to be charged to applicants for special use permits. At the time of application for a special use permit is filed, the fee shall be paid to the office of the building inspector, while the building inspector shall forthwith pay over to the city's chief fiscal office to the credit of the general revenue fund of the city.

(Ord. No. 424, § 19A1.2, 6-18-84)

### **Sec. 38-453. Basis for determination.**

Before making a recommendation on a special use permit application, the planning commission shall establish beyond a reasonable doubt that the following general standards, as well as the special standards outlined in each applicable section of this article, shall be satisfied:

- (1) *General standards.* The planning commission shall review each application for the purpose of determining that each proposed use meets the following standards and in addition, shall find adequate evidence that each use on its proposed location will:
- a. Be harmonious with and in accordance with the general principals and objectives of the mid-county land use plan and other approved planning documents of the city;
  - b. Be designed, constructed, operated and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and that such a use will not change the essential character of the area in which it is proposed;
  - c. Not be hazardous or disturbing to existing or future uses in the same general vicinity and will be a substantial improvement to property in the immediate vicinity and to the community as a whole;
  - d. Be served adequately by essential public facilities and services, such as highways, streets, police, fire protection, drainage structures, refuse disposal, water and sewage facilities and schools;
  - e. Not involve uses, activities, processes, materials and equipment or conditions of operation that will be detrimental to any person, property, or general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare or odors;
  - f. Be necessary to meet the intent and purpose of the zoning regulations; be related to the standards established in the ordinance for the land use or activity under consideration; and be necessary to insure compliance with these standards;
  - g. Be related to the valid exercise of police power and purposes which are affected by the proposed use or activity.

- (2) *Conditions and safeguards.* The planning commission may impose such additional conditions and safeguards deemed necessary for the general welfare, for the protection of individual property rights and for insuring that the intent and objectives of this article will be observed. The conditions imposed with respect to the approval of a land use or activity shall be recorded in the record of the approval action and shall remain unchanged except upon the mutual consent of the council and the landowner. The city clerk shall maintain a record of changes granted in conditions. The breach of any condition, safeguard, or requirement shall automatically invalidate the permit granted.
- (3) *Performance guarantee.* In authorizing a special land use permit, the city planning commission may require that a cash deposit, certified check, irrevocable bank letter of credit, or surety bond be furnished by the developer to insure compliance with an approved site plan and the special land use permit requirements. Such guarantee shall be deposited with the city clerk at the time of the issuance of the special land use permit. In fixing the amount of such performance guarantee, the city planning commission shall limit it to reasonable improvements required to meet the standards of this article and to protect the natural resources or the health, safety, and welfare of the residents of the city and future users or inhabitants of the proposed project or project area including but not limited to roadways, lighting, utilities, sidewalks, screening and draining. The term "improvements" does not include the entire project which is the subject of zoning approval nor to improvements for which a performance guarantee has been deposited pursuant to Act No. 288 of the Public Acts of Michigan of 1967 (MCL 560.101 et seq., MSA 26.430(101) et seq.), as amended. The city planning commission and the project developer shall establish an agreeable procedure for the rebate of any cash deposits required under this section in reasonable proportion to the ratio of work completed on the required improvements as work progresses. The agreement shall be written as an element of the conditions surrounding the approval of the special land use permit.
- (4) *Specified requirements.* The general standards and requirements of this section are basic to all uses authorized by special use permit. The specific and detailed requirements set forth in the following sections relate to particular uses and are requirements which must be met by those uses in addition to the foregoing general standards and requirements where applicable.

(Ord. No. 424, § 19A1.3, 6-18-84)

#### **Sec. 38-454. Special uses that may be permitted.**

The following uses may be permitted within the districts mentioned provided that there is an issuance of a special use permit and a compliance with the provisions of this article:

- (a) *Adult foster care small group home* in the R-1, R-2, RM-1 and RM-2 residential districts.
- (1) *Authorization.* In recognition of the existence of several large homes in the city with no practical use as a single family setting, there may be particular homes and settings that would allow for an adult foster care small group home in a residential neighborhood that would be compatible and reasonably harmonious with residential uses. In addition to section 38-453 provisions, the following conditions and standards are to be reviewed and applied by the planning commission:

(2) *Site location principals:*

- a. Any permitted institutional structure should preferably be located at the edge of a low density residential district abutting a public open space or high density residential district or commercial district.
- b. If possible, institutional use homes should front on a major street.
- c. Motor vehicle entrance and exit should be made on a major street to avoid the impact of traffic generated by the institutional use upon the residential area.
- d. Site locations should be chosen which offer natural or manmade barriers that would lessen the effect of the intrusion of any institutional uses into an established residential area.

(3) *Site development requirements.*

- a. Minimum floor area in the dwelling unit shall be three thousand (3,000) square feet for seven (7) adults receiving foster care and an additional one hundred fifty (150) square feet for every foster care adult thereafter.
- b. Minimum lot width of one hundred thirty-two (132) feet and minimum lot depth of one hundred thirty-two (132) feet. Yard, height and setback requirements should not be less than that specified for the district in which the proposed use would be located.
- c. Not more than thirty (30) percent of the lot area may be covered by buildings.
- d. All buildings should be harmonious in appearance with the surrounding residential area and shall be similar in design and appearance to any other buildings in the same site development.
- e. All signs shall be in accordance with section 38-385.
- f. A minimum of three (3) off-street parking spaces shall be provided for each foster care home caring for seven (7) adults and a half space for each additional foster care adult thereafter.

(b) *Child or adult care centers in the R-1, R-2, RM-1 and RM-2 residential districts:*

(1) *Site development requirements:* The following requirements for site development shall be complied with:

- a. Minimum site size: Seven thousand two hundred (7,200) square feet with sixty (60) feet lot width. For each child not a member of the family in excess of seven (7) children at a time there shall be provided two hundred (200) square feet of lot area in addition to the

base figure of seven thousand two hundred (7,200) square feet.

- b. Yard requirements and lot coverage shall conform to the provisions of Article XVI, schedule of regulations, as they pertain to the R-1 district.
- c. A proposed site shall front a major street as said streets are defined by the city engineer's act 51 street systems map.
- d. Off-street parking: One (1) space for each teacher and other staff member and one (1) space for every five (5) children shall be provided. Parking shall conform to all other provisions of Article XVII, general provisions.
- e. Signs: As provided in Article XVII, general provisions, for residential units.
- f. Play areas: There shall be provided on the site a usable outdoor play area at the rate of seventy-five (75) square feet for each child not a member of the family, exclusive of required front yard and side yard, and of driveways and parking areas. The play area shall be no nearer than forty (40) feet to any adjacent residential structure. The outdoor play area shall be suitably fenced and screened to protect the children and to avoid any nuisance to adjoining properties.
- g. Maximum size: Any facility that is to be operated for more than thirty (30) children shall be subject to the standards in section 38-53(2) for public and private schools.
- h. Such facilities shall be duly licensed by the state department of social services.

(c) *Conversion of one-family dwellings:* The conversion of one-family dwellings to two-family dwellings shall be permitted when all of the following conditions can be met:

- (1) *Need:* It can be demonstrated that larger houses in older residential areas of the city have been or can be converted from one-family to two-family residences in order to extend the economic life of these structures and allow the owners to justify the expenditures for repairs and modernization.
- (2) *Lot size:* A conforming lot of eight thousand seven hundred (8,700) square feet is required.
- (3) The minimum square footage of the structure shall be one thousand eight hundred (1,800) square feet.
- (4) The primary unit shall remain the larger one and retain the predominant location in the structure. The accessory unit shall not exceed forty (40) percent the size of the primary unit.
- (5) Except for a first floor entrance, there shall be no exterior alterations of the structure.
- (6) *Parking:* There shall be a minimum of three (3) parking spaces.

- (7) Either one (1) of the two (2) dwelling units shall be occupied by the owner of the property.
- (8) To assure a subordinate position of the accessory unit and to encourage flexibility in the event the structure can return to single-family use, there shall be only one (1) utility service meter for gas, electric, and water supply to the structure.
- (9) The proposal meets the general guidelines for determination of a special use permit outlined in section 38-453.

(d) *Private clubs, fraternal organizations, lodge halls, union halls:* Owing to the location of many R-1 district areas to more intensive land use districts, specifically commercial and industrial uses, and in recognition of large lot parcels in these locations, there may exist particular settings where these parcels could be developed into private clubs, fraternal organizations, or lodge/union halls. In addition to section 38-453 provisions, the following conditions and standards are to be reviewed and applied by the planning commission:

(1) *Site location principals:*

- a. Any proposed site should be at the edge of a low density residential district abutting commercial districts or uses.
- (b) A proposed site should front a major street.

(2) *Site development requirements:*

- a. Minimum lot size shall be forty thousand (4,000) square feet.
- b. Lot coverage by structures shall not exceed thirty (30) percent.
- c. All buildings shall be harmonious in appearance with the surrounding residential area.
- d. To assure adequate setbacks, building height shall be governed by the specification for the churches in section 38-53(1).
- e. See article XVII, general provisions for requirements governing off-street parking, signs, fencing, and other provisions.

(e) *Loft apartments in older industrial buildings:* The development of an apartment or apartments in the upper stories of older industrial buildings, hereinafter entitled "loft apartments," may be permitted subject to the following specific standards and conditions:

- (1) *Need:* It can be demonstrated that the building is an architectural landmark at least fifty (50) years old and an example of a period of style or method of construction significant to the region. Also the building's upper floors are considered functionally obsolete for industrial purposes and would clearly benefit from the development of a loft apartment dwelling or group of dwellings, the benefit being the justification for continued investment and rehabilitation of a historically significant structure. The development of residential living units shall not impair existing, routine

legal conforming operations of industrial activity onsite or existing and future uses on neighboring properties. The planning commission and city council shall place a critical emphasis on the evaluation of the short term and long term influence of mixing residential living with industrial district uses. A finding of potential interference or residential complaints or legal standing against industrial uses, such as hours of operation, activity in shipping areas, noise, and the like-referenced areas of conflict specified in the Uniform Building Code shall result in the denial of a special use permit for loft apartments.

- (2) *Location:* The structure is located on the boundary of a residential district, said boundary including any residential districts on the opposite side of a street.
- (3) *Square footage:* Each apartment shall contain at least one thousand (1,000) square feet of floor area, the purpose of said area being the control of lower residential densities in industrial areas and the provision of adequate residential storage area within the unit. The apartment shall contain at least one hundred (100) square feet of floor space dedicated to storage. Each unit shall contain a functional laundry area with hookups for a washer and dryer.
- (4) *Parking:* Parking shall comply with section 38-380, off-street parking requirements, and shall be in addition to the loading zone and parking space requirements for the balance of the structure's zoning specifications for parking.
- (5) *Open space:* Compliance with section 38-123 is required.
- (6) *Floor area ratio:* The provisions of section 38-352(e) shall apply.
- (f) *Group day care home* in the R-1, R-2, RM-1 and RM-2 residential districts:
  - (1) Minimum site size shall be seven thousand two hundred (7,200) square feet.
  - (2) There shall be one (1) off-street parking space for a caregiver not a member of the family.
  - (3) *Play areas:* There shall be provided on the site a usable outdoor play area of nine hundred (900) square feet, exclusive of required front yard and side yard, and of driveways and parking areas. The minimum setback for the play area shall be the greater of eight (8) feet from the property line of sixteen (16) feet from any adjacent residential structure. The planning commission may increase this setback up to forty (40) feet from property lines based on local conditions.
  - (4) The planning commission may introduce site improvement measures or restricted areas of operation to assure safety and lessening of nuisances as it may relate to the activities of pickup and dropoff of a proposed home's clients.
  - (5) Such facilities shall be duly licensed by the state department of social services.

(g) *Conversion of school and church buildings to office use in the R-1, R-2, RM-1 and RM-2 residential districts.* For those structures with a previous use and with institutional design features for public or private schools and churches, an office use may be permitted when all of the following specific standards and

conditions can be met:

- (1) The building does not have a demonstrated demand for uses permitted by right within the district. In order to encourage at the outset only those principal uses permitted by right in residential areas, demonstration of insufficient demand shall include a one-year period of public sale offering for which no reasonable offer was received.
- (2) The zoning board of appeals, after public hearing, has determined that the structure and/or parcel is impractical for a conforming use within the residential district. An example of impracticality may include insufficient demand, insufficient parking for a church or school or a combination of architectural or structural limitations.
- (3) The term "office use" shall be limited to mean the following occupations:
  - a. Executive, administrative, professional, accounting, writing, clerical, or stenographic.
  - b. Offices of doctors, dentists, osteopaths and similar or allied professions, but not including clinics.
  - c. Photographic studios, art galleries, art studios, interior decorating studios and nonprofit museums.
  - d. Uses similar to the above uses.
- (4) Employee parking shall not be permitted on residential streets.
- (5) Occupancy and redevelopment of a building shall be limited by the capacity of an onsite parking plan that conforms to section 38-380 and 38-381. Except for the preceding sentence and the sign standards in subsection (6), the office use shall comply with all of the standards within the respective residential district where the special use permit is considered.
- (6) One (1) wall sign not exceeding twenty-four (24) square feet for each public street frontage and in compliance with the other sign standards for the office service district shall be permitted. Smaller dimensions and other sign controls applied to residential districts in Chapter 26 of the Owosso City Code may be instituted by the special use permit when factors of preservation of neighborhood character are determined. These factors may include nonconforming setback of existing buildings, or the location within an historic district of the city.
  - (h) *Conversion of ground floor commercial space to apartment dwellings in the B-4 district.* The development of apartment or apartments on the ground floor may be permitted subject to the following specific standards and conditions:
    - (1) A special use permit under this category of use applies only to the lots of Westtown fronting Main Street and bordered by State Street, including the now closed portion of State Street north of Main Street, on the west side and Cedar Street on the east side.

- (2) The apartment space may only occupy twenty-five (25) percent of the gross ground floor area of a structure and must be located at the rearmost portion of that structure.
- (3) The apartment development must be designed to the extent that an eight-foot wide commercial use corridor from the rear entrance of the structure to the commercial section of the building is preserved.
- (4) Each apartment must have at least one (1) parking space.
- (5) In lieu of open space and setback requirements for apartment developments, a project must supply extra storage sufficient for bicycles or exercise equipment at a minimum dimension of twenty-five (25) square feet.
- (6) The floor plan and relationship of apartment spaces to the surrounding commercial area shall be subject further to the review and approval of the site plan by the planning commission in accordance with section 38-390.

(i) *Commercial recreation operations in upper stories of commercial buildings.* The development of commercial recreation operations in the upper stories of commercial buildings may be permitted subject to the following specific standards and conditions:

- (1) The building does not have any residential or office use at the time of application of special use permit.
- (2) A determination is made that the use shall not substantially affect the daytime use of the public parking system designed and constructed to service the principal uses of the district.
- (3) The special use is a subordinate use of the principal use of the building in terms of the space occupied by the special use.
- (4) The special use business is owned or operated by the principal user of the building.
- (5) The owner or operator of the special use shall assume responsibility to take whatever legally available measures that are necessary to deter loitering and gathering, during hours of operation of the special use, on the sidewalks that front the building containing the principal use and the adjoining buildings to the end of the city block or within one hundred (100) feet, whichever is the lesser.

(Ord. No. 424, § 19A2, 6-18-94; Ord. No. 444, § 1, 12-1-86; Ord. No. 445, § 1, 12-15-86; Ord. No. 446, § 1, 12-15-86; Ord. No. 476, § 1, 9-17-90; Ord. No. 477, § 1, (5), (6), 11-19-90; Ord. No. 483, § 1, 7-1-91; Ord. No. 512, § 1, 11-15-93; Ord. No. 533, § 1, 6-19-95; Ord. No. 560, § 1, 12-2-96)

**Editors Note:** Ord. No. 560, § 1, adopted December 12, 1996, which amended § 38-454 by adding a subsection (j), was repealed by voters May 6, 1997.

**Secs. 38-455--38-475. Reserved.**

## **ARTICLE XX.**

## ADMINISTRATION AND ENFORCEMENT\*

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\* **Cross References:** Administration. Ch. 2.

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### **Sec. 38-476. Enforcement.**

The provisions of this chapter shall be administered and enforced by the building inspector or by such deputies of his or her department as the building inspector may delegate to enforce the provisions of this chapter.

(Code 1977, § 5.105)

### **Sec. 38-477. Duties of building inspector.**

(a) The building inspector shall have the power to grant zoning compliance and occupancy permits, to make inspections of buildings or premises necessary to carry out his or her duties in the enforcement of this chapter. It shall be unlawful for the building inspector to approve any plans or issue any permits or certificates of occupancy for any excavation or construction until he or she has inspected such plans in detail and found them to conform with this chapter.

(b) Under no circumstances is the building inspector permitted to make changes to this chapter or to vary the terms of this chapter in carrying out his or her duties as building inspector.

(c) The building inspector shall record all nonconforming uses existing at the effective date of this chapter for the purpose of carrying out the provisions of section 38-378.

(Code 1977, § 5.106)

### **Sec. 38-478. Permits.**

The following shall apply in the issuance of any permit:

- (1) *Permits not to be issued.* No building permit shall be issued for the erection, alteration or use of any building or structure or part thereof, or for the use of any land, which is not in accordance with all provisions of this chapter.
- (2) *Permits for new use of land.* No land heretofore vacant shall hereafter be used or an existing use of land be hereafter changed to a use of a different class or type unless a certificate of occupancy is first obtained for the new or different use.
- (3) *Permits for new use of buildings.* No building or structure, or part thereof, shall be changed to or occupied by a use of a different class or type unless a certificate of occupancy is first obtained for the new or different use.
- (4) *Permits required.* No building or structure, or part thereof, shall be hereafter erected, altered, moved or repaired unless a building permit shall have been first issued for such work. The terms

"altered" and repaired" shall include any changes in structural parts, stairways, type of construction, type, class or kind of occupancy, light or ventilation, means of egress and ingress, or other changes affecting or regulated by the city building code, housing law, or this chapter except for minor repairs or changes not involving any of the aforesaid features.

(Code 1977, § 5.107)

### **Sec. 38-479. Certificates.**

No land, building or part thereof, shall be occupied by or for any use unless and until a certificate of occupancy shall have been issued for such use. The following shall apply in the issuance of any certificate:

- (1) *Certificates not to be issued.* No certificates of occupancy shall be issued to the owner of or contractor for any building, structure or part thereof, or for the use of any land, which is not in accordance with all the provisions of this chapter.
- (2) *Certificates required.* No building or structure, or parts thereof, which is hereafter erected or altered, shall be occupied or used or the same caused to be done, unless and until a certificate of occupancy shall have been issued for such building or structure.
- (3) *Certificates including zoning.* Certificates of occupancy as required by the city building code for new buildings or structures, or parts thereof, or for alterations to or changes of use of existing buildings or structures, shall also constitute certificates of occupancy as required by this chapter.
- (4) *Certificates for existing buildings.* Certificates of occupancy shall be issued for existing buildings, structures, or parts thereof, or existing uses of land if, after inspection, it is found that such buildings, structures, or parts thereof, or such use of land, are in conformity with the provisions of this chapter.
- (5) *Record of certificates.* A record of all certificates issued shall be kept on file in the office of the building inspector, and copies shall be furnished upon request to any person having a proprietary or tenancy interest in the property involved. Two (2) copies thereof shall be delivered to the owner or contractor.
- (6) *Certificates for dwelling accessory buildings.* Buildings or structures accessory to dwellings shall not require a separate certificate of occupancy but may be included in the certificate of occupancy for the dwelling when shown on the plot plan and when completed at the same time as such dwellings.
- (7) *Application for certificates.* Application for certificates of occupancy shall be made in writing to the building inspector on forms furnished by that department, and such certificates shall be issued within ten (10) days after receipt of such application if it is found that the building or structure, or part thereof, or the use of land is in accordance with the provisions of this chapter.

If such certificate is refused for cause, the applicant therefor shall be notified of such refusal and cause thereof, within the aforesaid ten-day period.

(Code 1977, § 5.108)

**Sec. 38-480. Final inspection.**

The holder of every building permit for the construction, erection, alteration, repair or moving of any building, structure or part thereof, shall notify the building inspector immediately upon the completion of the work authorized by such permit, for a final inspection.

(Code 1977, § 5.109)

**Secs. 38-481--38-500. Reserved.**

**ARTICLE XXI.**

**BOARD OF APPEALS\***

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\* **Cross References:** Boards and commissions generally, § 2-216 et seq.  
**State Law References:** Board of appeals, MCL 125.585, MSA 5-2935.

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**Sec. 38-501. Creation and membership.**

(a) *Establishment.* There is hereby established a city zoning board of appeals in accordance with Act No. 110 of the Public Acts of Michigan of 2006 (MCL 125.3101 et seq., as amended. The board of appeals shall perform its duties and exercise its powers as provided by section 603 of the Act, as amended, and in such a way that the objectives of this chapter may be equitably achieved; that there shall be provided a means for competent interpretation and controlled flexibility in the application of this chapter; that the health, safety and welfare of the public be secured, and that substantial justice be secured.

(b) *Membership, terms of office.* The board shall consist of five (5) members: One (1) member being a member of the planning commission; the remaining regular members and any alternate members shall be selected from the electors of the city residing within the city who shall be representative of the population distribution and of the various interests present in the local unit of government. One regular member may be a member of the city council but shall not serve as chairman of the zoning board of appeals. An employee or contractor of the city may not serve as member of the zoning board of appeals. As used in this subsection "contractor" means any individual that is a party, directly or indirectly, through an entity in which he or she has an ownership interest to an agreement with the city, wherein that individual or entity provides goods or services to the city. Except for the planning commissioner or council appointments that are not term limited. Appointments for the first year to be made for a period of one (1), two (2), and three (3) years respectively, two (2) of which shall be appointed for three (3) years, so as nearly as may be to provide for the appointment of an equal number each year, thereafter each member to hold office for the full three-year term. Two (2) alternate members shall be appointed. Appointments for the first year are to be made for two (2) and three (3) years respectively, thereafter each alternate to hold office for the full three-year term. A successor shall be appointed not more than one (1) month after the term of the preceding member has expired. The alternate members may sit as regular members of the board of appeals in the absence of a regular member if a regular member is absent from or unable to attend one (1) or more meetings of the board of appeals or for a period of more than thirty (30) consecutive days. An alternate member may also be called to serve in the place of a regular member for the purpose of reaching a decision on a case in which the regular member has abstained for reasons of conflict of interest. The alternate member having been selected shall serve in the case until a final decision has been made.

The alternate member shall have the same voting rights as a regular member of the board of appeals. All members of the board shall serve without compensation. Board vacancies shall be filled by council appointment for the unexpired terms remaining. The board shall annually elect a chairman, vice-chairman and secretary. Members of the board of appeals shall be removable by the council for nonfeasance, malfeasance and misfeasance in office upon written charges and after public hearing.

(c) *Training for board of appeals members.* It shall be the duty of the building inspector to carefully review with each new member of the board of appeals the provisions of this chapter, most importantly the provisions of article XXI as they regard the duties, powers and scope of responsibility that each board member will assume while a member of the board of appeals. Furthermore, once each year the city building inspector may, at the board's request, review with the entire board of appeals their duties, powers, scope of responsibilities and the procedures and policies set forth for the board of appeals in the chapter. (Ord. No. 437, § 5.110, 9-16-85; Ord. No. 680, § 1, 10-16-06)

### **Sec. 38-502. Organization and procedures.**

(a) *Rules of procedure.* The board of appeals shall adopt its own rules of procedure as may be necessary to conduct its meetings and carry out its function. The board shall choose its own chairperson, and in his or her absence, an acting chairperson. The rules of procedure shall contain compliance requirements consistent with section 601 PA 110 of 2006 as amended and that is a member must disqualify himself or herself from a vote in which the member has a conflict of interest. Failure of a member to disqualify himself or herself from a vote in which the member has a conflict of interest constitutes malfeasance in office.

(b) *Meetings.* Meetings shall be held at the call of the chairperson and at such times as the board of appeals may determine. All meetings by the board shall be open to the public. The board may declare any meeting, or part of any meeting, a study meeting to pursue matters of business without comment or interruption from the public in attendance. A writing prepared, owned, used, in the possession of, or retained as required by this act shall be made available to the public in compliance with the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

**State Law References:** Open meetings act, MCL 15.261 et seq.

(c) *Records.* Minutes shall be recorded of all proceedings which shall contain the evidence received, the findings of fact and data relevant to every case considered, together with the votes of the members and the final disposition of each case. Such minutes shall be filed in the office of the city clerk and shall be made available to the general public.

(d) *Counsel.* The city attorney shall act as legal counsel for the board and shall be present at all meetings upon request of the board.

(e) *Hearings and notice.* The board of appeals shall fix a reasonable time for the public hearing of the appeal and give due notice thereof to all persons to whom any real property within three hundred (300) feet of the premises in question is assessed, and to the occupants of all single- and two-family dwellings within three hundred (300) feet regardless of whether the property or occupant is located in the zoning jurisdiction, such notice to be published in a newspaper of general circulation and to be delivered personally or by mail addressed to the respective owners at the address given in the last assessment roll at least fifteen (15) days in advance of the public hearing and shall decide the same within a reasonable time. If the tenant's name is not known, the term "occupant" may be issued. The board may require any party applying to the board for relief to give such

notice to other interested parties as it shall prescribe. Upon the hearing, any party may appear in person or by agent or by attorney. The board of appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from and shall make such order, requirement, decision or determination as in its opinion ought to be made in the premises and to that end shall have all powers of the officer from whom the appeal is taken. Where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of this chapter, the board of appeals may in passing upon appeals vary or modify any of its rules, regulations or provisions relating to the construction, or structural changes in equipment, or alteration of buildings or structures, or the use of land, buildings, or structures, so that the spirit of the ordinance shall be observed, public safety secured and substantial justice done. The board may recess such hearing from time to time and, if the time and place of the continued hearing is publicly announced at the time of adjournment of the board hearing, no further notice shall be required.

(f) *Decisions.* The board of appeals shall return a decision on a case within sixty (60) days after a request or appeal has been filed, unless a further time is agreed upon with the parties concerned. Any decision of the board shall not become final until expiration thereof five (5) days from the date of entry of such order, unless the board shall find the immediate effect of such order is necessary for the preservation of property or personal rights and shall so certify on the record.

(g) *Quorum and vote.* The presence of three (3) members shall be necessary to constitute a quorum. A vote of a majority vote of the full board shall be necessary to reverse any order, requirement, decision, or determination of the city building official or to decide in favor of the applicant on any matter upon which they are required to pass under this chapter or to effect any variation in this chapter.

(h) *Reports to council.* At intervals of not greater than one (1) year, the board of appeals shall, by written report to the council, list all applications and appeals made to it since its last report, and shall summarize its decisions on such applications and appeals.

(Ord. No. 437, § 5.111, 9-16-85; Ord. No. 549, § 1, 12-4-95; Ord. No. 680, § 1, 10-16-06)

### **Sec. 38-503. Appeals.**

(a) *Filing of appeals.* Appeals to the board of appeals may be made by any person aggrieved, or by any officer, department, board or bureau of the city. Any appeal from the ruling of the building inspector concerning the enforcement of the provisions of the chapter shall be made to the board of appeals within ten (10) days after the date of the notice of the building inspector's decision. Such appeal shall be filed with the secretary of the board of appeals and with the city building inspector, and shall specify the grounds for the appeal. The city building inspector shall immediately transmit to the secretary of the board all papers constituting the record upon which the action appealed from was taken.

(b) *Stay.* An appeal shall stay all proceedings in furtherance of the action appealed from unless the city building inspector certifies to the board of appeals after notice of appeal has been filed with her/him that by reason of facts stated in the certificate a stay would, in the inspector's opinion, cause imminent peril to life or property, in which case the proceedings shall not be stayed otherwise than by a restraining order, which may be granted by the board of appeals, or, on application, by court of record.

(c) *Fees.* A fee, as established by the city council, shall be paid to the City at the time the petitioner files an application with the board. The purpose of such fee is to cover, in part, the necessary advertisements,

investigations, hearing records and other expenses incurred by the board in connection with the appeal. No fee shall be charged if the city or any official body of the city is the moving party.

(d) *Review by circuit court.* Any party aggrieved by any order, determination or decision of any officer, agency, board, commission, board of appeals or the council which has acted pursuant to the provisions of Act No. 110 of the Public Acts of Michigan of 2006, as amended, and Act No. 285 of the Public Acts of Michigan of 1931 (MCL 125.31 et seq.), as amended may obtain a review thereof both on the facts and the law, in the circuit court of the county; provided, that application is made to the court within thirty (30) days after the board of appeals certifies its decision in writing or approves the minutes of the decision; and further provided, that all other means of local appeal and review as provided in this chapter have first been exhausted. The circuit court shall review the record and decision of the board of appeals to ensure that the decision:

- (1) Complies with the constitution and laws of the state;
- (2) Is based upon proper procedure;
- (3) Is supported by competent, material, and substantial evidence on the record;
- (4) Represents the reasonable exercise of discretion granted by law to the board of appeals.

If the circuit court finds the record of the board of appeals inadequate to make the review required by this section, or that there is additional evidence which is material and with good reason was not presented to the board of appeals on conditions which the court considers proper, the board of appeals may modify its findings and decision as a result of the new proceedings, or may affirm its original decision. The supplementary record and decisions shall be filed with the courts. As a result of this review the circuit may affirm, reverse, or modify the decision of the board of appeals.

(Ord. No. 437, § 5.112, 9-16-85; Ord. No. 680, § 1, 10-16-06)

### **Sec. 38-504. Duties and powers.**

The city zoning board of appeals shall not have the power to alter or change the zoning district classification of any property, nor to make any change in the terms or intent of this chapter, but does have power to act on those matters where this chapter provides for an administrative review, interpretation, variance, exception, or special approval permit as defined in this section:

- (1) *Review.* The board shall hear and decide appeals where it is alleged by the appellant that there is an error in any order, requirement, permit, decision or refusal made by the city building inspector or by any other official in administering or enforcing any provisions of this chapter.
- (2) *Interpretation.* The board shall have the power to:
  - a. Interpret, upon request, the provisions of this chapter in such a way as to carry out the intent and purpose of this chapter;
  - b. Determine the precise location of the boundary lines between zoning districts;

- c. Classify a use which is not specifically mentioned as part of the use regulations of any zoning district so that it conforms to a comparable permitted or prohibited use, in accordance with the purpose and intent of each district;
  - d. Determine the off-street parking and loading space requirements of any use not specifically mentioned in section 38-380, 38-381 or 38-382;
  - e. Permit, after recommendation from the planning commission, less than three (3) attached units in the R-T district as outlined in section 38-98;
  - f. Authorize a change to another nonconforming use as provided in section 38-378(e)(3);
  - g. Authorize selected accessory buildings, provisions outlined in section 38-379(5) and (7).
- (3) *Variances.* The board shall have the power to authorize, upon appeal, specific variances from such requirements as lot area and width regulations, building height and bulk regulations, yard and depth regulations, signs and off-street parking and loading space requirements, provided all of the basic conditions listed herein and any one (1) of the special conditions listed thereafter can be satisfied.
- a. *Basic conditions.* In order to qualify for a variance, the applicant must show that a variance:
    1. Will not be contrary to the public interest or to the intent and purpose of this chapter;
    2. Shall not permit the establishment within a district of any use which is not permitted by right within that zone district, or any use or dimensional variance for which a conditional use permit or a temporary use permit is required;
    3. Is one that is unique and not shared with other property owners;
    4. Will relate only to property that is under control of the applicant;
    5. Is applicable whether compliance with the strict letter of the restrictions governing area, set backs, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome;
    6. Was not created by action of the applicant (i.e. that it was not self-created);
    7. Will not impair an adequate supply of light and air to adjacent property or unreasonably increase the congestion of public streets or increase the danger of fire or endanger the public safety;
    8. Will not cause a substantial adverse effect upon property values in the immediate

vicinity or in the district in which the property of the applicant is located;

9. Is applicable whether a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the area, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.

b. *Special conditions.* When all of the foregoing basic conditions can be satisfied, a variance may be granted when any one (1) of the following special conditions can be clearly demonstrated:

1. Where there are practical difficulties or unnecessary hardships which prevent carrying out the strict letter of this chapter. These hardships or difficulties shall not be deemed economic, but shall be evaluated in terms of the use of a particular parcel of land;
2. Where there are exceptional or extraordinary circumstances or physical conditions such as narrowness, shallowness, shape, or topography of the property involved, or to the intended use of the property, that do not generally apply to other property or uses in the same zoning district;
3. Where such variation is necessary for the preservation of a substantial property right possessed by other properties in the same zoning district.

c. *Rules.* The following rules shall be applied in the granting of variances:

1. The board may specify, in writing, such conditions regarding the character, location, and other features that will, in its judgement, secure the objectives and purposes of this chapter. The breach of any such condition shall automatically invalidate the permit granted.
2. Each variance granted under the provisions of this chapter shall become null and void unless:
  - i. The construction authorized by such variance or permit has been commenced within six (6) months after the granting of the variance and proceeds to completion in accordance with the terms of the variance;
  - ii. The occupancy of land, premises, or buildings authorized by the variance has taken place within one (1) year after the granting of the variance.
3. No application for a variance which has been denied wholly or in part by the board shall be resubmitted for a period of one (1) year from the date of the last denial, except on the grounds of newly-discovered evidence or proof of changed conditions found upon inspection by the board to be valid.

4. In granting or denying a variance the board shall state the findings of fact upon which it justifies the action.

(4) *Special exceptions.* When, in its judgment, the public welfare will be served and the use of neighboring property will not be injured thereby, the board may, in a specific case, after due notice and public hearing and subject to appropriate conditions and safeguards, determine and vary the application of the regulations of this chapter in harmony with the general character of the district and the intent and purposes of this chapter. The granting of a special exception shall in no way constitute a change in the basic uses permitted in the district affected nor on the property wherein the exception is permitted. The board may issue either temporary or conditional permits as special exceptions for the following land and structure uses:

- a. *Temporary permits.* For temporary structures for dwelling purposes, including trailer coaches, subject to the following procedures and limitations:
  1. An application for a permit for the erection or movement of a temporary structure for dwelling purposes, including trailer coaches, shall be made to the board on a special form used exclusively for that purpose.
  2. The board shall give due notice to the applicant and to all property owners within three hundred (300) feet of the property affected at least five (5) days before the hearing will be held on such application.
  3. A temporary permit shall not be granted unless the board finds adequate evidence that the proposed location or use will not be detrimental to property in the immediate vicinity; and that the proposed water supply and sanitary facilities have been approved by the county health department or the city director of public services.
  4. The board may impose any reasonable conditions, including setbacks, land coverage, off-street parking, landscaping, and other requirements deemed necessary to protect adjoining properties and the public welfare. The violation of any such condition shall automatically invalidate the permit.
  5. The permit issued shall clearly set forth the conditions under which the permit is granted and shall state that the proposed temporary dwelling structure is to be vacated upon expiration of a specific time limit not to exceed six (6) months. No permit shall be transferable to any other owner or occupant.
- b. *Conditional permits.* When conditions exist that are unique to a particular situation, a conditional permit may be issued with specific limitations imposed by the board. The land or structure may be permitted to be established and to continue in use as long as the conditions unique to the use exist. The permit issued shall contain all the specified conditions under which continued use may be allowed. Conditional permits may be issued for the following uses:

1. Permit more than two (2) roomers in any one (1) dwelling, but not more than four (4), when it can be demonstrated to the satisfaction of the board that such an expanded capacity is a clear necessity for satisfaction of this particular housing demand; that adequate off-street parking space can be provided in accordance with standards stated in section 38-380; and that such use will not injure the character or value of the immediate neighborhood.
2. The board may authorize a reduction, modification, or waiver of any of the off-street parking or off-street loading regulations in section 38-380, 38-381 or 38-382, when it can be demonstrated that circumstances of extreme practical difficulty exist that would unquestionably result in hardship to the applicant when a literal interpretation of the regulations is required. Hardship shall not be deemed economic, but shall be evaluated in terms of the use of a particular parcel of land. A hardship that is a result of any action of the applicant shall not be considered by the board. Under all these circumstances, in no case shall the off-street parking or off-street loading standards be reduced by more than twenty-five (25) percent.
3. Joint use of off-street parking areas may be authorized by the board when the capacities outlined in section 38-380 are complied with and when a copy of an agreement between joint users shall be filed with the application for a building permit and is recorded with the county register of deeds, guaranteeing continued use of the parking facilities for each party.
4. Permit modification of wall requirements, as outlined in Article XVIII, section 38-387, only when such modification will not adversely affect or be detrimental to surrounding or adjacent development.
5. Permit, upon proper application, the following character of temporary use, not otherwise permitted in any district, not to exceed twelve (12) months with the granting of twelve-month extensions being permissible: Uses which do not require the erection of any capital improvement of a structural nature.

The board of appeals, in granting permits for the above temporary uses, shall do so under the following conditions:

- i. The granting of the temporary use shall in no way constitute a change in the basic uses permitted in the district nor on the property wherein the temporary use is permitted.
- ii. The granting of the temporary use shall be granted in writing, stipulating all conditions as to time, nature of development permitted and arrangements for removing the use at the termination of said temporary permit.
- iii. All setbacks, land coverage, off-street parking, lighting and other

requirements to be considered in protecting the public health, safety, peace, morals, comfort, convenience and general welfare of the inhabitants of the city, shall be made at the discretion of the board of appeals.

- iv. In classifying uses as not requiring capital improvement, the board of appeals shall determine that they are either demountable structures related to the permitted use of the land; recreation developments, such as, but not limited to: golf-driving ranges and outdoor archery courts; or structures which do not require foundations, heating systems or sanitary connections.
- v. The use shall be in harmony with the general character of the district.
- vi. No temporary use permit shall be granted without first giving notice to owners of adjacent property of the time and place of a public hearing to be held as further provided for in this chapter. Further, the board of appeals shall seek the review and recommendation of the planning commission prior to the taking of any action.

(5) *Findings of adverse impact on historical resources.* Prior to any action taken by the board for any of the aforementioned duties and powers, a consideration of adverse impact described in section 38-32(e)(1) shall be applied to a matter as a basis for denial or alteration of the appeal.

(Ord. No. 437, § 5.113, 9-16-85; Ord. No. 448, §§ 1, 2, 2-16-87; Ord. No. 499, 2-16-93; Ord. No. 590, § 1, 10-18-99)

#### **Sec. 38-505. Essential services.**

The board of appeals shall have the power to permit the erection and use of a building, or an addition to an existing building, or a public service corporation or for public utility purposes, in any permitted district to a greater height or of larger area than the district requirements herein established, and permit the location in any use district of a public utility building, structure, or use if the board shall find such use, height, area, building, or structure reasonably necessary for the public convenience and service.

(Ord. No. 437, § 5.114, 9-16-85)

#### **Sec. 38-506. Bond for compliance.**

In authorizing any variance, or in granting any conditional, temporary or special approval permits, the city board of appeals may require that a cash deposit, certified check, irrevocable bank letter of credit, or surety bond acceptable to the city covering the estimated cost of improvements associated with a project for which zoning approval is sought, be deposited with the city clerk to insure faithful completion of the improvements. The performance guarantee shall be deposited at the time of the issuance of the permit authorizing the activity or project. The city board of appeals may not require the deposit of the performance guarantee before the date on which the permit is to be issued. The city board of appeals shall establish procedures under which a rebate of any cash deposit in reasonable proportions to the ratio of work completed on the required improvements will be made as work progresses.

(Ord. No. 437, § 5.115, 9-16-85)

**Secs. 38-507--38-525. Reserved.**

## **ARTICLE XXII.**

### **PLANNING COMMISSION\***

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\* **Cross References:** Boards and commissions generally, § 2-216 et seq.; city planning commission generally, § 23-16 et seq.

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#### **Sec. 38-526. Establishment, membership, terms.**

The city planning commission is hereby designated as the commission specified in section 301 of Act No. 110 of the Public Acts of Michigan of 2006 (MCL 125.3301) as amended and shall perform the zoning duties of the commission as provided in the statute.  
(Code 1977, § 5.119; Ord. No. 694, § 1, 3-3-08)

#### **Sec. 38-527. Approval of certain uses.**

In cases where the city planning commission is empowered to approve certain uses of premises under the provisions of this chapter, the applicant shall furnish such surveys, plans or other information as may be reasonably required by the commission for the proper consideration of the matter.

The planning commission shall investigate the circumstances of each such case and shall notify such parties, who may in its opinion be affected thereby, of the time and place of any hearing which may be held relative thereto as required under its rules of procedure.

The planning commission may impose such conditions or limitations in granting approval as may in its judgment be necessary to fulfill the spirit and purpose of this chapter.

Any approval given by the planning commission, under which premises are not used or work is not started within six (6) months or when such use or work has been abandoned for a period of six (6) months, shall lapse and cease to be in effect.  
(Code 1977, § 5.120)

**Secs. 38-528--38-550. Reserved.**

## **ARTICLE XXIII.**

### **CHANGES AND AMENDMENTS\***

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\* **State Law References:** Enactment of ordinances, MCL 125.584, MSA 5.2934.

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#### **Sec. 38-551. Authorized.**

The city council may from time to time, on recommendation from the planning commission or on

petition, amend, supplement or change the district boundaries or the regulations herein, or subsequently established herein pursuant to the authority and procedure established in Act No. 207 of the Public Acts of Michigan of 1921 (MCL 125.581 et seq., MSA 5.2931 et seq.), as amended.  
(Code 1977, § 5.121)

**Sec. 38-552. Notice and hearing.**

Notice and hearing for any proposed change or amendment of this chapter shall be provided in accordance with Act No. 207 of the Public Acts of Michigan of 1921 (MCL 125.581 et seq., MSA 5.2931 et seq.), as amended.  
(Code 1977, § 5.122)

**Sec. 38-553. Protest petitions.**

Protest petitions may be submitted in accordance with Act No. 207 of the Public Acts of Michigan of 1921 (MCL 125.581 et seq., MSA 5.2931 et seq.), as amended.  
(Code 1977, § 5.123)

**Sec. 38-554. Petition for change; fees.**

(a) Any person desiring a change in zoning classification of property shall initiate said change by one (1) of the following methods:

- (1) Submit a petition to the council containing the names and addresses of the owners of all property proposed to be changed. The petition shall indicate whether the owners are for or against the proposed zoning change. No petition shall be eligible for consideration by the council until at least seventy-five (75) percent of the property owners have signed it.
- (2) The person or persons desiring a zoning classification shall submit a letter to the council requesting the change, accompanied by a certification that the owners of all properties located within two hundred (200) feet of any part of the property proposed to be changed have been notified by the city, by registered letter with return receipt requested of the proposed zoning change.

(b) All costs of initiating a zoning change by either of the above methods shall be borne by the person or persons requesting the change.  
(Code 1977, § 5.124)

**Sec. 38-555. Findings of fact required.**

In reviewing any petition for a zoning amendment, the planning commission shall identify and evaluate all factors relevant to the petition and shall report its findings in full along with its resulting recommendations for the proper disposition of the petition to the city council. The facts to be expressly considered by the planning commission shall include, but shall not be limited to the following:

- (1) What, if any, identifiable conditions related to the petition have changed which justify the

petitioned change in zoning?

- (2) What, if any, error in judgment procedure or administration was made in the original ordinance which justifies the petitioned change in zoning?
- (3) What are the precedents and the possible effects of a precedent which might result from the approval or denial of the petition?
- (4) What is the impact of the amendment on the ability of the city to provide adequate public services and facilities and/or programs that might reasonably be required in the future if the petition is approved?
- (5) Does the petitioned zoning change adversely affect the environmental conditions or value of the surrounding property?
- (6) Does the petitioned zoning change generally comply with the adopted future land use plan of the city?
- (7) Does the petitioned zoning change adversely affect the historic resources of the city?

(Ord. No. 586, § 1, 6-21-99)

**Editors Note:** Ord. No. 586, § 1, adopted June 21, 1999, amended the Code by adding a new section to be numbered § 38-575. In order to keep related materials together, the editor has redesignated such provisions as a new § 38-555.

**Secs. 38-556--38-575. Reserved.**

## **ARTICLE XXIV.**

### **ENFORCEMENT, PENALTIES AND OTHER REMEDIES**

#### **Sec. 38-576. Violations.**

Any person, firm or corporation violating any of the provisions of this chapter shall be guilty of a misdemeanor, and upon conviction thereof, shall be subject to the penalties of section 1-8.  
(Code 1977, § 5.130)

#### **Sec. 38-577. Public nuisance per se.**

Any building or structure which is erected, altered or converted, or any use of premises or land which is begun or changed subsequent to the time of passage of this chapter and in violation of any of the provisions thereof is hereby declared to be a public nuisance per se, and may be abated by order of any court of competent jurisdiction.  
(Code 1977, § 5.131)

#### **Sec. 38-578. Fines, imprisonment.**

The owner of any building, structure or premises or part thereof, where any condition in violation of this chapter shall exist or shall be created, and who has assisted knowingly in the commission of such violation shall

be guilty of a separate offense and upon conviction thereof shall be liable to the fines and imprisonment herein provided.

(Code 1977, § 5.132)

**Sec. 38-579. Rights and remedies are cumulative.**

The rights and remedies provided herein are cumulative and in addition to any other remedies provided by law.

(Code 1977, § 5.134)