

Zoning Ordinance

City of Benton Harbor, Michigan



HOUSEAL LAVIGNE ASSOCIATES

DUNCAN ASSOCIATES

ADOPTED: 8/23/12

HOW TO USE THIS CODE

IF YOU OWN PROPERTY AND WANT TO KNOW WHAT RULES APPLY:

STEP 1: Find your zoning district and any overlay districts by looking at the district map (found in the planning department).

STEP 2: Go to §2.1, Districts Established, to review the intent of the district(s) applied to your property.

STEP 3: Go to §2.4, Permitted Land Use Table, for details on uses permitted on your property. Find the row that lists the group of uses or specific use you've identified. Match this row to your district (across the top of the table) to determine if the use you want to establish is permitted. To determine if the use you've identified is part of group of uses go to §2.5.1.D, Similar Use Interpretation.

STEP 4: If your use is permitted, before building the structure or establishing the use, you must get the appropriate permits approved (see Article 6). For details on minimum lot size and required yards see §2.8. For (specific) use standards, see Article 3. The use may also be subject to the site development standards in Article 4.

These requirements are intended to help you and the City ensure that your project is legally established and that it matches the development vision that City of Benton Harbor, as a community, desires.

IF YOU WANT TO BUILD OR ESTABLISH A PARTICULAR USE:

Follow Steps 1 through 4 above, to identify your zoning district and the permitted uses. You can find the specific details for the permitted uses in your zoning district in either §2.4 or §2.5.1.D. You can also find the various development standards that apply to your property in Article 3.

IF YOU WANT TO CHANGE YOUR ZONING DISTRICT:

Only the city commission may rezone property – following public notice and hearings. See §6.2, map (rezoning) and text amendment, for details on the procedure.

CONTENTS

ARTICLE 1. GENERAL PROVISIONS	1-1
§1.1. TITLE	1-1
§1.2. EFFECTIVE DATE	1-1
§1.3. AUTHORITY.....	1-1
§1.4. APPLICABILITY	1-1
§1.5. PURPOSE.....	1-1
§1.6. INTERPRETATION OF REGULATIONS.....	1-2
§1.7. WORD USAGE AND CONSTRUCTION OF LANGUAGE	1-2
§1.8. DELEGATION OF AUTHORITY	1-3
§1.9. NUMBER OF BUILDINGS ON A ZONING LOT	1-4
§1.10. TRANSITIONAL PROVISIONS.....	1-4
§1.11. COMMENTARIES	1-5
§1.12. SEVERABILITY AND SAVINGS	1-5
ARTICLE 2. ZONING DISTRICTS	2-1
§2.1. DISTRICTS ESTABLISHED	2-1
§2.2. DISTRICT PURPOSE STATEMENTS	2-1
§2.3. DISTRICT MAP.....	2-2
§2.4. PERMITTED USES	2-3
§2.5. USE CLASSIFICATION.....	2-6
§2.6. INTENSITY AND DIMENSIONAL STANDARDS	2-20
§2.7. M-U DISTRICT STANDARDS	2-23
§2.8. MEASUREMENTS AND EXCEPTIONS.....	2-29
ARTICLE 3. USE STANDARDS.....	3-1
§3.1. RESIDENTIAL USES	3-1
§3.2. PUBLIC AND CIVIC USES	3-1
§3.3. COMMERCIAL USES.....	3-1
§3.4. INDUSTRIAL USES.....	3-3
§3.5. ACCESSORY BUILDINGS AND USES	3-8
§3.6. TEMPORARY USES.....	3-12
ARTICLE 4. SITE DEVELOPMENT STANDARDS	4-13
§4.1. GENERAL.....	4-13
§4.2. OFF-STREET PARKING AND LOADING	4-13
§4.3. SIGNS	4-22
§4.4. LANDSCAPING, SCREENING AND BUFFERING.....	4-24
§4.5. OUTDOOR LIGHTING.....	4-37
ARTICLE 5. DECISION-MAKING BODIES AND OFFICIALS	5-1
§5.1. PLANNING COMMISSION	5-1
§5.2. BOARD OF APPEALS.....	5-1
§5.3. ZONING ADMINISTRATOR	5-2
§5.4. BUILDING OFFICIAL	5-2
ARTICLE 6. DEVELOPMENT REVIEW	6-1
§6.1. COMMON PROCEDURES.....	6-1
§6.2. MAP (REZONING) AND TEXT AMENDMENTS.....	6-3
§6.3. M-U, MIXED USE DISTRICT REVIEWS	6-4
§6.4. PLANNED DEVELOPMENT REVIEWS	6-7

§6.5.	SPECIAL USE PERMIT REVIEWS	6-11
§6.6.	SITE PLAN REVIEWS.....	6-13
§6.7.	ADMINISTRATIVE APPEALS.....	6-15
§6.8.	VARIATIONS.....	6-16
§6.9.	EXCEPTIONS.....	6-17
§6.10.	BUILDING AND OCCUPANCY PERMITS	6-18
§6.11.	JUDICIAL APPEALS	6-19
ARTICLE 7. NONCONFORMITIES.....		7-1
§7.1.	NONCONFORMING STATUS.....	7-1
§7.2.	NONCONFORMING LOTS	7-1
§7.3.	NONCONFORMING USES AND STRUCTURES.....	7-2
§7.4.	NONCONFORMING SIGNS	7-3
ARTICLE 8. VIOLATIONS, ENFORCEMENT AND PENALTIES		8-1
§8.1.	ENFORCEMENT.....	8-1
§8.2.	VIOLATION AND PENALTY.....	8-1
ARTICLE 9. DEFINITIONS		9-1
INDEX		

Article 1. General Provisions

§1.1. TITLE

This ordinance is officially known, referred to and cited as the “Benton Harbor Zoning Ordinance”, and referred to throughout this document as “this ordinance”.

§1.2. EFFECTIVE DATE

Unless otherwise expressly indicated herein, the provisions of this ordinance become effective on [??Effective Date??].

§1.3. AUTHORITY

This ordinance is adopted pursuant to the powers granted and limitations imposed by state law and the city charter.

§1.4. APPLICABILITY

The regulations of this ordinance apply to all development, public or private, within the corporate limits of the City of Benton Harbor, unless otherwise expressly exempted or provided in this ordinance.

§1.5. PURPOSE

- A. The zoning regulations of this ordinance are in accordance with the master plan, and they are designed to:
 - 1. reinforce and support the recommendations and objectives of the master plan;
 - 2. promote the health, safety and general welfare;
 - 3. lessen congestion in the streets;
 - 4. secure safety from fire, panic, and other dangers;
 - 5. provide adequate light and air;
 - 6. prevent the over-crowding of land;
 - 7. avoid undue concentration of population;
 - 8. preserve and improve the character of development in the city and its neighborhoods; and
 - 9. facilitate the adequate provision of transportation, water, sewerage, drainage, schools, parks, and other public requirements.
- B. The regulations have been made with reasonable consideration, among other things, to the character of the district, and its peculiar suitability for particular uses, with a view to conserving property values, encouraging the most appropriate use of land and to be in keeping with the general trend and character of population and building development.

§1.6. INTERPRETATION OF REGULATIONS

§1.6.1. Minimum requirements

Regulations set forth by this ordinance shall be minimum regulations. If the requirements set forth in this ordinance are at variation with the requirements of any other lawfully adopted uses, regulations, or ordinances, the more restrictive or higher standard shall govern.

§1.6.2. Restrictive covenants

Unless restrictions established by covenants with the land are prohibited by or contrary to the provisions of this ordinance, nothing contained within this ordinance shall be construed to render such covenants inoperative.

§1.6.3. Conflicting provisions

A. Conflict with state or federal regulations

If the provisions of this ordinance are inconsistent with those of the State or Federal government, the more restrictive provision will control, to the extent permitted by law.

B. Conflict with other city regulations

If the provisions of this ordinance are inconsistent with one another, or if they conflict with provisions found in other adopted ordinances or regulations of the city, the more restrictive provision will control unless otherwise expressly stated.

C. Conflict with private agreements and covenants

This ordinance is not intended to interfere with, abrogate or annul any easement, covenant, deed restriction or other agreement between private parties. The city does not enforce private covenants. If the provisions of this ordinance impose a greater restriction than imposed by a private agreements or covenants, the provisions of this ordinance control.

§1.6.4. Cumulative nature of provisions

The provisions of this ordinance are cumulative and pose limitations and requirements in addition to all other applicable laws and ordinances.

§1.6.5. Commentary

Whenever provisions of this ordinance require additional explanation to clarify its intent, a “commentary” is included. Commentaries have no regulatory effect, but rather to serve as a guide, and to assist decision-making bodies and officials and the public to use in understanding and interpreting the ordinance.

Commentary: When commentaries are provided they will appear in this format.

§1.7. WORD USAGE AND CONSTRUCTION OF LANGUAGE

§1.7.1. Meanings and intent

All provisions, terms, phrases and expressions contained in this ordinance shall be construed according to the purpose and intent set out in §1.5. (See also §7.13, Written interpretations)

§1.7.2. Headings, illustrations and text

In case of any difference of meaning or implication between the text of this ordinance and any heading, drawing, table, figure or illustration, the text shall control.

§1.7.3. Lists and examples

Unless otherwise specifically indicated, lists of items or examples that use terms such as “including,” “such as” or similar language are intended to provide examples; not intended to be exhaustive lists of all possibilities.

§1.7.4. Computation of time

- A. References to “days” are to calendar days unless otherwise expressly stated.
- B. The time in which an act is to be completed is computed by excluding the first day and including the last day. If the last day is a Saturday, Sunday, or holiday observed by the city, that day is excluded.
- C. A day concludes at the close of business local time (5:00pm), and any materials received after that time will be considered to be have been received the following day, unless acceptable to the city.

§1.7.5. References to other regulations, publications and documents

Whenever reference is made to a resolution, ordinance, statute, regulation, or document, that reference shall be construed as referring to the most recent edition of such resolution, ordinance, statute, regulation, or document or to the relevant successor document, unless otherwise expressly stated.

§1.7.6. Technical and non-technical terms

Words and phrases shall be construed according to the common and approved usage of the language, but technical words and phrases that may have acquired a peculiar and appropriate meaning in law shall be construed and understood according to such meaning as specified in Article 10, Definitions.

§1.7.7. Public officials and agencies

All public officials, bodies and agencies to which references are made are those of the city of Benton Harbor, unless otherwise expressly provided.

§1.7.8. Mandatory and discretionary terms

The words “shall,” “will” and “must” are mandatory and not directory. The words “may” and “should” are advisory and discretionary terms.

§1.7.9. Conjunctions

Unless the context clearly suggests the contrary, conjunctions shall be interpreted as follows:

“And” indicates that all connected items, conditions, provisions or events apply; and

“Or” indicates that one or more of the connected items, conditions, provisions or events may apply.

§1.7.10. Tenses and plurals

Words used in one tense (past, present or future) include all other tenses, unless the context clearly indicates the contrary. The singular includes the plural, and the plural includes the singular.

§1.8. DELEGATION OF AUTHORITY

Whenever a provision of this ordinance appears requiring the zoning administrator or other official to perform an act or duty, that provision shall be construed as authorizing the zoning administrator or other official to delegate that responsibility to others over whom they have authority.

§1.9. NUMBER OF BUILDINGS ON A ZONING LOT

No more than one principal detached residential building may be located on a lot, and a principal detached residential building may not be located on a lot that contains any other principal building. This limitation on the number of buildings on a zoning lot does not apply to previously approved multiple dwelling developments or to nonresidential developments.

§1.10. TRANSITIONAL PROVISIONS

The following transitional provisions shall apply to various activities, actions and other matters pending or occurring on the effective date of this ordinance.

§1.10.1. Conforming uses and structures

A. Permitted uses

Any permitted use lawfully approved prior to the effective date of this ordinance shall continue to be valid after the effective date. Development in accordance with an approved permitted use shall comply with the requirements of this ordinance, provided that in the event of any inconsistency between an approved permitted use and the requirements of this ordinance, development in accordance with the approved permitted use shall be permitted.

B. Special uses

1. Any use or structure existing prior to the effective date of this ordinance that would be permitted by this ordinance as a special use in the district in which it is located, may be continued as if a conditional use permit had been issued, and shall not be a nonconforming use; provided that any use, structural or other changes shall comply with the provisions of this ordinance.
2. Any expansion, relocation or change of such use beyond conditions placed on the approval shall require a new special use permit in compliance with the procedures set out in §6.5.
3. Any existing use, approved by special use permit prior to the adoption of this ordinance, shall not be a nonconforming use, but shall continue as a special use within the provisions of said permit.

§1.10.2. Nonconformities

Any legal nonconformity under the previous zoning ordinance shall be considered a nonconformity under this ordinance, provided the situation that resulted in the nonconforming status under the previous regulations continues to exist. Such nonconformity may continue in accordance with the provisions of Article 7, Nonconformities. If, however, a nonconformity under the previous ordinance becomes conforming as a result of the adoption of this ordinance or any subsequent amendment to this ordinance, then such situation shall no longer be considered a nonconformity.

§1.10.3. Variations

Any variation lawfully approved prior to the effective date of this ordinance shall continue to be valid after the effective date. Development in accordance with an approved variation shall comply with the requirements of this ordinance, provided that in the event of any inconsistency between an approved variation and the requirements of this ordinance, development in accordance with the approved variation shall be permitted.

§1.10.4. Violations continue

Any violation of the previous zoning ordinance shall continue to be a violation under this ordinance and shall be subject to penalties and enforcement under Article 8, unless the use, development, construction or other activity expressly complies with the current terms of this ordinance.

§1.10.5. District conversion

Commentary: The table below translates existing zoning districts to the new zoning districts in this ordinance.

The zoning district names in effect prior to the effective date of this ordinance are converted as shown below.

DISTRICT CONVERSION			
Previous District		New District	
A	Single-family Dwelling	R-S	Single-family Dwelling
B	Multiple Dwelling	R-M	Multiple Dwelling
C	Multiple Dwelling and Office		DELETED
D-1	Local Commercial	C-L	Local Commercial
D-2	Commercial	C-G	General Commercial
D-3	Mixed-Use District	M-U	Mixed Use
B	Business	C-B	Central Business
I-L	Light Industrial	I-L	Light Industrial
I-H	Heavy Industrial	I-H	Heavy Industrial
P	Port		DELETED
	NEW	P-R	Public River Front

§1.11. COMMENTARIES

Whenever a provision of this ordinance requires additional explanation to clarify its intent, a “commentary” is included. Commentaries have no regulatory effect, but rather are intended solely as a guide for decision-making bodies and officials and the public to use in understanding and interpreting the ordinance.

Commentary: When commentaries are provided they will appear in this format.

§1.12. SEVERABILITY AND SAVINGS**§1.12.1. Severability**

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this ordinance.

§1.12.2. Savings

All rights and remedies of the city are expressly saved as to any and all violations of the provisions of any other ordinances affecting land use regulations which have accrued at the time of the effective date of this ordinance. Such accrued violations and all pending litigation, both civil and criminal, shall not be affected by this ordinance but may be prosecuted until final disposition by the courts.

Article 2. Zoning Districts

§2.1. DISTRICTS ESTABLISHED

- A. The following zoning districts are hereby established including residential and nonresidential districts, which are further defined by commercial and industrial districts, as shown below:

DISTRICTS ESTABLISHED	
Residential Districts	
R-S	Single-Family Dwelling
R-M	Multiple Dwelling
Mixed Use District	
M-U	Mixed Use
Nonresidential Districts	
Commercial Districts	
C-L	Local Commercial
C-G	Commercial
C-B	Central Business
Industrial Districts	
I-L	Light Industrial
I-H	Heavy Industrial
P-R	Public River Front

- B. Under the hierarchy of zoning districts established by this article, the R-S district is the most restrictive zoning district and the I-H district is the least restrictive zoning district. The P-R district is not included in the zoning district hierarchy.

§2.2. DISTRICT PURPOSE STATEMENTS

§2.2.1. R-S, Single-family dwelling

The R-S, Single Family Residential Zoning District is intended to establish and preserve low density single-family areas free from other uses except those which are both compatible with and convenient to the residents of such a district.

§2.2.2. R-M, Multiple dwelling

The R-M, Multiple Family Residential Zoning District is intended to establish and preserve areas containing mid to high density multiple-family dwellings. It is intended to provide a wide range of housing types while maintaining an overall moderate density residential character. It is intended to be compatible with lower density residential areas and serve as a transition between single family residential areas and non-residential districts.

§2.2.3. M-U, Mixed use

The MU, Mixed-Use Zoning District is intended to encourage a diversity of compatible land uses close to one another, including a creative mix of residential, office, commercial, and recreational land uses. Businesses are intended to be of limited scale serving nearby areas. Housing is intended to be of mixed income and design, accommodating various life stages and life styles.

§2.2.4 C-L, LOCAL COMMERCIAL**§2.2.4. C-L, Local commercial**

The C-L, Local Commercial Zoning District is intended to provide restricted commercial development in areas adjacent to or surrounded by residential neighborhoods. This district is intended to allow commercial development which can be carried out in a harmonious manner with a minimum of disruption and undesirable impact upon the adjacent residential uses.

§2.2.5. C-G, General commercial

The C-G, General Commercial Zoning District is intended to provide areas for all types of retailing and service uses that service both the needs of local residents as well as draw customers from areas beyond the city. This district is intended to accommodate commercial areas where customers reach individual business establishments primarily by automobile.

§2.2.6. C-B, Central Business

The C-B, Central Business Zoning District is intended to establish and preserve a convenient and attractive central business district offering a wide range of concentrated retail, office, and service uses. The C-B district is intended to be a compact business area with reliance on pedestrian access, thus creating a more traditional “downtown” atmosphere.

§2.2.7. I-L, Light industrial

The I-L, Light Industrial Zoning District is intended to provide areas for industrial, commercial service, office, research, warehousing, and related uses of such a nature that they do not create appreciable nuisances, hazards, or serious problems of compatibility with other kinds of land uses. This district is intended to also provide for certain kinds of commercial uses which are most appropriately located in proximity to industrial areas or which are necessary to serve the immediate needs of these areas.

§2.2.8. I-H, Heavy industrial

The I-H, Heavy Industrial Zoning District is intended to accommodate most types of industrial development. This district is designed to protect residential and less intensive commercial and industrial uses by locating general industrial uses in locations removed from such residential or commercial development. Certain general industrial uses that may tend to be objectionable due to their odor, vibrations, smoke, glare, heat, noise or similar characteristics are provided as special uses in this district.

§2.2.9. P-R, Public River Front

The P-R, Public River Front Zoning District is intended to protect and maintain public open space areas along the St. Joseph River.

§2.3. DISTRICT MAP**§2.3.1. Incorporated as part of this ordinance**

The district map and all the notations, references and other information shown thereon, as well as any amendments thereto, are a part of this ordinance and have the same force and effect as if the district map and all the notations, references and other information shown thereon, as well as any amendments thereto, were all fully set forth or described herein. The district map is on file in the office of the city clerk.

§2.3.2. Extension of boundaries upon vacation of streets

Whenever any street, alley, or other public way is vacated by official action, the zoning district adjoining each side of such street, alley, or public way shall be automatically extended to the center of such vacation, and all area included in the vacation shall then and henceforth be subject to all appropriate regulations of the extended districts.

§2.3.3. Newly added property

All territory which may be added to the city after the effective date of this ordinance shall be considered as being in the R-S, Single-Family Dwelling District until otherwise changed pursuant to the map amendment (rezoning) procedures of §6.2.

§2.3.4. Interpretation of district boundaries

Where uncertainty exists as to the boundaries of any district shown on the district map, the following rules shall apply:

- A. Boundaries indicated as approximately following the centerlines of streets, alleys or highways shall be construed to follow such centerlines;
- B. Boundaries indicated as approximately following lot lines, city limits boundaries, shall be construed as following such lines, limits or boundaries;
- C. Boundaries indicated as following shorelines shall be construed to follow such shorelines, and in the event of change in the shoreline shall be construed as following such changed shorelines;
- D. Where a district boundary divides a lot or where distances are not specifically indicated on the district map, the boundary shall be determined by measurement, using the scale of the district map, or by a legal description and recorded plat of survey if available; and
- E. Where any street or alley is hereafter officially vacated or abandoned, the regulations applicable to each parcel of abutting property shall apply to that portion of such street or alley added thereto by virtue of such vacation or abandonment.

§2.4. PERMITTED USES

The following table lists the principal uses permitted by this ordinance for base zoning districts.

§2.4.1. Key to types of use

The permitted land use table is subject to the explanation as set forth below.

A. Permitted

A "P" indicates that a use is permitted in the respective district subject to the use standards in Article 3. Such uses are also subject to all other applicable requirements of this ordinance.

B. Special uses

An "S" indicates a use that may be permitted in the respective base zoning district only where approved by the city commission in accordance with §6.5. Special uses are subject to all other applicable requirements of this ordinance, including the use standards contained in Article 3.

C. Use standards

The "use standard" column on the table is a cross-reference to any use standard listed in Article 3. Where no cross-reference is shown, no additional use standard shall apply.

§2.4.1 KEY TO TYPES OF USE

D. Uses not permitted

A blank cell () in the use table indicates that a use is not permitted in the respective district.

E. Accessory and temporary uses

The regulations that apply to accessory and temporary uses are contained in §3.5, accessory uses and structures, and §3.6, temporary uses.

PERMITTED (PRINCIPAL) USE TABLE											
Use Categories	Use Types	R-S	R-M	M-U	C-L	C-G	C-B	I-L	I-H	P-R	Use Standard
Residential Uses (See §2.5.2)											
Household living (See §2.5.2.A)	Single-family dwellings	P	P	P							§3.1.2
	Two-family dwellings		P	P							
	Townhouses			P							
	Multiple-family dwellings		P	P							
	Upper story residential			P	P	P	P				§3.1.4
Group living (See §2.5.2.B)	Assisted living & nursing homes	S	S	P	S	P	P				
	Boarding houses & lodging houses		P	P	P	P	P				
	Family residential facilities			P			P				§3.1.3
Public and Civic Uses (See §2.5.3)											
Community service (See §2.5.3.A)	All community service uses	P	P	P	P	P	P	P	P		
Day care (See §2.5.3.B)	All day care uses	S	S	S	S	S	S	S			
Educational facilities (See §2.5.3.C)	Elementary or high schools	P	S	S	S	S	S	S			§3.2.1
	All other educational facilities	S	S	S	S	S	S	S	S		
Government facilities (See §2.5.3.D)	All government facilities	S	S	S	S	S	S	S	S		
Medical facilities (See §2.5.3.E)	Hospitals		S	S	S	S	P	P	P		§3.2.2
	All other medical facilities	S	S	S	S	S	S	S	S		
Parks and open space (See §2.5.3.F)	Cemeteries	S	S		P		S	S			
	Country club or golf course	P	P	P							
	Water-oriented recreational facilities, including swimming pools			P						S	
	All other parks & open space uses, including playgrounds	P	P	P	P	P	P	P	P	P	
Passenger terminals and services (See §2.5.3.G)	All passenger terminals & services	S	S	S	S	S	P	P	S		
Religious institution (See §2.5.3.H)	All religious institutions	P	P	S	P	P	S	S	S		§3.2.3
Social service institutions (§2.5.3.I)	All social service institutions	S	S	S	P	P	P	P	P		
Utilities, minor	All minor utilities	P	P	P	P	P	P	P	P	P	

PERMITTED (PRINCIPAL) USE TABLE											
Use Categories	Use Types	R-S	R-M	M-U	C-L	C-G	C-B	I-L	I-H	P-R	Use Standard
(See §2.5.3.J)											
Utilities, major (See §2.5.3.J)	All major utilities			S	S	S	S	S	P		
Commercial Uses (See §2.5.4)											
Eating and drinking establishments (See §2.5.4.A)	All eating & drinking establishments			P	P	P	P	P	P		
Entertainment, indoor (See §2.5.4.B)	Adult entertainment							S	S		§3.3.1
	Dance hall			S		S		P	P		
	All other indoor entertainment uses			P	S	P	P	P	P		
Entertainment, outdoor (See §2.5.4.B)	All outdoor entertainment			P	P	S	S	S			
Marine-related Commercial (See §2.5.4.C)	Marina or boat livery			P						S	
	All other marine-related commercial			P			P	P	P	S	
Offices (See §2.5.4.D)	Business & professional offices			P	P	P	P	P	P		
	Financial businesses			P		P	P	S			
	Radio & television studios & towers			S	S	S	P	P	P		
	All other office uses			S		P	P	P	P		
Overnight accommodations (See §2.5.4.E)	Bed and breakfasts	S	S	P	P	P	P	S	S		§3.3.3
	Hotels and motels			P	S	P	P	P	S		§3.3.7
	All other overnight accommodations			S	S	P	P	P	S		
Parking, commercial (See §2.5.4.F)	All commercial parking			P	P	P	P	P	P		
Retail sales and service, sales-oriented (See §2.5.4.G)	Building supply & lumber				S	S		P	P		
	Drug stores			P	P	P	P	P			
	Farmers market or farm stand	S	S	P	P	P	P	P			
	Flea market or auction				S	S	S	P			
	Furniture stores			P		P	P	P			
	Grocery and convenience stores		S	P	P	P	P	P			
	Home improvements stores			P		P	P	P			
	Manufactured home sales					P		P			
	All other retail sales and service, sales-oriented uses			P	S	P	P	P			
Retail sales and service, personal service-oriented (See §2.5.4.G.1(b))	Athletic or health clubs			P		P	P	P			
	Body art studios and tattoo parlors						P				
	Business and trade schools			P	P	P	P	P	P		§3.3.10
	Hair, nail, tanning or personal care services			P	P	P	P	P	P		§3.3.6
	Medical marijuana clinics and sales					S	S				
	Mortuaries or funeral homes				P	P	P	P	S		
	Laundromats		S		P	P	P	P	P		§3.3.8
	All other retail sales and service, personal service-oriented uses			P	P	P	P	P			
Retail sales and service, repair-oriented (See §2.5.4.G.1(c))	Tailors, milliners & upholsterers				P	P	P	P	P		§3.3.11
	Repair of appliances, radios and televisions				P	P	P	P	P		§3.3.9
	All other retail sales & service, repair-oriented				P	P	P	P	P		

§2.5.1 GENERAL

PERMITTED (PRINCIPAL) USE TABLE											
Use Categories	Use Types	R-S	R-M	M-U	C-L	C-G	C-B	I-L	I-H	P-R	Use Standard
Self-service storage (See §2.5.4.H)	All self-service storage							P	P		
	Fuel stations, including full-service, mini-service & self-service				P	P	P	P	P		§3.3.5
Vehicle sales and service (See §2.5.4.I)	Vehicle service, general					P		P	P		§3.4.4
	Vehicle services, limited					P	P	P	P		
	All other vehicle sales and service				S	S		S	S		
Industrial Uses (See §2.5.5)											
Light industrial service (See §2.5.5.A)	Laundry & dry-cleaning plants					S		P	P		§3.4.1
	Printing, publishing & lithography					S		P	P		§3.4.2
	All other light industrial uses					S		P	P		
Heavy industrial (See §2.5.5.B)	Wholesale storage of petroleum products					S		S	S		
	All other heavy industrial uses								S		
Warehouse and freight movement (See §2.5.5.C)	All warehouse and freight movement uses					S		P	P		
Waste-related service (See §2.5.5.D)	All waste-related service uses	S	S		S	S	S	S	S		§3.4.3
Wholesale trade (See §2.5.5.E)	All wholesale trade uses					S	P	P	P		
Other Uses (See §2.5.6)											
Agriculture	Community gardens	S	P		P	P		P	P	S	
	Greenhouse or nursery	S	S		P	P	S	S	S		
Telecommunications facilities (See §2.5.6.A)	Telecommunications facilities (general)			S		S	S		S		

§2.5. USE CLASSIFICATION

§2.5.1. General

A. Use groups

This development ordinance classifies land uses into five major groupings: “residential,” “public and civic,” “commercial,” “industrial” and “other.” These are referred to as “use groups.”

B. Use categories

Each use group is further divided into more specific “use categories.” Use categories classify land uses and activities based on common functional, product, or physical characteristics. Characteristics include the type and amount of activity, the type of customers or residents, how goods or services are sold or delivered and site conditions.

C. Typical uses

Typical uses cited in the description of use categories are not intended to be exclusive or restrictive.

D. Use interpretations

The planning commission is authorized to classify specific use types into defined use categories based on the use category descriptions of this development ordinance. When a specific use type cannot be readily classified into a use category or appears to fit into multiple use categories, the zoning administrator is authorized to determine the most similar, and thus most appropriate, use category based on the following considerations:

1. the actual or projected characteristics of the activity in relationship to the stated characteristics of each use type;
2. the relative amount of site area or floor space and equipment devoted to the activity;
3. relative amounts of sales from each activity;
4. the customer type for each activity;
5. the relative number of employees in each activity;
6. hours of operation;
7. building and site arrangement;
8. vehicles used with the activity;
9. the relative number of vehicle trips generated by the use;
10. signs;
11. how the use advertises itself; and
12. whether the activity is likely to be found independent of the other activities on the site.

§2.5.2. Residential use group

The residential use group includes uses that provide living accommodations to one or more persons. The group includes two use categories: household living and group living.

A. Household living

Residential occupancy of a dwelling unit by a household on a month-to-month or longer basis. Uses where tenancy may be arranged for a shorter period are not considered residential; they are considered a form of lodging.

1. Examples

Examples of household living include single-family dwellings; duplexes; townhouses; manufactured homes; multi-family buildings; retirement center apartments; and vertical mixed-use buildings.

2. Accessory uses

Accessory uses include accessory dwelling units (if legally established); day care homes (when authorized by special use); greenhouses and nurseries not engaged in retail trade; garden for personal use; hobbies; home occupations; in-home care for fewer than six persons; parking of occupants' vehicles; raising of pets (not animal breeding; recreational activities; storage sheds; and swimming pools.

3. Uses not included

Bed and breakfast establishments; boarding or rooming houses (see group living); community residential homes (see group home); extended-stay facilities (see overnight

§2.5.3 PUBLIC AND CIVIC USE GROUP

accommodations); group home/other (more than 8 persons) (see group living); halfway house (see social service institutions); hotels/motels; inns; nursing or convalescent home (see group living); residential assisted living facility not having individual dwelling units (see group living).

B. Group living

Residential occupancy of a dwelling by other than a “household,” typically providing communal kitchen/dining facilities.

1. Examples

Examples of group living include but are not limited to assisted living facilities, dormitories, fraternity and sorority houses, convents, nursing homes, boarding houses, and student housing.

2. Accessory uses

Accessory uses include associated offices; garden for on-site occupants; food preparation and dining facilities; laundry facilities and services; parking of vehicles for occupants and staff; and recreational facilities.

3. Uses not included

Adult day care center (see day care), alternative or post-incarceration facilities, exclusive care and treatment for psychiatric, alcohol, or drug problems, where patients are residents (see social service institutions); bed and breakfast establishments; child care center (see day care); community residential homes or congregate care facilities, where individual units comply with the definition of a dwelling unit (see household living); extended-stay facilities, hotels/motels, inns (see overnight accommodations); day care home (see accessory uses and structures); residential occupancy of a dwelling unit by a household on a month-to-month or longer basis (see household living); time-shared interval ownership facility (see overnight accommodations); treatment centers, transient lodging or shelters (see social service institutions).

§2.5.3. Public and civic use group

The public and civic use group includes uses that provide public or quasi-public services. The public and civic use group includes the following use categories:

A. Community service

Uses of a public, nonprofit, or charitable nature providing ongoing education, training, or counseling to the general public on a regular basis, without a residential component.

1. Examples

Examples of community service include community centers; community gardens; libraries; museums; cultural exhibits; philanthropic institutions; senior centers; fraternal organizations; and youth club facilities.

2. Accessory uses

Accessory uses include associated offices; caretaker housing; food preparation and dining facilities; health, arts and crafts, child care and therapy areas; indoor or outdoor recreation and athletic facilities; limited retail sales; meeting areas; and parking.

3. Uses not included

Athletic or health clubs (see retail sales and service); churches, mosques, synagogues, or temples (see places of worship); counseling in an office setting (see office); parks (see parks and open areas); soup kitchen (see social service institutions); treatment centers, transient lodging or shelters for the homeless (see social service institutions).

B. Day care

Uses providing care, protection, and supervision for children or adults on a regular basis away from their primary residence. Care is typically provided to a given individual for fewer than 18 hours each day, although the facility may be open 24 hours each day.

1. Examples

Examples of day care include adult day care, day care centers and day care facilities; day care homes are an accessory use (see §3.5 for more information).

2. Accessory uses

Accessory uses include associated offices; food preparation and dining facilities; health, arts and crafts and therapy areas; indoor or outdoor recreation facilities; and parking.

3. Uses not included

Counseling in an office setting (see office); family day care for fewer than six persons (see accessory use); on-site schools or facilities operated in connection with a business or other principal use where children are cared for while parents or guardians are occupied on the premises (see accessory use).

C. Educational facilities

Public and private (including charter or religious) schools at the primary, elementary, middle, junior high, or high school level that provide basic academic education. Also includes colleges and other institutions of higher learning that offer courses of general or specialized study leading to a degree usually in a campus setting.

1. Examples

Examples of educational facilities include boarding schools; community colleges; elementary schools; high schools; liberal arts colleges; middle schools; military academies; nursing and medical schools not accessory to a hospital; private schools; seminaries; universities.

2. Accessory uses

Adult continuing education programs; associated offices; auditoriums; before- and after-school child care; cafeterias; child care; food services; health facilities; housing for students and faculty; laboratories; libraries; maintenance facilities; meeting areas; parking; play areas; recreational and sports facilities; support commercial (a college-operated bookstore, for example); and theaters.

3. Uses not included

Business, driving, fitness/wellness, trade and other commercial schools (see retail sales and service); dance, art, music studios or classes (see retail sales and service); preschools or nursery schools (see child care).

D. Government facilities

Offices, storage, maintenance and other facilities for the operation of local, State, or Federal government.

1. Examples

Examples of government facilities include city hall; courthouse; detention or correctional centers; emergency medical and ambulance stations; bus stops; fire stations; government offices; local, state, or federal offices; municipal office center; police stations; and post offices.

2. Uses not included

Educational facilities (see educational facilities); maintenance facilities not associated with government facilities (see light industrial service); parks and recreational facilities (see parks and open areas); utilities (see utilities); waste-related service (see waste-related service).

E. Medical facilities

Uses providing medical or surgical care to patients possibly offering overnight care.

1. Examples

Examples of medical facilities include blood plasma donation centers; hospitals; and medical centers.

2. Accessory uses

Accessory uses include associated helicopter landing facilities; auditorium and meeting rooms; cafeterias; stealth telecommunications; child care; holding cells; infirmaries; limited fueling facilities; parking; and satellite offices.

3. Uses not included

Exclusive care and treatment for psychiatric, alcohol, or drug problems, where patients are residents (see social service institutions); nursing and medical schools not accessory to a hospital (see educational facilities); urgent care or emergency medical offices (see retail sales and service)

F. Parks and open space

Uses focusing on natural areas consisting mostly of vegetation, and passive or active outdoor recreation areas and having few structures.

1. Examples

Examples of parks and open space include botanical gardens; cemeteries and mausoleums; community gardens; country club or golf course; forest and nature preserves; game and wildlife management preserves (where shooting of wildlife is not allowed); mini-parks; memorial parks; pocket or neighborhood parks; play fields; reservoirs; squares, plazas or greens; tot lot and playgrounds; and water-dependent recreation facilities.

2. Accessory uses

Accessory uses include boat docks; boat house; basketball courts; clubhouses, with or without restaurants; concessions; maintenance facilities; parking; play equipment;

recreational trails; single residential unit for caretaker or security purposes; swimming pools; and tennis courts.

3. Uses not included

Athletic or health clubs (see retail sales and service); golf driving ranges and miniature golf facilities (see entertainment); membership clubs and lodges (see entertainment); water park (see entertainment); water towers, tanks and standpipes (see utilities)

G. Passenger terminal and service

Facilities for the takeoff and landing of airplanes and helicopters and terminals for taxi, rail or bus service.

1. Examples

Examples include airports; bus passenger terminals; heliports; landing strips; taxi dispatch center; and train passenger terminals.

2. Accessory uses

Accessory uses include associated offices; concessions; freight handling areas; fueling facilities; limited retail; maintenance facilities; and parking

3. Uses not included

Private helicopter landing facilities that are accessory to another use (see medical or government facilities); public transit facilities, bus shelters, and park-and-ride facilities (see retail sales and service).

H. Religious institution

Places of assembly that provide meeting areas for religious practice.

1. Examples

Examples of religious institutions include synagogues, temples, mosques and churches.

2. Accessory uses

Accessory uses include associated offices; food services and dining areas; meeting room/classroom for meetings or classes not held on a daily basis; parking; on-site child care, schools or facilities where children are cared for while parents or guardians are occupied on the premises or a site-sponsored special event, but not on a daily basis; and staff residences located on-site.

3. Uses not included

Athletic or health clubs (see retail sales and service); educational facilities (see educational facilities); preschools, child care centers, nursery schools, latch-key programs, intermediate childcare, or adult day care programs (see day care); senior centers, community centers or social service facilities (see Community service); soup kitchen (see social service institutions); treatment centers, transient lodging or shelters for the homeless (see social service institutions)

I. Social service institution

Uses that primarily provide treatment of those with psychiatric, alcohol, or drug problems, and transient housing related to social service programs.

§2.5.4 COMMERCIAL USE GROUP

1. Examples

Examples of social service institutions include alternative- or post-incarceration facilities; exclusive care and treatment for psychiatric, alcohol, or drug problems, where patients are residents; halfway houses; neighborhood resource centers; rehabilitative clinics; and social service facility, soup kitchen, transient lodging or shelter for the homeless.

2. Accessory uses

Accessory uses include adult educational facility; ancillary indoor storage; associated office; day care; food services and dining area; meeting room; parking; and staff residences located on-site.

3. Uses not included

Retirement living facility with individual self-contained dwelling units (see household living); assisted living facility without individual dwelling units, community residential home (see group living); cemetery, columbarium, mausoleum, memorial park (see parks and open areas); educational facility (see educational facilities); philanthropic institution (see community service).

J. Utilities

Public or private infrastructure serving a limited area with no on-site personnel (Minor Utility) or the general community and possibly having on-site personnel (Major Utility).

1. Examples**(a) Minor**

Examples of minor utilities include lift stations; navigational aids; stormwater retention and detention facilities; telephone exchanges; and water and wastewater pump stations.

(b) Major

Examples of major utilities include electrical generating plants and substations; electrical transmission facilities; stormwater pumping station; television and radio broadcasting transmitters; wastewater treatment plants; water treatment plants; and water towers, tanks or standpipes; and railroad right-of-way (new).

2. Accessory uses

Accessory uses include control, monitoring, data or transmission equipment; parking; cell antennae; storage; and security measures, such as fences.

3. Uses not included

Maintenance yards and buildings (see light industrial service); utility offices (see office); TV and radio studios (see office); reservoir (see parks and open areas); and telecommunications towers and facilities (see telecommunications towers and facilities)

§2.5.4. Commercial use group

The commercial use group includes uses that provide a business service or involve the selling, leasing or renting of merchandise to the general public. The commercial use group includes the following use categories.

A. Eating and drinking establishment

Establishments that prepare and sell food for on- or off-premise consumption.

1. Examples

Examples of eating establishments include bakery; coffee shops; drive-ins; fast food (with or without drive-through); outdoor vendors with permanent facilities; pizza delivery establishments; restaurants; restaurants and bar; small-scale catering establishments; and yogurt or ice cream shops.

2. Accessory uses

Accessory uses include decks and patios for outdoor seating; drive-through facilities; live music; off-street customer and employee parking; and valet parking facilities.

3. Uses not included

Bars and nightclubs (See entertainment).

B. Entertainment

Generally commercial uses, varying in size, providing daily or regularly scheduled recreation or entertainment-oriented activities. Such activities may take place outdoors or within a number of structures.

1. Examples**(a) Indoor entertainment**

Examples of indoor entertainment uses include adult establishment; bars and nightclubs; indoor entertainment activities such as bowling alleys, game arcades, pool halls, dance halls, movie or other theaters; membership clubs and lodges.

(b) Outdoor Entertainment

Examples of outdoor entertainment uses include batting cages; commercial golf driving ranges, miniature amusement parks, miniature golf facilities; flea markets; stadiums and arenas; and water parks.

2. Accessory uses

Associated offices; concessions; food preparation and dining areas; maintenance facilities; parking; and restaurants.

3. Use not included

Golf courses or country clubs (see parks and open areas).

C. Marine-related commercial

Commercial uses that require direct access to navigable waters.

1. Examples

Examples of water-oriented uses include dock or pier (commercial); charter fishing offices; dry storage of boats; ferry/water taxi; marina/boat livery; marine regulatory agencies; marine research and educational facilities; personal boat repair facilities; retail boat and marine equipment sales establishments; seafood retailers and markets; and wet storage of boats (commercial).

§2.5.4 COMMERCIAL USE GROUP

2. Accessory uses

Offices of marine-related businesses; selling, leasing or rental of covered or uncovered boat slips or dock space, dry storage space, boats and boat motors, marine fuel and lubricants, bait and fishing equipment; repair and maintenance of boats and boat motors; on-shore restaurants; and small boat hauling or launching facilities.

3. Uses not included

Water park (see outdoor entertainment).

D. Office

Activities conducted in an office setting and generally focusing on business, government, professional, medical, or financial services. These uses are compatible with residential uses and generate minimal traffic. Accessory uses generally have no external access or signs.

1. Examples

Examples of offices include advertising offices; business management consulting; counseling in an office setting; day labor employment agency; data processing; financial businesses such as lenders, investment or brokerage houses, collection agencies, or real estate and insurance agents; professional services such as lawyers, accountants, bookkeepers, engineers, or architects; medical and dental clinics; sales office; travel agency; television and radio studios; and utility offices.

2. Accessory uses

Accessory uses include cafeterias; child care; health facilities; meeting rooms; parking; on-site child care, schools or facilities where children are cared for while parents or guardians are occupied on the premises; other amenities primarily for the use of on-site employees; small retail operations for on-site workers (with limited external signage); small personal service operations for on-site workers (with limited external signage); and technical libraries.

3. Uses not included

Banks (see retail sales and service); contractors and others who perform services off-site, but store equipment and materials or perform fabrication or similar work on-site (see light industrial service); government offices (see government facilities); mailing or stenographic services (see light industrial service); mail-order houses (see wholesale trade); offices that are part of and located with a principal use in another category (see accessory use); research, testing and development laboratories (light industrial service); urgent care or emergency medical offices (see retail sales and service).

E. Overnight accommodation

Residential units arranged for short term stays of less than 30 days for rent or lease.

1. Examples

Examples of overnight accommodations include bed and breakfast establishments; condominium hotels; dwelling rentals; recreational vehicle parks and campgrounds; extended-stay facilities; hotels/motels; resort hotels and inns; and time-shared interval ownership facility.

2. Accessory uses

Accessory uses include associated offices; food preparation and dining facilities; laundry facilities; limited storage; meeting facilities; parking; and swimming pools and other recreational facilities

3. Uses not included

Transient lodging or shelters for the homeless (see social service institutions).

F. Parking, commercial

Facilities that provide parking not accessory to a specific use for which a fee may or may not be charged.

1. Examples

Examples of commercial parking include mixed parking lots (partially accessory to a specific use, partly to rent for others); public transit park-and-ride facilities; and short- and long-term fee parking facilities.

2. Accessory uses

Accessory uses include bus barns (see warehouse and freight movement); parking facilities that are accessory to a principal use, but that charge the public to park for occasional events nearby (see accessory use); sales or servicing of vehicles (see vehicle sales and service).

3. Uses not included

Parking facilities accessory to other permitted uses.

G. Retail sales and service

Companies or individuals involved in the sale, lease, or rental of new or used products, or providing personal services or entertainment to the general public.

1. Examples**(a) Sales-oriented**

Examples of sales-oriented retail sales and service include stores selling, leasing or renting consumer, home and business goods including alcoholic beverages; antiques; appliances; art; art supplies; baked goods; bicycles; building supplies and lumber; books; cameras; carpet and floor coverings; crafts; clothing; computers; convenience goods; dry goods; electronic equipment; fabric; flowers; furniture; flea market or auction; garden supplies; gifts; groceries; hardware; home improvements; household products; jewelry; medical supplies; musical instruments; pet food and/or pets; pharmaceuticals; photo finishing; picture frames; office supplies and equipment; plants; printed material; produce; sporting goods; stationery; tobacco and related products; vehicle parts; videos; and farmers markets or farm stand.

(b) Personal service-oriented

Examples of personal service-oriented retail sales and service including animal care facilities, veterinary clinics, animal hospitals, kennels and grooming services; athletic or health clubs; bike shop; body art studios and tattoo parlors; business, driving, trade and other commercial schools; dance, art, fitness/wellness, gymnastic or

§2.5.4 COMMERCIAL USE GROUP

music studios or classes; dry-cleaning and laundry drop-off establishments; hair, nail, tanning and personal care services; laundromats; massage therapy; medical marijuana clinics and sales; mortuaries or funeral homes; pawn shops; photocopy, blueprint and quick-sign services; photographic studios; psychics and mediums; security services; taxidermists; and urgent care or emergency medical offices.

(c) **Repair-oriented**

Examples of repair-oriented retail sales and service include locksmiths; repair of appliances, bicycles, canvas products, clocks, computers, guns, jewelry, musical instruments, office equipment, radios, shoes, televisions and watches; and tailors, milliners and upholsterers.

2. **Accessory uses**

Accessory uses include single residential unit for security purposes; associated offices; food preparation and dining areas; kennels; manufacture or repackaging of goods for on-site sale; parking; parking lot/sidewalk sales; public transit facilities, bus shelters, and park-and-ride facilities; and storage of goods.

3. **Uses not included**

Adult entertainment; large-scale catering (see light industrial service); laundry and dry-cleaning plants (see light industrial service); lumber yards and other building material sales that sell primarily to contractors and do not have a retail orientation (see wholesale trade); repair and service of motor vehicles, motorcycles, recreational vehicles, boats, and light and medium trucks (see vehicle sales and service); restaurants (see eating establishments); sale or rental of machinery, equipment, heavy trucks, building materials, special trade tools, welding supplies, machine parts, electrical supplies, janitorial supplies, restaurant equipment and store fixtures (see wholesale trade).

H. **Self-service storage**

Facilities providing separate storage areas for personal or business use designed to allow private access by the tenant for storing or removing personal property.

1. **Examples**

Typical uses include mini-warehouses; and self-storage warehouses.

2. **Accessory uses**

Accessory uses include leasing offices; outside storage of boats and campers; and single residential unit for security purposes.

3. **Uses not included**

Rental of light or medium trucks (see vehicle sales and service); storage areas used as manufacturing uses (see light industrial services); storage areas used for sales, service and repair operations (see retail sales and service); transfer and storage businesses where there are no individual storage areas or where employees are the primary movers of the goods to be stored or transferred (see warehouse and freight movement)

I. **Vehicle sales and service**

Direct sales of and service to passenger vehicles, light and medium trucks and other consumer motor vehicles such as motorcycles, boats and recreational vehicles.

1. Examples

Examples of vehicles sales and service include fuel stations, including full-service, mini-service and self-service; general vehicle service, including auto body shops, auto paint shops, upholstery shops; limited vehicle service, including auto detailing, auto repair, battery sales and installation, quick lubrication facilities, tire sales and mounting, car washes; towing service; vehicle sales, rental, or leasing facilities, including passenger vehicles, motorcycles, light and medium trucks, boats and other recreational vehicles.

2. Accessory uses

Accessory uses include associated offices; parking; sales of parts; towing vehicle fueling; and vehicle storage.

3. Uses not included

Refueling facilities for fleet vehicles that belong to a specific use (see accessory use); retail sales of farm equipment and machinery and earth moving and heavy construction equipment (see industrial); vehicle parts sales as a principal use (see retail sales and service).

§2.5.5. Industrial use group

The industrial use group includes uses that produce goods from extracted materials or from recyclable or previously prepared materials, including the design, storage and handling of these products and the materials from which they are produced. It also includes uses that store or distribute materials or goods in large quantities. The industrial use group includes the following use categories:

A. Light industrial service

Firms engaged in the manufacturing, assembly, repair or servicing of industrial, business, or consumer machinery, equipment, products, or by-products mainly by providing centralized services for separate retail outlets. Contractors and building maintenance services and similar uses perform services off-site. Few customers, especially the general public, come to the site.

1. Examples

Examples of light industrial service include building, heating, plumbing or electrical contractors; building maintenance facilities and services; contractors and others who perform services off-site, but store equipment and materials or perform fabrication or similar work on-site; carpet cleaning plants; clothing or textile manufacturing; commercial bakery; dental laboratories; dry cleaning plants; exterminators; mailing and stenographic services; manufacture or assembly of consumer equipment, instruments (including musical instruments), appliances, precision items and other electrical items; movie production facilities; photo-finishing laboratories; printing, publishing and lithography; production of artwork and toys; research service; repair of scientific or professional instruments, electric motors; research, testing and development laboratories; sign making; storage areas used as manufacturing uses; truck stop or truck plaza; vehicle and equipment maintenance facilities; welding, machine and tool repair shops; woodworking, including cabinet makers and furniture manufacturing.

2. Accessory uses

Accessory uses include cafeterias; child care; employee recreational facilities; offices; parking; on-site repair facilities; single residential unit for security purposes; and storage.

3. Uses not included

Manufacture and production of goods from composting organic material (see waste-related service).

B. Heavy industrial

Firms typically involved in research, development, fabrication, manufacturing and assembly involving chemicals and plastics, steel and heavy metals, and industrial machinery. The uses emphasize industrial businesses and sale of heavier equipment. Often involve the process of manufacturing from raw materials to finished product and then the shipping of goods. Factory production and industrial yards are located here. Sales to the general public are limited. Uses of this nature are typically not compatible with residential uses.

1. Examples

Uses often involved in research and development, fabrication, manufacturing and assembly, industrial equipment and often involving steel and heavy metals, plastics, and the processing of raw materials into a finished product or state. Such uses can involve a level of noise, vibration, odor, emission, fumes, or other impact that is often considered incompatible with non-industrial uses. Examples of uses include but are not limited to: processing of food and related product; production of chemical, rubber, leather, clay, bone, paper, pulp, plastic, stone, or glass materials or products; production or fabrication of metals or metal products including enameling and galvanizing; bulk storage of flammable liquids; concrete batching and asphalt processing and manufacture; earth moving and heavy construction equipment; manufacturing of acid, acetylene, cement lime, gypsum or plaster-of-Paris, chlorine, corrosive acid or fertilizer, insecticides, disinfectants, fertilizer poisons, explosives, glue, paint, lacquer, varnish, petroleum products, coal products, plastic and synthetic resins; and wholesale storage of petroleum products.

2. Accessory uses

Accessory uses include cafeterias; drainage structures; offices; parking; product repair; repackaging of goods; warehouses; outdoor storage.

3. Uses not included

Animal waste processing (see waste-related service); repair and service of motor vehicles, motorcycles, RVs, boats, and light and medium trucks (see vehicle sales and service).

C. Warehouse and freight movement

Firms involved in the storage or movement of goods for themselves or other firms. Goods are generally delivered to other firms or the final consumer with little on-site sales activity to customers.

1. Examples

Examples of warehouse and freight movement include bus barn; cold storage plants, including frozen food lockers; household moving and general freight storage; parcel services; separate warehouses used by retail stores such as furniture and appliance stores; stockpiling of sand, gravel, or other aggregate materials; and transfer and storage businesses, where there are no individual storage areas or where employees are the primary movers of the goods to be stored or transferred.

2. Accessory uses

Accessory uses include cafeterias; child care; employee recreational facilities; offices; parking; outdoor storage yard; single residential unit for security purposes; and truck fleet parking and maintenance areas.

3. Uses not included

Mini-warehouses, multi-story enclosed storage facilities or storage garages (see self-service storage); solid or liquid waste transfer or composting (see waste-related service).

D. Waste-related service

Characterized by uses that receive solid or liquid wastes from others for transfer to another location and uses that collect sanitary wastes or that manufacture or produce goods or energy from the composting of organic material.

1. Examples

Examples of waste-related service include auto wrecking, animal waste processing; landfill; manufacture and production of goods from composting organic material; recycling centers; solid or liquid waste transfer or composting; and wrecking or salvage yard.

2. Accessory uses

Accessory uses include offices, parking, on-site refueling and repair, recycling of materials, and repackaging and shipment of by-products.

3. Uses not included

Stockpiling of sand, gravel, or other aggregate materials (See Warehouse and Freight Movement).

E. Wholesale trade

Firms involved in the sale, lease, or rent of products primarily intended for industrial, institutional, agricultural, or commercial businesses. The uses emphasize on-site sales or order-taking and often include display areas. Businesses may or may not be open to the general public, but sales to the general public are limited. Products may be picked up on-site or delivered to the customer.

1. Examples

Examples of wholesale trade include lumber yards and other building material sales that sell primarily to contractors and do not have a retail orientation; beverage distribution facilities; mail-order houses; sale or rental of machinery, equipment, heavy trucks, building materials, special trade tools, welding supplies, machine parts, electrical supplies, janitorial supplies, restaurant equipment and store fixtures; wholesale of food, clothing, auto parts and building hardware.

2. Accessory uses

Accessory uses include cafeterias, child care, minor fabrication services, offices, parking, product repair, repackaging of goods, single residential unit for security purposes, and warehouses.

§2.5.6 OTHER USE GROUP

3. Uses not included

Stores selling, leasing, or renting consumer, home and business goods (see retail sales and service); warehouse and freight movement uses (see warehouse and freight movement).

§2.5.6. Other use group

The “other” use group includes the following:

A. Telecommunications facilities**1. Characteristics**

Telecommunications facilities are signal distribution systems used or operated by a telecommunications carrier under a license from the FCC consisting of a combination of improvements and equipment including (i) one or more antennas, (ii) a supporting structure and the hardware by which antennas are attached; (iii) equipment housing; and (iv) accessory building and equipment such as signal transmission cables and miscellaneous hardware.

2. Accessory use

Accessory uses may include transmitter facility buildings.

3. Examples

Examples include broadcast towers, attached telecommunications facilities, telecommunications support towers and point-to-point microwave towers.

4. Uses not included

Amateur radio facilities that are owned and operated by a federally-licensed amateur radio station operator and receive-only antennas (see accessory uses); radio and television studios (see office category).

§2.6. INTENSITY AND DIMENSIONAL STANDARDS**§2.6.1. General**

This section provides the intensity and dimensional standards that apply in the city’s zoning districts.

§2.6.2. M-U district intensity and dimensional standards

Intensity and dimensional standards that apply in MU district intensity and dimensional standards are as follows:

A. Density

1. Single family and two family residential uses, not exceed twelve units per acre.
2. Multiple family uses shall not exceed 72 units per acre.
3. Townhouses shall not exceed 34 units per acre.

B. Lot coverage

Lot coverage, including all buildings and paved areas, shall not exceed 80 percent of the gross project area.

C. Bulk

No single story building shall exceed a 100,000 square foot building footprint.

D. Required yards (setbacks)

1. Minimum yards for single family dwellings shall be;
 - (a) Front: 10 feet
 - (b) Side: 5 feet
 - (c) Rear: 15 feet
2. Minimum yards for multiple family dwellings shall be;
 - (a) Front: 15 feet
 - (b) Side: 10 feet
 - (c) Rear: 30 feet
3. Maximum front yard for commercial or office uses shall be 25 feet.
4. Zero lot line provisions may be used for the side or rear setbacks of buildings provided:
 - (a) The building has an approved fire rating for zero-lot line development under the building code.
 - (b) The building has adequate vehicular and fire access preserved pursuant to fire code requirements.
 - (c) The zero lot line side is not adjacent to a street.
5. The following may encroach upon a required yard provided adequate fire access can be accommodated on site:
 - (a) mechanical equipment (in side or rear yards), architectural features, ramps for barrier free access, awnings, canopies, steps, stoops, service walkways, window wells, bay windows, chimneys, garages, balconies, porches, decks, hot tubs, barbeques, air conditioning, decks, utility meters, yard lights, basketball backboards, swimming pools, tennis courts, fountains, sculptures, trellises, etc.

E. Height**1. Minimum**

Commercial structures shall have a minimum height of 28 feet in height.

2. Maximum

- (a) Except for hotels and resorts, no building shall exceed 45 feet in height.
- (b) The following may encroach upon a required yard provided adequate fire access can be accommodated on site:
 - (1) Mechanical equipment (in side or rear yards); and
 - (2) Architectural features, ramps for barrier free access, awnings and steps (in any yard).

§2.6.3 ALL OTHER DISTRICTS

§2.6.3. All other districts

The following table illustrates the intensity and dimensional standards that apply in the city’s zoning districts; except for the M-U district, standards for which are found in §2.6.2. See also §2.8.

Editor’s Note. “Floor area ratio” and “impervious cover” are the appropriate tools for controlling the intensity of development in nonresidential districts, not minimum lot area.

ZONING DISTRICTS INTENSITY AND DIMENSIONAL									
Standard	R-S	R-M	C-L	C-G	C-B	I-L	I-H	P-R	
Lot area (min. sq. ft.)	7,500	7,500	n/a	n/a	n/a	n/a	n/a	n/a	
Lot area per unit (min. sq. ft.)									
Single-family dwellings	7,500	7,500	n/a	n/a	n/a	n/a	n/a	n/a	
Two-family dwellings	n/a	3,750	n/a	n/a	n/a	n/a	n/a	n/a	
Multiple-family dwellings	n/a	2,500	n/a	n/a	n/a	n/a	n/a	n/a	
Townhouses	n/a	2,500	n/a	n/a	n/a	n/a	n/a	n/a	
Upper story residential	n/a	n/a	none	none	none	n/a	n/a	n/a	
Lot width (min. ft.)									
Single family dwellings	60	60	n/a	n/a	n/a	n/a	n/a	n/a	
Two-family dwellings	n/a	30	n/a	n/a	n/a	n/a	n/a	n/a	
Multiple-family dwellings	n/a	100	n/a	n/a	n/a	n/a	n/a	n/a	
All other uses	60	25	n/a	n/a	n/a	n/a	n/a	n/a	
Yard, required (min. ft.)									
Front	30	25	15	15	0	15	15	15	
Side (interior)									
Up to 24 ft. high	5	5	10	10	0	10	10	10	
Over 24 ft. high	5	10	10	10	0	10	10	10	
Side (street)									
Up to 24 ft. high	30	25	10	10	0	10	10	10	
Over 24 ft. high	30	25	30	30	0	30	30	30	
Rear	30	25	25	25	30	30	30	30	
Height (max.)									
(feet)	35	45	35	45	120	90	60	45	
(stories)	2 1/2	3	n/a	n/a	n/a	n/a	n/a	n/a	
Impervious surface (%)	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	
Floor area ratio	n/a	n/a	n/a	3.0	10.0	n/a	n/a	n/a	

§2.7. M-U DISTRICT STANDARDS

§2.7.1. Applicability

The provisions of this section apply to all development in the M-U district. Any other provisions within this ordinance which are contradictory to the purposes of the M-U district (see §2.2) or in conflict with the provisions of this section shall not apply to the M-U district.

§2.7.2. Design components

Site and building design are key components of any mixed use development. The provisions of this article have been developed to coordinate a mixture of land uses with the intent to:

- A. Establish and maintain high aesthetic standards;
- B. Ensure that improvements are properly related to surrounding developments;
- C. Encourage flexibility in architectural design and building size; provided that they are compatible and harmonious with nearby areas; and
- D. Encourage areas devoted primarily to pedestrians by separating pedestrian and vehicular circulation patterns.

§2.7.3. Land use

- A. A minimum of 15 percent of the overall site shall be devoted to open space.
- B. Drive-through facilities are prohibited in the M-U district.
- C. Accessory home occupations shall be permitted, provided:
 1. No person other than the resident occupants shall be engaged in the home occupation.
 2. The use of the dwelling unit for the home occupation shall be clearly incidental and subordinate to its use for residential purposes by its occupants. The home occupation shall be operated in its entirety within the principal dwelling, but shall not, in any case, exceed a total floor area of 25 percent of the total gross floor area of the dwelling unit.
 3. There shall be no change in the outside appearance of the building or premises, or other visible evidence of the conduct of the home occupation.
 4. No retail or other sales of merchandise or products shall be conducted upon the premises except for incidental products related to the home occupation or those goods actually produced on the premises.
 5. Any traffic generated by the home occupation shall not be so great as to cause adverse effects within or upon the surrounding neighborhood. Parking areas for a home occupation shall be located on a hard-surfaced area.
 6. No equipment or process shall be used in a home occupation which creates noise, vibration, glare, fumes, odors, or electrical interference detectable to the normal senses off the premises, if the occupation is conducted in a single-family dwelling, or outside the dwelling unit if conducted in other than a single-family dwelling. In case of electrical interference, no equipment or process shall be used which creates visual or audible interference in any radio or television receivers off the premises, or cause fluctuation in line voltage off the premises.

§2.7.4 SITE DEVELOPMENT STANDARDS

§2.7.4. Site development standards**A. Building design**

1. Buildings shall have a variety of architecture including but not limited to cornices, belt courses, sills, lintels, bay windows, wall insets, arcades, balconies and window projections.
2. The front face of commercial structures devoted to retail shall have a minimum of 60 percent non-reflective glass on the first floor and all other commercial structures shall have a minimum of 30 percent non-reflective glass on the first floor. This measurement shall be applied between two feet and eight feet above grade.
3. Upper stories of any commercial structure shall consist of a minimum of 30 percent non-reflective glass.
4. Any side of a commercial or multiple family building facing a road shall be covered with, or constructed of, at least 50 percent brick or decorative concrete block. In no case shall sheet metal or cement board be considered an acceptable outdoor wall covering.

B. Garages

1. Attached garages for single family dwellings shall be offset at least one foot behind the front building line of the dwelling. Garage doors shall not comprise more than 50 percent of the front width of any structure.
2. Garages for multiple family developments shall not face the street frontage.

C. Site amenities

1. Site amenities such as benches, trash receptacles, bus stops, bus turn-outs, etc. shall be provided where necessary to encourage or accommodate pedestrians.
2. Outdoor cafes and roof seating areas are encouraged, and may be approved by the zoning administrator provided:
 - (a) The area devoted to outdoor seating must be ancillary to a main use.
 - (b) Pedestrian circulation and access to the building entrance shall not be impaired. A minimum of five feet of sidewalk along the curb and leading to the entrance to the establishment must be maintained free of tables, chairs, and other encumbrances.
 - (c) The seating area shall be limited to the area directly in front of or at the side of the use to which the seating area is accessory and shall not extend into adjoining sites.
 - (d) Tables, chairs, umbrellas, canopies, planters, waste receptacles, and other elements of street furniture shall be compatible with the architectural character of the main building.
 - (e) Outdoor amplification shall not be a nuisance to neighboring properties.
 - (f) The area devoted to outdoor service shall not encroach upon or extend over any public right-of-way.
 - (g) A site plan shall clearly depict the seating area and location and style of tables and chairs, reflecting ample aisles for pedestrian traffic.

- (h) The outdoor seating area shall not obstruct visibility of on-coming pedestrians or vehicular traffic.
- (i) All outdoor furnishings shall be completely removed from sidewalk areas no later than December 1, through March 1 of each year.
- (j) The area devoted to outdoor dining shall be maintained in a safe, clean, and sanitary manner.
- (k) Roof seating shall comply with the building code.

D. Off-street parking

1. General

Required off-street parking for uses in the M-U district are as follows:

- (a) Parking lots shall generally be located at the rear or at the side of buildings and shall be screened from the sidewalk by low walls, fences or hedges.
- (b) Parking lots shall not abut street intersections.
- (c) The entire parking area of commercial and office uses, including parking spaces and maneuvering lanes, shall be surfaced with asphalt or concrete. Overflow areas for recreational uses are permitted to be gravel.
- (d) Access drives and maneuvering lanes for parking areas shall be a minimum of 12 feet in width for one-way traffic and 22 feet in width for two-way traffic but shall not exceed 36 feet in width.
- (e) Parking spaces shall not be less than nine feet wide by 18 feet deep.

2. Alternative compliance

The planning commission may defer construction of the required number of parking spaces if the following conditions are met:

- (a) Areas proposed for deferred parking shall be shown on the site plan, and shall be sufficient for construction of the required number of parking spaces in accordance with the requirements of this ordinance for parking area design and other site development requirements.
- (b) Alterations to the deferred parking area may be initiated by the owner or required by the zoning administrator.
- (c) All or a portion of the deferred parking shall be constructed if required by the zoning administrator or requested by the property owner upon a finding that the additional parking is needed.

3. Maximum parking requirement

- (a) To minimize excessive areas of pavement which detract from the aesthetics of an area and contribute to high rates of storm water runoff, no parking lot shall have parking spaces totaling more than an amount equal to ten percent (10%) greater than the minimum parking space requirements.
- (b) The planning commission, upon application, may grant additional spaces beyond those permitted in (1), above. In granting additional spaces the planning commission shall determine that the parking area otherwise permitted will be

§2.7.4 SITE DEVELOPMENT STANDARDS

inadequate to accommodate the minimum parking needs of the particular use and that the additional parking will be required to avoid overcrowding of the parking area. The actual number of permitted spaces shall be based on professional documented evidence of use and demand provided by the applicant.

4. Shared parking

- (a) The planning commission may approve a shared parking arrangement for two or more uses to utilize the same off-street parking facility where the operating hours of the uses do not significantly overlap.
- (b) Required parking shall be calculated from the use that requires the greatest number of spaces.
- (c) Should any use involved in the shared parking arrangement change to another use, the zoning administrator may revoke this approval and require separate parking facilities as required by this ordinance.

5. Signs

- (a) Wall signs of up to 10 percent of the front face of the commercial portion of the building are permitted. Wall signs may be placed on any wall but shall not be above the roof line.
- (b) One ground sign to announce a business center is permitted at a main road entry provided it does not exceed 32 square feet in area and eight feet in height. Signs shall not be located in the right-of way nor shall they block clear vision of travelers.
- (c) Signs shall pertain exclusively to the business carried on at the property.
- (d) Signs may be internally illuminated.
- (e) No pole signs are permitted.

6. Outdoor lighting

- (a) All utility lines serving internal development shall be underground.
- (b) Site lighting shall be limited to 25 feet in height.
- (c) Light fixtures (including those on buildings) shall be cut-off fixtures that direct light downward.
- (d) Canopy lighting shall be recessed into the canopy structure.

7. Access**(a) Driveways**

Access to each parcel or lot must be from an internal street and not from abutting major thoroughfares or arterials. The internal street system shall have curb and gutter design built to city specifications.

(b) Streets

- (1) A series of dead-ends and cul-de-sacs are prohibited except where recreational spaces or natural features prevent the continuation of a road or unless the

development is less than 15 dwelling units in size. The street system shall be interconnected with the community.

- (2) Rights of way may be reduced to 50 feet. At a minimum, road bases shall consist of three inches of asphalt over eight inches of gravel.

(c) Pedestrian access

- (1) All lots shall be served by a sidewalk. Residential sidewalks shall be a minimum of five feet in width and commercial sidewalks shall be a minimum of eight feet in width.
- (2) Sidewalks and other non-motorized links are required between neighboring uses and across the frontage of all lots

E. Landscaping, screening and buffering

1. Fencing and walls

- (a) Fences shall be used to define yards in single family residential areas. Fencing which is essentially open (e.g., wrought iron, chain link, split rail, or picket fence) may be up to 36 inches in height in the front yard.
- (b) Stockade fence and masonry walls shall be limited to 3 feet in height in the front yard.
- (c) Fences may be up to six feet in height behind the rear building line.
- (d) The decorative portion of any fence shall face adjacent properties.
- (e) Low level brick walls (3 feet in height), brick piers with wrought iron type fencing of four feet in height or a 10 foot wide landscape buffer shall be used to separate commercial parking areas from public areas at the sidewalk.

2. Landscaping

- (a) Primary internal circulation aisles and the street lawn of public roads shall be landscaped with canopy street trees of at least two inches in diameter, measured at four feet off the ground, and shall be planted on 30 foot centers.
- (b) Between commercial and residential uses and between multi-family and single family uses, perimeter side and rear setbacks shall have a landscaped buffer strip of at least 15 feet deep, unless a 4foot brick wall is provided at the property line.
- (c) The following trees are not permitted for landscaped areas but may be allowed if existing in natural areas:
 - (1) Box Elder
 - (2) Populus species
 - (3) Horse Chestnut (nut bearing)
 - (4) Tree of Heaven
 - (5) Catalpa
 - (6) Slippery Elm
 - (7) Silver maple

§2.7.4 SITE DEVELOPMENT STANDARDS

- (8) European Barberry
 - (d) Parking areas shall be landscaped with one deciduous canopy or ornamental tree and three shrubs for each 10 parking spaces. Parking lot landscaping may be provided in bump-outs on the perimeter of the lot, may be grouped in clusters rather than in separate landscape islands, or may be provided in boulevards or internal pedestrian walkways.
 - (e) Landscaped areas shall be covered by grass or other living ground cover or wooden mulch.
3. Buffering
- (a) Berms and swales shall be constructed with slopes not to exceed a 1:3 gradient with side slopes designed and planted to prevent erosion.
 - (1) Slopes shall be protected with sod, seed, shrubs or other form of natural groundcover.
 - (2) Berms shall be no more than four feet height and shall be a minimum of two feet in width at the highest point of the berm.
 - (b) Dumpsters, mechanical equipment, loading spaces and outdoor storage shall be screened by landscaping, wall or stockade fence of up to six feet in height as determined by the planning commission during site plan review.

§2.8. MEASUREMENTS AND EXCEPTIONS

§2.8.1. General

A. Lot reduction

No lot, even though it may consist of one or more adjacent lots of record in single ownership, shall be reduced in size so that the lot area per unit, lot width, yard and lot coverage requirements, and other requirements of this ordinance are not maintained. This prohibition shall not be construed to prevent the purchase or condemnation of narrow strips of land for public utilities or street right-of-way purposes.

B. Building separation

1. Separation of nonresidential buildings

More than one nonresidential building may be located upon a lot or tract, provided such buildings conform to all setbacks requirements for the district in which the lot or tract is located.

2. Separation of buildings used for residential, institutional or hotel

More than one residential, institutional or hotel building may be located upon a lot or tract, provided the separation between buildings that are parallel or within 45 degrees of being parallel shall be a minimum of 20 feet for one story buildings, 30 feet for two story buildings and 40 feet for three or more story buildings.

3. Minimum width of open yard area surrounded by buildings

Where an open yard area is more than 50 percent surrounded by residential use(s) or accommodations, the minimum width of the open yard area shall be at least 20 feet for one story, buildings, 30 feet for two story buildings, and 40 feet for three or more story buildings.

§2.8.2. Density

A. Calculation

Density is calculated as the number of dwelling units per gross acre located within the development site.

B. Multiple districts

If the development site is located in more than one zoning district, the maximum number of dwelling units allowed must be determined separately for that portion of the site lying within each respective zoning district.

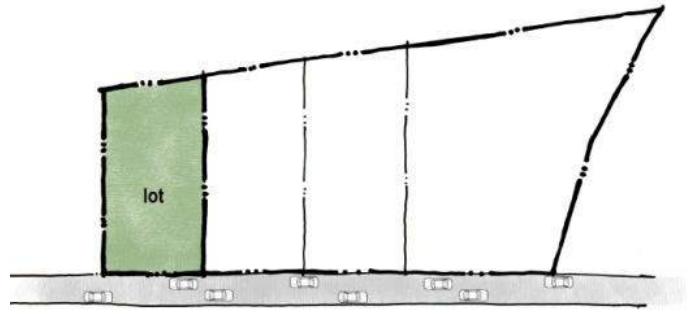
§2.8.3. Area

Area shall be measured in gross square feet or acres.

§2.8.3 AREA

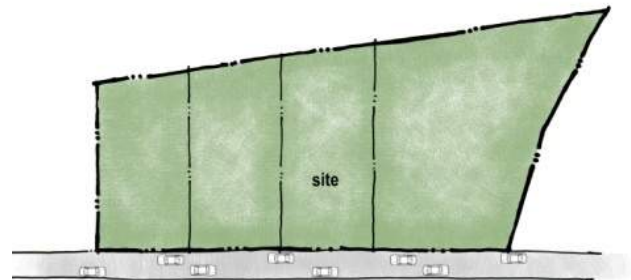
A. Lot area

1. A single lot of record.
2. Lot area shall be that area contained within the property lines of a single, undivided piece of land.
3. If a lot falls within multiple zoning districts, the minimum lot area requirements for the most restrictive district shall be met.



B. Site area

1. A continuous quantity of land to be developed as a single project. A site may include more than one lot.
2. Site area shall be the total land area contained within the property lines of a development site.
3. A site may include multiple lots.



C. Lot area per unit

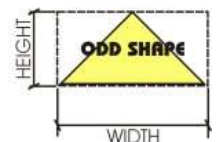
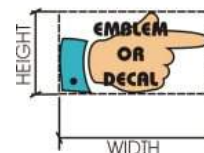
Lot area per unit refers to the amount of lot area required for each dwelling unit on the subject lot.

Commentary: For example, if a minimum lot area per unit standard of 1,000 square feet were applied to 7,000 square foot lot, a maximum of seven dwelling units would be allowed on that lot.

D. Sign area

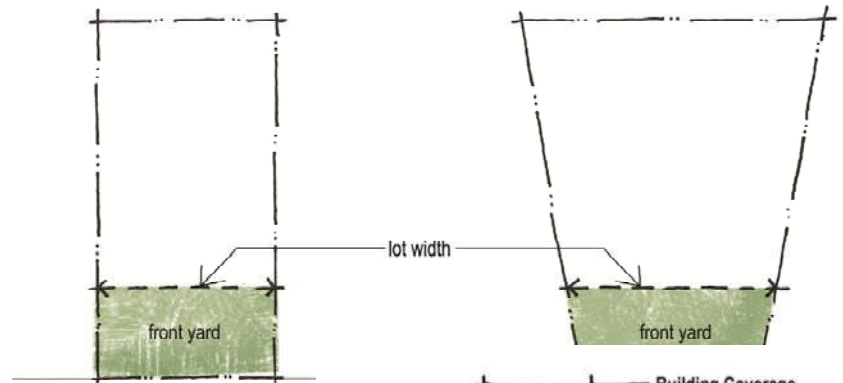
The area of all signs shall be computed as follows:

1. The area of a wall sign which consists of individual letters that are erected directly onto a wall is measured by finding the area of the minimum imaginary or actual rectangle or square which fully encloses all sign words, copy or message.
2. The area of a sign with three or more sides shall be computed as the sum of the area of each side designed either to attract attention or communicate information.
3. The area of any other sign is measured by finding the area of the minimum imaginary or actual rectangle or square which fully encloses all extremities of one side of the sign, exclusive of its supports.



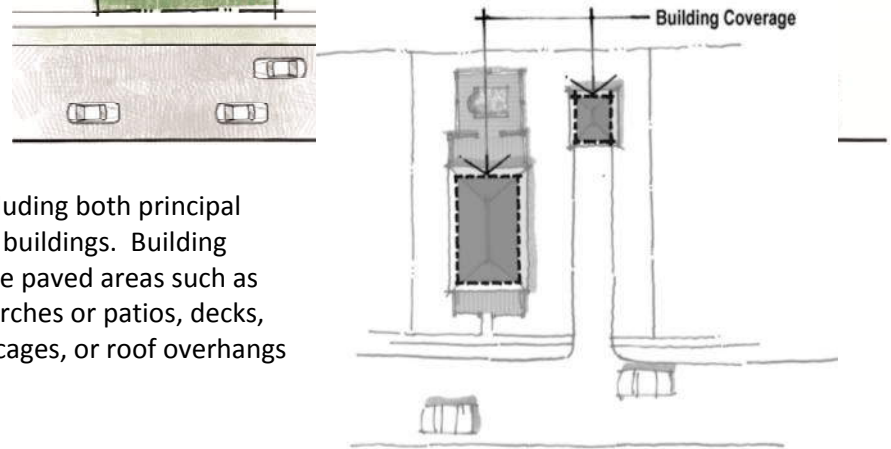
§2.8.4. Lot width

Lot width is the horizontal distance between the side property lines of a lot measured at the point of the minimum front setback.



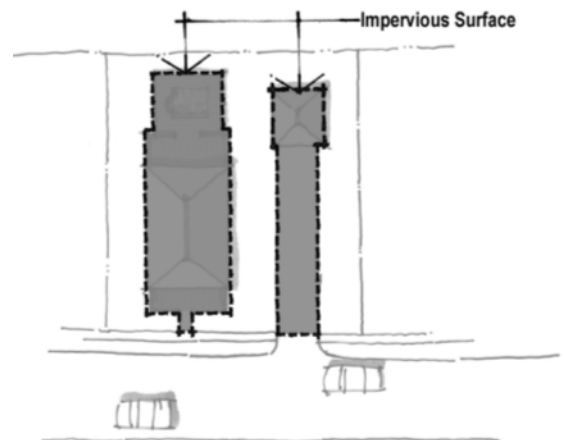
§2.8.5. Building coverage

Building coverage is the maximum area of the lot that is permitted to be covered by buildings, including both principal structures and accessory buildings. Building coverage does not include paved areas such as driveways, uncovered porches or patios, decks, swimming pools or pool cages, or roof overhangs of less than three feet.



§2.8.6. Impervious surface

Impervious surface is the maximum area of the lot that is permitted to be covered by buildings, including both principal structures and accessory buildings, paved areas such as swimming pools, driveways, uncovered porches or patios, or solid decks.



§2.8.7. Height

A. Building height

1. Residential uses

Building height for residential uses is the vertical distance in feet from the grade at the base of a building to the highest point of the coping of a flat roof, or to the deck line of a mansard roof, or to the ridge of a gable or pitched roof.

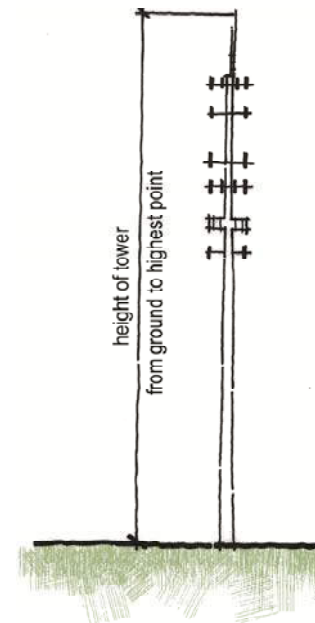


2. Nonresidential uses

Building height for nonresidential uses is the vertical distance from grade at the base of a building to the highest point of a flat roof, to the deck line of a mansard roof, or to the average height between the plate and the ridge of a gable or hip roof.

B. Telecommunications tower or structure height

Telecommunications tower or structure height is measured from ground level to the highest point on the telecommunications tower or structure, even if said highest point is an antenna.

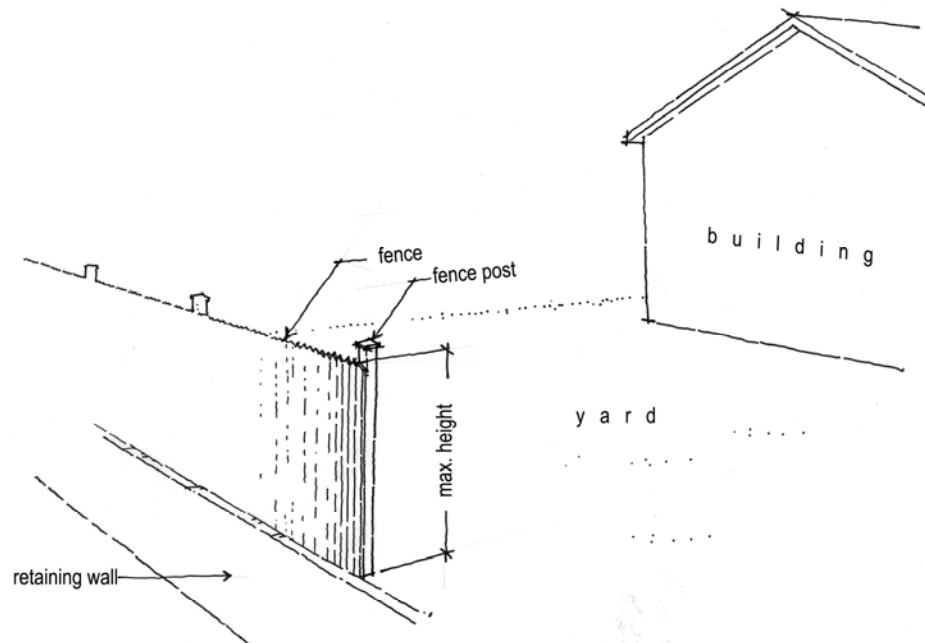


C. Amateur radio and receive-only antennas height

Antenna height is measured from ground level to the highest point on the antenna.

D. Fence or wall height

The height of fences or walls shall be measured as the vertical distance between finished grade on the highest side of the fence or wall to the top of the fence or wall, rather than to the top of the fence post or columns.



E. Sign height

The height of a sign shall be computed as the distance from the base of the sign at normal grade to the top of the highest attached component of the sign. For purposes of determining sign height, normal grade shall be construed to be the established grade at the front property line.

F. Exceptions

1. Public and semi-public buildings

Public and semi-public buildings, hospitals, institutions or schools, when permitted in a district, may be erected to a height not exceeding 60 feet, and churches and temples may be erected to a height not exceeding 75 feet if the building is set back from each yard line at least one foot for each two feet of additional building height above the height limit otherwise provided in the district in which the building is located.

2. Certain types of structures

- (a) Church spires, belfries, cupolas, domes, and other architectural embellishments not intended for human habitation may exceed maximum allowable height by up to 10 feet.
- (b) Chimneys, cooling towers, elevator bulkheads, fire towers, stacks, stage towers or scenery lofts, tanks, water towers, wireless towers, grain elevators, or necessary mechanical appurtenances are exempt from the height regulations as contained herein; provided, however, if over 75 feet in height a special use permit pursuant to §6.5 shall be required from the city commission.

3. Other structures

Maximum allowable height of any structure not listed in subsection 2, above, may be increased by special use permit pursuant to §6.5.

§2.8.8. Required yards (setbacks)

A. General

1. There are three types of required yards – front, side (interior or street) and rear yards.
2. Every part of a required yard shall be open to the sky, unobstructed by a building, except for accessory buildings in a rear yard, and except for:
 - (a) the ordinary horizontal projection of sills, belt courses, cornices, overhangs, and ornamental features projecting not to exceed 12 inches; and
 - (b) terraces, uncovered porches, platforms, decks, and ornamental features, which do not extend more than three feet above the grade level may project into a required yard, provided these projections be a distance of at least two feet from the adjacent side line lot line.
3. No part of a required yard shall be included as a part of a yard similarly required for another structure or use.

B. Front yards

1. Measurement

Front yards are measured from the front property line to the closest point of the building or structure.

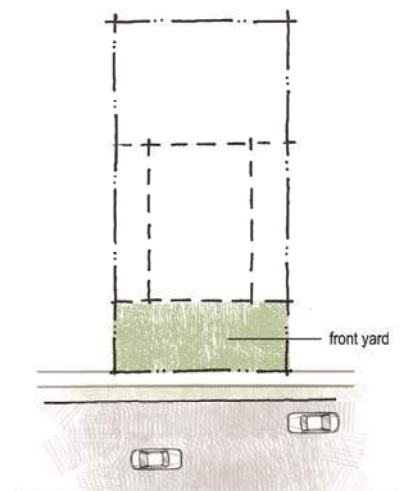
2. Exceptions

(a) Enclosed vestibules

Enclosed vestibules and porches containing not more than 40 square feet may project into a front yard for a distance not to exceed five feet.

(b) C-L or C-G district - abutting any residential district

Where a front yard of a lot in the C-L or C-G district abuts a front yard in a residential district, the front yard regulations of the abutting residential district shall apply.

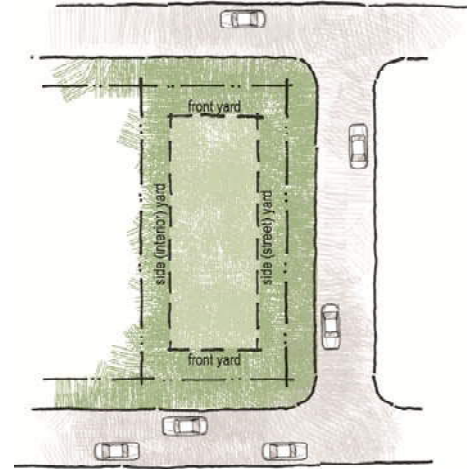


(c) Double frontage lots

Double frontage lots must have a required front yard on both opposing sides of the lot. For purpose of this provision, the front property line is the property line abutting the street.

(d) Corner lots

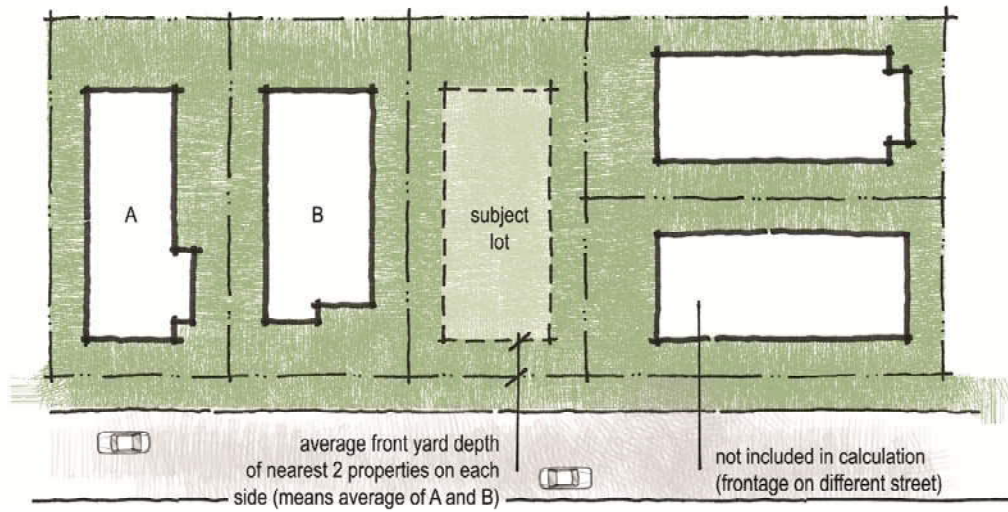
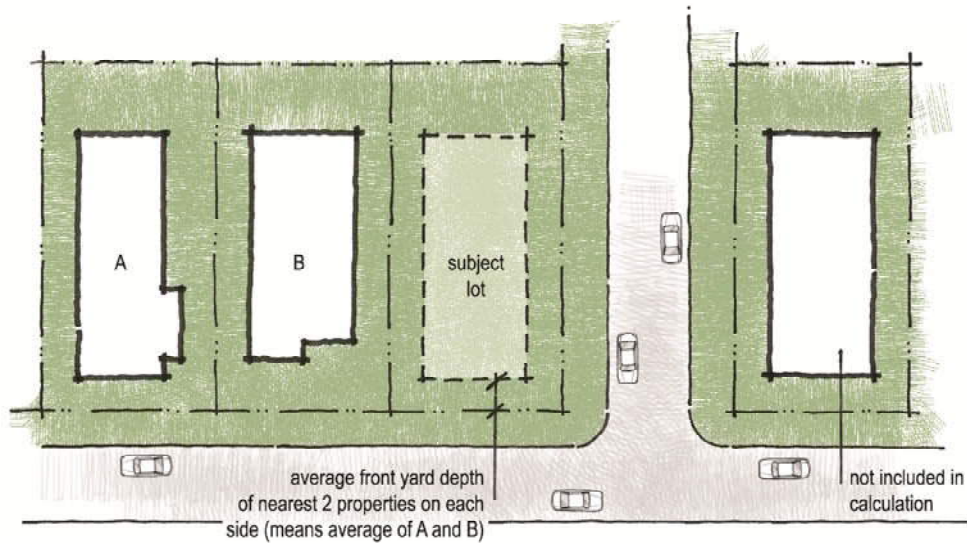
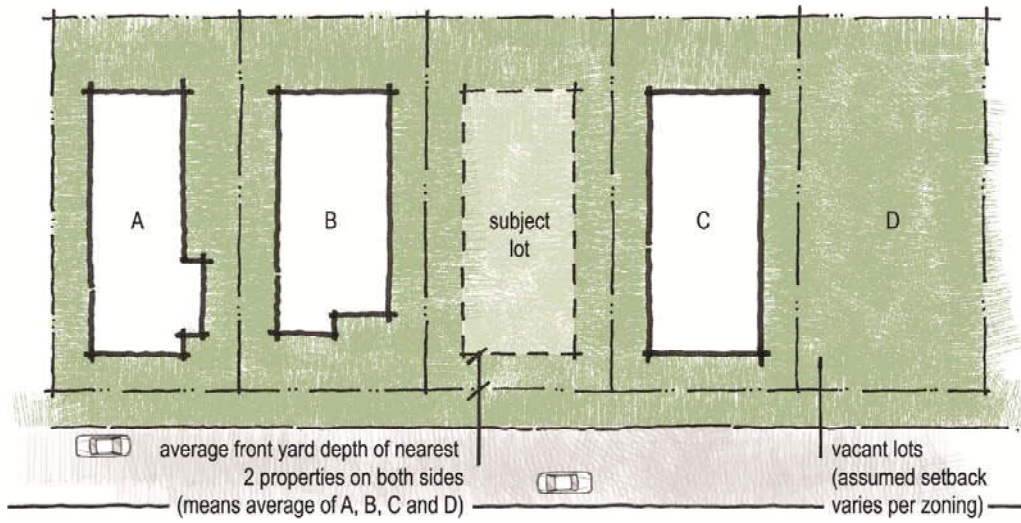
Corner lots shall have the required front yard on both streets, except that the Buildable width of a lot need not be reduced to less than 30 ft. unless necessary to provide a minimum yard of seven feet along the side street.

**(e) Front yard averaging, residential**

When existing lawfully established residential buildings on one or more abutting lots are closer to the front property line than the otherwise required front yard, additions to existing residential buildings or construction of new residential buildings on the subject lot may comply with the average front yard depth that exists on the nearest two lots on either side of the subject lot in lieu of complying with the zoning district's minimum front yard requirement.

- (1) If one or more of the lots required to be included in the averaging calculation are vacant, the vacant lots shall be deemed to have a front yard depth equal to the minimum front yard requirement of the underlying zoning district.
- (2) Lots that front on a different street than the subject lot or that are separated from the subject lot by a street or alley may not be used in computing the average.

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- (3) When the subject lot is a corner lot, the average front yard depth shall be computed on the basis of the nearest two lots that front on the same street as the subject lot.
- (4) When the subject lot abuts a corner lot fronting on the same street, the average front yard depth will be computed on the basis of the abutting corner lot and the nearest 2 lots that front on the same street as the subject lot.

(f) **I-H district - mixed district blocks**

Where the frontage on one side of the street between two intersecting streets is located partly in the I-H district and partly in a residential or commercial district, the front yard requirements of the residential or commercial district shall apply to the I-H district.

C. Side yards

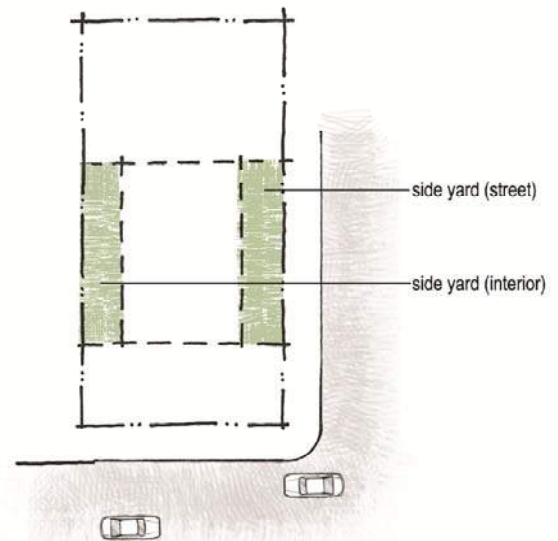
1. Measurement

Side yards are measured from the side (interior or street) property line (or right-of-way line) to the closest point of the building.

2. Exceptions

(a) **Additions to nonconforming structures**

When an existing nonconforming structure encroaches into the otherwise required side yard, additions to that nonconforming structure may also encroach, but no further than the nonconforming structure.



(b) **R-S district -- narrow lots of records**

In the R-S district, whenever a lot of record has a width of less than 50 feet, the side yard on each side of a building may be reduced to a width of not less than 10 percent of the width of the lot, but in no instance shall it be less than three feet.

(c) **C-L district -- adjacent to residential district**

In the C-L district, where a lot is used for any of the commercial purposes permitted in this district a side yard is not required except on the side of a lot abutting on a residential district, in which case there shall be a side yard of not less than five feet.

(d) **C-B district - nonresidential uses**

In the C-B district, nonresidential uses shall provide a side yard abutting a residential district of not less than 10 feet.

(e) I-L, I-H and P-R district - nonresidential uses

In the I-L, I-H and P-R districts, nonresidential uses shall provide a side yard abutting a residential district of not less than five feet.

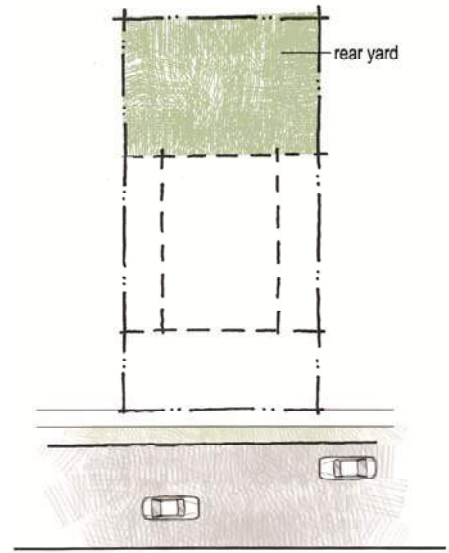
(f) Upper-story dwellings above commercial and industrial uses

3. No side yards are required where dwelling units are erected above commercial and industrial structures.

D. Rear yards

1. Measurement

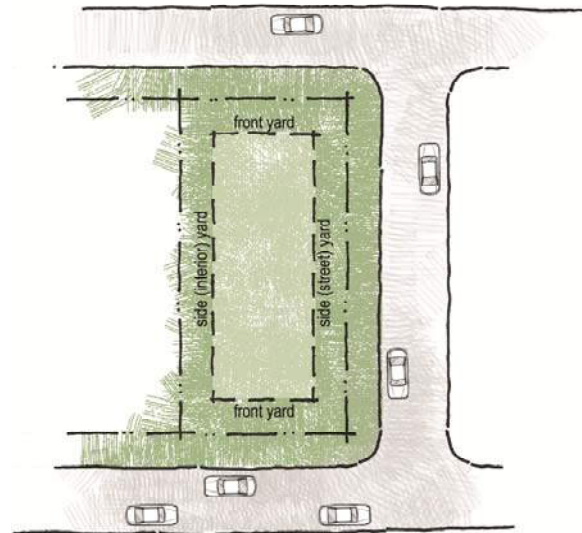
Rear yards are measured from the rear property line to the closest point of the building.



2. Exceptions

(a) Double frontage lots

On double frontage lots both (opposing) street lines are considered front property lines and front yard standards apply; rear yard standards do not apply.



(b) **Fire escapes, fire-proof outside stairways, balconies, and ordinary projections of chimneys and flues**

Open lattice-enclosed fire escapes, fire-proof outside stairways, and balconies opening upon fire towers, and the ordinary projections of chimneys and flues into the required rear yard may be permitted for a distance of not more than three and one-half feet and where the same are so placed as not to obstruct light and ventilation. (See also §3.5.3.C)

(c) **Additions to nonconforming structures**

When an existing nonconforming structure encroaches into the otherwise required rear yard, additions to that nonconforming structure may also encroach, but no further than the nonconforming structure.

(d) **R-S district -- reduction alternative**

In the R-S district, rear yard depth may be reduced to 20 percent of the depth of the lot. For purposes of this section, lot depth is measured from the any point on the front property line to the closest point of the rear lot line.

(e) **C-L district -- abutting residential district**

In the C-L district, a rear yard is not required except where a lot abuts a residential district, in which case there shall be a rear yard of not less than 10 feet.

(f) **C-G district - abutting residential district**

In the C-G district, a rear yard is not required except where a lot abuts upon a residential district, in which case there shall be a rear yard of not less than 20 feet for buildings 24-35 feet in height, and a rear yard setback of 30 feet for buildings greater than 35 feet in height.

(g) **C-B district - nonresidential uses**

In the C-B district, no rear yard is required for nonresidential uses.

(h) **I-L, I-H and P-R districts - nonresidential uses**

In the I-L, I-H and P-R districts, nonresidential uses abutting a residential district shall provide a rear yard of not less than 20 feet.

§2.8.9. Gross floor area (GFA)

A. Measurement

Gross floor area is the gross square feet of floor space within the area bound by the exterior walls of a building, not including space in cellars, basements, porches, garages nor any space with a ceiling height of less than that allowed in the Benton Harbor Housing Code.

B. Exception for structures over eight stories

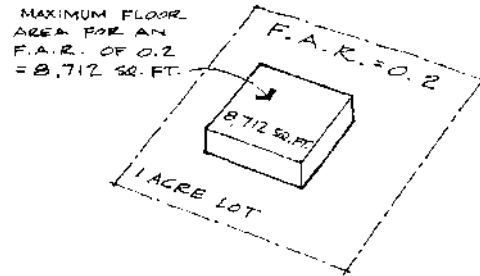
The floor area of a multiple dwelling structure may be reduced to 600 square feet of lot area per dwelling unit if the structure exceeds eight stories in height.

§2.8.10 FLOOR AREA RATIO

§2.8.10. Floor area ratio

A. Measurement

The floor area ratio of the building or buildings on a lot is the floor area of such building or buildings on that lot divided by the area of such lot. The floor area ratio requirements contained in this ordinance shall determine the maximum floor area allowable for the building or buildings (total floor area of both principal and accessory buildings) in direct ratio to the gross area of the lot.



FLOOR AREA RATIO (F.A.R.)

$$F.A.R. = \frac{\text{TOTAL BUILDING FLOOR AREA}}{\text{TOTAL LOT AREA}}$$

B. Exception

1. Buildings in the C-G and C-B districts may exceed the maximum height in exchange for public open area as follows:
 - (a) Where a building is set back from one or more lot lines, the floor area of such building may be increased by:
 - (1) Two square feet for each square foot of public open area in the C-G district; and
 - (2) Three square feet for each square foot of public open area in the C-B district.
 - (3) The provisions of this subsection (a) shall not be permitted for any public open area in excess of two-thirds of the total area of the lot; and
 - (b) The floor area of a building permitted by this section may be further increased by an amount equal to the area of public open landscaped space (as distinguished from parking space), provided upon the lot, except that not more than one additional story shall be allowed as a premium for such public open landscaped space.
 - (c) In either the C-G or the C-B district, whenever the minimum off-street parking requirements for any office, retail or commercial structure are exceeded, the floor area ratio may be increased by an amount equal to 300 times the number of excess parking spaces, divided by the total area of the lot.
2. Vehicular use areas and parking spaces provided for the residential portion of a lot or planned district development shall not be included in computing the floor area ratio of the lot or development.

Article 3. Use Standards

§3.1. RESIDENTIAL USES

§3.1.1. Day care

All day care shall comply with applicable State requirements.

§3.1.2. Single-family dwellings

Single-family dwellings shall provide a minimum gross floor area per family of 720 square feet and those minimum habitable floor areas as prescribed in the Benton Harbor Housing Code.

§3.1.3. Family residential facilities

Family residential facilities shall be State-licensed and may provide housing for up to six residents.

§3.1.4. Upper-story residential

Upper-story residential units shall be located on a floor(s) above a nonresidential use.

§3.2. PUBLIC AND CIVIC USES

§3.2.1. Educational facilities

Where educational facilities are permitted by special use permit pursuant to §6.5, all buildings shall be setback from all lot lines a distance of not less than one foot for each foot of building height and the maximum building coverage shall be 40 percent. (See §2.8.5 for more information)

§3.2.2. Hospitals

Where hospitals are permitted by special use permit pursuant to §6.5, all buildings shall be setback from all lot lines a distance of not less than one foot for each foot of building height and the maximum building coverage shall be 40 percent. (See §2.8.5 for more information)

§3.2.3. Religious institutions

Where religious institutions are permitted by special use permit pursuant to §6.5, all buildings shall be setback from all lot lines a distance of not less than one foot for each foot of building height and the maximum building coverage shall be 40 percent. (See §2.8.5 for more information)

§3.3. COMMERCIAL USES

§3.3.1. Adult entertainment

- A. No adult entertainment business shall be located on a lot within 1,500 feet of a residential district, a planned development with residential uses, a school, a child-care facility or another adult entertainment business.
- B. No person shall reside in or permit any person to reside in the premises of an adult entertainment business.
- C. No person shall operate an adult personal service business unless there is conspicuously posted in each room where such business is carried on a notice indicating the prices for all services performed by said business. No person operating or working at such a place of business shall solicit or accept any fees except those indicated on any such notice.

§3.3.2 ANIMAL CARE FACILITIES, VETERINARIAN CLINICS

- D. No person operating an adult entertainment business shall permit it to be used for acts of prostitution or to be frequented by known prostitutes who have been convicted of the act of prostitution within the last 24 months and any customers convicted of being customers of prostitutes within the last 24 months.
- E. No person operating an adult entertainment business shall permit any person under the age of 18 to be on the premises of said business either as an employee or customer.
- F. Comply with licensing requirements of the Municipal Code.

§3.3.2. Animal care facilities, veterinarian clinics

Animal care facilities and veterinarian clinics shall be permitted provided all animals are kept indoors.

§3.3.3. Bed and breakfasts

Bed and breakfast operations shall be permitted as a special use permit pursuant to §6.5, provided:

- A. The rooms utilized are a part of the primary residential use and not specifically constructed for rental purposes.
- B. The dwelling unit in which the bed and breakfast operation takes place shall be the principal residence of the owner/operator, and said owner/operator shall live on the premises when the bed and breakfast operation is active.
- C. Sufficient off-street parking shall be provided in addition to that required by §4.2 for residential purposes, at the rate of one parking space per room to be rented.
- D. The maximum stay for any occupants of bed and breakfast operations shall be 10 days.
- E. Signs are not permitted.

§3.3.4. Eating and drinking establishments

In the C-L district, all food that is prepared upon the premises shall be sold at retail thereon.

§3.3.5. Fuel stations, including full-service, mini-service and self-service

In the C-L district, fuel stations, including full-service, mini-service and self-service, shall be permitted provided that any building used primarily such purposes may have not more than 40 percent of the floor area devoted to storage purposes incidental to such primary uses.

§3.3.6. Hair, nail, tanning or personal care services

Hair, nail, tanning or personal care services with no more than two employees may be allowed in any district, where not otherwise permitted, by special use permit pursuant to §6.5.

§3.3.7. Hotels and motels

In the M-U district, hotels and motels shall not exceed a height of 80 feet or 8 floors.

§3.3.8. Laundromats

In the C-L district, laundromats shall have a maximum of five employees on site at any one time engaged in processing or treating materials or products on the premises. This limitation shall not apply to employees engaged in selling, clerical, delivery or similar activities.

§3.3.9. Repair of appliances, radios and televisions

In the C-L district, repair of appliances, radios and televisions shall have a maximum of five employees on site at any one time engaged in processing or treating materials or products on the premises. This limitation shall not apply to employees engaged in selling, clerical, delivery or similar activities.

§3.3.10. Business and trade schools

In the M-U district, business and trade schools and all related activities shall be conducted entirely indoors.

§3.3.11. Tailors, milliners and upholsterers

In the C-L district, tailors, milliners and upholsterers shall have a maximum of five employees on site at any one time engaged in processing or treating materials or products on the premises. This limitation shall not apply to employees engaged in selling, clerical, delivery or similar activities.

§3.4. INDUSTRIAL USES

§3.4.1. Laundry and dry cleaning plants

In the C-L district, laundry and dry cleaning plants shall have a maximum of five employees on site at any one time engaged in processing or treating materials or products on the premises. This limitation shall not apply to employees engaged in selling, clerical, delivery or similar activities.

§3.4.2. Printing, publishing and lithography

In the C-L district, printing, publishing and lithography establishments shall have a maximum of five employees on site at any one time engaged in processing or treating materials or products on the premises. This limitation shall not apply to employees engaged in selling, clerical, delivery or similar activities.

§3.4.3. Recycling facilities

A. Junk dealers permits required

1. No person shall place, construct, install, operate or permit the placement, construction, or operation of any recycling facility without first obtaining a permit pursuant to this section. Recycling facilities may be permitted as set forth in the following table. As used in the table, "alternative permit" is the permit that may be sought for the applicable recycling uses if the required permit is denied, or at the discretion of an applicant who does not want to comply with the standards for a secondhand, or junk dealer's license in Chapter 34, Article II, Division 2, Sections 34-31 through 34-35, of the Benton Harbor city Code.

JUNKYARD PERMIT SUMMARY		
Type of Facility	Districts	Permit Required
Small collection	C-G	Special use permit
Large collection	C-G, I-L and I-H	Special use permit
Light processing	I-L and I-H	Special use permit
Heavy processing	I-L and I-H	Special use permit and Secondhand and Junk Dealers License

B. Permits for multiple sites

A single special use permit pursuant to §6.5 may be granted to allow more than one small collection facility located on different sites under all of the following conditions:

1. The operator of each of the proposed facilities is the same;
2. The proposed facilities are determined by the zoning administrator to be similar in nature, size and intensity of activity.
3. All of the applicable criteria and standards set forth in subsection 4 are met for each such proposed facility.

C. Criteria and standards

Recycling facilities shall comply with all of the applicable criteria and standard listed. Recycling facilities permitted with a special use permit pursuant to §6.5 shall comply with the applicable criteria and standards, provided that the zoning administrator, planning commission, or city commission, as the case may be, may relax such standards or impose stricter standards as an exercise of discretion upon a finding that such modifications are reasonable and necessary in order to implement the general intent of this section and the purposes of Chapter 34, Article II, Division 2, Sections 34-31 through 34-35, of the Benton Harbor city Code. The criteria and standards for recycling facilities are as follows:

1. Small collection facility

A small collection facility may be sited in commercial and industrial zones with a special use permit provided they comply with all the following conditions:

- (a) Shall be established in conjunction with a commercial use or community service facility which is in compliance with the zoning, building and fire codes of the City of Benton Harbor.
- (b) They shall be no larger than 100 square feet and occupy no more than two parking spaces not including spacing that will be periodically needed for removal of materials or exchange of containers.
- (c) They shall be set back at least 10 feet from any street line and shall not obstruct pedestrian or vehicular circulation.
- (d) They shall accept only glass, metal, plastic containers, papers and reusable items.
- (e) They shall use no power-driven processing equipment.
- (f) They shall use containers that are constructed and maintained with durable waterproof and rustproof material, covered when the site is not attended, secured from unauthorized entry or removal of material, and shall be of a capacity sufficient to accommodate materials collected and collection schedule.
- (g) They shall store all recyclable matter in containers or in containers in the mobile unit vehicle, and shall not leave materials outside of containers when an attendant is not present.
- (h) They shall be maintained free of litter and any other undesirable materials, and mobile facilities, from which the truck or containers are removed at the end of each collection day, shall be swept at the end of each collection day.

- (i) They shall not exceed noise levels of 60 DBA as measured at the property line of residentially zoned or occupied property, otherwise shall not exceed 70 DBA.
- (j) Attended facilities located within 100 feet of a property zoned or occupied for residential use shall operate only during the hours between 9:00 a.m. and 7:00 p.m.
- (k) Containers for the twenty-four-hour donation of materials shall be at least 30 feet from any property zoned or occupied for residential use unless there is a recognized service corridor and acoustical shielding between the containers and the residential use.
- (l) Containers shall be clearly marked to identify the type of material which may be deposited. The facility shall be clearly marked to identify the name and telephone number of the facility operator and the hours of operation, and display a notice stating that no material shall be left outside the recycling enclosure or containers.
- (m) Signs may be provided in compliance with the city's sign regulations.
- (n) The facility shall not impair the landscaping required by local ordinances for any concurrent use, by this article or by any permit issued pursuant this ordinance or any other ordinance of the city.
- (o) No additional parking spaces will be required for customers of a small collection facility located at the established parking lot of a host use. One space will be provided for any attendant.
- (p) Mobile recycling units shall have an area clearly marked to prohibit other vehicular parking during hours when the mobile unit is scheduled to be present.
- (q) If the permit expires without renewal, the collection facility shall be removed from the site on the day following permit expiration.
- (r) Occupation of parking spaces by the facility and by the attendant may not reduce available parking spaces below the minimum number required for the primary host use unless all of the following conditions exist:
 - (1) The parking study shows that existing parking capacity is not already fully utilized during the time the recycling facility will be on the site.
 - (2) The permit will be reconsidered at the end of 12 months.
 - (3) A maximum five spaces reduction will be allowed when not in conflict with parking needs of the host use.

2. Large collection facility

A large collection facility is one that is larger than 100 square feet, or is on a separate property not appurtenant to a host use, and which may have a permanent building. A large collection facility is permitted in commercial and all industrial zones with a special use permit, provided the facility complies with the following standards:

- (a) The facility does not abut a property zoned or planned for residential use.
- (b) The facility will be screened from the public right-of-way by operating in an enclosed building or:

- (1) Within an area enclosed by an opaque fence at least six feet in height with landscaping;
 - (2) Is at least 150 feet from property zoned or planned for residential use; and
 - (3) Complies with all applicable noise standards in this ordinance.
- (c) Setbacks and landscape requirements shall be those provided for the zoning district, in which the facility is located.
 - (d) No exterior storage of “loose” recyclable material is allowed. All materials intended for exterior storage must be in enclosed containers maintained in good condition, and screened from view of public rights-of-way to the extent possible.
 - (e) The site shall be maintained free of litter and any other undesirable materials, and will be cleaned of loose debris on a daily basis.
 - (f) Space shall be provided on site for six vehicles or the anticipated peak customer load, whichever is higher, to circulate and to deposit recyclable material, except where the zoning administrator determines that allowing overflow traffic above six vehicles is compatible with surrounding businesses and public safety.
 - (g) One parking space will be provided for each commercial vehicle operated by the recycling facility.
 - (h) If the facility is located within 500 feet of property zoned, planned or occupied for residential use, it shall not be in operation between 7:00 p.m. and 7:00 a.m.
 - (i) Any containers provided for after-hours donation of recyclable materials will be at least 50 feet from any property zoned or occupied for residential use, shall be of sturdy, rustproof construction, shall have sufficient capacity to accommodate materials collected, and shall be secure from unauthorized entry or removal of materials.
 - (j) Donation areas shall be maintained free of litter and any other undesirable materials, and the containers will be clearly marked to identify the type of material that may be deposited; facility shall display a notice stating that no material shall be left outside the recycling containers.
 - (k) The facility shall be clearly marked with the name and phone number of the facility operator and the hours of operation. Identification and informational signs will comply with the standards of the underlying zoning district. Directional signs bearing no advertising message, may be installed with the approval of the zoning administrator, if necessary, to facilitate traffic circulation if the facility is not visible from the public right-of-way.
 - (l) Power-driven processing is not allowed.
 - (m) A light processing facility is permitted in all industrial zones with a special use permit. A large processor is permitted in the IH district with a secondhand and junk dealer’s license. A processor shall comply with the following requirements:
 - (1) The facility shall be located at least 125 feet from property zoned or planned for residential use.

- (2) In a Light Industrial zone, processors will operate in a wholly enclosed building or within an area enclosed on all sides by a fence or wall not less than six nor more than eight feet in height and landscaped on all street frontages.
- (n) Power-driven processing shall be permitted, provided all noise level requirements are met. Light processing facilities are limited to baling, brevetteing, crushing, compacting, grinding, shredding and sorting of source-separated recyclable materials and repairing of reusable materials.
- (o) A light processing facility shall be no larger than 45,000 square feet and shall have no more than an average of two outbound semi-truck shipments of material per day on residential streets, and may not shred, compact or bale ferrous metals other than food and beverage containers.
- (p) A processing facility may accept material for recycling in accordance with applicable local, county and state and federal laws, rules and regulations.
- (q) Setbacks and landscaping requirements shall be those provided for the zoning district in which the facility is located.
- (r) All exterior storage of recyclable material shall be in sturdy containers or enclosures which are covered, secured, and maintained in good condition. Storage containers shall be constructed of non-flammable material. No storage, except for truck trailers, will be visible above the height of the fencing.
- (s) The site shall be maintained free of litter and any other undesirable materials, and will be cleaned of loose debris on a daily basis and will be secure from unauthorized entry and removal of materials when attendants are not present.
- (t) Paved areas shall be provided on site for the anticipated peak load of customers to circulate, park and deposit recyclable materials. If the facility is open to the general public, space will be provided for minimum of 10 customers or the peak load, whichever is higher, except where the zoning administrator determines that allowing overflow traffic is compatible with surrounding businesses and public safety.
- (u) One paved parking space will be provided for each commercial vehicle operated by the processor. Parking requirements will otherwise be as mandated by the zone in which the facility is located.
- (v) Noise levels shall not exceed 60 DBA as measured at the property line of residentially zoned or occupied property, otherwise shall not exceed 75 DBA.
- (w) If the facility is located within 500 feet of property zoned or planned for residential use, it shall not be in operation between 10:00 p.m. and 6:00 a.m. The facility will be administered by on-site personnel during the hours the facility is open.
- (x) Donation areas shall be kept free of litter and any other undesirable materials.
- (y) All signs shall be in compliance with the city's sign regulations as they pertain to the zoning district.
- (z) No dust, fumes, smoke, vibration or odor above ambient levels may be detectable on neighboring properties.
- (aa) An application for operating a special use permit, recycling processing facility has been accepted by the zoning administrator, and:

§3.4.4 VEHICLE SERVICE, GENERAL

- (1) The permit application is under consideration for issuance by the planning commission, with final approval from the city commission, after conducting a public hearing.
 - (2) The renewal of the permit will be reconsidered on an annual, twelve-month basis.
- (bb) If the permit expires without renewal, the collection facility shall be removed from the site on the day following permit expiration.

§3.4.4. Vehicle Service, General

In the C-G district, general vehicle service establishments shall have a maximum of five employees on site at any one time engaged in processing or treating materials or products on the premises. This limitation shall not apply to employees engaged in selling, clerical, delivery or similar activities.

§3.5. ACCESSORY BUILDINGS AND USES**§3.5.1. General**

Accessory buildings and uses shall comply with all standards in the district for the principal use, except as expressly set forth below.

- A. Accessory buildings and uses shall be accessory and clearly incidental and subordinate to a permitted principal uses. An accessory use shall only be allowed when a principal use exists for permitted accessory uses associated with a principal use. (See §2.5, Use Classification).
- B. Unless otherwise specified, accessory buildings and uses shall be located on the same lot as the permitted use or building.
- C. Accessory buildings and uses shall not involve operations or buildings not in keeping with the character of the primary use or principal building served.
- D. Accessory buildings and uses shall not be of a nature likely to attract visitors in larger numbers than would normally be expected in association with the principal use, where applicable.
- E. An accessory use shall contribute to the comfort, convenience or necessity of occupants of the primary use served.

§3.5.2. Accessory structures

Accessory structures may be built in a rear yard in accordance with the following requirements.

A. Required yards (setbacks)

No accessory structures shall be nearer than three feet to any side or rear lot line

B. Rear yard coverage

Accessory structure may be built in a rear yard but such accessory structure shall not occupy more than 30 percent of a rear yard,

C. Construction and use of accessory buildings

No accessory structure shall be constructed upon a lot until the construction of the main building has been actually commenced, and no accessory structure shall be used for dwelling purposes other than by bona-fide employees employed entirely on the premises.

§3.5.3. Residential accessory structures and uses

Residential accessory structures and uses shall include, but not be limited to, the following:

- A. Family day care, subject to the standards of §3.5.5.B;
- B. Fences, screens, and walls, subject to the standards of §3.5.7;
- C. Fire escapes, stairways and balconies, subject to the standards of §3.5.5.C;
- D. Home occupations, subject to the standards of §3.5.5.D;
- E. Private parking garages, subject to the standards of §3.5.5.E;
- F. Storage garages, subject to the standards of §3.5.5.F;
- G. Other necessary and customary uses determined by the zoning administrator to be appropriate, incidental and subordinate to the principal use on the lot.

§3.5.4. Nonresidential accessory structures and uses

Nonresidential accessory structures and uses shall include, but not be limited to, the following:

- A. Fences, screens, and walls, subject to the standards of §3.5.7
- B. Small retail and personal services, subject to the standards of §3.5.6.A;
- C. Storage garages, subject to the standards of §3.5.6.B;
- D. Watchman and caretaker housing, subject to the standards of §3.5.6.C; and
- E. Other necessary and customary uses determined by the zoning administrator to be appropriate, incidental and subordinate to the principal use on the lot.

§3.5.5. Residential accessory structures and uses**A. Cellars and basements**

No cellar shall be occupied for residential purposes. Basements may be occupied only when a part of a total residential structure.

B. Family day care

Family day care shall be permitted as an accessory use to dwelling units and may provide such care for up to six persons (children or adults).

C. Fire escapes, stairways, balconies

Secondary means of egress from residential structures, as open or enclosed exterior stairways, fire escapes, and etc. shall originate and terminate on the portion of the building abutting the rear yard whenever possible, and the side yard if necessary.

D. Home occupation

An occupation carried on, in or from a dwelling unit (but not an accessory building) by a member of the family residing therein, which is clearly incidental and secondary to the use of the dwelling for residential occupancy and does not change the character thereof; provided the following requirements are met by such home occupation:

1. Except where a special use permit has been obtained, every home occupation shall be conducted wholly within a dwelling unit;

§3.5.5 RESIDENTIAL ACCESSORY STRUCTURES AND USES

2. Home occupations involving any outdoor activity shall require additional review in the form of a special use permit and shall be subject to all appropriate standards and provisions of this title;
3. No more than one person shall be employed other than a member of the family residing in the dwelling unit;
4. No more than two clients or customers shall visit the premises at the same time. In no case shall any client or customer visit the premises between the hours of nine o'clock P.M. and seven o'clock A.M.;
5. There shall be no signs, activities, lighting or display that will indicate from the exterior that the building is being used, in part, for any purpose other than that of a residential dwelling;
6. No stock-in-trade or other commodity shall be kept, displayed, sold or offered for sale upon the premises, except that sales by electronic means, which otherwise comply with this definition, are permitted;
7. There shall be no commodities sold or services rendered that require receipt or delivery of merchandise, goods or equipment by other than a passenger motor vehicle or by parcel or letter carrier mail service using vehicles typically employed in residential deliveries. No deliveries by semi-tractor/trailer-trucks and related to the home occupation are permitted;
8. There shall be no noise, odor, dust, vibration, smoke, glare, television or radio interference, fire hazard or any other hazard emanating from the dwelling so as to create a nuisance;
9. No home occupation shall involve the use of noxious, toxic or harmful materials, or on site staging, displaying or assembling of any commercial vehicles;
10. The use of any equipment or process which adversely affects the fire rating of the dwelling or fire district is prohibited;
11. There shall be no separate entrance or any structural alteration that specifically accommodates the occupation or changes the residential character of the dwelling, provided, however, that reasonable means to accommodate physically disabled clients or customers may be employed;
12. Any type of manufacturing process that is allowed in a commercial district is prohibited;
13. Only one home occupation shall be conducted in any dwelling unit;
14. A special use permit shall be required for any home occupation involving the handling or preparation of food;

15. The care or treatment of animals, other than those owned by the occupant, is prohibited;
16. The home occupation shall be subject to inspections by City personnel provided, however, that probable cause exists to believe that a violation of law has occurred;
17. The home occupation must be for the gain or support of a full-time occupant of the dwelling unit;
18. The generation of refuse in excess of limits currently established for residential dwellings is prohibited; and
19. Outdoor storage of any materials is prohibited.

E. Private parking garages

When a garage is located entirely within the required rear yard it can be located as close as three feet from the rear and side property line. If a detached garage is not located entirely within the required rear yard, it must comply with the setback requirement for the primary structure on the lot.

F. Storage garages (residential)

Storage garages may be permitted where the lot is occupied by a multiple dwelling, provided that, if a storage garage is not a part of the main building, it shall be located not less than 60 feet from the nearest part of the front lot line.

§3.5.6. Nonresidential accessory structures and uses

A. Small retail and personal services

Small retail and personal services uses may be considered accessory to hotels, motels, offices and medical facilities provided such uses shall be located entirely within the building with no direct entrance from the street nor visible from any sidewalk. Signs serving such uses shall be in accordance with the requirements of §4.3.

B. Storage garages (nonresidential)

Storage garages may be permitted where the lot is occupied by a medical facility or religious or social service institutional building, provided that, if a storage garage is not a part of the main building, it shall be located not less than 60 feet from the nearest part of the front lot line.

C. Watchman and caretaker housing

1. In the C-B district, watchman and caretaker housing shall be permitted for persons employed on premises where such housing is incorporated within the principal building.
2. In other nonresidential districts, such housing may be attached or detached from the principal building.

§3.5.7 FENCES, SCREENS, AND WALLS (RESIDENTIAL AND NONRESIDENTIAL)

§3.5.7. Fences, screens, and walls (residential and nonresidential)

- A. Fences, screens, and walls, including those made of vegetation shall not extend to a height of greater than six feet in the side and rear yards, nor extend to a height of greater than three feet in front yards in all districts.
- B. Fences in front yards may extend to a height of up to six feet if they are wrought iron and the openings between the material is greater than the material itself. For purposes of this section, corner lots are considered to have two front yards.
- C. No fence shall be erected within 10 feet of any opening in a building which serves to provide light or ventilation for said building.
- D. No fence, screen or wall including those made of vegetation shall be placed within street right-of-ways nor within 20 feet of street curb line intersections.

§3.6. TEMPORARY USES**§3.6.1. Mobile homes**

No mobile home (or house trailer) with or without wheels may be used for any residential, commercial, or industrial purpose either transiently or permanently, except by special use permit pursuant to §6.5 approved by the city commission for a limited period specified in the permit.

§3.6.2. Construction buildings

Temporary buildings that are used in conjunction with construction work only may be permitted in any district during the period that the building is being constructed, but such temporary buildings shall be removed within 30 days of completion of the construction work.

Article 4. Site Development Standards

§4.1. GENERAL

Unless otherwise directed by the building official, the first floor elevation of buildings shall be at least 18 inches above the grade of the center of the street, except in a commercial area where the target grade is at the elevation of the sidewalk.

§4.2. OFF-STREET PARKING AND LOADING

§4.2.1. Purpose

The regulations of this section are in rough proportion to the generalized parking and transportation demands of different land uses. By requiring such facilities, it is the intent of this section to help avoid the negative impacts associated with spillover parking into adjacent neighborhoods, while at the same time avoiding the negative environmental and urban design impacts that can result from parking lots and other vehicular use areas. The provisions of this section are also intended to help protect the public health, safety, and general welfare by:

- A. Helping avoid and mitigate traffic congestion;
- B. Encouraging multi-modal transportation options and enhanced pedestrian safety;
- C. Providing methods to reduce the amount of impervious surfaces in parking areas and adequate drainage structures in order to reduce the environmental impacts of storm water runoff;
- D. Encouraging paving or alternate means of surfacing of parking areas in order to address dust abatement and improve air quality; and
- E. Providing flexible methods for responding to the transportation and access demands of various land uses in different areas of the city.

§4.2.2. Applicability

The parking and loading requirements of this section apply to all districts and all uses within the city.

A. New development

Unless otherwise expressly stated, parking and loading requirements shall apply to all new uses established and all new structures constructed.

B. Enlargements and expansions

Unless otherwise expressly stated,

1. The parking and loading standards of this section apply when an existing building or use is:
 - (a) Enlarged or expanded to include additional dwelling units; or
 - (b) Enlarged by ten percent or 2,000 square feet, whichever is less.
2. In the case of enlargements or expansions triggering requirements for additional parking, additional parking spaces are required only to serve the enlarged or expanded area, not the entire building or use.

§4.2.3 PARKING REQUIREMENTS

Commentary: There is no requirement to address lawfully existing parking deficits in conjunction with enlargements or expansions.

C. Change of use

Unless otherwise expressly stated,

1. When the use of property changes, additional parking facilities must be provided to serve the new use only when the number of parking spaces required for the new use exceeds the number of spaces required for the lawful use that most recently occupied the building, based on the standards of this section.

Commentary: “Credit” is given to the most recent lawful use of the property for the number of parking spaces that would be required under this ordinance, regardless of whether such spaces are actually provided.

2. When the number of parking spaces required for the new use exceeds the number of spaces required for the use that most recently occupied the property, additional parking spaces are required only to make up the difference between the amount of parking required for the previous use and the amount of parking required for the new use, based on the standards of this section.

§4.2.3. Parking requirements**A. Minimum requirements**

Except as otherwise expressly stated, off-street motor vehicle parking spaces must be provided in accordance with the parking ratio requirements of §5.1.3.C.

B. Calculations

The following rules apply when calculating the required number of parking spaces:

1. Multiple uses

Unless otherwise expressly stated, lots containing more than one use must provide parking in an amount equal to the total of the requirements for all uses. Where exact future tenants are unknown, the zoning administrator may establish overall parking requirements pursuant to subsection D, below.

2. Fractions

When measurements of the number of required spaces result in a fractional number, any fraction of less than $\frac{1}{2}$ is rounded down to the next lower whole number, and any fraction of $\frac{1}{2}$ or more is rounded up to the next higher whole number.

3. Area measurements

Unless otherwise expressly stated, all area-based (square footage) parking standards must be computed on the basis of gross floor area (GFA).

4. Occupancy- or capacity-based standards

For the purpose of computing parking requirements based on employees, students, residents or occupants, calculations must be based on the largest number of persons working on any single shift, the maximum enrollment or the maximum fire-rated capacity, whichever is applicable and whichever results in the greater number of spaces.

5. Unlisted uses

Upon receiving a development application for a use not specifically listed in subsection D, below, the zoning administrator is authorized to apply the parking ratio specified for the listed use that is deemed most similar to the proposed use pursuant to the similar use interpretation requirements of §2.5.1.D, or establish a different minimum parking requirement on the basis of parking data provided by the applicant and the planning department.

C. Exceptions

The requirements of this §4.2.3.D do not apply to ground floor, non-residential uses, in the C-B district.

D. Parking ratio requirements

Except as specified in C, above, the parking requirements for all uses shall be as follows:

PARKING RATIO REQUIREMENTS		
Use Categories	Use Types	General Requirement (GFA = Gross Floor Area)
Residential Uses (See §2.5.2)		
Household living (See §2.5.2.A)	Single-family dwellings	2 spaces per unit
	Two-family, multiple-family dwellings, or upper story residential	1.5 spaces per efficiency or one bedroom unit 2 spaces per 2 or more bedroom units
Group living (See §2.5.2.B)	Nursing home	1 space per 5 beds
	Assisted living facility not having individual	1 space per 4 beds
	All other group living uses	1 space per 2 beds
Public and Civic Uses (See §2.5.3)		
Community service (See §2.5.3.A)	All community service uses	15 spaces, plus one space for each 200 GFA employee
Day care (See §2.5.3.B)	All day care	1 space per employee
Educational facilities (See §2.5.3.C)	High school	1 space per 4 seats in main assembly area, but not less than 5 per classroom
	All other educational facilities	1 space per 4 seats in main assembly area, but not less than 1 per classroom
Government facilities (See §2.5.3.D)	All government facilities	1 space per employee
Medical facilities (See §2.5.3.E)	Hospitals	1 space per 2 beds
	Medical or dental clinics	1 space per 250 GFA
Parks and open space (See §2.5.3.F)	All parks and open space uses	Determined by zoning administrator per §4.2.8
Passenger terminals and services (See §2.5.3.G)	All passenger terminals and services	1 space per 400 feet passenger terminal area
Religious institution (See §2.5.3.H)	All religious institutions	1 space per 4 seats in main assembly area
Utilities, minor (See §2.5.3.J)	All minor utilities	None
Utilities, major	All major utilities	Determined by zoning administrator per §4.2.8

§4.2.3 PARKING REQUIREMENTS

PARKING RATIO REQUIREMENTS		
Use Categories (See §2.5.3.J)	Use Types	General Requirement (GFA = Gross Floor Area)
Commercial Uses (See §2.5.4)		
Eating and drinking establishments (See §2.5.4.A)	Coffee shops, ice cream shops, fast food	1 space per 50 square feet
	All other eating and drinking establishments	1 space per 100 GFA
Entertainment, indoor (See §2.5.4.B)	Adult entertainment	1 space per 100 GFA
	Bowling alleys	3 spaces per lane
	Theaters, auditoriums or exhibition hall	1 space per 4 seats
	All other indoor entertainment	1 space per 300 GFA
Entertainment, outdoor (See §2.5.4.B)	Arenas and stadiums	1 space per 4 seats
	Fairgrounds	Determined by zoning administrator per §4.2.8
	Driving ranges	1 space per tee box
	Miniature golf courses	1 space per hole
Offices (See §2.5.4.D)	All other entertainment outdoor	Determined by zoning administrator per §4.2.8
	Banks and financial institutions	1 space per 250 GFA
Overnight accommodations (See §2.5.4.E)	All other office uses	1 space per 400 GFA
	Hotels and motels	1 space per room, plus 1 space per 200 GFA conference or restaurant area
Parking, commercial (See §2.5.4.F)	All commercial parking	Determined by zoning administrator per §4.2.8
Retail sales and service, sales-oriented (See §2.5.4.G)	Artist studios or galleries	1 space per 400 GFA
	Building supply and lumber	1 space per 300 GFA
	Flea market or auction (indoor)	1 space per 100 GFA
	All other retail sales and service	1 space per 200 GFA
Retail sales and service, personal service-oriented (See §2.5.4.G.1(b))	All retail sales and service, personal service oriented not listed below	1 space per 250 GFA
Retail sales and service, repair-oriented (See §2.5.4.G.1(c))	All retail sales and service, repair-oriented	1 space per 250 GFA
Self-service storage (See §2.5.4.H)	All self-service storage	1 space per employee
Vehicle sales and service (See §2.5.4.I)	Fuel stations, including full-service, mini-service and self-service	1 space per 250 GFA
	Vehicle service, general or limited	3 spaces per service bay
	Vehicle sales and rental	1 space per 500 GFA
Industrial Uses (See §2.5.5)		
Light industrial service (See §2.5.5.A)	Building, heating, plumbing or electrical contractors	1 space per 250 GFA
	Printing, publishing and lithography	1 space per 250 GFA
	All other light industrial	1 space per 600 GFA

PARKING RATIO REQUIREMENTS		
Use Categories	Use Types	General Requirement (GFA = Gross Floor Area)
Heavy industrial (See §2.5.5.B)	All heavy industrial uses	1 space per 1,000 GFA
Warehouse and freight movement (See §2.5.5.C)	All warehouse and freight movement uses	1 space per 1,000 GFA
Waste-related service (See §2.5.5.D)	All waste service	1 space per 1,000 GFA
Wholesale trade (See §2.5.5.E)	All wholesale trade uses	1 space per 1,000 GFA
Other Uses (See §2.5.6)		
Agriculture	All agriculture uses not listed below	Determined by zoning administrator per §4.2.8
	Greenhouse or nursery	1 space per 200 GFA
Telecommunications facilities (See §2.5.6.A)	All telecommunications facilities (general)	Determined by zoning administrator per §4.2.8

§4.2.4. Location of parking

- A. Except as otherwise specified, required parking spaces must be located off-street and on the same lot as the building or use they are required to serve. (On-site garage spaces may be used to satisfy off-street parking requirements).
- B. All or a portion of required parking may be provided off-site, in accordance with the provisions of this section.
- C. Any off-site parking space must be located within 300 feet walking distance of the shared parking area, measured between the entrance of the use to be served and the outer perimeter of the furthest parking space within the shared parking lot. (See also §5.1.4.G)
- D. Sites utilized for off-site parking used to meet required parking spaces for commercial or industrial uses shall be in nonresidential districts.
- E. Parking space location must be owned or under legal control of the same property where building or use requiring parking spaces is located. Off-site parking areas may be under separate ownership only if an agreement is provided guaranteeing the long-term availability of the parking, commensurate with the use served by the parking. Off-site parking privileges will continue in effect only as long as the agreement, binding on all parties, remains in force. If an off-site parking agreement lapses or is no longer valid, then parking must be provided as otherwise required by this section.
- F. No vehicle shall be parked temporarily or otherwise, on any lot used for dwelling purposes except in a driveway or parking space as defined by §4.2.6, below.

§4.2.5. Shared parking

A. Purpose

Shared parking is encouraged as a means of conserving scarce land resources, reducing stormwater runoff, reducing the heat island effect caused by large paved areas and improving community appearance.

§4.2.5 SHARED PARKING

B. General

The zoning administrator may approve shared parking facilities, subject to the following standards:

1. Eligible uses

Shared parking is allowed among different categories of uses or among uses with different hours of operation, but not both.

2. Ineligible uses

Accessible parking spaces (for persons with disabilities) may not be shared and must be located on-site.

3. Location

Shared parking spaces shall be located within 300 feet of the primary entrance of all uses served, unless shuttle bus service is provided to the parking area.

C. Zoning classification

Shared parking areas serving uses located in nonresidential districts shall be located in nonresidential districts. Shared parking areas serving uses located in residential districts may be located in residential or nonresidential districts. Shared parking areas shall require the same or a more intensive zoning classification than that required for the most intensive of the uses served by the shared parking area.

D. Temporary uses

Up to ten percent of required parking spaces for any use may be used jointly by a temporary commercial use.

E. Shared parking study

Applicants wishing to use shared parking as a means of satisfying parking requirements shall submit a shared parking analysis to the zoning administrator that clearly demonstrates the feasibility of shared parking. The study shall be provided in a form established by the zoning administrator and made available to the public. It shall address, at minimum, the size and type of the proposed development, the composition of tenants, the anticipated rate of parking turnover and the anticipated peak parking and traffic loads for all uses that will be sharing parking spaces.

F. Agreement

Applicants must provide a shared parking agreement executed by the parties establishing the shared parking spaces. Shared parking privileges will continue in effect only as long as the agreement, binding on all parties, remains in force. Should the agreement cease to be in force, parking must be provided as otherwise required by this section.

G. Shared parking for different categories of uses

A use may share parking with a different category of use according to only one of the following subsections:

1. Office use and retail sales-oriented use

If an office use and a retail sales-oriented use share parking, the parking requirement for the retail sales-related use may be reduced by up to 20 percent, provided that the reduction does not exceed the minimum parking requirement for the office use.

2. Residential use and retail sales-oriented use

If a residential use shares parking with a retail sales-related use (expressly excluding lodging uses, eating and drinking establishments and entertainment-related uses), the parking requirement for the residential use may be reduced by up to 25 percent, provided that the reduction does not exceed the minimum parking requirement for the retail sales-related use.

3. Residential use and office uses

If a residential use and an office use share parking, the parking requirement for the residential use may be reduced by up to 30 percent, provided that the reduction does not exceed the minimum parking requirement for the office use.

H. Shared parking for uses with different hours of operation

1. For the purposes of this section, the following uses are considered daytime uses:

- (a) Customer service and administrative offices;
- (b) Retail sales uses, except eating and drinking establishments, lodging uses, and entertainment-related uses;
- (c) Warehousing, wholesaling, and freight movement uses;
- (d) Manufacturing, production and industrial service uses; and
- (e) Other similar primarily daytime uses, as determined by the zoning administrator.

2. For the purposes of this section, the following uses are considered nighttime or Sunday uses:

- (a) Auditoriums accessory to public or private schools;
- (b) Religious assembly uses;
- (c) Entertainment-related uses, such as theaters, bowling alleys, and dance halls; and
- (d) Other similar primarily nighttime or Sunday uses, as determined by the zoning administrator.

3. Up to 90 percent of the parking required by this section for a daytime use may be supplied by the parking provided for a nighttime or Sunday use and vice-versa, when authorized by the zoning administrator.

4. The applicant must show that there is no substantial conflict in the principal operating hours of the uses for which shared parking is proposed.

§4.2.6. Parking area design

A. Dimensions and access

1. Each parking space shall be striped.
2. Each parking space and the maneuvering area thereto shall be located entirely within the boundaries of the site.
3. All parking spaces and aisles shall comply with the following minimum requirements.

§4.2.7 OFF-STREET LOADING REQUIREMENTS

PARKING SPACE AND AISLE DIMENSIONS					
Angle (degrees)	Width of Stall (feet)	Depth of Stall 90 Degrees to Aisle (feet)	Width of Aisle (feet)		Width of Stall Parallel to Aisle (feet)
			One-way	Two-way	
45	9 feet	21.1 feet	13 feet	20 feet	12.7 feet
45	10 feet	21.1 feet	13 feet	20 feet	14.1 feet
60	9 feet	22.3 feet	15 feet	--	10.4 feet
60	10 feet	22.3 feet	14 feet	--	11.6 feet
90	9 feet	18 feet	--	24 feet	9 feet
90	10 feet	18 feet	--	22 feet	10 feet
Parallel	9 feet	9 feet (width)	13 feet	24 feet	22 feet

Commentary: The table above provides minimum standards for two parking stall width options, nine-foot wide spaces and ten-foot wide spaces.

4. Parking spaces (90 degree only) that abut a sidewalk adjacent to a building may be reduced in length to 16 feet provided that the sidewalk is a minimum of eight feet in width.
5. The width of the alley may be assumed to be a portion of the maneuvering space requirement for parking facilities located adjacent to a public alley.
6. In no event shall pavement be located within four feet of a right-of-way or alley, unless the pavement is part of an entrance driveway or an alley being used for maneuvering space requirement.

B. Surfacing

1. Surfacing required

Except as provided below, where required off-street facilities are provided for parking or any other vehicular use area, they shall be surfaced with asphalt bituminous, concrete or dustless material approved by the zoning administrator and shall be maintained in a smooth, well-graded condition.

2. Alternative materials

- (a) Alternative permeable pavement or other permeable parking surfaces may be permitted as set forth below, provided they are approved by the zoning administrator.
- (b) Where provided, such alternative parking surfaces shall be maintained in a smooth, dust-free condition. If parking demand causes the alternative surfaces to be damaged or destroyed, then paving of such an area in accordance with this section may be required.

§4.2.7. Off-street loading requirements

A. Loading facilities required

1. Off-street loading spaces shall be required for uses that regularly handle or receive the shipment of goods, except in the C-B district.

2. Uses receiving large quantities of goods shall provide one loading space for each 10,000 square feet, or fraction thereof, and shall be of sufficient quantity to adequately serve the proposed use.
3. Vehicle sales or rental facility or similar use requiring delivery of vehicles by truck shall demonstrate that an adequate on-site area exists for the loading and unloading of such trucks.
4. Any convenience store or similar use requiring deliveries by truck shall demonstrate that an adequate on-site area exists for the loading and unloading of such trucks.

B. Design and layout

1. Except as approved pursuant to §4.2.8 and §4.2.8, loading and unloading activity shall not be permitted in any public right-of-way. In no case shall loading and unloading activity encroach on or interfere with the public use of streets, sidewalks, and lanes by automotive vehicles or pedestrians. Adequate space shall be made available for the unloading and loading of goods, materials, items or stock for delivery and shipping.
2. Where off-street loading facilities are provided, they shall be not less than 12 feet in width by 35 feet in length, with not less than 14 feet of vertical clearance.

§4.2.8. Alternative compliance

The planning commission is authorized to approve other alternatives to strict compliance with the parking and loading requirements of this section if the zoning administrator finds, based on evidence provided by the applicant that the proposed plan will:

- A. Not adversely affect surrounding neighborhoods and uses;
- B. Not adversely affect traffic congestion and circulation; and
- C. Be at least as effective as strict compliance with the requirements of this section in complying with the purpose of this §4.2.1.

§4.3. SIGNS

§4.3.1. Purpose

The sign regulations of this ordinance are intended to protect the health, safety, and general welfare by establishing standards for the design, construction, location, illumination, and maintenance of all signs and sign structures. Such regulations are necessary and desirable for the following reasons:

- A. To protect the public safety by ensuring that traffic signs and devices are easily visible and free from obstruction or other distraction caused by signs;
- B. To ensure that signs are designed, constructed, installed and maintained in a way that protects life, health, property and the public welfare, especially during periods of high winds;
- C. To support the desired character of Benton Harbor, as expressed in adopted city plans and to promote an attractive visual environment;
- D. To control the size, placement, and use of signs and other attention-gathering paraphernalia in order to preserve the right of citizens to enjoy Benton Harbor's natural scenic beauty; and
- E. To address the ongoing technological advancements in the sign industry that continues to result in new sign types.

§4.3.2. Measurement of sign height and area

For sign measurement calculations, see §2.8.3.D, sign area, and §2.8.7.E, sign height.

§4.3.3. Prohibited signs

- A. No sign or sign structure shall be erected at any location where it may interfere with, obstruct the view of, or be confused with any authorized traffic sign, signal or device.
- B. No rotating beam, beacon or flashing illumination resembling an emergency light shall be used in connection with any sign display.
- C. No sign or sign structure shall be located in such a manner as to materially impede the view of any street or highway intersection; or in such a manner as to materially impede the view of the intersection of a street or highway with a railroad grade crossing.

§4.3.4. Permitted signs by district

No signs shall be allowed except as follows:

A. Residential district(s) signs

Residential district(s) signs shall comply with the following requirements:

1. Church or public bulletin boards not exceeding 25 square feet in area.
2. Signs concerning political candidates or public issues, including primary and general elections, not exceeding 20 square feet in area, provided the same shall not be erected until 30 days prior to the subject election and shall be removed not later than the day following the election.
3. Signs appertaining to the lease, or sale or rent of a building or premises not exceeding four square feet in area provided the same shall be only displayed from inside the structure in a window or other opening or in the yard, and providing any such sign shall

be removed within three days after a sale, lease, or rent of the building or premises has been consummated. A maximum of one such sign shall be allowed per lot.

B. C-L district signs

C-L district signs shall comply with the following requirements:

1. The combined total square foot area of all sign faces not to exceed the number of lineal feet of street frontages. A maximum of one such sign shall be allowed per street frontage. Building mounted signs shall not cover any key architectural features of a building (windows, cornice, decorative stonework, etc.).
2. Provided however, that the square foot area of all signs permitted on corner lots shall be 50 percent of the total number of lineal feet of street frontage; and
3. No wall, electric, projecting or temporary sign extend more than five feet from the building and that in the front yard there may be one ground sign for each lot.
4. Pole or ground signs shall not exceed 30 square feet per face, with the advertising content at least 10 feet above the ground for pole signs. Pole signs shall not exceed the height of the primary structure on the site and other ground signs shall not exceed eight feet in height.
5. Signs appertaining to the lease, or sale or rent of a building or premises not exceeding 6 square feet in area provided the same shall be only displayed from inside the structure in a window or other opening or in the yard, and providing any such sign shall be removed within three days after a sale, lease, or rent of the building or premises has been consummated. A maximum of one such sign shall be allowed per lot.

C. C-G district signs

C-G district signs shall comply with the following requirements:

1. The combined total square foot area of all sign faces shall not exceed two times the number of lineal feet of street frontage, provided however, that the square foot area of all signs permitted on corner lots shall be 50 percent of the total otherwise permitted. A maximum of one such sign shall be allowed per street frontage. Building mounted signs shall not cover any key architectural features of a building (windows, cornice, decorative stonework, etc.).
2. No wall, electric, fin, projecting or temporary sign extend more than five feet from the building and that in the front yard there may be one pole or ground sign for each lot or each 150 feet of street frontage and there shall not be more than two for each business.

D. C-B, I-L, I-H and P-R district signs

Signs in the C-B, I-L, I-H and P-R district shall comply with the following requirements:

1. The combined total square foot area of all sign faces shall not exceed two times the number of lineal feet of street frontage at grade, except as hereafter provided, for all signs on the lot or on a building within the first story or 24 feet whichever is lower. A maximum of one such sign shall be allowed per street frontage. Building mounted signs shall not cover any key architectural features of a building (windows, cornice, decorative stonework, etc.).
2. The total permitted sign surface area of signs located on a building above the first two stories or 26 feet, whichever is lower, may be increased but shall not exceed an amount

§4.3.5 MAINTENANCE AND REPAIR

equal to 10 percent of the area of only one building facade or other architectural elevation to which the sign is oriented;

3. No wall, electric, fin, projecting or temporary sign shall extend more than five feet from the building line into the front yard, except that in the front yard there may be one pole or ground sign for each lot or each 200 feet of street frontage and there shall not be more than two for each business; and
4. Signs on marquees are permitted provided that the square foot area of all signs does not exceed that permitted in the district.
5. Freestanding ground signs and pole signs are prohibited in the C-B district.

E. Directional signs

Directional signs may be permitted in any district by special use permit pursuant to §6.5.

§4.3.5. Maintenance and repair

All signs and sign structures shall be kept in repair and in a proper state of preservation. Any sign deteriorated more than 50 percent of replacement value in the opinion of the zoning administrator or building official shall be removed, and if replaced, the new sign must be conforming.

§4.4. LANDSCAPING, SCREENING AND BUFFERING**§4.4.1. Purpose**

The landscaping, screening and buffering regulations of this section are intended:

- A. To improve the physical appearance, public health, safety, convenience, comfort and general welfare of the community;
- B. To improve the environmental performance of new development by contributing to the abatement of heat, glare, and noise and by promoting natural percolation of storm water;
- C. To reduce the visual impact of parking lots, unsightly equipment, or material storage from the view of persons on the public streets or adjoining properties;
- D. To buffer uncomplimentary and potentially incompatible land uses from one another; and
- E. To conserve the value of property and neighborhoods within the city.

§4.4.2. Applicability**A. General**

1. Unless otherwise specified below, the landscaping, screening and buffering provisions of this section shall apply to all new multi-family and nonresidential development, including principal and accessory structures.
2. Buildings and structures lawfully existing as of the effective date of this ordinance may be redeveloped, renovated or repaired without providing or modifying landscaping, screening, and buffering in conformance with this section.
3. Where a building or structure existed as of the effective date of this ordinance, and such building or structure is enlarged in gross floor area or impervious area by twenty percent or 2,000 square feet, whichever is less, landscaping, screenings, and buffering as specified in this section shall be provided.

4. The requirements of this section are not intended to be cumulative.

Commentary: Landscaping area requirements may be completely or partially satisfied within the yard (setback) requirements and frontage landscaping requirements; required yards (setback) requirements and frontage landscaping requirements may be completely or partially satisfied within landscaping areas.

B. Exception

1. The parking lot landscaping standards §4.4.7 (only) of this section apply in the C-B district; all other development in the C-B district shall be exempt from the requirements of this section.
2. The requirements of this section shall not apply to development adjacent to and on the same side of the street as parks and open space uses (see §2.5.3.F for more information).

§4.4.3. General requirements

A. Previously approved site plans

Any site plan or landscaping plan approved by the zoning administrator prior to the effective date of the ordinance codified in this section shall remain enforceable and in force.

B. Material selection

All plant materials used shall be of good quality and meet American Association of Nurserymen (AAN) standards for minimum acceptable form, quality and size for species selected, and capable to withstand the seasonal temperature variations of Benton Harbor, as well as the individual site microclimates. The use of species native to Benton Harbor shall be encouraged. Size and density of plant material, both at the time of planting and at maturity, are additional criteria that shall be considered when selecting plant material. Where appropriate, the use of drought and salt tolerant plant material is preferred.

C. Installation

1. All landscaping required by this section shall be installed prior to occupancy or commencement of a use. If the landscaping cannot be installed prior to occupancy or commencement of a use because of climatic conditions, the building inspector may issue a temporary certificate of occupancy and grant a delay of landscaping installation until the calendar date of June 1 immediately following the date of said temporary certificate of occupancy.
2. All landscaping materials shall be installed in accordance with the current planting procedures established by the AANS. All plant materials shall be free of disease and shall be installed so that soil of sufficient volume, composition and nutrient balance are available to sustain healthy growth.

D. Required element

Landscape materials depicted on landscape plans approved by the city shall be considered to be required site plan elements in the same manner as buildings, parking and other improvements. As such, the owner of record, or in some instances the homeowner's association, shall be responsible for the maintenance, repair and replacement of all landscape materials, and fences, steps, retaining walls and similar landscaping elements over the entire life of the development.

§4.4.3 GENERAL REQUIREMENTS

E. Maintenance of required landscaping

Trees and vegetation, irrigation systems, fences, walls and other landscaping elements shall be considered as elements of the project in the same manner as parking, building materials and other site details. The applicant, landowner or successors in interest shall be responsible for the regular maintenance of all landscaping elements in good condition. All landscaping shall be maintained free from disease; pests, weeds and litter, and all landscape structures such as fences and walls shall be repaired and replaced periodically to maintain a structurally sound condition in order to maintain the required landscaping of the site. Any dead, unhealthy or missing plants shall be replaced within 30 days of notification by the city, unless an extension is permitted by the zoning administrator.

F. Landscaping plans

Landscaping, screening and buffering shall be subject to the following general requirements:

1. Landscaping plan submittals

Landscaping plans must be provided for each phase of the development review and building permit processes. At a minimum the landscaping plan of the development shall require the following:

- (a) The applicant's name and address and interest in the property;
- (b) The owner's name and address, if different from the applicant, and the owner's signed consent to the filing of the plan;
- (c) The street address and legal description of the property;
- (d) Title, scale, north marker, and date;
- (e) Zoning of site and all adjoining property(s);
- (f) All lot lines, easements and rights-of-way;
- (g) All surrounding roads including names;
- (h) The total square foot of the site area dedicated for vehicle use, including parking, loading, circulation, drop-off/pick-up, etc.
- (i) Location, scientific name, common name, quantity and size of all existing plant materials and designation of all vegetation to be removed.
- (j) Proposed new and existing-to-remain landscape plantings by location, scientific name and common name, planting size and planting details. A plant list should be provided listing this information and keyed to plant location on the plan.
- (k) Size and location of berms, fences and other screening or buffering devices.
- (l) All existing and proposed drainage and detention areas.
- (m) Designation of area(s) to be used for snow storage.
- (n) Other information or documentation as the zoning administrator may deem necessary to allow a full and proper consideration and disposition of the particular plan, including but not limited to special features, sign locations, lighting, decks, paving, gazebos, etc.

2. Landscaping shall be provided within the minimum setback area along street frontages as provided in this section.
3. Bufferyards between various types of land use and residential areas, both existing and planned shall include design elements in a combination to provide effective buffering with consideration of existing topography and site conditions. The proposed plan for said design elements shall be reviewed by the zoning administrator to determine consistency with the provisions of this section. Placement of trees and shrubs shall be designated to meet city requirements regarding minimum sight lines from driveways and intersections, proximity to utility lines, and underground utility easements.
4. Landscaping plans provided for development approval and construction shall identify the minimum size and number of required trees, shrubs, and provisions for living groundcover such as grass, decorative ground cover, or natural/native plant material. Non-living ground cover such as rock and walk on bark, that does not exceed 25 percent of the overall planting area may be used. Impervious materials, such as concrete or asphalt paving, shall not be used within required landscaping areas with the exception of sidewalk areas or edging.
5. Existing appropriate mature trees and vegetation may be incorporated into overall site design and shall be considered in meeting the requirements of this section. The extent that such existing vegetation meets the requirements of these standards shall be reviewed and approved by the zoning administrator.

G. Changes to approved landscape plan

The landscaping shall be installed and maintained according to the approved landscape plan except where authorized changes are approved by the zoning administrator. The approved landscape plan and supporting data shall be binding on the applicants, their successors, and grantees.

§4.4.4. Landscape design standards

Landscape plans shall be prepared by a landscape architect or other qualified professional, and evaluated and approved based on the following design criteria.

A. Scale and nature of landscape material

The scale and nature of landscape materials shall be appropriate to the size of the site and related structures.

B. Trees

All required trees shall be balled and burlaped nursery grown trees as follows:

1. Shade trees

All deciduous shade trees shall have a minimum trunk size of three inches in caliper as measured from 12 inches above grade at planting, unless otherwise specified.

2. Evergreen trees

Evergreens trees shall have a minimum height of six feet at planting and shall be incorporated into the landscape treatment of a site, particularly in those areas where year-round screening and buffering is required.

§4.4.4 LANDSCAPE DESIGN STANDARDS

3. Ornamental trees

Single stem ornamental trees shall have a minimum trunk size of three inches in caliper as measured from 12 inches above grade at planting, unless otherwise specified.

Multiple stem ornamental trees shall have a minimum height of eight feet at planting, unless otherwise specified.

C. Shrubs

Unless otherwise specified, all large deciduous and evergreen shrubs shall have minimum height of three feet at installation, and all small deciduous and evergreen shrubs shall have a minimum height of 18 inches at installation. Large shrubs shall be considered to be those shrubs that reach five or more feet in height at maturity. Small shrubs shall be considered to be those shrubs that can grow up to five feet in height if left unmaintained, but are generally kept at heights of 18 to 30 inches.

D. Softening of walls and fences

Plant material shall be placed intermittently against long expanses of building walls, fences and other barriers to create a softening effect and to help break up extensive blank walls with little architectural detail.

E. Planting beds

Planting beds may be mulched with shredded hardwood, granite chips, river rock, feather rocks or similar materials. The use of lava rock is prohibited.

F. Irrigation

1. Landscape design pursuant to the requirements of this ordinance shall recognize the need for irrigation and water conservation. Sprinkler irrigation systems may be required for certain landscaped areas, as determined by a landscape architect. The need for sprinkler irrigation systems shall be determined by the type of plant material and the condition/growing medium that they are installed in. For instance, whether there is a permanent means available to water plant material, such as hose bibs, shall be a consideration.

2. All irrigation systems shall be designed to minimize the use of water. The use of design features (e.g. bio-swales, rain gardens, etc.) in landscaped areas is encouraged to minimize or eliminate the need for irrigation.

G. Energy Conservation

Plant material placement should be designed to reduce the energy consumption needs of the development. In addition, landscaping designs shall take into account and make an effort to promote energy conservation, where appropriate:

1. Deciduous trees should be placed on the south and west sides of buildings to provide shade from the summer sun; and

2. Evergreens and other plant materials should be concentrated on the north and west sides of buildings to dissipate the effect of winter winds.

H. Species diversity

Diversity among required plant material is required not only for visual interest, but to reduce the risk of losing a large population of plants due to disease. The table below indicates the

percentage of plant type diversity; i.e. shade tree, ornamental tree, evergreen tree, shrubs; required based on the total quantity of species being used.

Commentary: For example, if a development requires 45 shade trees, no more than 18 trees nor less than five trees can be of one species, and there must be a minimum of five different species within the 45 trees.

DIVERSITY REQUIREMENTS			
Total Plants per Type (number)	Minimum of Species (number)	Minimum of Any Species (percent of total)	Maximum of any Species (percent of total)
1 to 4	1	N/A	100
5 to 10	2	40	60
11 to 15	3	20	45
16 to 75	5	10	40
76 to 500	8	5	25
500 to 999	10	5	30
1,000 or more	15	4	15

I. Berming

Earthen berms and existing topographic features shall be incorporated into the landscape plan of a site where there is sufficient space and, in particular, when berms and existing topographic features can be combined with plant material to facilitate effective screening. Minimum un-retained berm side slopes shall be maintained at no less than a 4:1 slope ratio to prevent erosion and be properly and safely maintained. Retained slopes may be implemented with the appropriate terracing necessary to reduce the need for safety railing. Steeper slopes may be approved by the zoning administrator is proposed slope and planting treatment ensures stable slopes and minimized landscaping maintenance requirements.

§4.4.5. Street trees

In addition to other requirements of this ordinance, one shade tree per 50 linear feet shall be provided along all street frontages, be balled and burlaped, and be a nursery grown tree.

- Two shade trees per two-family or multi-family development, except in the C-B district where no on-lot trees are required. (This does not exempt lots in the C-B district from the parking lot landscaping requirements described in §4.4.7.)
- Four shade trees per non-residential or mixed-use development in all districts, except in the C-B district where no on-lot trees are required. The zoning administrator may waive this requirement where space does not allow for additional trees to be planted. Existing on-site trees that are retained shall be counted toward the minimum requirement.

§4.4.6. Street frontage landscaping

A. General

- The standards of this section are intended to provide landscape design flexibility in plant selection while still meeting the purposes of §4.4.1. All areas adjoining public or private street frontage shall be landscaped to include trees, shrubs, and living ground cover as required by this section.
- Street frontage plantings shall work in concert with bufferyard plantings to frame important views, while visually softening long expanses of walls, particularly those that

§4.4.7 PARKING LOT LANDSCAPING

lack windows and/or other architectural details. Street frontage plantings shall respond to the materials and the form of a building.

B. Street frontage areas

Street frontage landscape width requirements shall be as follows:

STREET FRONTAGE STANDARDS	
Type of Street Frontage	Minimum Landscape Width (feet)
Nonresidential Districts	
Front yard	15
Side yard, street	10
Double frontage lots	10
Residential Districts	
All district	Respective district setbacks

C. Shrubs

1. Street frontage plantings shall be installed across 60 percent of the length of the building façade, except where walkways, driveways, or loading areas are located.
2. A minimum four foot wide double hedge row shall be planted with one shrub every three feet on center, spaced linearly.
3. Shrubs shall measure a minimum of 24 inches at planting, and shall be a minimum of 36 inches to a maximum of 48 inches in height at maturity.

D. Groundcover

Living groundcover, such as grass, shall be provided within all required street frontage landscaped areas with a minimum one foot of width. Non-living materials (such as walk-on bark, mulch, and ornamental rock) may be used for up to 25 percent of the landscaped area. The use of lava rock is prohibited.

E. Supplemental plantings

Street frontage plantings may be enhanced with trees, additional shrubs and perennials where appropriate. Up to 20 percent of the required shrubs may be replaced by ornamental grasses or perennial flowers at a rate of four such plants per shrub replaced.

F. Location

The specific location of trees and landscaping within the required setback area shall be approved by the zoning administrator based on site characteristics.

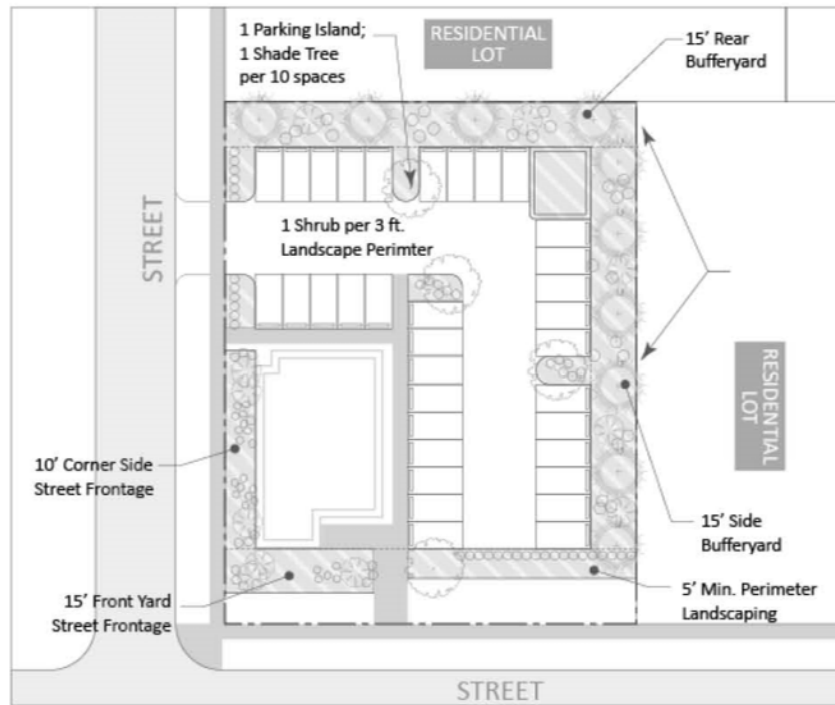
G. Berming

Berms to screen vehicles in parking areas adjoining street frontages with at least 15 feet between lot line and parking area are strongly encouraged. Berming shall not exceed a 4:1 slope, unless approved by the zoning administrator.

§4.4.7. Parking lot landscaping

All parking lots shall include landscaping and trees located within the parking area as required by this section. Trees required by this section shall be in addition to trees and landscaping required under other sections of this ordinance. It is the objective of this section to provide shade within parking areas, break up large expanses of parking lot pavement, and provide a safe pedestrian environment. The location, size, and design of the parking lot landscaped areas shall be approved

by the zoning administrator to ensure viability of the planting and protection from damage by vehicles while also meeting the objectives of this section.



A. Tree plantings

1. Shade trees shall be provided within parking lot areas at a rate of one tree per 10 parking spaces. Required parking area trees shall be large shade tree varieties and have a minimum three inch caliper at 12 inches above grade at the time of planting.
2. Trees shall be located in protected landscape areas within the parking lot with the provision that up to 15 percent of the required trees may be located within 10 feet of the parking lot perimeter.

B. Interior parking lot standards

For parking lot areas with 20 or more spaces, interior parking lot landscaping shall be required.

1. Planters

One planter shall be provided between every 10 parking spaces. As part of the landscape plan approval, planter locations may be varied based on specific site requirements or design scheme, but the total number of planters shall be no less than the amount required to provide one planter for every 10 spaces. All parking space rows shall be terminated by a parking lot island or landscaped area.

2. Size and planting of parking lot planters

- (a) Planter areas shall be a minimum width of six feet measured from the inside of the protective curbing. These areas may be widened to accommodate head in parking with a 39 inch vehicle overhang into the planter area so long as the required six foot minimum width for the tree planting is maintained. The width and design of

§4.4.7 PARKING LOT LANDSCAPING

planters shall be approved by the zoning administrator to ensure viability of the planting and protection from damage by vehicles.

- (b) Large shade trees shall be planted no closer than 20 foot on center.

3. Design of planting areas

- (a) Planters shall be at least 144 square feet in area and at least six inches above the surface of the parking lot.
- (b) All planters shall be protected with concrete curbing, except where designed specifically for the absorption of stormwater. Curbs separating landscaped areas from parking areas may be perforated or have gaps or breaks to allow storm water runoff to pass through them.
- (c) Tire stops, bollards, or other protective barriers may be used at the front ends of parking spaces. Trees must have adequate protection from car doors as well as car bumpers.
- (d) Planters shall be properly drained and irrigated as appropriate to the site conditions to ensure planting survivability.

4. Type of landscape material

Shade trees shall be the primary plant materials used in planting areas. Ornamental trees, shrubs, hedges and other plant materials may be used to supplement the shade tree plantings, but shall not create visibility concerns for automobiles and pedestrians.

5. Groundcover

A minimum of 75 percent of each planter shall be planted in turf or other live groundcover, perennials or ornamental grasses

6. Pedestrian walkways

Parking lots with 40 parking spaces or more should include protected pedestrian walkways through the parking lot:

- (a) Pedestrian walkways should be incorporated into landscaped areas and separated from vehicular traffic where possible;
- (b) Pedestrian cross-walks within larking lots should be demarcated using a paving material of contrasting color to the parking lot area; and
- (c) Parking lot area lighting should illuminate pedestrian walkways.

C. Perimeter landscaping standards

Perimeter landscaping is required for all parking lots and shall be established along the edge of the parking lot. The landscape treatment shall run the full length of the parking lot and shall be located between the property line and the edge of the parking lot. All perimeter parking lot screening areas shall be protected with raised concrete curbs. Landscaped areas outside of shrub and tree masses shall be planted in turf or other live groundcover. The landscaped area shall be improved as follows:

- 1. One shrub, measuring a minimum of 18 inches at planting and a minimum of three feet at maturity, shall be planted for every three feet of landscaped area length, spaced linearly to adequately screen vehicle bumpers (ideally creating a solid hedge row).

2. Alternatively, a low pedestrian wall the height of which provides effective screening to a maximum height of three feet may be used instead of shrubs. Where feasible, plant materials shall be installed between the sidewalk and the wall to provide a softening effect on the fence or wall.
3. The perimeter parking lot landscaping area shall be at least five feet in width, as measured from the back of curb, to accommodate vehicle bumper overhang and ensure planting areas that are adequate in size.

D. Existing parking lots

1. For existing parking lots that currently do not comply with the required parking lot landscaping, such landscaping shall be provided when:
 - (a) A new principal building or building addition is constructed, or exterior remodeling of the principal building occurs.
 - (b) Over 50 percent of the total area of an existing parking lot is reconstructed. For purposes of this section, reconstruction shall include all paving of previously unpaved surfaces, replacement of pavement with new binder and surface courses, construction of curbing, and similar activities. Reconstruction shall not include maintenance activities such as repair of existing curbing, repairs, sealing, re-stripping, or placement of surface course pavement over previously paved areas.
 - (c) When an existing parking lot under 10,000 square feet in area is expanded by 50 percent or more in total surface area.
 - (d) When an existing parking lot over 10,000 square feet in area is expanded by 25 percent or more in total surface area.
2. When an existing parking lot is required by subsection 1 above to provide landscaping and such improvements would result in creating a parking area that no longer conforms to the parking regulations of this ordinance, the existing parking lot shall not be required to install all or a portion of the required landscaping. The applicant shall be required to show that landscaping cannot be accommodated on the site. If only certain requirements are able to be accommodated on the site, those elements shall be required. The zoning administrator shall make the determination that all or a portion of required landscaping does not have to be installed.

§4.4.8. Bufferyards

A. Objective

It is the objective of the bufferyard to lessen, rather than completely eliminate, land use conflicts between such uses. It is not expected that bufferyards will totally screen such uses. It is expected that the bufferyard design elements identified below will provide immediate lessening of land use conflicts and such buffering will be enhanced over time as landscaping matures. A buffer is not intended to be commensurate with the term "yard" or "setback."

B. Bufferyard requirements

1. Perimeter compatibility is required along the boundaries of all incompatible zoning districts. The following table shall be used to determine the required buffer classification between adjacent districts.

§4.4.8 BUFFERYARDS

⬇️ ADJACENT PROJECT DISTRICT ⬆️									
Subject Property District ⬇️	R-S	R-M	M-U	C-L	C-G	C-B	I-L	I-H	P-R
R-S	n/a	n/a	n/a	m/a	n/a	n/a	n/a	n/a	n/a
R-M	X	n/a	n/a	m/a	n/a	n/a	n/a	n/a	n/a
M-U	X	X	n/a	m/a	n/a	n/a	n/a	n/a	n/a
C-L	X	X	X	m/a	n/a	n/a	n/a	n/a	n/a
C-G	X	X	X	X	n/a	n/a	n/a	n/a	n/a
C-B	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
I-L	X	X	X	X	X	X	n/a	n/a	n/a
I-H	X	X	X	X	X	X	X	n/a	n/a
P-R	X	X	X	X	X	X	X	X	n/a

2. Bufferyards may include a combination of elements including setback distances as separation, tree and shrubs, solid fencing, and/or berming. It is encouraged that existing topography and vegetation be included in the design of the bufferyard as approved by the zoning administrator. Retention of existing matures trees is strongly encouraged in meeting the requirements of this section.
3. The standards provided in the bufferyard options identified below may be used in combination to meet the intent of this section.

C. Rear bufferyards

Rear bufferyards shall have a minimum depth of 15 feet and include standards as identified below.

1. Natural buffers

Four evergreen variety trees, two flowering variety trees, and 10 shrubs per 100 feet of linear distance (evergreen shrubs to be spaced at five feet on center with a minimum mature height of five feet or 15 large deciduous shrubs, per 100 feet of linear distance planted in a staggered double row.

2. Structural buffers

Solid six foot high wall or fence with two evergreen variety trees, two flowering variety trees, and five large shrubs per 100 feet of linear distance.

3. Earthen berm buffer

Minimum 15 foot rear bufferyard with berming not to exceed a 1 to 3 slope, three large evergreen trees, two flowering variety trees per 100 feet of linear distance, and sufficient evergreen shrubs with a combined height (berm and mature shrub) of five feet to form a continuous screen within three years of planting and/or sufficient deciduous shrubs with a combined height of five feet to form a continuous screening within three years of planting.

D. Side bufferyards

Side bufferyards shall have a minimum depth of 15 feet and include standards as identified below.

1. **Natural buffer - evergreen**

Four evergreen variety trees, two flowering variety trees and 10 evergreen shrubs per 100 feet of linear distance.

2. **Natural buffer - deciduous**

Four deciduous variety trees, two flowering variety trees, and 15 large shrubs per 100 feet of linear distance.

3. **Structural buffers**

Solid six foot high wall or fence with two flowering trees and five large shrubs per 100 feet of linear distance.

§4.4.9. Required landscaping elements

The location of the landscaping requirements described in previous sections, are as illustrated below:



§4.4.10. Additional landscaping/screening requirements

A. General

Landscape and building elements shall be used to screen areas of low visual interest or visually intrusive site elements (such as trash collection, open storage, service areas, loading docks and blank walls) from off-site view. Such screening shall be established on all sides of such elements except where an opening is required for access. If access is possible only on a side that is visible from a public street, a removable or operable screen shall be required.

B. Screening of ground mounted mechanical units

For all uses, except any individual lot occupied by a single-family, two-family, or three-family dwelling, all ground-mounted mechanical units, including but not limited to: air-conditioning condensers, heat pumps, ventilation units, computer cooling equipment, etc., and any related

§4.4.10 ADDITIONAL LANDSCAPING/SCREENING REQUIREMENTS

utility structures and equipment, that are visible from any adjacent public thoroughfare shall be visibly screened from public view. The screen shall be designed and established so that the area or element being screened is no more than 20 percent visible through the screen.

C. Screening of roof mounted mechanical units

All roof-mounted mechanical units shall be screened from adjacent public thoroughfares by the use of an opaque screening material compatible with the architecture of the building or architecturally designed screening such as a parapet wall. The screening of the roof-mounted units shall be designed to blend with the building and roof materials. Additional screening may be required due to topographic differences in the adjoining properties.

D. Screening of trash receptacles

For all uses, except any individual lot occupied by a single-family, two-family, or three-family dwelling, using a common trash receptacle and all nonresidential uses:

1. Solid material screening or full screening landscaping on three sides to a height that screens the containers, having a minimum height of six feet.
2. Materials used for screening shall complement the architecture of the principal structure. The use of materials that are not solid, such as slats in chain-link, shall not be used to meet this requirement.
3. Materials and elevations for enclosures that are attached to buildings shall be designed to be compatible with the main structure.
4. If enclosures are to be attached to buildings they shall comply with applicable fire and building codes.
5. Enclosure openings directly visible from a public right-of-way and/or adjoining residential areas shall have a solid material gate. For larger enclosure areas, a separate gate access is encouraged.
6. Access drives shall be constructed of material and thickness to accommodate truck loading. Year round accessibility to the enclosure area for service trucks shall be maintained by the property owner or tenant.
7. Enclosures shall be of an adequate size to accommodate expected containers. It is encouraged to design the enclosure area to be expandable to accommodate future additional containers.
8. Enclosure structures shall be designed to protect the walls from damage by containers. Such protection may be provided by use of barrier curbing, reinforced masonry walls, or other similar means.
9. Trash enclosures shall not be located within a required street front or street side setbacks or occupy area used for required parking spaces.

E. Loading docks, service yards, and exterior work or storage areas

Service yards, loading docks and exterior work or storage areas shall be screened from view from public rights-of-way or adjacent lots.

1. The screening shall consist of either of the following:

- (a) Opaque masonry (stone or brick), solid wood or simulated wood fence having a minimum height of six feet.
 - (b) Multi-stemmed ornamental trees, evergreen trees, large shrubs or some combination thereof, planted at a minimum ratio of 50 plant units for each 100 linear feet of perimeter to be screened. If large shrubs are used, they shall be a minimum of six feet in height at the time of installation.
2. If outdoor storage is allowed, said storage areas shall be screened in a manner such that the materials being stored are completely screened from view. If storage materials exceed the allowable maximum fence height of eight feet, then a combination of berming, fencing and landscaping shall be used to accomplish appropriate screening. In no case shall stored materials exceed the height of the proposed screening method.

§4.5. OUTDOOR LIGHTING

§4.5.1. Applicability

A. General

All new development shall comply with the standards of this section.

1. Buildings and structures lawfully existing as of the effective date of this section, may be redeveloped, renovated or repaired without modifying outdoor lighting in conformance with this section, provided there is no increase in gross floor area in such building or structure or impervious area on the site.
2. Where a building or structure existed as of the effective date of this section, and such building is enlarged in gross floor area or impervious area on the site by 10 percent or 2,000 square feet, whichever is less, outdoor lighting as specified in this section shall be provided.

B. Exception

The following shall be excepted from the outdoor lighting requirements of this section:

1. Fixtures (luminaries) utilizing incandescent lamps (bulbs) with less than 1,000 initial lumen output.

Commentary: A 60 watt incandescent light bulb has an initial lumen output of about 1,000 lumens. This exemption covers the typical exterior residential light fixture, almost all such fixtures recommend (on the box) use of a maximum 60 watt incandescent bulb.

2. Public recreational playfield lighting; and
3. Lighting with more than 1,000 initial lumen may be allowed with an active or activated motion sensor.

§4.5.2. Prohibited light sources

The following light fixtures and sources shall not be used within the city where the direct light emitted is visible from adjacent areas:

- A. Low-pressure sodium and mercury vapor light sources;
- B. Cobra-head-type fixtures having dished or drop lenses or refractors which house other than incandescent sources; and

- C. Searchlights and other high-intensity narrow-beam fixtures.

§4.5.3. Design Requirements

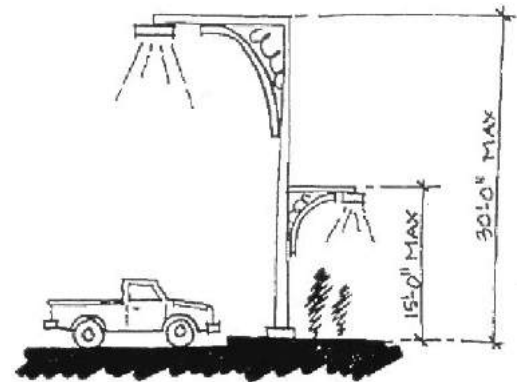
Outdoor lighting shall primarily be used to provide safety while secondarily accenting key architectural elements and to emphasize landscape features. Light fixtures shall be designed as an integral design element that complements the design of the project. This may be accomplished through style, material or color. All lighting fixtures designed or placed so as to illuminate any portion of a site shall meet the following requirements:

A. Fixture (luminarie)

The light source shall be concealed and shall not be visible from any street rights-of-way or adjacent properties. In order to direct light downward and minimize the amount of light spillage into the night sky and onto adjacent properties, all lighting fixtures shall be full cutoff fixtures.

B. Fixture Height

Lighting fixtures shall be a maximum of 30 feet in height within parking areas and at street intersections and shall be a maximum of 15 feet in height within non-vehicular pedestrian areas. All light fixtures located within 50 feet of any residential use or residential property boundary shall not exceed 15 feet in height.



C. Light source (lamp)

Only incandescent, fluorescent, metal halide, or color corrected high-pressure sodium may be used. The same light source type shall be used for the same or similar types of lighting on any one site throughout any development.

D. Mounting

Fixtures shall be mounted in such a manner that the cone of light is contained on-site and does not cross any property line of the site.

E. Limit lighting to periods of activity

The use of sensor technologies, timers or other means to activate lighting during times when it will be needed may be required by the zoning administrator to conserve energy, provide safety and promote compatibility between different land uses.

§4.5.4. Specific standards

Tear sheets for all lighting fixtures (luminaries) to be installed on-site or on adjacent streets shall be required as follows:

A. Street lighting

A street light standard of 30 feet mounting height shall be installed at all street intersections, at the end, cul-de-sacs and at intermittent spacing necessary to produce a minimum of 0.6 maintained foot candles for collector streets and 0.4 maintained foot candles for local streets with uniformity ratio not exceeding 3 to 1. Luminaries shall have a minimum 175 watt high intensity discharge lamps.

B. Security lighting

1. Building-mounted security light fixtures such as wall packs shall not project above the fascia or roof line of the building and shall be shielded.
2. Security fixtures shall not face a residential property.
3. Security fixtures shall not be substituted for parking area or walkway lighting and shall be restricted to loading, storage, service and similar locations.

C. Accent lighting

Only lighting used to accent architectural features, landscaping or art may be directed upward.

D. Canopy area lighting

All development that incorporates a canopy area over fuel sales, automated teller machines or similar installations shall use a recessed lens cover flush with the bottom surface of the canopy that provides a cutoff or shielded light distribution.

E. Entrances and exits in nonresidential and multifamily development

All entrances and exits to buildings used for nonresidential purposes and open to the general public, along with all entrances and exits in multifamily residential buildings, shall be adequately lighted to ensure the safety of persons and the security of the building.

F. Off-street parking area lighting

Off-street parking areas shall be required to provide adequate lighting during nighttime hours of operation.

§4.5.5. Excessive Illumination

- A. Lighting within any lot that unnecessarily illuminates and interferes with the use or enjoyment of any other lot is prohibited. Lighting unnecessarily illuminates another lot if it clearly exceeds the requirements of this section, or if the standard could reasonably be achieved in a manner that would not interfere with the use or enjoyment of neighboring properties.
- B. Lighting shall not be oriented so as to direct glare or excessive illumination onto streets in a manner that may distract or interfere with the vision of drivers on such streets.
- C. All lighting, including any exterior floodlights, shall be shielded so that substantially all emitted light falls within the property line of the property from which the light emanates.
- D. Illumination using bare illuminated tubing or strings of lights that completely outline or define property lines, sales areas, roofs, doors, windows or similar areas in a manner that is not primarily for safety purposes is prohibited, except for temporary holiday displays.
- E. All lighting fixtures used to illuminate an off-street parking area shall be arranged so as to direct or shield the light away from any adjoining residential premises.
- F. Lighting used to illuminate commercial sites and parking areas shall be arranged, located or screened to direct light away from any adjoining or abutting residential district or use or any street rights-of-way.

Article 5. Decision-Making Bodies and Officials

§5.1. PLANNING COMMISSION

§5.1.1. Establishment and composition

The planning commission is established and composed as specified in the planning commission's bylaws.

§5.1.2. Meetings

Meetings shall be held as specified in the planning commission's bylaws.

§5.1.3. Powers and duties

A. General

The planning commission shall:

1. Exercise powers and duties as may be described elsewhere in this ordinance, the planning commission's bylaws and as permitted by state law;
2. Establish or amend bylaws as necessary to facilitate the performance of its duties as outlined in P.A. 33 of 2008, as amended, being the Michigan Planning Enabling Act; and
3. Perform related duties as directed by the city commission.

B. Recommendations

The planning commission shall make recommendations regarding the following:

1. Map (rezonings) and text amendments (§6.2);
2. Planned development review (§6.4); and
3. Special use permit reviews (§6.5).

C. Final decisions

The planning commission shall make final decisions regarding the following:

1. Site plan reviews (§6.6); and
2. M-U, Mixed use district reviews (§6.3).

§5.2. BOARD OF APPEALS

§5.2.1. Establishment and composition

A board of appeals is hereby created in accordance with the laws of the State of Michigan, which shall consist of the city commission of the City of Benton Harbor, except that in the event the city commission so desires, it may appoint a board of appeals consisting of not less than five members, each to be appointed for a term not to exceed three years.

§5.2.2. Hearings and meetings

- A. The members of the board of appeals shall hold hearings from time to time as necessary at such time and place as they may fix, except that any application of administrative appeal, variation or exception shall be considered within 15 days of receipt of a complete application

by the appropriate official. The mayor and mayor pro tern shall serve as chairman and vice-chairman.

- B. Special meetings may be called at any time by the chairman or, in his absence, by the vice-chairman. A majority of the board shall constitute a quorum for the transaction of business.
- C. The board shall cause a proper record to be kept of its proceedings.

§5.2.3. Powers and duties

A. General

The board of appeals shall:

1. Exercise powers and duties as may be described elsewhere in this ordinance, the board of appeal's bylaws and as permitted by state law; and
2. Establish or amend bylaws as necessary to facilitate the performance of its duties as outlined in the Michigan Planning Enabling Act.

B. Final decisions

The board of appeals shall have the powers and duty to make final decisions regarding the following:

1. Administrative appeals (§6.7);
2. Variations (§6.8); and
3. Exceptions (0).

§5.3. ZONING ADMINISTRATOR

§5.3.1. Designation

The zoning administrator shall be as designated by the city manager.

§5.3.2. Powers and duties

A. Recommendations

The zoning administrator shall make recommendations regarding the following:

1. Map (rezonings) and text amendments (§6.2);
2. M-U, Mixed use district reviews (§6.3);
3. Planned development review (§6.4); and
4. Special use permit reviews (§6.5).

B. Final decisions

The zoning administrator shall make final decisions regarding the following:

1. [RESERVED].

§5.4. BUILDING OFFICIAL

§5.4.1. Designation

The building official shall be as designated by the city manager.

§5.4.2. Powers and duties

A. Recommendations

1. Variations (§6.8); and
2. Exceptions (0).

B. Final decisions

1. Building and occupancy permits (§6.10).

Article 6. Development Review

§6.1. COMMON PROCEDURES

§6.1.1. General

Every official and employee of the city, vested with the duty or authority to issue a permit, approval, decision or certificate shall not issue such permit, approval, decision or certificate for any use, building or purpose that conflicts with any provision of this ordinance.

§6.1.2. Preapplication conference

- A. Before submitting an application required by this ordinance, each applicant may hold a preapplication conference with the applicable review official to discuss the procedures, standards and regulations required for development approval in accordance with this ordinance. In addition, such preapplication conferences shall be required for the following types of application and review:
 - 1. M-U district review (§6.3);
 - 2. Site plan review (§6.6); and
 - 3. Special use permit review (§6.5).
- B. At the conference, the applicant is expected to outline the project in terms of land uses, anticipated building arrangements and site design, and proposed construction timetable.

§6.1.3. Minimum submission requirements

A. Forms

Applications required under this article shall be submitted on application forms and in such numbers as required by the applicable review official or review body. The application form for each development review procedure shall establish the minimum information required for that procedure.

B. Proof of ownership

All applications required under this article shall include proof of ownership satisfactory to the applicable review official or decision-making body. Such proof may include a preliminary title report from a licensed title company or attorney listing the name of the property owner(s) and all liens, easements and judgments of record affecting the subject property.

C. Property owner endorsement

- 1. All applications shall include the name and signature of the current property owner(s) of all property within the boundaries; or
- 2. Where the owner is not the applicant, the applicable review official shall require an applicant to present evidence that the applicant is a duly authorized agent of the owner.

D. Content

- 1. An application shall be sufficient for processing when it contains all of the information (statements, plans, evidence, material, and documentation) necessary to demonstrate

§6.1.4 NOTICE AND PUBLIC HEARINGS

that the development as proposed will comply with the applicable requirements of this ordinance.

2. The burden of demonstrating that an application complies with applicable requirements is on the applicant. The burden is not on the city or other parties to show that the applicable requirements have not been met.
3. Each application is unique and, therefore, more or less information may be required according to the needs of the particular case. The applicant shall rely on the review official as to whether more or less information should be submitted.

Commentary: Information needs tend to vary substantially from application to application and to change over time as result of code amendments and review procedure changes. Staff has the flexibility to specify submission standards for each application and to waive standards that are irrelevant to specific situations.

E. Filing fees

1. All applications shall be accompanied by the associated filing fee and shall be filed with the applicable review official or body.
2. Filing fees shall be established from time to time by resolution of the city commission to cover all actual costs associated with the processing of applications. Such costs may include but not be limited to all costs associated with application review and the provision of required public notices.
3. Filing fees are not refundable except where an application was accepted in error or the fee paid exceeded the amount due. Fees may be refunded or partially refunded, where applications are withdrawn prior to publication of any notices. Under no condition shall said sum or any part thereof be refunded for failure of said application to be approved. No fee shall be required from any governmental or public agency.

F. Completeness review

An application shall be considered submitted only after the applicable review official certifies that it is complete, provided in the required form, includes all mandatory information as may be required by the review official, and is accompanied by the applicable fee. A determination of application completeness shall be made by the review official within five working days of application filing. If an application is determined to be incomplete, the review official shall contact the applicant to explain the application's deficiencies. No further processing of the application shall occur until the deficiencies are corrected. If the deficiencies are not corrected by the applicant within 15 working days, the application shall be considered withdrawn and returned to the applicant. All applications must be certified complete at least 30 days prior to a meeting or public hearing, unless otherwise allowed by the review official.

§6.1.4. Notice and public hearings

- A. After an application has been certified complete as required by §6.1.3.F, the applicable review or decision-making body shall fix a reasonable time for the hearing of the application or appeal and decide the same within 30 days. Notice of the time and place of such hearing shall be given in accordance with the laws of the State of Michigan.
- B. At the hearing any party may appear in person or by agent or by attorney.

§6.1.5. Application processing

A. Referrals

Review officials may forward complete applications submitted under this article to such other public officials and agencies as required by law or as deemed appropriate for further review.

B. Staff reports

Review officials shall submit a written report containing recommendations on each land use application to the applicable review- and/or decision-making body, prior to the meeting or hearing of the review- and/or decision-making body before which the application is to be heard.

C. Concurrent applications

1. If approved by the applicable review officials, applications for development approvals may be filed and reviewed concurrently; provided, however,
 - (a) Any application that also requires a legislative decision shall not be eligible for final approval until the legislative decision has been approved; and
 - (b) No site plan shall be approved before any necessary rezoning is approved.
2. Applications submitted concurrently are subject to approval of all other related applications; denial or disapproval of any concurrently submitted application shall stop consideration of any related applications until the denied or disapproved application is resolved.

§6.1.6. Notice of decision

Within 10 days after a final decision is made under this article, a written copy of the decision or findings of fact shall be sent to the applicant and filed with the applicable review official and recorded in the minutes of the decision-making body where it shall be available for public inspection during regular office hours.

§6.2. MAP (REZONING) AND TEXT AMENDMENTS

§6.2.1. Applicability

Amendments to the zoning map (rezonings) or text of this ordinance shall be made in accordance with the provisions of this section.

§6.2.2. Initiation

The city commission may from time to time on its own motion or upon application amend, supplement, change, modify or repeal by ordinance the boundaries of districts or regulations, or restrictions herein established.

§6.2.3. Application requirements

All applications for map (rezoning) or text amendment shall be submitted in accordance with the minimum submission requirements of §6.1.3.

§6.2.4. Notice and hearing

All required hearings and notice shall be in accordance with the requirements of §6.1.4.

§6.2.5. Action by zoning administrator

The zoning administrator shall draft the appropriate amendment and/or prepare a report that reviews the proposed zoning map (rezonings) or text amendment and makes a recommendation.

§6.2.6. Action by planning commission

Any proposed amendment, supplement, change, modification or repeal shall first be submitted to the planning commission for its recommendations and report; and the report to be made within 30 days thereafter. Such report shall contain the findings of the commission regarding the effect of the proposed amendment, supplement change, modification or repeal upon adjacent property and upon the master plan.

§6.2.7. Action by city commission

After receiving the recommendations and report of the planning commission, the city commission shall consider any proposed amendment, supplement, change, modification or repeal in a public hearing. The city commission shall approve, conditionally approve, deny, or table the application.

§6.2.8. Approval criteria

No proposed amendment, supplement, change, modification or repeal shall be approved that is inconsistent with the master plan.

§6.2.9. Protest

In the event of protest against a proposed amendment, supplement or change be presented, duly signed by the owners of 20 percent or more of the frontage proposed to be altered or by the owners of 20 percent of the frontage in the rear thereof, or by the owners of 20 percent turn of the frontage directly opposite the frontage proposed to be altered, such amendment shall not be passed except by the three-fourths vote of the city commission.

§6.2.10. Time lapse between similar applications

The city commission will not accept, hear or consider substantially the same application to amend the zoning map or text of this ordinance within a period of one year from the date a similar application was decided.

§6.2.11. Notice of decision

Notice of decision shall be provided as required by §6.1.6.

§6.3. M-U, MIXED USE DISTRICT REVIEWS

§6.3.1. Applicability

In addition to other applicable requirements of this ordinance, M-U district development review shall occur in accordance with the provisions of this section.

§6.3.2. Initiation

The owner of not less than 10 acres of land within the city, or such owner's duly authorized agent or representative, may submit an application to the zoning administrator for M-U district development.

§6.3.3. Preapplication conference

- A. All applicants for - development shall hold a preapplication conference with the zoning administrator in accordance with §6.1.2 prior to committing to any lot or site design.

- B. The city manager may waive the preapplication conference for a M-U district application if the applicant requests a waiver in writing and the city manager finds that the applicant has a clear understanding of the design and processing requirements.

§6.3.4. Application requirements

Applications for M-U district development shall be submitted in accordance with the minimum submission requirements of §6.1.3. At a minimum the required documentation shall consist of a site plan in accordance with §6.6, and the following:

- A. A narrative that provides the evidence that the project satisfies the requirements of this article regulating the M-U district, and describes existing site characteristics, the proposed character of the development, and a discussion of the means of serving the development with sewer and water service;
- B. Statement of covenants, grants of easements, and other restrictions to be imposed upon the uses of land and structures;
- C. A legal description of the property;
- D. A schedule indicating the proposed timing of the development, including phasing, if appropriate; and
- E. Any other data, plans, or drawings considered by the planning commission or city commission to be necessary for the consideration of the proposal.

§6.3.5. Notice and hearing

All required hearings and notice shall be in accordance with the requirements of §6.1.4.

§6.3.6. Action by zoning administrator

Upon submission of a complete application, the zoning administrator shall review the application for consistency with the requirements §6.3.9 and other applicable city requirements, and prepare a written report and recommendation.

§6.3.7. Action by planning commission

The planning commission shall consider the application in a public hearing, and shall approve, deny, conditionally approve or table the application, as follows.

A. Approval

If the plan complies with all this ordinance and related development requirements and standards, the planning commission shall approve the preliminary site plan.

B. Denial

If the preliminary site plan does not comply with zoning and related requirements and standards, the planning commission shall deny the application and record its reasons for the denial. The applicant may subsequently submit a corrected site plan under the same procedures followed for the initial submission, except that the preapplication conference is at the option of the applicant.

C. Conditional approval

If minor corrections to the preliminary site plan are necessary, which can be clearly noted, or the planning commission wishes to attach any conditions necessary to ensure that the application complies with the standards for approval, the commission shall conditionally

approve the preliminary site plan. Any conditions attached shall comply with the requirements of the state zoning act.

D. Table

If the site plan does not comply with certain requirements, or is incomplete with respect to necessary information, or presents a unique situation that requires additional information or review, the planning commission may table action until for a reasonable amount of time so these conditions may be addressed, or additional data provided.

§6.3.8. Phased development

For phased developments, a preliminary approval may be given for the preliminary site plan, as follows:

- A. Individual phases shall be submitted to the planning commission for final site plan approval prior to approval of a building permit.
- B. Each final site plan shall be substantially in accordance with the preliminary site plan and any conditions or modifications imposed.

§6.3.9. Approval criteria

Property may be zoned to the M-U district when the city commission finds that:

- A. Site proposed for a mixed use development shall be a minimum of 5 acres and shall be under unified control at the time of application;
- B. Development shall not be used to otherwise circumvent other requirements of this ordinance;
- C. Site proposed for mixed-use development is consistent with the master plan;
- D. Development will be integrated with surrounding areas and not be isolated from them;
- E. Development and surrounding areas have adequate public facilities, services, and transportation networks to support the proposed uses;
- F. Development will not involve uses, activities, processes, materials, equipment, and conditions of operation that will be detrimental to any persons, property, or the general welfare by reasons of smoke, fumes, glare, noise, vibration, or odors; and
- G. The site is particularly suited for mixed use development.

§6.3.10. Notice of decision

Notice of decision shall be provided as required by §6.1.6.

§6.3.11. Minor amendments

- A. The zoning administrator is authorized to approve minor amendments to an approved site plan upon determination that the minor amendment:
 - 1. Is consistent with the master plan;
 - 2. Does not increase the approved density or intensity of the development;
 - 3. Does not adversely affect the timing and phasing of development of any other development in the zoning district; and
 - 4. Is generally in accordance with the purpose and intent of the approved application.

- B. If the zoning administrator deems that there is a substantial change or deviation from that shown on the approved site plan, the owner/applicant or his successors shall be required to apply to the planning commission for approval of an amended site plan, using the same process as the original approval.

§6.3.12. Duration

A preliminary site plan shall be valid for three years. If the development has not moved toward meaningful construction within that time, the planning commission may revoke development approval under the same process taken to review the development.

§6.4. PLANNED DEVELOPMENT REVIEWS

§6.4.1. Purpose

Planned development review is intended to accommodate innovation, imagination, and creative development that may be difficult if not impossible to carry out under otherwise applicable or available zoning district standards. PD development standards permit and encourage such flexibility and, more specifically, seek to achieve the following objectives:

- A. General consistency and support of the recommendations of the Benton Harbor Master Plan;
- B. Stimulate creative approaches to the development of land;
- C. Provide more efficient use of land;
- D. Preserve natural features and provide open space areas and recreation areas in excess of that required under base zoning district regulations;
- E. Develop new approaches to the living environment through variety in type, design and layout of buildings, transportation systems, and public facilities.
- F. Ensure unity of design in building and structures; and
- G. Achieve a compatible land use relationship with surrounding areas.

§6.4.2. Applicability

- A. Planned developments may be approved only when the applicant demonstrates to the satisfaction of the city commission that a proposed planned development project would not negatively affect surrounding property and uses and/or result in a greater benefit to the city than would development under conventional zoning district regulations.
- B. All development on lots and sites in excess of five acres;
- C. Any development on a lot or site adjacent to, with frontage on, or within 100 feet of Lake Michigan, the Paw Paw River, the Saint Joseph River or the Benton Harbor Canal shall be subject to the approval of a PD plan in accordance with the procedures of §6.4 and the PD plan requirements of this section; and
- D. All development in the C-B district.

§6.4.3. Allowed uses

Allowed uses in the PD development shall be established as part of the planned development review application approval process.

§6.4.4. Dimensional standards

Dimensional standards in the PD development shall be established as part of the rezoning application approval process.

§6.4.5. PD plan requirements

A. PD plan requirement

In approving PD development, the city commission shall require a master plan of the development. The development proposed in the PD plan shall be compatible with the character of surrounding land uses and maintain and enhances the value of surrounding properties. The PD plan shall be prepared by a professionally certified urban planner, landscape architect, engineer or architect, or other professional approved by the zoning administrator. The PD plan shall be approved and filed prior as part of the approval.

B. Recreation and open space

To the extent practical, land in the proposed PD development shall be dedicated for recreation and open space purposes for the use and enjoyment of residents and occupants of the development and the community.

C. Preservation of natural features

Mature trees, vegetative cover, watercourses, and other natural site features must be preserved to the maximum extent feasible.

D. Roadway access

Unless otherwise expressly approved during the planned development review procedure of §6.4, principal vehicular access to planned developments must be from collectors or higher classification streets.

E. Architecture

1. All buildings within a PD development shall exhibit a unity of design for buildings through the use of similar elements such as rooflines, materials, window arrangement, sign location, and details.
2. The city may require an architectural site plan to review for the purpose of promoting the preservation of the visual character of the neighborhood, the stability of land values and investment, the public safety, and the general welfare by preventing the erection of structures or additions or alterations thereto of unsightly or obnoxious appearance, which are not properly related to their sites or to prevent the indiscriminate clearing of property, excessive grading, and the destruction of trees and shrubbery.
3. In carrying out the purpose of this section with respect to the external design of the buildings, approval shall be considered in accordance with the following objectives:
 - (a) Reducing the adverse visual impacts of structures which, because of size, scale, color, or location, are out of harmony with the neighborhood in which they are to be constructed; and
 - (b) Minimizing disturbances to the natural terrain and existing significant vegetation; enhancing drainage; reducing soil erosion; and otherwise maximizing compatibility with policies and regulations of this ordinance.

4. It is the intent of this section that the city shall exercise the minimum control necessary to achieve the overall objectives thereof.

§6.4.6. Initiation

An owner of not less than five acres of land within the city (or a duly authorized agent or representative) may petition the city commission for planned development rezoning.

§6.4.7. Preapplication conference

All applicants filing a planned development application shall hold a preapplication conference with the zoning administrator in accordance with §6.1.2.

§6.4.8. Application requirements

- A. All applications for planned development shall be submitted in accordance with the minimum submission requirements of §6.1.3.
- B. Concurrent with a request for planned development approval, an applicant shall submit a PD plan prepared in accordance with the requirements of §6.4.5 to govern the development and maintenance of the land within the planned development.

§6.4.9. Notice and hearing

All required hearings and notice shall be in accordance with the requirements of §6.1.4.

§6.4.10. Action by zoning administrator

- A. Upon submission of a completed application, the zoning administrator shall review the PD plan for consistency with the requirements of this ordinance.
- B. Upon completion of the technical review, the zoning administrator may meet with the applicant to discuss any changes in development plan.
- C. The zoning administrator shall prepare a staff report that reviews the application in light of the adopted plans and policies of the city, and the requirements of this ordinance. The report, PD plan and any related application materials shall be forwarded to the planning commission.

§6.4.11. Action by planning commission

- A. The planning commission shall make a recommendation on the application to the city commission. The planning commission's recommendation shall include a written statement to the city commission describing whether its recommendation is consistent with the adopted plans and policies of the city.
- B. Following planning commission review, the zoning administrator shall forward the completed planned development request and any related materials, including the planning commission recommendation (if applicable), to the city commission for final action.

§6.4.12. Action by city commission

- A. Before taking action on a planned development rezoning, the city commission shall consider the recommendations of the planning commission and the zoning administrator.
- B. The city commission may approve the rezoning, deny the rezoning, or send the rezoning back to the zoning administrator for additional consideration.

§6.4.13 ADDITIONAL CONDITIONS

- C. Concurrently with adopting, denying, or remanding any rezoning, the city commission shall adopt a statement describing whether its action is consistent with the adopted plans and polices of the city and explaining why the city commission considers the action taken to be reasonable and in the public interest.
- D. A PD plan which meets the requirements for submittal of a preliminary plat may be approved as the PD plan for the development and the preliminary plat concurrently.

§6.4.13. Additional conditions

The city commission may impose such other conditions as are deemed necessary to accomplish the purposes of this section, this ordinance and the master plan.

§6.4.14. Effect on other code standards

Except as expressly authorized by this section and approved as a part of a PD plan, pursuant to the procedures of §6.4, planned development review, the standards of this ordinance shall apply to all development within a planned development.

§6.4.15. PD plan approval criteria

The planned development review shall include and the applicant shall be responsible for successfully addressing the following:

- A. Compliance with the requirements of this section and all other applicable requirements of this ordinance;
- B. Uses to be allowed in a planned development;
- C. Conformance of the proposal with the stated purpose of the requested planned development approval;
- D. Compatibility of the proposed development with the adjacent community;
- E. The quality of design intended for each component of the project and the ability of the overall development plan to ensure a unified, cohesive environment at full build-out;
- F. Compatible relationships between each component of the overall project;
- G. Self-sufficiency of each phase of the overall project;
- H. Documentation that the proposed infrastructure improvements accommodate the additional impacts caused by the development, or documentation to assure that the development, as proposed, will not overtax the existing public infrastructure systems;
- I. The fiscal impact of the proposal and the proposed financing of required improvements;
- J. The success of the proposal in providing adequate pedestrian access and use within the development and with the adjacent community; and
- K. The effectiveness with which the proposal protects and preserves the ecologically sensitive areas within the development.

§6.4.16. Action after approval

- A. Upon approval of a planned development by the city commission, and on recordation of the approved PD plan, the district is deemed established. All documents (including the approved PD plan) shall be an integral part of the approved proposal.

- B. Approved PD developments shall be indicated on the zoning map.
- C. The approved planned development and associated PD plan shall run with the land and shall be binding on the original applicant as well as any successors, assigns and heirs. The approved PD plan shall be recorded in the office of the city clerk and the zoning map shall be amended.
- D. Approval of a planned development and associated master plan does not constitute site plan approval or subdivision approval (if the property is to be further subdivided), except where the PD plan meets applicable subdivision requirements.
- E. Property to be further subdivided shall obtain approval in accordance with the subdivision regulations of the city.
- F. Property not to be further subdivided shall obtain site plan approval as set forth in §6.6.

§6.4.17. Time lapse between similar applications

- A. In the event of a withdrawal of an application prior to action by the city commission, no application may be filed requesting the same planned development contained in the withdrawn application prior to the expiration of a minimum period of six months from the withdrawal of the application.
- B. No subsequent application requesting a planned development for any parcel contained in an application which has expired may be made prior to the expiration of a minimum period of six months from the date of expiration.
- C. The city commission, by a majority vote, may waive the time-lapse requirements of this section if the city commission deems it to be in the public interest to do so.

§6.4.18. Modification of approved PD plans

- A. Modifications (changes) to an approved PD plan, if minor in scope, may be approved administratively by the zoning administrator. Minor changes shall include up to ten percent modifications to the original mixture of uses (so long as the minimum and maximum stated are maintained), minor adjustments to phasing, and the realignment of internal roadways. Minor changes to the sign, lighting, and landscape requirements may also be approved administratively by the zoning administrator.
- B. Major modifications shall require re-submittal to the city commission. These shall include the addition of land modifications to the originally approved mixture of uses in excess of ten percent, a change in the number of phases within the development, and the addition or deletion of main vehicular entrances serving the development or their relocation. Major modifications shall also include any proposed revisions that are deemed by the zoning administrator to be inconsistent with the adopted plans and policies of the city.

§6.5. SPECIAL USE PERMIT REVIEWS

§6.5.1. Applicability

Special use permit review shall occur in accordance with the provisions of this section.

- A. Special uses within each zoning district are uses that may be appropriate in a particular district, but because of the increased potential for incompatibility with adjacent uses requires individual review by the city commission.

- B. A special use permit review shall be required for all special uses as set forth in the permitted land use table (see §2.4). A development comprised of uses regulated by separate rows on the table shall be reviewed using the most restrictive process from among the proposed uses.

Commentary: If a proposed development includes a gas station, library and a restaurant, including outparcels, and any one of those uses is only permitted as a special use in the district, then the entire development requires special use permit review.

- C. Where a use requiring an approval or a special use permit lies on a separate legal parcel, only the building containing the use and its separate parcel shall be subject to special use permit review, not the entire project. However, where the separate legal parcel is an outparcel, the application shall describe the relationship of the outparcel to the remaining site.

Commentary: For example, where a use in the C-L district (requiring a special use permit) is an outparcel within a larger retail development, the special use permit review shall apply to the outparcel only – not the entire development. However, where a special use is proposed in a building that contains a variety of other uses, the entire building and its associated parcel of land shall require special use permit review.

§6.5.2. Preapplication Conference

All applicants seeking special use permit approval shall hold a preapplication conference with the zoning administrator in accordance with the requirements of §6.1.2.

§6.5.3. Application Requirements

All applications for special use permit review shall be submitted in accordance with the minimum submission requirements of §6.1.3. Concurrent with a request for a special use permit review, the applicant shall submit a site plan for review and approval.

§6.5.4. Notice and hearing

All required hearings and notice shall be in accordance with the requirements of §6.1.4.

§6.5.5. Action by zoning administrator

Upon submission of a complete application, the zoning administrator shall review the application for compliance with §6.5.8 and other applicable requirements, and prepare a written report.

§6.5.6. Action by planning commission

The planning commission shall consider the application in a public hearing and shall prepare a report within 45 days of the closing of the hearing and the conclusion of related plan commission meetings and deliberations regarding the effect of such proposed buildings or use upon the character of the neighborhood, traffic conditions, public utility facilities and other matters pertaining to the public health, public safety, and general welfare. Where a contemplated use would require large amounts of water to be disposed of in sanitary sewers, the report shall include a certification by the city engineer.

§6.5.7. Action by city commission

No action shall be taken by the city commission upon any application for a special use prior to the report of the planning commission; provided, however, that if no report is received within 45 days, it shall be assumed that the commission has approved the application as presented. The city commission shall approve, conditionally approve, deny, or table the application.

§6.5.8. Approval criteria

No special use shall be approved unless the city commission determines that the proposed building or use:

- A. will not materially endanger the public health or safety if located where proposed and developed according to the plans as submitted and approved;
- B. is in compliance with all applicable requirements of this ordinance and other applicable requirements;
- C. will not substantially injure the value of adjoining or abutting property, and will not be detrimental to the use or development of other property in the neighborhood; and
- D. will be not be inconsistent with the master plan.

§6.5.9. Conditions of approval

In approving a special use, the city commission may impose reasonable conditions which serve to assure that the required findings are upheld. Such conditions may include, but are not limited to, right-of-way or easement dedication; recreation, open space, or buffer provision; limitation in scale, intensity, or hours of operation; and other reasonable restrictions. Any conditions approved by the city commission shall become a part of the permit and be of equal importance in the responsibility of the applicant or subsequent assigns to adhere to its terms.

§6.5.10. Effect of decision

- A. If the city commission denies an application, there may be no subsequent application for the same or similar use submitted by any party for any part of the subject property until 12 months have elapsed from the date of denial.
- B. Special use permits, including any conditions of approval, shall run with the land and shall be binding on the original applicant as well as any successors, assigns, and heirs.

§6.5.11. Notice of decision

Notice of decision shall be provided as required by §6.1.6.

§6.6. SITE PLAN REVIEWS

§6.6.1. Applicability

All nonresidential and multiple-family development (multiplexes, townhouses and multi-family buildings) shall be subject to the site plan review requirements of this section. No building permit may be approved for such development prior to the approval of a site plan pursuant to the requirements of this section. Temporary uses may require site plan review.

§6.6.2. Initiation

An owner of land within the city, or such owner's duly authorized agent or representative, may submit an application to the zoning administrator for site plan review.

§6.6.3. Preapplication conference

All applicants filing a site plan application for review shall hold a preapplication conference with the zoning administrator in accordance with §6.1.2.

§6.6.4 APPLICATION REQUIREMENTS**§6.6.4. Application requirements**

All applications for site plan review shall be submitted in accordance with the minimum submission requirements of §6.1.3. The site plan shall be drawn to an appropriate scale and shall clearly show the arrangement of the proposed development on the site, and the relationship of the proposed development to surrounding streets, properties and land uses.

§6.6.5. Action by zoning administrator

Upon submission of a complete application, the zoning administrator shall review the site plan for consistency with the requirements of this ordinance and other applicable city requirements, and make a recommendation.

§6.6.6. Action by planning commission

The planning commission shall have authority to approve site plans; the planning commission shall approve, conditionally approve, deny, or table the application.

§6.6.7. Approval criteria

In approving a site plan, the zoning administrator or planning commission shall consider the following:

- A. compliance with all applicable requirements of this ordinance;
- B. site design and development intensity;
- C. location of trash handling, recycling, grease bins, and other waste-related facilities employed in the normal operation of the use;
- D. adequacy and location of parking areas and pedestrian and vehicular access points;
- E. compliance with site construction specifications;
- F. adequacy of stormwater facilities, water supply, sanitary sewer service, fire protection, street signs, and street lighting as evidenced by conformance with applicable standards, specifications and guidelines;
- G. compliance with requirements for easements or dedications;
- H. compliance with any applicable subdivision improvements; and
- I. if applicable, compliance with any development conditions.

§6.6.8. Dedication and improvements

The applicant shall bear the costs of the installation of all on-site improvements as required by this ordinance and other applicable city regulations. The city may require appropriate financial guarantees of required improvements.

§6.6.9. Administrative appeal

The zoning administrator's final decision on a site plan may be appealed within 30 days of the decision in accordance with §6.7.

§6.6.10. Notice of decision

Notice of decision shall be provided as required by §6.1.6. Where a site plan is denied, the zoning administrator shall provide in writing the cause of such disapproval to the applicant.

§6.7. ADMINISTRATIVE APPEALS

§6.7.1. Applicability

An appeal by any person aggrieved by a final decision or interpretation of by any officer, department, or bureau of the city in regard to the provisions of this ordinance may be taken to the board of appeals in accordance with the requirements of this section.

§6.7.2. Initiation

An owner of land within the city, or such owner's duly authorized agent or representative, may submit an administrative appeal to the zoning administrator.

§6.7.3. Application requirements

An administrative appeal shall be made by filing a written notice of appeal specifying the grounds for the appeal. Such notice of appeal shall be considered filed when a complete notice is delivered to the building official, who shall enter the date and time of filing on the notice.

§6.7.4. Notice and hearing

All required hearings and notice shall be in accordance with the requirements of §6.1.4.

§6.7.5. Action by building official

Upon receipt of an administrative appeal, the building official shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from is taken.

§6.7.6. Action by board of appeals

The board of appeals shall consider administrative appeals in a public hearing. The concurring vote of two-thirds of the members of the board shall be necessary to reverse any order, requirement, decision, or determination of the officer, department, or bureau of the city, or to decide in favor of the applicant.

§6.7.7. Findings of fact

- A. Every administrative appeal granted or denied by the board shall be accompanied by a written finding of fact, based on sworn testimony and evidence, specifying the reason for granting or denying the appeal.
- B. The board shall, before making any finding in a specific case, first determine that the proposed change will not constitute a change in the district map and will not impair an adequate supply of light and air to adjacent property, or increase the congestion in public streets, or increase the public danger of fire and safety, or materially diminish or impair established property values within the surrounding area, or in any other respect impair the public health, safety, comfort, morals or welfare.

§6.7.8. Effect of appeal

An appeal stays all proceedings in furtherance of the action appealed from, unless after the notice of appeal shall have been filed, the building official certifies to the board of appeals that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed other than by a restraining order which may be granted by the board, or by a court of record on application or notice to the building official on good cause shown.

§6.7.9. Notice of decision

Notice of decision shall be provided as required by §6.1.6.

§6.8. VARIATIONS

§6.8.1. Applicability

The board of appeals may approve variations, which are not contrary to the public interests, when the strict application of the dimensional regulations of this ordinance would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of such property, where a property owner can show that:

- A. by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the original adoption of the regulations from which this ordinance is derived; or
- B. by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property, which condition is not generally prevalent in the neighborhood.

§6.8.2. Initiation

An owner of land within the city, or such owner's duly authorized agent or representative, may submit an application for variation to the zoning administrator.

§6.8.3. Application requirements

All applications for variation shall be submitted in accordance with the minimum submission requirements of §6.1.3. At a minimum, such application shall specify the grounds for the variation.

§6.8.4. Notice and hearing

All required hearings and notice shall be in accordance with the requirements of §6.1.4.

§6.8.5. Action by building official

Upon receipt of an application for variation, the building official shall forthwith transmit the application and all relevant materials pertaining to the application to the board of appeals. The building official shall review the application, prepare a written report and make a recommendation.

§6.8.6. Action by board of appeals

The board of appeals shall consider application in a public hearing. The concurring vote of two-thirds of the members of the board shall be necessary to decide in favor of the applicant upon any matter upon which it is required to pass under any such ordinance, or to effect any variation in such ordinance.

§6.8.7. Findings of fact

- A. Every variation granted or denied by the board shall be accompanied by a written finding of fact, based on sworn testimony and evidence, specifying the reason for granting or denying the variation.
- B. The board shall, before making any finding in a specific case, first determine that the proposed change will not constitute a change in the district map and will not impair an adequate supply of light and air to adjacent property, or increase the congestion in public streets, or increase the public danger of fire and safety, or materially diminish or impair established property

values within the surrounding area, or in any other respect impair the public health, safety, comfort, morals or welfare.

§6.8.8. Conditions of approval

- A. In authorizing a variation the board of appeals may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary in the public interest, and may require a guarantee or bond to insure that the conditions imposed are being and will continue to be complied with.
- B. All conditions attached to a variance are enforceable in the same manner as any requirements of this ordinance.

§6.8.9. Notice of decision

Notice of decision shall be provided as required by §6.1.6.

§6.9. EXCEPTIONS

§6.9.1. Applicability

The board of appeals may authorize upon application such exceptions from the terms of this ordinance as will not be contrary to the public interest, when the strict application of the dimensional regulations of this ordinance would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of such property, and where a property owner can show that:

- A. To permit the extension of a district where the boundary line of a district divides a lot in single ownership as shown of record.
- B. To permit the reconstruction of a nonconforming building which has been destroyed, or partially destroyed, by fire or Act of God where the board shall find some compelling public necessity requiring a continuance of the nonconforming use.
- C. To permit the erection and use of a building or the use of premises in any location for a public service corporation for public utility purposes which the board deems reasonably necessary for the public convenience or welfare. Such uses lawfully existing on the effective date of this ordinance, shall be deemed to have received such a permit, shall be provided with such a permit by the building official upon request, and shall not be nonconforming uses; provided, however, that a permit shall be required for the enlargement, extension or relocation of any of these existing uses.
- D. To interpret the provisions of the ordinance where the street layout actually on the ground varies from the street layout as shown on the map fixing the several districts, which map is attached to and made a part of this ordinance.
- E. To vary the parking regulations of this ordinance whenever the character or use of a building is such as to make unnecessary the full provision of parking facilities or where such regulations would impose an unreasonable hardship upon the use of the lot, as contrasted with merely granting an advantage or a convenience.

§6.9.2. Initiation

An owner of land within the city, or such owner's duly authorized agent or representative, may submit an application for an exception to the building official and board of appeals.

§6.9.3 APPLICATION REQUIREMENTS

§6.9.3. Application requirements

An application for exception shall be made by filing a written request specifying the grounds for the exception. Such application shall be considered filed when a complete application is delivered to the building official, who shall enter the date and time of filing on the notice.

§6.9.4. Notice and hearing

All required hearings and notice shall be in accordance with the requirements of §6.1.4.

§6.9.5. Action by building official

Upon receipt of a complete application, the building official shall forthwith transmit the application and all relevant materials pertaining to the application to the board of appeals. The building official shall review the application, prepare a written report and make a recommendation.

§6.9.6. Action by board of appeals

The board of appeals shall consider application in a public hearing. The concurring vote of two-thirds of the members of the board shall be necessary to decide any variation in the ordinance.

§6.9.7. Findings of fact

- A. Every exception granted or denied by the board of appeals shall be accompanied by a written finding of fact, based on sworn testimony and evidence, specifying the reason for granting or denying the exception.
- B. The board shall, before making any finding in a specific case, first determine that the proposed change will not constitute a change in the district map and will not impair an adequate supply of light and air to adjacent property, or increase the congestion in public streets, or increase the public danger of fire and safety, or materially diminish or impair established property values within the surrounding area, or in any other respect impair the public health, safety, comfort, morals or welfare.

§6.9.8. Notice of decision

Notice of decision shall be provided as required by §6.1.6.

§6.10. BUILDING AND OCCUPANCY PERMITS**§6.10.1. Applicability****A. General**

No change in the use or occupancy of land, nor any change of use or occupancy in an existing building other than for single-family dwelling purposes, shall be made, nor shall any new building be occupied until a certificate of occupancy has been issued by the building official. Construction, reconstruction, repair, alteration, enlargement, or excavation for any building or structure shall not commence until receipt of a building permit from the building official.

B. New development

No permit for excavation for, or the erection or alteration of, any building shall be issued before the application has been made and approved for a certificate of occupancy and compliance, and no building or premises shall be occupied until such certificate and permit is issued.

§6.10.2. Application requirements

All applications for building permit and certificate of occupancy shall be submitted in accordance with the minimum submission requirements of §6.1.3. At a minimum, applications shall be accompanied by a plat showing the actual dimensions of the lot to be built upon, the size, shape and location of the building to be erected.

§6.10.3. Action by building official

The building official shall review the application for compliance with the provisions of §6.10.4. Every certificate of occupancy shall state that the new occupancy complies with all provisions of this ordinance.

§6.10.4. Approval criteria

In evaluating any proposed building and occupancy permit, the building official shall consider the adopted building code, this ordinance and other applicable ordinances.

§6.10.5. Notice of decision

Notice of decision shall be provided as required by §6.1.6. Where building and occupancy permit is denied, the building official shall provide in writing the cause of such disapproval to the applicant.

§6.10.6. Administrative appeal

Final decisions by the building official may be appealed within 30 days of the decision in accordance with §6.7.

§6.11. JUDICIAL APPEALS

Any persons having an interest affected by a decision of the board of appeals shall have the right to appeal to the circuit court on questions of law and fact.

Article 7. Nonconformities

§7.1. NONCONFORMING STATUS

§7.1.1. General

The use of land, use of a structure, or a structure itself, shall be deemed to have lawful nonconforming status when each of the following conditions is satisfied:

- A. The use or structure does not conform to the current regulations prescribed in the district in which such use or structure is located, but was lawfully in existence and lawfully constructed, located and operating prior to, and at the time of the event that made such use or structure nonconforming.
- B. The event that made such use or structure nonconforming was one of the following: boundary adjustment of the city, adoption of this ordinance or a previous zoning ordinance, or amendment of this ordinance.
- C. The nonconforming use or the use occupying the nonconforming structure has been operating since the time that the use or structure first became nonconforming without abandonment, as abandonment is defined, below.

§7.1.2. Abandonment

Whenever a nonconforming use or a conforming use in a nonconforming structure is abandoned, all nonconforming rights shall cease and the use of the premises shall henceforth conform to this ordinance. Abandonment shall involve the actual act of discontinuance, regardless of the intent of the user or owner to discontinue a nonconforming operation. Any nonconforming use that is discontinued for, or that remains vacant for a period of one year, shall be considered to have been abandoned. Any nonconforming use that is moved from the premises shall be considered to have been abandoned.

§7.1.3. Burden of proof

The burden of establishing nonconforming status under this ordinance shall, in all cases, be that of the owner or the party claiming a lawful nonconforming use and/or structure, and not the city's.

§7.2. NONCONFORMING LOTS

§7.2.1. Residential district lots

Where a lot of record in a residential district met the requirements of the zoning ordinance in effect at the time of recordation, then such lot, either as a single lot or in combination with other such lots, may be used for any a single-family dwelling or any other nonresidential use permitted in this ordinance even though the lot(s) does not meet the minimum lot area or width required in the district, provided all other regulations of this ordinance can be satisfied.

§7.2.2. Nonresidential district lots

Where a lot of record in a nonresidential district met the requirements of the zoning ordinance in effect at the time of recordation, then such lot, either as a single lot or in combination with other such lots, may be used for any use permitted in this ordinance even though the lot(s) does not meet the minimum lot area or width required in the district, provided all other regulations of this ordinance can be satisfied.

§7.3. NONCONFORMING USES AND STRUCTURES

§7.3.1. Description

A. Nonconforming uses

1. A nonconforming use is a land use that was lawfully established in accordance with all zoning regulations in effect at the time of its establishment but that is no longer allowed by the use regulations of the zoning district in which the use is now located. Lawfully established uses that do not comply with any applicable separation (or spacing) distance requirements (e.g., those that require one land use to be located a certain minimum distance from another land use) are also deemed nonconforming uses.
2. All nonconforming uses are subject to nonconformity determination provisions of §7.1.

B. Nonconforming structures

1. A nonconforming structure is any building or structure, other than a sign, that was lawfully established but no longer complies with the intensity and dimensional standards of the zoning district in which it is located.
2. All nonconforming structures are subject to the nonconformity status provisions of §7.1.

§7.3.2. Continuation

The lawful use of a structure and premises existing at the time of the effective date of this ordinance may be continued although such use does not conform to the provisions hereof. If no structural alterations are made, a nonconforming use of a structure may be changed to another nonconforming use of the same or of a more restrictive classification. Whenever a nonconforming use has been changed to a more restrictive use or to a conforming use, such use shall not thereafter be changed to a less restrictive use.

§7.3.3. Continuation after zoning change

Whenever the use of a structure or premises becomes a nonconforming use through a change in the zoning ordinance or district boundaries, such use may be continued and if no structural alterations are made, it may be changed to another nonconforming use of the same or of a more restrictive classification. Whenever a nonconforming use has been changed to a more restrictive use or to a conforming use, such use shall not thereafter be changed to a less restrictive use.

§7.3.4. Discontinuance

In the event that a nonconforming use of any structure or premises is discontinued, or its normal operation stopped, for a period of one year, the use of the same shall thereafter conform to the uses permitted in the district in which it is located.

§7.3.5. Enlargement or alteration

No existing structure devoted to a use not permitted by this ordinance, in the district in which such structure is located shall be enlarged, extended, reconstructed or structurally altered, unless such use is changed to a use permitted in the district in which such structure is located, except when required to do so by law or order; provided, however, that during the 10 year period immediately following the passage of this ordinance, nonconforming light industrial uses in the C-L and C-G districts and nonconforming heavy industrial uses in the C-B and I-L districts may be extended or enlarged by not to exceed 50 percent increase in the cubical contents of the buildings; and further provided, that all height and area regulations be observed in any such extension; provided further

that existing nonconforming two-family and multiple-dwelling in the R-S district may be enlarged, extended, reconstructed or structurally altered if the premises will, thereafter, comply in all respects to the R-M district regulations, provided that there be no increase in the number of dwelling units; and provided further that existing nonconforming commercial C-L and C-G uses may be extended and enlarged by not to exceed a 50 per cent increase in the cubical contents of the buildings if the premises will thereafter comply in all respects to the C-L and C-G district regulations.

§7.3.6. Restoration prohibited after certain damage

When a structure, the use of which does not conform to the provisions of this ordinance, is damaged by fire, explosion, Act of God, the public enemy, vandalism, riot or insurrection to the extent of more than 75 percent of its assessed value as equalized at the time the damage occurred, it shall not be restored except in conformity with the regulations of the district in which the structure is situated.

§7.4. NONCONFORMING SIGNS

§7.4.1. Signs to comply with most restrictive district

Whenever a nonconforming use shall have a sign(s), such sign(s) shall conform with the requirements of the most restrictive zoning district in which such a use is permitted.

Article 8. Violations, Enforcement and Penalties

§8.1. ENFORCEMENT

It shall be the duty of the zoning administrator to enforce this ordinance. Appeals from decisions of the zoning administrator may be made to the board of appeals as provided in §6.7.

§8.2. VIOLATION AND PENALTY

- A. The owner or agent of a building or premises in or upon which a violation of any provision of this ordinance has been committed or shall exist, or the lessee or tenant of an entire building or entire premises in or upon which violation has been committed or shall exist, or the agent, architect, building contractor or any other person who commits, takes part or assists in any violation or who maintains any building or premises in or upon which such violation shall exist, shall be guilty of a misdemeanor and shall be punished by a fine not to exceed \$100. Each and every day that such violation continues after notification may constitute a separate offense.
- B. In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained, or any building, structure or land is used in violation of this ordinance, the appropriate authorities in addition to other remedies, may institute injunction, mandamus or other appropriate action or proceeding to prevent such unlawful erection, construction, reconstruction, alteration, conversion, maintenance or use, or to correct or abate such violation, or to prevent the occupancy of said building, structure, or land.

Article 9. Definitions

For the purpose of this ordinance, certain terms and words are hereby defined.

ABUT or ABUTTING: Same as contiguous.

Accessory buildings and uses: See §3.5.

ADULT ENTERTAINMENT: One or a combination of more than one of the following types of businesses: adult bookstore, adult motion picture theater, adult mini-motion picture theater, adult personal service business, adult novelty business, adult nightclub.

ADULT BOOKSTORE: An establishment having as a principal activity the sale of books, magazines, newspapers, video tapes, video discs and motion picture films which are characterized by their emphasis on portrayals of human genitals and pubic regions or acts of human masturbation, sexual intercourse or sodomy.

ADULT MOTION PICTURE THEATER: An enclosed building with a capacity of 50 or more persons having as a principal activity displaying motion pictures characterized by their emphasis on portrayals of human genitals and pubic regions or acts of human masturbation, sexual intercourse or sodomy for observation by patrons therein.

ADULT MINI-MOTION PICTURE THEATER: An enclosed building having as a principal activity the presenting of material characterized by emphasis of portrayals of human genitals and pubic regions or actions of human masturbation, sexual intercourse or sodomy for observation by patrons therein in individual viewing booths.

ADULT NOVELTY BUSINESS: A business which has as a principal activity the sale of devices of simulated human genitals or devices designed for sexual stimulation.

ADULT PERSONAL SERVICE BUSINESS: A business having as a principal activity a person, while nude or partially nude, providing personal services for another person on an individual basis in a closed room. It includes, but is not limited to, the following activities and services; massage parlors, exotic rubs, modeling studios, body painting studios, wrestling studios, individual theatrical performances. It does not include activities performed by persons pursuant to, and in accordance with, licenses issued to such persons by the State of Michigan.

ADULT NIGHTCLUB: A business with the principal activity of providing entertainment by nude or partially nude performers.

PARTIALLY NUDE: Having any or all of the following bodily parts exposed: buttocks, genitals, pubic area or female breasts.

PRINCIPAL ACTIVITY: A use accounting for more than 20 percent of a business' stock in trade, display space, floor space, live entertainment time or movie display time per year.

ALLEY: A public or private thoroughfare which affords only a secondary means of access to property abutting thereon.

APARTMENT HOTEL: An apartment building under resident supervision which maintains an inner lobby through which all tenants must pass to gain access to the apartments and which may provide retail and services ordinarily furnished by hotels in accordance with the requirements of this ordinance. (See §3.5 for more information.)

§7.4.1 SIGNS TO COMPLY WITH MOST RESTRICTIVE DISTRICT

APARTMENT HOUSE: Any building, or portion thereof, which is designed, built, rented, leased, let, or hired out to be occupied, or which is occupied as the home or residence of three or more families living independently of each other and doing their own cooking in the said building, and shall include flats and apartments.

APARTMENT: A room or suite of rooms which is occupied or which is intended or designed to be occupied by one family for living and sleeping purposes.

BASEMENT: A story having part but not more than one-half its height below grade. A basement is counted as a story for the purpose of height regulations, if prior to the passage of this ordinance, is subdivided and used for dwelling purposes other than by a janitor employed on the premises.

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. In addition, in return for payment, a continental breakfast, limited to only coffee, juice, tea, milk and commercially prepared sweet rolls, may be provided.

BERM: A mound of soil graded, shaped and improved with landscaping in such a fashion as to be utilized for screening purposes.

BOARDING HOUSE: A building other than a hotel, where, for compensation and by prearrangement for definite periods, meals, or lodging and meals, are provided for three or more guests, but not exceeding 20 guests, nor containing more than five guest rooms, including nursing and/or convalescent homes with less than a total of 21 patients or six rooms.

BUFFER STRIP: A strip of land of definite width and location reserved for the planting of shrubs and/or trees to serve as an obscuring screen or greenbelt in carrying out the requirements of this ordinance.

BUILDING OFFICIAL: The chief building official of the City of Benton Harbor, Michigan.

BUILDING: Any building or structure designed or intended for the support, enclosure, shelter, or protection of persons, animals, chattels, or property, not including fences. Poles used for the support of wires and appurtenant equipment for supplying public utility services shall not be considered as buildings or structures under this ordinance.

BUSINESS CENTER: Any two or more businesses which meet one of the following: (a) are located on a single parcel of property; (b) are connected by common walls, partitions, canopies, or other structural members to form a continuous building or group of buildings; (c) are under one common ownership or management and have a common arrangement for the maintenance of the grounds; (d) share a common parking area; (e) otherwise present the appearance of a single, contiguous business area.

CANOPY TREE: A deciduous tree whose mature height and branch structure provide foliage primarily on the upper half of the tree. The purpose of a canopy tree is to provide shade to adjacent ground areas.

CELLAR: A story having more than one-half of its height below grade. A cellar is not included in computing the number of stories for purpose of height measurement.

CLINIC: An establishment where human patients are admitted for special study and treatment by one or more members of a healing profession.

COLLECTION FACILITY: A center for the acceptance by donation, redemption, or purchase of recyclable materials from the public. Such a facility does not use power-driven processing equipment except as indicated in §3.4.3.C, criteria and standards. Collection facilities may include the following: (a) Small collection facilities which occupy an area of not more than 500 square feet, and may include: (i) A mobile unit; (ii) Kiosk type units which may include permanent structures; (iii) Unattended containers placed for the donation of recyclable materials. (b) Large collection facilities which may occupy an area of more than 500 square feet, but less than 750 square feet and may include permanent structures.

CONTIGUOUS: To physically touch or border upon; or to share a common property line or border. Unless otherwise expressly stated, this definition does not include lots or parcels on the opposite side of a street.

COUNTRY CLUB: A planned development used as a means to attract new investment in and around the area designated for Country Club use. Often consisting of using reclaimed and Brownfield parcels, neighborhood club, with a club house and grounds for social and recreational activities, generally having facilities for indoor and outdoor dining, golf, tennis, swimming, walking trails, dedicated entrances and sidewalks etc. More often than not, operating as a public facility as a means to support and attract new residential users of the area.

COURT: An open, unoccupied space, bounded on two or more sides by the walls of the building. An inner court is a court entirely within the exterior walls of a building. All other courts are outer courts.

DENSITY: As applied in this ordinance the number of dwelling units situated on or to be developed on a development site or zoning lot, calculated to the number of units per acre.

DEVELOPMENT: Any manmade change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment and materials.

DISTRICT: A section or sections of the City of Benton Harbor for which regulations governing the use of buildings and premises, the height of buildings, the size of yards, and the intensity of use are uniform.

DRIVEWAY: An area, surfaced or un-surfaced, connecting a legal parking space with the street or alley or both, which driveway area shall not have a width more than the width of the curb-cut, exclusive of the radius of the curb-cut, as authorized by the City of Benton Harbor.

DWELLING, MULTIPLE: A building having accommodations for and occupied exclusively by more than two families.

DWELLING, SINGLE-FAMILY: A building having accommodations for and occupied exclusively by one family.

DWELLING, TWO-FAMILY: A building having accommodations for and occupied exclusively by two families.

DWELLING: Any building or portion thereof which is designed and used exclusively for residential purposes.

FAMILY: An individual or two or more persons related by blood, marriage or civil union, or a group of not more than five persons (excluding servants) who need not be related by blood, marriage, or civil union living together in a dwelling unit.

FENCE: A structure intended for the enclosure, screening or protection of persons or property.

FRONTAGE: All the property on one side of a street between two intersecting streets (crossing or terminating) measured along the property line of the street, or if the street is dead-ended, then all of the property abutting on one side between an intersecting street and the dead end of the street.

§7.4.1 SIGNS TO COMPLY WITH MOST RESTRICTIVE DISTRICT

GARAGE, PRIVATE: An accessory building designed or used for the storage of not more than four vehicles owned and used by the occupants of the building to which it is accessory, not more than one of which may be a commercial vehicle.

GARAGE, PUBLIC: A building or portion thereof, other than a private or storage garage, designed or used for equipping, repairing, hiring, servicing, selling or storing vehicles.

GARAGE, STORAGE: A building or portion thereof designed or used exclusively for housing more than four vehicles.

GOLF COURSE: A general term for an area of land laid out for golf consisting of 9 or 18 holes each including tees, fairway, and putting green and often with one or more natural or artificial hazards and including associated uses such as walking trails, restaurant, snack bar, bars, pro shop, cart barn, teaching facilities, maintenance facilities, restrooms, pump stations, turf nursery and other accessory uses. Often constructed as a means to redevelop an area by utilization of reclaimed and Brownfield parcels, often operating as a public facility and as means to add natural beauty to Brownfield areas that attract mixed use development on or near the grounds including different types of residential.

GRADE: Ground Level. Grade is the average of the finished ground level at the center of all walls of a building. In case walls are parallel to and within five feet of a sidewalk, the above ground level shall be measured at the sidewalk.

GUEST ROOM: Guest room is any room or rooms used, or intended to be used, by a guest for sleeping purposes. Every 100 square feet of floor area in a dormitory is a guest room.

GUEST: Guest is any person hiring or occupying a room for living or sleeping purposes.

HEIGHT, BUILDING: The vertical distance measured from the average grade to the highest point of the roof surface if a flat roof; to the deck of mansard roofs; and to the mean height level between eaves and ridge of gable, hip and gambrel roofs.

HOME OCCUPATION: See §3.5.1.

HOTEL: Hotel is any building containing six or more guest rooms intended or designed to be used, or which are occupied for sleeping purposes by guests, whether rent is paid in money, goods, labor, or otherwise. It does not include any jail, hospital, nursing home, asylum, sanitarium, orphanage, prison, detention home, or other institution in which human beings are housed and detained under legal restraint.

INSTITUTIONS: A non-profit corporation or a non-profit establishment for public use.

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

LODGING HOUSE: A building where lodging is provided (or which is equipped to provide lodging regularly) by prearrangement for definite periods, for compensation, for three or more persons but not more than 20, nor containing more than five guest rooms, as distinct from hotels open to transients.

LOT COVERAGE: The part or percent of the lot occupied by buildings or structures, including accessory buildings or structures, parking lots, driveways, patios, sidewalks, and other paved or constructed surfaces.

LOT OF RECORD: A lot which is a part of a subdivision, the plat of which has been recorded in the office of the Register of Deeds of Berrien County at the time of the adoption of this ordinance; or a parcel of

land as described by a deed recorded with the Register of Deeds of Berrien County at the time of the passage of this ordinance.

LOT, CORNER: A lot abutting upon two or more streets at their intersection.

LOT, DOUBLE FRONTAGE: A lot having a frontage on two non-intersecting streets, as distinguished from a corner lot. (See also §2.8.8)

LOT: A parcel of land occupied or intended for occupancy by a use permitted in this ordinance, including one main building with its accessory buildings, and providing the open spaces, parking spaces, and loading spaces required by this ordinance. The word "lot" shall include plot or parcel. A lot need not be a "lot of record." A lot may also mean a portion of a condominium project, as regulated by Public Act 59 of 1978, as amended, designed and intended for separate or limited ownership or use.

LOT: A parcel of land occupied or intended for occupancy by a use permitted in this ordinance, including one main building together with its accessory buildings, the open spaces and parking spaces required by this ordinance, and having its principal frontage upon a street or upon an officially approved place.

MANUFACTURED HOME: A HUD-approved manufactured home constructed after July 1, 1976, which is transportable in one or more sections; is eight body feet or more in width and 40 body feet or more in length in the traveling mode, or is 320 or more square feet when erected on site; is built on a permanent chassis; is designed to be used as a single-family dwelling, with or without a permanent foundation, when connected to the required utilities; and includes the plumbing, heating, air conditioning and electrical systems contained in the structure. For floodplain management purposes the term "manufactured home" also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days, but does not include a recreational vehicle.

MASTER PLAN: The City of Benton Harbor Master Plan.

MOBILE HOME (OR HOUSE TRAILER): A portable manufactured housing unit built before June 15, 1976 designed for transportation on its own chassis and placement on a temporary or semi-permanent foundation having a measurement of over 32 feet in length and over eight feet in width. (See also §3.6.1)

NATURAL FEATURES: Natural features shall include, but not be limited to: wetlands, woodlots, floodways, landmark trees, water bodies, topography, vegetative cover, steep slopes, or other significant features identified by the planning commission.

NONCONFORMITY: See Article 7.

PARKING SPACE: An area, enclosed or unenclosed, sufficient in size to store one automobile, together with a driveway connecting the parking space with a street or alley and permitting ingress and egress of an automobile.

PLACE: An open unoccupied space other than a street or alley permanently reserved as the principal means of access to abutting property.

PROCESSING FACILITY: A building or enclosed space used for the collection and processing of recyclable material. "Processing" means the preparation of material for efficient shipment, or to an end-user's specifications, by such means as baling, briquetting, compacting, flattening, grinding, crushing, mechanical sorting, shredding, cleaning, and re-manufacturing. Processing facilities

§7.4.1 SIGNS TO COMPLY WITH MOST RESTRICTIVE DISTRICT

include the following: (a) A light processing facility occupies an area of under 45,000 square feet of gross collection, processing and storage area and has up to an average of two outbound truck shipments per day. Light processing facilities are limited to baling, briquetting, crushing, compacting, grinding, shredding and sorting of source-separated recyclable materials and repairing of reusable materials sufficient to qualify as a certified processing facility. A light processing facility shall not shred, compact or bale ferrous metals other than food and beverage containers. A heavy processing facility is a processing facility other than a light processing facility. (b) Mobile recycling unit means an automobile, truck, trailer or van, licensed under the Michigan Vehicle Code which is used for the collection of recyclable materials. A mobile recycling unit also means the bins, boxes or container transported truck, vans, or trailers, and used for the collection of recyclable materials.

RECYCLABLE MATERIAL: Reusable material including, but not limited to metals, glass, plastic and paper which are intended for reuse, re-manufacture, or reconstitution for the purpose of using the altered form. Recyclable materials does not include refuse or hazardous material. Recyclable material may include used motor oil collected and transported in accordance with all local, county, state and federal health and safety codes.

RECYCLING FACILITY: A center for the collection and/or processing of recyclable materials. A certified recycling facility or certified processor means a recycling facility certified by the City of Benton Harbor as complying with the following requirements. A recycling facility does not include storage containers or processing activity located on the premises of a residential, commercial, or manufacturing use and used solely for the recycling of material generated by the residential property, business or manufacturer. Recycling facilities may include collection facility, processing facility, and mobile recycling unit.

ROOMING HOUSE: See "Lodging House".

SCREENING: A structure providing enclosure, such as a fence, and a visual barrier between the area enclosed and the adjacent property. A screen may also be non-structured, consisting of shrubs or other growing materials.

SIGN: Any device or visual communicator that is used for the purpose of bringing the subject thereof to the attention of the public. (See also §4.3)

SIGN, GROUND: A sign resting directly on the ground or on aloft poles.

SIGN, WALL: A sign painted or attached directly to and parallel to the exterior wall of a building extending no greater than 18 inches from the exterior face of the wall to which it is attached.

STORY, HALF: A space under a sloping roof which has the line of intersection of roof decking and wall face not more than three feet above the top floor level, and in which space not more than 60 percent of the floor area is finished off for use.

STORY: That portion of a building, other than a cellar, included between the surface of any floor and the surface of the floor next above it, or, if there be no floor above it, then the space between the floor and the ceiling next above it.

STREET CENTERLINE: A line midway between street right-of-way lines.

STREET LINE: A dividing line between a lot tract or parcel of land and a contiguous street.

STREET: All property dedicated and accepted for public street, highway, freeway, or roadway purposes.

STRUCTURAL ALTERATIONS: Any change in the supporting members of a building, such as bearing walls or partitions, columns, beams, or Orders, or any complete rebuilding of the roof or the exterior walls.

STRUCTURE: Anything constructed or erected, the use of which requires permanent location on the ground or attached to something having a permanent location on the ground including, but without limiting the generality of the foregoing, advertising signs, billboards, back-stops for tennis court, pergolas and fences.

TELECOMMUNICATIONS FACILITIES (General): Includes “telecommunications tower” and “tower” and “telecommunications site” and “personal wireless facility.” A structure, facility or location designed, or intended to be used as, or used to support, antennas or other transmitting or receiving devices. This includes without limit, towers of all types and kinds and structures that employ stealth (or camouflage) technology, including, but not limited to structures such as a multi-story building, church steeple, silo, water tower, sign or other structures that can be used to mitigate the visual impact of an antenna or the functional equivalent of such, including all related facilities such as cabling, equipment shelters and other structures associated with the site. It is a structure and facility intended for transmitting and/or receiving radio, television, cellular, paging, 911, personal telecommunications services, commercial satellite services, microwave services and services not licensed by the FCC, but not expressly exempt from local government siting, building and permitting authority, excluding those used exclusively for the fire department or police communications, or exclusively for private, non-commercial radio and television reception and private citizen’s bands, amateur radio and other similar non-commercial telecommunications where the height of the facility is below the height limits set forth in these regulations.

TELECOMMUNICATIONS FACILITIES (MU District Permitted Use): As a permitted use in the MU District, a radio or internet based wireless communication signal distribution system used or operated by a federally licensed private operator and not used for commercial purposes, consisting of a combination of improvements and equipment including (i) one or more antennas; (ii) a supporting structure and the hardware by which the antennas are attached; (iii) equipment housing; (iv) accessory building and equipment such as signal transmission cables and miscellaneous hardware.

TOWNHOUSE: Attached single-family dwelling units connected by a party wall. Each dwelling unit has an individual entry which can be accessed directly from the outside.

YARD LINE: A yard line shall mean setback or building line.

YARD: See §2.8.8.

ZONING LOT: A single tract of land located within a single block, that (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. Therefore, a “zoning lot or lots” may or may not coincide with a lot of record.

INDEX

- Accessory uses
 - nonresidential, 3-10*
 - residential, 3-10*
- Appeals, Administrative
 - procedure for, 6-15*
- Applications
 - processing of, 6-3*
- Area, 2-30
 - lot, 2-31*
 - per unit, 2-31*
 - sign, 2-31*
 - site, 2-31*
- Building and Occupancy Permits
 - procedure for, 6-18*
- Building Coverage, 2-32
- Building Separation, 2-30
- Buildings
 - maximum per zoning lot, 1-4*
- Commentaries, 1-5
- Decision-making Bodies and Officials, 5-1
- Definitions, 9-1
- Delegation of Authority, 1-3
- Density, 2-30
- Development Review, 6-1
- District Conversion table, 1-5
- District Map, 2-2
- District Purpose Statements, 2-1
- Districts Established, 2-1
- Effective Date, 1-1
- Enforcement, 8-1
- Exceptions
 - procedure for, 6-17*
- Fences, Screens and Walls, 3-11
- Filing Fees, 6-2
- Floor Area Ratio, 2-41
- Floor Area, Gross, 2-40
- General Provisions, 1-1
- Height, 2-33
 - amateur radio antennas, 2-33*
 - building, 2-33*
 - exceptions, 2-34*
 - fence or wall, 2-34*
 - sign, 2-34*
 - telecommunications tower or structure, 2-33*
- Home Occupations, 3-10
- Interpretation of District Boundaries, 2-3
- Landscaping, Screening and Buffering
 - bufferyards, 4-21*
 - design of, 4-15*
 - general requirements, 4-13*
 - parking lots, 4-18*
 - plans for, 4-14*
 - street frontage, 4-17*
- Loading Requirements, 4-1, 4-9
- Lot Reduction, 2-30
- Lot Width, 2-32
- Lots
 - corner, 2-36*
 - double frontage, 2-36*
- Map (Rezoning) and Text Amendments
 - procedure for, 6-3*
- Measurements and Exceptions, 2-30
 - area, 2-30*
 - building coverage, 2-32*
 - building separation, 2-30*
 - density, 2-30*
 - floor area ratio, 2-41*
 - floor area, gross, 2-40*
 - height, 2-33*
 - impervious surface, 2-32*
 - lot reduction, 2-30*
 - lot width, 2-32*
 - yards, required, 2-35*
- M-U District Reviews
 - procedure for, 6-4*
- Nonconformities
 - lots, 7-1*
 - signs, 7-3*
 - Status, 7-1*
 - uses and structures, 7-2*
- Notice and Hearing Requirements, Public, 6-2
- Outdoor Lighting
 - design of, 4-26*
 - excessive, 4-27*
 - prohibited sources, 4-25*
- Parking Requirements, 4-1
 - design, 4-8*
 - minimum, 4-2*
 - shared, 4-6*
- Permitted Uses, 2-3

- Planned Development Reviews
 - procedure for, 6-7*
- Powers and Duties
 - board of appeals, 5-2*
 - building official, 5-3*
 - planning commission, 5-1*
 - zoning administrator, 5-2*
- Required Yards (Setbacks), 2-35
- Setbacks, 2-35
- Sign Height
 - measurement of, 2-34*
- Signs
 - nonconforming, 7-3*
- Signs, Permitted
 - in C-B district, 4-11*
 - in C-G district, 4-11*
 - in C-L district, 4-11*
 - in I-H district, 4-11*
 - in I-L district, 4-11*
 - in residential districts, 4-10*
- Site Development Standards, 4-1
- Site Plan Reviews
 - procedure for, 6-13*
- Special Use Permit Reviews
 - procedure for, 6-11*
- Temporary Uses, 3-11
- Time
 - computation of, 1-3*
- Title, 1-1
- Transitional Provisions, 1-4
- Use Categories, 2-6
- Use Groups, 2-6
 - agriculture, 2-20*
 - community service, 2-8*
 - day care, 2-9*
 - eating and drinking establishment, 2-12*
 - educational facilities, 2-9*
 - entertainment, 2-13*
 - governmental facilities, 2-10*
 - group living, 2-8*
 - heavy industrial, 2-18*
 - household living, 2-7, 2-11*
 - light industrial service, 2-17*
 - marine-related commercial, 2-13*
 - office, 2-14*
 - overnight accommodation, 2-14*
 - parking, commercial, 2-15*
 - parks and open space, 2-10*
 - religious institution, 2-11*
 - resource extraction, 2-20*
 - retail sales and service, 2-15*
 - self-service storage, 2-16*
 - social service institution, 2-11*
 - telecommunications facilities, 2-21*
 - utilities, major, 2-12*
 - utilities, minor, 2-12*
 - vehicle sales and service, 2-16*
 - warehouse and freight movement, 2-18*
 - waste-related service, 2-19*
 - wholesale trade, 2-19*
- Use Interpretation, 2-7
- Use Standards, 3-1
 - accessory buildings and uses, 3-8*
 - accessory uses, 3-8*
 - commercial uses, 3-1*
 - industrial uses, 3-3*
 - public and civic uses, 3-1*
 - residential uses, 3-1*
 - temporary uses, 3-11*
- Variations
 - procedure for, 6-16*
- Violations and Penalties, 8-1
- Violations, Enforcement and Penalties, 8-1
- Yard
 - rear, 2-39*
 - side, 2-38*
- Yards
 - front, 2-36*
- Zoning Districts, 2-1
- Zoning lot, 1-4