

ZONING ORDINANCE BODY

Section 1: Purpose. This ordinance is to divide the city into zones, or districts restricting and regulating the location, erection, construction, reconstruction, alteration and use of buildings, structures, and land for trade, industry, residence and other specified uses; to regulate the intensity of lot areas, and to regulate and determine the area of open spaces surrounding such buildings; to establish building lines and the location of buildings designed for specified industrial, business, residential and other uses within such areas; to fix standards to which buildings or structures shall conform; to prohibit uses, buildings or structures incompatible with the character of such districts, respectively; to prevent additions to and alterations or remodeling of existing buildings or structures in such a way as to avoid the restrictions and limitations lawfully imposed; to limit congestion in the public streets by providing for the off-street parking and loading and unloading of vehicles; providing for the gradual elimination of nonconforming uses of land, building and structures; and prescribing penalties for violating the ordinance to lessen congestion in the streets; to secure safety from fire, panic and other dangers; to provide adequate lights and air; to prevent the overcrowding of land; to conserve the table value of land and buildings throughout the city; and to promote the public health, safety, and general welfare.

Section 2. Short Title. This ordinance may be cited as the zoning ordinance of the city, known as “Ordinance # 356-Zoning”.

Section 3. Use Districts. The city is divided into three (3) districts:

3-1 “R” Residential district;

3-2 “B” Commercial Business district;

3-3 “A” Agricultural district.

3-4 The boundaries of designated districts are shown upon the map made a part of this ordinance, which map is designated as the zoning map of the city. The zoning map made a part of this ordinance and on file in the office of the city clerk and all notations, references and other information shown thereon are part of this ordinance and have the same force and effect as if the zoning map and all such notations, references, and other information shown thereon were fully set forth or described.

Section 4. General Provisions.

4-1 All streets, alleys, and railroad rights-of-way, if not otherwise specifically designated, shall be deemed to be in the same zone as the property immediately abutting upon such alleys, streets, or railroad right-of-way. Where the center line of a street or alley serves as a district boundary the zoning of such street or alley, unless otherwise specifically designated, shall be deemed to be the same as that of the abutting property up to such center line.

4-2 No building or structure shall be erected, converted, enlarged, reconstructed or structurally altered, nor shall any building or land be used for any purpose other than what is permitted in the district in which the building or land is located.

4-3 No building or structure shall be erected, converted, enlarged, reconstructed, or structurally altered to exceed the height limit established for the district in which the building is located except that penthouses or roof structures for housing elevators stairways, tanks ventilating fans or similar equipment required to operate and maintain the building, and fire or parapet walls, skylights, towers, steeples, flagpoles, chimneys, smokestacks, radio and television aerials or antennas, wireless masts, water tanks, or similar structures may be erected above the height limits prescribed. No such structure may be erected to exceed over twenty-five

(25) feet the height limits of the district in which it is located, except that aerials or antennas designed to aid home television reception may be erected to a height not to exceed sixty (60) feet from the ground level, provided said aerial or antenna is attached to the building or erected in the rear yard area.

4-4 No building or structure other than a building for conditional use shall be erected, converted, enlarged, reconstructed or structurally altered except in conformity with the area regulations of the district in which the building is located.

4-5 No space which for a building or dwelling group has been counted or calculated as part of a side yard, rear yard, front yard, court or other open space required by this ordinance, may, by change in ownership or otherwise, be counted or calculated to satisfy or comply with a yard, court, or other open space requirement of or for any other building.

4-5-1 An open terrace, but not including a roofed over porch or terrace, may occupy a front yard provided the unoccupied portion of the front yard has a depth of not less than fifteen (15) feet. A one (1) story bay window may project into a front yard not over three (3) feet. Overhanging eaves, including gutters, may project over the minimum required side yard not over eighteen (18) inches.

4-5-2 The minimum yards or other open spaces, including lot areas per family required by this ordinance for every building existing during passage of this ordinance or for any building erected, shall not be encroached upon or considered as yard- or open-space requirements for any other building.

4-6 Every building erected or structurally altered to provide dwelling units shall be on a lot and in no case shall there be more than one such building on one lot unless otherwise provided in this ordinance.

4-7 Any separate tract, the title of which was of record during the adoption of this ordinance, that does not meet the requirements of this ordinance for yards, courts, or other area of open space may be utilized for single residence purpose provided the requirements for such yard or court (or lot) area, width, depth or open space is within seventy-five percent (75%) of that required by this ordinance. This provision permits utilization of recorded lots which lack adequate width or depth if reasonable living standards can be provided.

4-8 No building shall be constructed or erected upon a lot, or parcel of land, which does not abut upon a public street or permanent easement of access to a public street, which easement shall have a minimum width of twenty-five feet unless an easement of lesser width was of record prior to the adoption of this ordinance.

4-9 No wall, fence, or shrubbery shall be erected, maintained or planted on any lot which unreasonably obstructs or interferes with traffic visibility on a curve or at any street intersection.

4-10 A dwelling shall not be erected in the "M" manufacturing district; however the sleeping quarters of a watchman or caretaker are permitted.

4-11 No residential structure shall be erected upon the rear of a lot or upon a lot with another dwelling; except that in a two (2) story garage with living quarters upon the second floor, such quarters may be occupied by a servant (and his or her family) of the family occupying the main structure. A guest house may also be constructed (without kitchen) or rooms for guests within an accessory building, provided such facilities are used for the occasional housing of guests of the occupants of the main structure and not for permanent occupancy by others as a housekeeping unit.

4-12 Nothing in this ordinance shall be deemed to require any change in the plans, construction or designated use of any building upon which actual construction was lawfully begun prior to the adoption of this ordinance and upon which building actual construction has been diligently carried on, and provided further, that such building shall be completed within two (2) years from passage and publication of this ordinance.

4-13 An area indicated on the official "zoning map" as a public park or recreation area, public utility area, cemetery, public school site, or semipublic open space, shall not be used for any other purpose, and when the use of the area is discontinued, it shall automatically be zoned "R" one (1) family district, until otherwise zoned.

4-14 Any area annexed to the city shall, upon such annexation, be automatically zoned "R" one (1) family district, until otherwise zoned.

4-15 Not more than one (1) garage sale shall be conducted in any calendar year.

4-16 Easements: No easement shall be permitted in any residential district to serve any building or other use in any commercial district.

4-17 Telecommuting: Telecommuting shall be permitted in any residential district.

Section 5. "R" Residential District

5-1 Use regulations: Permitted uses are:

5-1-1 One (1) family dwellings;

5-1-2 Day care centers;

- 5-1-3 Truck gardening and other horticultural uses, where no building is involved, and not operated for profit;
- 5-1-4 Conditional uses; subject to Section 15;
- 5-1-5 Uses customarily incident to any of the above uses, including permitted home occupations, as provided in this ordinance;
- 5-1-6 Accessory buildings including a private garage, accessory living quarters, guesthouse, recreation room, greenhouse, bathhouse, stable, corral, pen, coop or kennel, provided they shall be located as required in Section 10;
- 5-1-7 Temporary buildings and uses for construction for a period not to exceed one (1) year;
- 5-1-8 One (1) sign on each lot not exceeding twelve (12) square feet in area, pertaining to the lease or sale of the building or premises on which the sign is located; and
- 5-1-9 Automobile parking space to be provided as required in Section 8.
- 5-2 Building height: No building or structure nor the enlargement of any building or structure shall be erected or maintained or exceed two and one-half (2 ½) stories, nor shall it exceed thirty-five (35) feet in height.
- 5-3 Areas: No building or structure nor the enlargement of any building or structure shall be erected or maintained unless the following yards and lot areas are provided and maintained with such building, structure or enlargement.

5-3-1 Front yard: There shall be a front yard of not less than twenty-five (25) feet.

5-3-2 Side yard: On interior lots there shall be a side yard on each side of a main building of not less than five (5) feet.

5-3-3 On corner lots the side yard requirement shall be the same as for interior lots, except there shall be maintained a side yard of not less than fifteen (15) feet on the side adjacent to the street which intersects the street upon which the building or structure maintains frontage, and except with a reversed corner lot, there shall be maintained a setback from the side street of not less than fifty percent (50%) of the front yard required on the lots in the rear of such corner lots but such setback need not exceed fifteen feet. No accessory building on said reversed corner lot shall project beyond the front yard required on the adjacent lot to the rear, nor be located nearer than ten (10) feet to the side lot line of said adjacent lot.

5-3-4 Rear yard: There shall be a rear yard of not less than forty (40) feet.

5-3-5 Side yard: On interior lots there shall be a side yard on each side of a main building of not less than five (5) feet, and a combined total of side yards of not less than fifteen (15) feet.

5-3-6 On corner lots the side yard requirement shall be the same as for interior lots, except there shall be maintained a side yard of not less than ten (10) feet on the side adjacent to the street which intersects the street upon which the building or structure maintains frontage.

5-3-7 Rear yard: There shall be a rear yard having an average depth of not less than twenty-five (25) feet.

5-3-8 Lot coverage: Not over thirty-five percent (35%) of the area of a lot may be covered by main buildings, structures or accessory buildings.

5-3-9 Lot area: Every dwelling erected or structurally altered shall be on a lot having an area of not less than seven thousand five hundred (7,500) square feet, and a width at the established building line of not less than sixty (60) feet, provided, however, that where a lot having less area and width, but is a single tract and the title thereof has been recorded before passing this amending ordinance, said tract may be improved with a single-family dwelling provided all yards and open spaces are within seventy-five percent (75%) of those required by this ordinance, and provided further, the total lot area is not less than five thousand (5,000) square feet.

5-3-10 Dwelling standards: Every one (1) story dwelling hereafter erected in any "residential district, shall have a total ground floor area of not less than nine hundred twenty (920) square feet measured from the outside of the exterior walls, including utility rooms, but excluding cellars, basements, open porches, garages and other spaces that are not used frequently or during extended periods for living, eating or sleeping purposes, except that rooms intended for such purposes which are "roughed in" and are to be completed within a reasonable time may be considered in computing such ground floor areas.

5-3-11 Every dwelling of more than one (1) story erected in the residential district shall have a total floor area, measured from the outside of the exterior walls, of not less than one thousand two hundred (1,200) square feet, including utility rooms, but excluding cellars, basements, open porches, garages and other spaces that are not used frequently or during extended periods for living, eating or

sleeping purposes, except that rooms intended for such purposes which are "roughed in" and are to be completed within a reasonable time may be considered in computing such ground floor areas.

5-4 Dwelling standards: Every one (1) story dwelling erected in any "R" district shall have a total ground floor area of not less than one thousand three hundred fifty (1,350) square feet measured from the outside of the exterior walls, including utility rooms, but excluding cellars, basements, open porches, garages and other spaces that are not used frequently or during extended periods for living, eating or sleeping purposes, except that rooms intended for such purposes which are "roughed in" and are to be completed within a reasonable time may be considered in computing such ground floor areas.

5-4-1 Every dwelling of more than one (1) story erected in any "R" district shall have a total floor area, measured from the outside of the exterior wall, of not less than one thousand six hundred eighty (1,680) square feet, including utility rooms, but excluding cellars, basements, open porches, garages and other spaces that are not used frequently or during extended periods for living, eating or sleeping purposes, except that rooms intended for such purposes which are "roughed in" and are to be completed within a reasonable time may be considered in computing such ground floor areas.

Section 6. "B" Commercial Business District

6-1 Use regulations: Permitted uses are:

6-1-1 Amusement devices.

6-1-2 Apartments, provided they are above the first floor and above a business use.

- 6-1-3 Auditoriums.
- 6-1-4 Automobile service stations.
- 6-1-5 Bakeries, where all goods are sold on the premises at retail.
- 6-1-6 Banks.
- 6-1-7 Barber shops and beauty parlors.
- 6-1-8 Battery and tire service stations.
- 6-1-9 Beverage distributors, but not including bottling plants.
- 6-1-10 Catering establishments.
- 6-1-11 Community service agencies.
- 6-1-12 Department, furniture and home appliance stores.
- 6-1-13 Frozen food lockers.
- 6-1-14 Grocer, fruit or vegetable store.
- 6-1-15 Hardware store.
- 6-1-16 Manufacturing or processing clearly incidental to retail use is permitted. Such manufacturing or processing is limited to that which employs not over ten (10) persons in the manufacturing or processing.
- 6-1-17 Offices.

- 6-1-18 Photographers' or artists' studios.
- 6-1-19 Plumbing, heating and roofing supply and workshop.
- 6-1-20 Professional or service offices.
- 6-1-21 Radio and television sales and service.
- 6-1-22 Recreation places.
- 6-1-23 Restaurant.
- 6-1-24 Retail stores, and services, but expressly excluding those uses in districts "B" and "M" districts.
- 6-1-25 Savings institutions.
- 6-1-26 Signs, outdoor advertising.
- 6-1-27 Signs relating only to the name and use of the store or premises. Such signs shall be attached to the building with no portion of the sign projecting more than one (1) foot from the structure, and if illuminated, shall not be of the flashing or intermittent type. In no case shall the sign project above the roof line.
- 6-1-28 Taverns, or retail sale of alcoholic liquors, subject to the regulations or other adopted ordinances of the city.
- 6-1-29 Telephone exchange building.
- 6-1-30 Temporary building incidental only to construction of a permitted use.

6-1-31 Uses customarily incidental to any of the above uses and accessory buildings when on the same lot. All business or service of aforesaid stores, shops or businesses shall be conducted wholly within an enclosed building, except for automobile parking and off-street loading areas, and sale of automobile fuel and lubricants.

6-2 Height: No building or structure shall be erected or structurally altered to exceed a height of three (3) stories nor shall it exceed forty-five (45) feet in height.

6-3 Areas: No front or side yards shall be required except that when a building or group of buildings abuts upon a residential district, a yard shall be provided on the side of the lot abutting the residential district, such yard having a width of not less than ten (10) feet. There shall be a rear yard with a depth of not less than fifteen (15) feet when abutting upon a publicly dedicated alley or public way and not less than twenty (20) feet when no dedicated alley or public way exists at the rear of the lot. The rear yard may be used for off-street parking and loading as provided by Section 10.

Section 7. "A" Agricultural District

7-1 Land in the agricultural district may be used for any agricultural purpose not prohibited.

7-2 No animal confinement operations of any type will be conducted within the City limits.

7-3 Any use permitted in the residential or business and commercial districts is also permitted in the agricultural district, subject to the same conditions and requirements as established in the residential or business and commercial district regulations for that use.

Section 8. Off-street Parking and Loading

(8-1) Off-street parking: For this section, one hundred eighty (180) square feet of lot or floor area, which has a means of ingress or egress from an alley or street, shall be deemed parking space for one (1) vehicle. Such space shall occupy no part of any required front yard, but where open may be included as part of a required open space for side or rear yard. On corner or through lots, parking space may not be included as part of required yards lying adjacent to either street. Such parking spaces and access driveways, required in residential districts, when used in compliance with this ordinance, shall be paved or otherwise surfaced with an all-weather, dustproof material. That part of the driveway connecting from the curb line to the property line shall be paved with concrete or asphaltic materials.

(8-2) In any district, except as noted herein, every building built, or structurally altered, enlarged or increased in capacity, and every land use initiated subsequent to the adoption of this section shall be provided with minimum off-street parking facilities as follows:

8-2-1 One (1) and two (2) family dwellings and multiple-family dwellings: One (1) parking space for each dwelling unit.

8-2-2 A plan of parking facilities shall accompany each application for a building permit or certificate of compliance. Completing the improvements for parking according to such plan shall be a requisite for the validity of the permit or certificate.

8-3 Off-street loading facilities: On the same lot with every building or part thereof, erected to be used for other than exclusive dwelling purposes, or as an accessory use for dwelling, there shall be provided on the lot, adequate space for motor vehicles to avoid undue interference with the public use of streets or alleys. Such space, unless otherwise adequately

provided for, shall include a ten (10) foot by twenty-five (25) foot loading space, with fifteen (15) feet height clearance, and one (1) such space shall be provided for each twenty thousand (20,000) square feet or fraction thereof of floor or lot area used for other than residence purposes.

8-4 Reserved spaces for handicapped people: Each required off-street parking lot shall have not less than two (2) spaces reserved for handicapped drivers. Such spaces shall be not less than fifteen (15) feet or four and six-tenths (4.6) meters wide and shall be marked with the international wheelchair symbol on a sign or wall. In parking lots having spaces for over fifty (50) cars, there shall be reserved spaces equal to four percent (4%), rounded off, of the total number of spaces.

Section 9. Additional Provisions

9-1 Accessory buildings: Accessory buildings for yard maintenance equipment, storage of garden tools, cultivating tools, lawnmowers, snowblowers, swimming pool equipment and garden and nursery supplies and equipment and related tools and supplies may be erected in any zoning district where accessory buildings are permitted, subject to the following restrictions:

9-1-1 A building permit must be obtained in the manner provided by the building ordinance.

9-1-2 A building permit fee of FIFTEEN DOLLARS (\$15.00) must be paid with each application. One (1) fee shall be adequate for each application even if the application is rejected or returned for changes and resubmitted several times. The fee shall be returned if the permit is not ultimately issued.

9-1-3 The following specifications must be met by each accessory building:

9-1-3-1 No accessory building in any one (1) family or two (2) family residential district shall exceed eight (8) feet in height or one hundred fifty 150 square feet in area. There shall not be more than one (1) accessory building on each lot in any one (1) family or two (2) family residential district. Nothing in this paragraph shall prohibit the erection of a detached garage besides one (1) accessory building, and the height and area limitation shall not apply to the detached garage.

9-1-3-2 All accessory buildings shall be anchored to a permanent concrete foundation.

9-1-3-3 No such accessory building shall be constructed closer to a lot line than permitted by the regulations applicable in the zoning district in which the accessory building is proposed to be constructed.

9-1-3-4 The application for a permit to construct an accessory building may show the location of trees and shrubs proposed to screen the building and to enhance its appearance. If the application as approved indicated such trees and shrubs the applicant shall not maintain the building without planting and maintaining the trees and shrubs.

9-1-4 No person shall reconstruct or alter any accessory building if it is damaged for fifty percent (50%) or more of its value without obtaining a building permit and complying with this section.

9-1-5 Where an accessory building is structurally attached to a main building, it shall be subject to, and must conform to all regulations of this ordinance applicable to the main building.

9-1-6 No detached accessory building shall be located closer than ten (10) feet of any main building.

9-1-7 An accessory building shall not be erected prior to the establishment or construction of the principal use of building.

9-2 Signs: Any publicly displayed sign, symbol or notice on a premise to advertise the business there transacted, or name of person or firm conducting said business on premise or directing to some other locale, shall be regulated as follows:

9-2-1 In "R" district, the following signs shall be permitted:

9-2-1-1 For each dwelling unit, one (1) unlighted name plate not exceeding one (1) square foot in area, indicating name of occupant.

9-2-1-2 not exceeding ten (10) square feet, except a church bulletin board which shall not exceed eighteen (18) square feet.

9-2-1-3 For orientation, directional signs when established by city, not exceeding two (2) square feet.

9-3 In a "B" district, the following signs shall be permitted:

9-3-1 Any sign which pertains to a use conducted within main building, which is displayed flat against a wall of the building and which does not project above roof line.

9-3-2 Only one (1) sign per face of a building for each business occupying that building.

9-3-3 Directional signs permitted as in "R" district.

9-3-4 One (1) sign identifying the occupant of a building or building complex.

9-4) The following conditions shall be observed in all of the use districts:

9-4-1 No sign shall be placed in a required front yard, except those directional signs established by the city.

9-4-2 Billboards shall not be permitted in any of the use districts.

Section 10. Nonconforming Uses. The lawful use of land or buildings existing during the adoption of this ordinance may continue although such use ignores the regulations specified by this ordinance for the district in which such land or building is located, subject to the following conditions and specifications.

10-1 A nonconforming use of land (outside of a building) shall be made to conform to the zoning ordinance within two (2) years after adoption of the zoning ordinance.

10-2 Any nonconforming use of land or building which has ceased by discontinuance or abandonment for a period of one (1) year shall thereafter conform to this ordinance.

10-3 Any nonconforming building destroyed or damaged by fire, explosion, act of God, or by a public enemy for sixty percent (60%) or more of its assessed valuation, shall thereafter conform to this ordinance. Where over forty percent (40%) of the assessed value of the building remains after such damage, such structure may be restored to the same nonconforming use as existed before such damage.

10-4 No nonconforming use of a building may be moved to any other part or parcel of land upon which such use is prohibited by this ordinance.

10-5 No nonconforming building shall be enlarged or structurally altered except to make it a conforming building. A nonconforming use of a building existing during the adoption of this ordinance may be extended throughout the building provided no structural alterations, except those required by ordinance or law are made, and provided approval is granted by the city council.

10-6 The use of a nonconforming building may be changed only to a use of like or similar character, or to a use conforming to the district in which the property is located.

10-7 Any nonconforming signs or billboards shall be removed within two (2) years from the adoption of this ordinance.

10-8 The foregoing provisions shall also apply to nonconforming uses in districts changed by amendment to this ordinance.

Section 11. Enforcing Officer. The _____ of the city is designated as the officer to enforce the zoning ordinance. The _____ shall have the power and shall exercise the function prescribed by the state law and by terms of all ordinances now in force or passed.

Section 12. Building permits, certificate of compliance, use permits.

12-1 Building permit: No building or structure shall be erected or structurally altered until a building permit shall be issued by the building commissioner stating that the building or structure, and use of land comply with the regulations of this ordinance and all building and health laws and ordinances.

12-1-1 All applications for building permits shall be accompanied by a plat in duplicate, drawn to scale, showing the actual dimensions of the lot or lots to be built upon, the size of the building or structure to be erected or structurally altered, its location on the lot or lots and such other information as may be necessary to provide to enforce these regulations. A careful record of such applications and plats shall be kept in the office of the building commissioner.

12-1-2 No building shall be constructed, and no permit shall be issued for any building, on any premises not served by the municipal sewer system.

12-2 Certificate of compliance: No building or structure erected or structurally altered shall be occupied and used until a certificate of compliance has been issued by the building commissioner. The certificate of compliance shall be issued only after the building commissioner makes a finding that the building or structure has been erected or structurally altered in conformance with this ordinance and other health and building laws and under the building permit.

12-2-1 Certificate of compliance shall be applied for coincident with the application for a building permit and shall be issued within ten (10) days after the erection or alterations of such buildings shall have been satisfactorily completed. A record of all certificates shall be kept on file in the office of the building commissioner and copies shall be furnished, on request, to any person having a proprietary or tenancy interest in the building affected.

12-3 Use permit: No change shall be made in using a building or part thereof now or erected or structurally altered, or in using land now or occupied, without a use permit having first been issued by the building commissioner. No such use permit shall be issued to make such change

unless it is in conformity with this ordinance or amendments thereto duly enacted.

12-4 Continuance of existing uses: Nothing in this article shall prevent the continuance of the present occupancy or lawful use of any existing building, except for the safety of life and property, and except as provided herein.

Section 13. Community Unit Plans The city council may, by ordinance and after a public hearing and a recommendation by the plan commission held and made in the manner provided by law for amendments to this ordinance, authorize, in any residential district, the location and development of a planned residential development of one (1) or multiple family dwellings, or both, on not less than five (5) acres of land, and provided:

13-1 The plan follows the intent and purpose of this ordinance to promote health, safety, morals, and general welfare.

13-2 The buildings shall be used for one (1) family dwellings, two (2) family dwellings or multiple-family dwellings, and the usual accessory uses such as garages, storage space or project activities.

13-3 Adequate open spaces are provided between buildings to create an appearance and character of development suitable for the district in which the improvement is to be located.

13-4 Off-street parking facilities to be provided to meet all requirements of Section 8.

13-5 The requirements of this ordinance for yards, height of buildings and intensity of land use may, but need not be required in part or in whole of any planned residential development authorized under this section.

Section 14. Board of Zoning Appeals. (City Council)

14-1 Board of zoning appeals established: There is established a board of zoning appeals. Said board will be the Alexandria City Council.

14-1-1 The board of zoning appeals shall select one (1) member as its chairman and another to serve as its vice-chairman, each for a term of one (1) year and subject to reelection. The chairman, or in his absence, the vice-chairman, may administer oaths and compel the attendance of witnesses.

14-1-2 The board shall also select one (1) member as secretary to keep minutes and maintain the records of the board of zoning appeals.

14-2 Meetings: All meetings of the board of zoning appeals and all hearings shall be open to the public. Meetings shall be held at the call of the chairman and at such other times as the board may determine. Meetings may be called at the request of three (3) members of the board. The board shall keep minutes of its proceedings showing the vote of each member upon every question decided by it, or if any member is absent or fails to vote, indicating such fact. Statement of the facts found by the board shall be included in the minutes of each case heard or considered by it. The reason for recommending or denying an exception as provided shall also appear in the minutes. Always, a statement of the facts upon which such recommendations are based shall appear in the minutes. The board shall adopt its own rules of procedure, a copy of which and all amendments thereto shall be filed in the office of the clerk. The minutes of the board shall be open to public examination at reasonable hours. Expenses incurred by the board of appeals are to be itemized and shall be borne by the city.

14-3 Jurisdiction: The board shall hear and decide appeals from, and review any order, requirement, decision, or determination, made by the administrative official charged with the enforcement of this ordinance.

14-3-1 The board of zoning appeals shall also hear all applications for variations to this ordinance and shall submit its recommendations, based upon a finding of fact, for enactment in an amended ordinance. The board of appeals shall not have the power to grant a variation until a public hearing has been held by the board of zoning appeals, pursuant to notice and upon receiving the board's report with a finding of fact.

14-3-2 The board of zoning appeals shall have no authority to authorize change in using any parcel of property or structure.

14-3-3 The concurring vote of four (4) members of the board shall be necessary to reverse any order, requirement, decision or determination of the officer from whom an appeal is taken or to decide in favor of the applicant any matter in which said board must pass under this ordinance.

14-4 Appeals and review: Any person aggrieved by a ruling of the building commissioner, respecting the interpretation of this ordinance or any officer, department, board or bureau of the city affected by a ruling of the building commissioner concerning interpreting the ordinance, may take an appeal to the board of zoning appeals. Such appeal shall be taken within such time as prescribed by the board of appeals by general rules adopted by it, and shall be taken by filing with the building commissioner and with the board of zoning appeals a notice of appeal, specifying the grounds thereof, with such plats and exhibits as are reasonably necessary. Such appeal shall be taken upon forms provided by the board of zoning appeals.

The building commissioner shall forthwith transmit to the board all the papers constituting the record upon which the action appealed was taken.

14-5 Stay of proceedings: The appeal shall stay all proceedings and furtherance of the action appealed from unless the commissioner certifies to the board of zoning appeals after the notice of appeal has been filed with him that by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property, in which case the proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board of zoning appeals or by court of record on application, with notice to the building commissioner, and all due causes shown.

14-5-1 The board of zoning appeals shall fix a reasonable time and place for the hearing of appeals and shall give notice thereof to the persons appealing and to the officer from whom the appeal is taken. It shall hear and decide the appeal within a reasonable time. At the hearing, parties of interest may appear in person or by agent or attorney.

14-5-2 The board of zoning appeals may reverse or affirm, wholly or in part, or may modify the order, requirement, decision, or determination as in its opinion ought to be made in the premises, and shall have all the powers of the officer from whom the appeal is taken.

14-6 Variations: The city council, by ordinance, may authorize in the manner provided by law variations from this ordinance where there are practical difficulties or particular hardships in the way of carrying out the strict letter of any of this ordinance relating to the use, construction or alteration of buildings or structures or the use of land. However, no such variation shall be made, except in a specific case and after a public hearing before the board of appeals, under notice and after a report with a finding

of fact of the board of zoning appeals, as provided by the laws of the State of South Dakota.

14-7 Rules governing variations: No variation shall be allowed:

14-7-1 To permit a nonconforming use which will materially interfere with using adjoining premises in conformity with the regulations applicable to the use district in which it is located.

14-7-2 To permit a billboard to be erected or maintained.

14-7-3 To permit a nonconforming use in any residence district, excepting that when there are two (2) or more similar nonconforming uses in the same block, a variation may be allowed (a) to alter or remodel a family residence to provide for two (2) dwelling units; (b) to erect a two (2) family dwelling in a one (1) family district; and (c) to erect, reconstruct, alter or remodel a building in a two (2) family district for an apartment house.

14-7-4 To permit a nonconforming manufacturing use in a business district, (a) unless it extends a permitted nonconforming use by enlarging a building or erecting additional buildings as part of one establishment upon a lot or lots adjoining a lot on which such nonconforming use exists; or (b) unless a separate tract, the title of which was of record on the effective date of this ordinance is divided by a district boundary line, but such variation shall be limited to the use permitted in the adjoining district and shall not be extended over twenty-five (25) feet beyond the district boundary lines.

14-8 Notice: Decisions and recommendations of the board of zoning appeals shall be reached only after a public hearing and after notice has been given by registered mail to the applicant. In addition, notice of the time and place of such public hearing shall be published in a paper of

general circulation in the city not less than fifteen (15) days or over thirty (30) days previous to the hearing. Such notice shall contain the address or location of the property for which a hearing by the board is sought, and a brief description of the application.

Section 15. Conditional Uses. Applications for conditional uses, as defined in this ordinance, shall be considered at a public hearing before the plan commission, under the requirements of this ordinance. Said plan commission shall make its findings of fact and recommendations to the city council within thirty (30) days after the public hearing.

15-1 The plan commission may recommend such restrictions upon the height and bulk of any structure so approved for conditional use as may be reasonable under the particular circumstances, provided that such restrictions shall not be more restrictive than the requirements established for the district in which such structure is proposed to be located.

15-2 Conditional uses shall be permitted by the plan commission upon showing particular facts and circumstances which make the conditional use appropriate in the location in which the conditional use is proposed. Facts to be considered include the need for the conditional use, both in the neighborhood and in the community, and the effect of the conditional use on neighboring property values, on the use of neighboring property, on traffic patterns, and on the capacity of city facilities, such as water mains and sewer mains to serve the area. No conditional use shall be granted until after a public hearing to determine the facts. The plan commission order granting a conditional use may include restrictions or conditions to ensure that the guidelines set out in this section are met.

Section 16. Interpretations; Purpose and Conflict. In interpreting and applying this ordinance, they shall be held to be the minimum requirements for the promotion of the public safety, health, convenience, comfort, prosperity, and general welfare. It is not intended by this

ordinance to interfere with, abrogate, annual or repeal any ordinance, rules, regulations, previously adopted, and not in conflict with any of this ordinance or which shall be adopted, under law relating to the use of buildings or premises, nor is it intended by this ordinance to interfere with or abrogate or annul any easements, covenants, or other agreements between parties, except that where this ordinance imposes a greater restriction upon buildings or premises or upon the height of buildings or requires larger open spaces than are imposed or required by such other ordinances or such easements, covenants or other agreements, this ordinance shall control.

Section 17. Fees. Fees pertaining to petitions for zoning amendments, use permits, certificates of compliance, variations, and for appeals to the board of zoning appeals, shall be established by action of the council from time to time. Such fees shall be paid to the Municipal Finance Officer, who shall give a receipt therefor.

Section 18. Severability. The provisions of this ordinance are separable, and if any provision or part of this ordinance should be held invalid, such invalidity shall not affect the validity of the remainder of this ordinance.

Section 19. Public Hearings. Wherever this zoning ordinance calls for a public hearing, notice of such hearing shall be given in the manner provided by South Dakota State Law.

Section 20. Penalty.

20-1. Any person, firm or corporation violating any provision of this ordinance may be penalized by a fine of not more than \$500.00 or imprisoned up to 30 days, or by a combination of both fine and imprisonment, for each offense, and a separate offense shall be deemed committed on each day during or on which a violation occurs or continues. Each day starts at midnight.

20-2. The council has further determined that a violation of this Zoning Ordinance is also a public nuisance. Civil litigation to abate or remedy the nuisance is also authorized.

Section 21. Definitions. For the purpose of this ordinance, certain terms and words are hereby defined; words used in the present tense shall include the future; words used in the singular number shall include the plural number, and the plural the singular; the “building” shall include the word “structure”; and the “lot” shall include the “plot”; and the word “shall” is mandatory and directory.

21-1 Accessory building or use: a subordinate building or use located on the same lot in which the main building or use is situated and which is reasonably necessary and incidental to the conduct of the primary use of such building or main use.

21-2 Alley: a public thoroughfare, not less than twenty (20) feet wide, and not more than forty (40) feet in width, which affords only a secondary means of access to abutting property.

21-3 Amusement device: any device either hand, electronically or mechanically operated whether or not a charge is made for its use, and which is primarily intended for the entertainment of the users.

21-4 Apartment: a room or suite of rooms in a multiple-family structure, which is arranged, designed, used or intended to be a housekeeping unit for a single family.

21-5 Auto wrecking or junkyard: any place where two (2) or more motor vehicles not in running condition, or parts thereof are stored in the open are not restored to operation, or any land, building or structure used for wrecking or storing of such motor vehicles or parts thereof; and including

any farm vehicles or farm machinery, or parts thereof, stored in the open and not being restored to operating condition; and including the commercial salvaging and scavenging of any other good, articles or merchandise.

21-6 Automobile repair: General repair, engine rebuilding or reconditioning of motor vehicles; collision service, such as body, frame, or fender straightening and repair; overall painting of motor vehicles.

21-7 Automobile service station: a place where gasoline stored only in underground tanks, motor oil lubricants or grease, for operation of automobiles, are retailed directly to the public on premises, and including minor accessories and services for automobiles, but not including automobile repairs and rebuilding. When the dispensing, sale or offering for sale of motor fuels or oil is incidental to the conduct of a public garage, the premises shall be classified as a public garage.

21-8 Basement: A story partly or wholly underground. Where more than one-half (1/2) is above the average level of the adjoining ground, a basement shall be counted as a story for height measurement.

21-9 Billboard: Any structure or portion thereof upon which are signs or advertisements used on an outdoor display. This definition includes no bulletin boards used to display official court or public office notices, or signs advertising the sale or lease of the premises on which the sign is located.

21-10 Building: Any structure having a roof supported by columns or walls, and designed or intended for the shelter, support, enclosure or protection of persons, animals or chattels.

21-11 Building area: The buildable area of a lot is the space remaining after the minimum open space requirements of this ordinance have been complied with.

21-12 Building height: The vertical distances measured from the sidewalk level or its equivalent established grade opposite the middle of the front of the building to the highest point of the roof with a flat roof; to the deck line of a mansard roof and to mean height level between eaves and ridge of a gable, hip or gambrel roof; provided that where buildings are set back from the street line, the height of the building may be measured from the average elevation of the finished lot grade at the front of the building.

21-13 Building line: For this ordinance the building line is the same as the front yard setback line.

21-14 Carnivals and street fairs: Temporary carnivals and street fairs shall be permitted as conditional uses subject to the provisions and procedures set out in this ordinance for granting conditional uses, in any zoning district except any "R" or residential district. The minimum lot or area requirement is ten (10) acres, and at least two (2) acres of paved parking area shall be provided. No carnival or street fair shall be within three hundred thirty (330) feet of any one (1) family, duplex or multiple family residence.

21-15 Carport: A structure attached or made a part of the main structure, and which is open to the weather on at least two (2) sides, intended for sheltering not over two (2) motor driven vehicles.

21-16 Community service agency: any agency which has as its primary purpose to the community.

21-17 Conditional uses: The following uses of land or structures, or both may be permitted in any district, subject to Section 15.

- 21-17-1 Areas for the dumping or disposal of trash or garbage;
- 21-17-2 Cable television control station or plant;
- 21-17-3 Cemeteries, crematories or mausoleums;
- 21-17-4 Churches and accessory buildings used for religious teaching;
- 21-17-5 Municipal or privately owned recreation building or community center;
- 21-17-6 Nursery schools, day nurseries, and child care centers;
- 21-17-7) Parking area, public;
- 21-17-8 Police stations, fire stations, or place for storage of municipal equipment;
- 21-17-9 Public administration building, auditorium, gymnasium or any other publicly owned structure;
- 21-17-10 Public or private park or playground;
- 21-17-11 Public utility facilities, i.e., filtration plant or pumping station, heat or power plant, transformer station and other similar facilities;
- 21-17-12 Radio and television antenna towers, commercial;
- 21-17-13 Railroad right-of-way;

21-17-14 Schools, public or private; and

21-17-15 Telephone exchange.

No conditional use shall be permitted in any location where it will contravene the existing adjacent and nearby uses.

21-18 Condominium: An apartment building in which units are owned individually. It is also an apartment in such a building.

21-19 Court: An open unoccupied space, other than a yard, on the same lot with a building and bounded on two (2) or more sides by such building.

21-20 Curb grade: the established elevation of the curb in front of the building measured at the center of such front. Where no curb grade has been established, the city shall establish such curb level or its equivalent for this ordinance.

21-21 District: A section of the incorporated area of the city for which the regulations and provisions governing the use of building and land are uniform for each class of use permitted.

21-22 Dwelling: A building or portion thereof, but not an automobile house trailer, designed exclusively for residential occupancy, including one (1) family, two (2) family and multiple dwellings, but not including hotels, boarding and lodging houses.

21-23 Dwelling, one (1) family: A detached building designed exclusively for occupancy by one (1) family.

21-24 Dwelling, two (2) family: A building designed exclusively for occupancy by two (2) families living independently of each other.

21-25 Dwelling, multiple: A building or portion thereof designed for occupancy by three (3) or more families living independently of each other.

21-26 Dwelling, row: A row of three (3) to six (6) attached one (1) family dwelling, not over two and one-half (2 ½) stories in height, nor over two (2) rooms deep.

21-27 Dwelling unit: One (1) or more rooms in a dwelling or apartment hotel designed primarily for occupancy by one (1) family for living or sleeping purposes.

21-28 Family: An individual, or two (2) or more persons related by blood or marriage, or a group of not over five (5) persons (excluding servants) who need not be related by blood or marriage living in a dwelling unit. Family shall include two (2) or more persons with a handicap defined in the Fair Housing Amendments Act of 1988, 42 U.S.C.A. § 3601 and following, living as a single housekeeping unit.

21-29 Frontage: All property on one (1) side of a street between two (2) intersecting streets, or natural barriers.

21-30 Garage, private: An accessory building for the storage of not over three (3) motor-driven vehicles, of which not more than one (1) shall be a commercial vehicle of not over two (2) -ton capacity.

21-31 Garage, public: A building other than a private garage, used for the care, repair, or equipment of automobiles, or where such vehicles are parked or stored for remuneration, hire or sale within the structure.

21-32 Garage sale: Any sale conducted in any residential district, where tangible personal property is offered for sale in or out of any building or structure.

21-33 Home occupation: any use customarily conducted entirely within the dwelling and carried on by the inhabitants thereof, which use is incidental and secondary to the use of the dwelling for dwelling purposes and does not change the character thereof; and provided that not article is sold or offered for sale except such as may be produced on the premises by members of the immediate family. Clinics, doctors' offices, hospitals, U, millinery shops, real estate offices, tearooms, tourist homes, animal hospitals, kennels, among others, shall not be deemed home occupations.

21-34 Institution: A building occupied by a nonprofit corporation or a nonprofit establishment for public or semipublic use.

21-35 Loading space: An off-street space or berth on the same lot with a building, or contiguous to a group of buildings, for the temporary parking of a commercial vehicle while loading or unloading merchandise or materials, and which abuts upon a street, alley or other appropriate means of access.

21-36 Lot: A parcel of land occupied or suitable for occupancy by one main building or use, with accessory buildings, including the open spaces required by this ordinance, and having its principal frontage upon a public street or highway.

21-37 Lot, corner: A lot at the intersection of two or more streets.

21-38 Lot, depth: The horizontal distance between the front and rear lot lines measured in the mean direction on the side lot lines.

21-39 Lot, frontage: the front of a lot shall be that boundary of a lot along a public street; and for a corner lot the front shall be the shorter lot boundary along a street.

21-40 Lot, interior: A lot other than a corner lot.

21-41 Lot, width: The horizontal distance between the side lot lines measured at right angles to the lot depth at a point midway between the front and rear lot lines.

21-42 Mobile theater: Any theater with a mobile stage or mobile viewing equipment, but not including facilities where patrons remain in their cars.

21-43 Outdoor concert or open air concert: Any musical performance given out of doors but not including a performance at which patrons remain inside their cars.

21-44 Parking area, private: An open area for the parking of privately owned automobiles and not for public use.

21-45 Parking area, public: An open are, other than street, used for the temporary parking of over four (4) automobiles and available for the public use whether free, for compensation or as an accommodation for clients or customers.

21-46 Parking space; An area, enclosed in the main building, in an accessory building, or unenclosed, sufficient in size to store one standard automobile, which has adequate access to a public street or alley and permitting satisfactory ingress and egress of an automobile.

21-47 Porch: A roofed entrance to a building, projecting out from the wall or walls of the main structure and commonly open to the weather in part.

21-48 Signs, outdoor advertising: any card, cloth, paper, metal, painted, glass, wooden, plastic, stone or other sign of any kind or character, placed for outdoor advertising on the ground or on any tree, wall bush, rock, post, fence, building, structure, or thing. The term "placed" as used in the

definition of “outdoor advertising sign” and “outdoor advertising structure” shall include erecting, constructing, posting, painting, printing, tacking, nailing, gluing, sticking, carving, or other fastening, affixing or making visible in any manner.

21-49 Story: That portion of a building included between the surface of any floor and the surface of the floor next above it, or if there be no floor above it, then the space between the floor and the ceiling next above it. Any portion of a story exceeding fourteen (14) feet in height shall be considered as an additional story for each fourteen (14) feet or fraction thereof.

21-50 Structural alterations: Any change which would prolong the life of the supporting members of a building or structure, such as bearing walls, columns, beams or girders.

21-51 Structure: Anything constructed or erected, which required location on the ground or attached to something having location on the ground.

21-52 Telecommuting: Working in the home by using a computer terminal or other terminal connected by a telephone line by other means to a central office or central computer.

21-53 Terrace, open: A level and rather narrow plain, or platform, which for this ordinance is located adjacent to one (1) or more faces of the main structure, and which is constructed not over four (4) feet in height above the average level of the adjoining ground.

21-54 Use: The purpose for which land or a building thereon is designed, arranged or intended, or for which it is occupied or maintained, let or leased.

21-55 Yard: An open space with a main building, unoccupied and unobstructed from the ground upward, except as otherwise provided in this ordinance.

21-56 Yard, front: A yard extending across the full width of the lot and lying between the front line of the lot and the nearest line of the building.

21-57 Yard, rear: A yard extending across the full width of the lot and lying between the front line of the lot and the nearest line of the building.

21-58 Yard, side: That part of the yard lying between the main building and a side lot line, and extending from the required front yard (or from the front lot line, if there is no required front yard) to the required rear yard.