

A ZONING CODE OVERVIEW FOR THE GENERAL PUBLIC

**THE INFORMATION IN THIS PUBLICATION IS EXCERPTED FROM
THE COMPREHENSIVE CITY ZONING CODE, AS AMENDED, ARTICLE 14,
CHAPTER 16 OF THE REVISED ORDINANCES OF ALBUQUERQUE, 1994.**

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**City of Albuquerque
Planning Department
Code Enforcement Division**

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INTRODUCTION

The Albuquerque City Commission first proposed a zoning code to regulate land uses in 1928. The proposal, though published in the legal notices of the "New Mexico State Tribune", was never adopted. The first zoning code actually to be adopted by the City Commission took effect in December of 1953. That ordinance, too, was ill-fated. It failed to contain the words "Be it ordained by the City Commission of the City of Albuquerque", and was determined by the courts to be invalid.

Finally, on March 27, 1959, Albuquerque adopted its first valid zoning ordinance. That ordinance was 57 pages in a 5" x 7" booklet containing 14 zone categories. In 1965, a new zoning ordinance was adopted which completely replaced the 1959 original. Among the new regulations in the 1965 code were the first parking requirements for new buildings. In 1975, another new zoning code was approved by the City Council, which was to take effect on January 1, 1976. It is this code, adopted as Ordinance 80-1975, which is still in use today. Minor changes were made in 1990 and in 1994.

With the adoption of the new code, signs were regulated on a city-wide basis, open space was required for all multi-family development, and landscaping requirements were imposed on the majority of non-single-family development. The new code had 22 zone categories, including two new special use zones to accommodate the redevelopment of older neighborhoods and the unique regulations necessary for Albuquerque's urban areas, Downtown, the University of Albuquerque, and Uptown, including Winrock and Coronado centers.

Since 1976, the Zoning Code has been amended nearly 200 times. Several new zones have been created, landscaping regulations and air quality impact regulations have been added, and many other regulations have been created which affect each zone category. No other city ordinance comes close to having been amended as often as has the zoning Code.

STRUCTURE OF THE CODE

The City of Albuquerque Comprehensive Zoning Code is logically structured into four parts.

Part I identifies the authority and jurisdiction of the code, states the intent of the code, discusses the interpretation of the code and defines the terms used throughout the code. Definitions are especially critical to understanding the code, as words that have common meanings in everyday usage may have different definitions in terms of zoning regulation.

Part II of the Zoning Code establishes the various zone categories and identifies the regulations applicable to each zone. Most zones list the uses that are allowed, either as a permissive use, which is a use allowed without public review, or as a conditional use that can only be approved after a public hearing. In addition, each zone lists the required setbacks, maximum height restrictions, minimum lot sizes and other regulations that may affect the uses allowed in the zone.

Part III lists the general regulations, which apply to all uses and zones throughout the city. Among the general regulations are those for parking, shopping center development, signs, mobile home parks, lighting, landscaping, community residential programs, and wireless telecommunications facilities. Also found in this section are supplementary height, area and use regulations for accessory buildings, fences, and the like. This section also regulates nonconforming uses, site development plans, private commons development, and other administrative actions.

Part IV deals with the administrative procedures and enforcement authority of the code. This part explains how to make an application to obtain a variance from the strict application of the code, how to apply for conditional use approval, procedures for amending the text of the code, how to change a zone category, and how to appeal administrative actions. This part also identifies the Zoning Enforcement Officer as the sole authority to enforce the code, provides for declaratory rulings, and details the penalties for violating the code.

IMPORTANT TERMS TO UNDERSTAND

The following terms are important to understanding the Zoning Code and how it is enforced:

- 1.) Permissive Use - Each zone category identifies those uses that are allowed as a right in that zone. Such uses are specifically identified in each zone. An example of a permissive use would be a single-family house in the R-1 zone.
- 2.) Conditional Use - A type of special exception, the uses that may be approved on an individual basis after a public hearing are identified in each zone category. In certain cases these uses have conditions that must be met for approval of the conditional use.
- 3.) Non-conformance - As the text of the Zoning Code is amended, or the zoning map is amended as a result of re-zoning or annexation, certain uses existing and legal before the amendment may not be allowed under the new regulations. Those uses which legally pre-existed the amendment then become nonconforming, but not illegal. Such uses may expand, a type of special exception, with approval at a public hearing, but never beyond 25% of the size of the original building. Most non-conforming uses may only remain for a finite period of time, usually 43-60 years. After the time period has expired, the building may then only be used in conformance with the current regulations. Buildings non-conforming to regulations for setback, height, parking, and other quantitative regulations may remain for the life of the structure, and may be repaired if damaged.
- 4.) Variance - A type of special exception, a variance with approval at a public hearing allows a variation from the strict application of the regulations found in the Zoning Code. An example of a variance would be an approval to allow a building 30 feet high where the regulations restrict height to 26 feet. The allowable use of a property may never be changed by a variance; e.g., a gas station is a use that is not allowed in the R-1 single-family zone, therefore a gas station may not be approved as a variance in the R-1 zone.
- 5.) Status Established Building – A building nonconforming as to use that has been approved to maintain its nonconforming use status through a hearing process with the Zoning Hearing Examiner. Approval of a status established building can only occur if the property owner has requested on or before the expiration date of the nonconforming status. Those properties that became nonconforming as to use due to a text amendment do not qualify for this process.
- 6.) Declaratory Ruling - A declaratory ruling is an interpretation of the regulations of the Zoning Code by the Zoning Enforcement Officer. A citizen may request a declaratory ruling at any time as it applies to a proposed use or activity. If there is an objection to the ZEO's ruling, it may be appealed to the Environmental Planning Commission, which may either uphold the ruling or overturn it and direct the ZEO to change the ruling. Declaratory rulings are applicable only to proposed uses and activities and may not be issued for uses or activities already taking place.

- 7.) Zoning Enforcement Officer - Also known as the Zoning Enforcement Manager. The ZEO is the individual in charge of enforcing and interpreting the Zoning Code. The current ZEO is Matthew Conrad. Certifications, interpretations and all enforcement actions are in the exclusive domain of the ZEO and the zoning enforcement office.
- 8.) Zoning Hearing Examiner - The Zoning Hearing Examiner is the individual who presides over the hearings for special exceptions (i.e., conditional uses, variances and expansions of nonconforming uses) to the Zoning Code. Currently, Roberto Albertorio is the Zoning Hearing Examiner. The ZHE makes his decision after a public hearing where he listens to the arguments for and against approval of the special exception. ZHE decisions may be appealed to the Board of Appeals.
- 9.) Board of Appeals - The Board of Appeals is a five-member citizen board appointed by the Mayor. The BA is authorized to hear appeals from decisions on special exceptions made by the Zoning Hearing Examiner. The board may uphold, deny or remand the ZHE's decisions. Appeals of decisions of the Board of Appeals go to the City Council.
- 10.) Environmental Planning Commission - This is a nine-member citizen board appointed by the Mayor. The primary function of the EPC is to review site development plans, zone change requests, and text amendments to the Zoning Code. The EPC also hears appeals of declaratory rulings. As with the Board of Appeals, appeals of decisions of the EPC go to the City Council.
- 11.) Sector Development Plan - A Sector Development Plan essentially sub-zones a large area with distinct characteristics that can be best regulated by means other than standard zoning regulations. Such sector plans are generally found in the redeveloping areas of Albuquerque such as the Downtown Neighborhood Area, University Neighborhoods Area, South Broadway Neighborhoods, and Nob Hill/Highland; or in newly developing areas such as the North I-25 area or the La Cueva area. SU-2 zoning, which will be discussed later, is synonymous with Sector Development Plan.

PART ONE - INTENT, INTERPRETATIONS & DEFINITIONS

Intent:

Section 14-16-1-3 of the Zoning Code identifies the intended achievements of the ordinance. Sub-section (B) states that uses allowed in a zone must be specifically designated as either permissive or conditional. A use not specifically designated as either permissive or conditional is therefore not allowed.

Interpretation:

This section clarifies enforcement authority when dealing with conflicting codes and ordinances. If, for example, a regulation in the Zoning Code is stricter than a similar regulation in the Building Code, the zoning regulation prevails.

Restrictive neighborhood covenants may supercede less restrictive zoning regulations. Such covenants, however, must be enforced through the civil courts and cannot be enforced by the city.

Definitions:

Section 14-16-1-5 of the Zoning Code defines the terms used throughout the ordinance. Words not found in this section are referenced to the Uniform Building Code, or to a standard dictionary. In some cases, words with generally understood common usage may not mean the same thing in terms of zoning regulation. Examples include:

“BATH”... “[A] space or suite of adjacent spaces containing a wash basin, toilet, and a bathtub and/or shower”, the Zoning Code definition considers all baths the same.

“FAMILY”... “An individual, [t]wo or more persons related by blood, marriage, legal guardianship, or adoption, plus resident domestic servants, or [a]ny group of not more than five persons living together in a dwelling.” Thus, a rental house with five unrelated individuals living together is considered a family in terms of the Zoning Code and would be permitted in any single-family zone.

“KITCHEN” ... “An area of a dwelling where there is a sink and a significant cooking appliance, including but not limited to a range, oven microwave oven or hot plate, in close proximity.” Single-family zone categories generally only allow one kitchen per dwelling unit and do not allow kitchens in accessory buildings at all. This definition makes it difficult to circumvent the single kitchen regulation by equipping the dwelling unit or accessory building with hot plates, microwave ovens, convection ovens and similar appliances in lieu of a traditional oven/stove combination.

“HOME OCCUPATION” ... “An activity carried on for profit or philanthropic purposes...” in a dwelling unit in a residential zone. A properly run home occupation will not negatively impact the residential character of a neighborhood.

Although it is not typical of the Zoning Code to place specific regulations in the definitions section, some regulations, such as parking space size standards and the number of townhouses that may be attached in a single structure, can be found among the definitions.

PART TWO - ZONE CATEGORIES

Residential Zones:

There are thirteen residential zones delineated in the Zoning Code. This does not include special use zones which are designed for residential use, nor or the various residential zones found in Sector Development Plan areas.

RO-1 & RO-20:

These are rural, agricultural single-family zones requiring large minimum lot sizes and generally found on the fringes of the city. The number found after the RO designation is the minimum acreage necessary to develop the lot. Except for agricultural activity as a permissive use, the other uses allowed in these zones are nearly identical to the R-1 standard single-family zone category.

RA-1& RA-2:

These two zone categories are also residential agricultural single-family zones. The RA-1 zone requires a minimum of 20,000 square feet of open space per swelling unit. At least 8,000 square feet of the required open space must be on site, while the rest of the requirement can be met by donating either land or money to the City. Money donated to the City is used to buy open space. The RA-2 zone does not have the same open space requirement but does require lots to be at least one-quarter acre.

R-1:

The greatest majority of residential land in Albuquerque is zoned R-1. This zone category allows single-family dwellings and incidental accessory uses. Common accessory uses allowed in R-1 zone include detached garages, greenhouses and storage sheds. Other allowed uses include holding one garage sale at the premises each year, family day care homes for up to six children, agricultural animal keeping of poultry, rabbits and similar animals and certain home occupations. Residential shelter care facilities for the aged or for the physically or mentally handicapped are also permissive uses provided certain criteria are met. (See supplementary publication "Community Residential Programs and Emergency Shelters" for further information.)

Conditional uses in the R-1 zone include walls or fences over 3 feet high in the front yard, second kitchens within a dwelling unit, carports that do not meet standard setbacks, accessory living quarters without cooking facilities, and family day care for more than six children. Health care as a home occupation is also a conditional use.

Front and rear setbacks are standard throughout the R-1 zone: 20 feet in the front and 15 feet in the rear. Side setbacks, however, vary from lot to lot depending upon lot width, solar access and other factors. All setbacks are measured from property lines. Sidewalks or curbs are rarely a good indication of property lines.

MH:

As might be deduced from the initials, the MH zone allows mobile home development. Minimum contiguous area for the MH zone designation is three acres. Uses allowed in the MH zone are similar to those in the R-1 zone. Neighborhood commercial uses, where appropriate, may be approved as conditional uses. Minimum area for a residential lot in the MH zone is 4000 square feet and setbacks are generally 15 feet in the front, 10 feet in the rear, and 5 feet on each side. Each MH development must also provide 1200 square feet of usable open space per dwelling.

R-LT, R-T:

Each of these zone categories allows townhouse development. The R-LT zone,

however, only allows one townhouse per lot and no more than two townhouses in a single building. The R-T zone allows multiple townhouses on a lot and up to eight dwelling units in a building. Neither zone category allows agricultural animal keeping or front yard parking of recreational vehicles as allowed in the R-I zone. Single-family detached units are allowed permissively in either the R-LT or R-T zones, but apartments, other than townhouses, are not allowed in either zone.

R-G, R-2, R-3:

These three zone categories each allow apartment development to varying degrees of density. Density is the ratio of heated floor area to land area and, in addition to other requirements such as parking, open space and setbacks, limits the total number of dwelling units allowed on a lot.

Floor area ratio for apartments in the R-G zone is 0.5, or one half square foot of heated floor area for each square foot of land area. In addition, the total number of units may not exceed 20 per acre. In the R-2 zone, Floor area ratio is also 0.5, but 30 units per acre are permissive. The R-3 zone also allows 30 units per acre, but allows a floor area ratio of 1.0.

Minimum lot size area for apartments in the R-G and R-2 zones is 6,000 square feet. In the R-3 zone, minimum lot size is 150 feet by 150 feet. Lots that do not meet these minimum sizes may only be developed with houses or townhouses as regulated in the R-T zone.

R-C, R-D:

Both residential and nonresidential neighborhood commercial uses are allowed in these zones. In the R-C zone, the residential and nonresidential uses are permitted in the same building. This zone category is primarily located in the older parts of Albuquerque and generally allows up to 50% of floor area to be used for the allowed nonresidential activities.

The R-D zone, in conjunction with an approved Sector Development Plan, pre-plans an entire area for single-family dwellings, multiple family dwelling, mobile homes and incidental commercial development to service the area. Commercial uses may not exceed 15% of the total development. This zone category is primarily applied to the newly annexed developing areas of Albuquerque.

Other Residential Zones and Residential Activity:

Two other zones, 51.3-1 and H-1 (Old Town Historic Zone) also allow, but not necessarily restrict, residential dwellings as primary uses. In the SU-1 zone (also discussed later), an area may be designated for a specific type of residential development, while the H-1 zone allows R-2 permissively.

Additionally, the O-1 zone allows up to 25% of a development's gross floor area to be residential as a permissive use. Residential dwelling units are allowed as a conditional use in the C-1, C-2, and C-3 zones, and for more than 25% gross floor area in the O-1 zone. Mobile home development is allowed as a conditional use in the C-2 and C-3 zones, provided the development contains a minimum of three acres. A dwelling in the industrial zones (IP, M-1, and M-2) is allowed only in conjunction with a business activity on the property.

Sector Developments (SU-2):

The SU-2 zone, which is a special neighborhood zone, allows both residential and nonresidential uses. This zone category is generally used for urban redevelopment.

Specific regulations are found in the sub-zone categories, which are unique to the particular area being redeveloped. The sub-zones generally reference a standard zone category and then identify exceptions that reflect the character of the neighborhood. An example of this would be the SU-2/SF zone in the Downtown Neighborhoods Area. This zone references the R-1 zone of the Zoning Code for most uses and regulations, but requires a lesser front yard setback in keeping with the character of downtown residential development.

Non-residential Zones:

In addition to the 13 residential zones, there are several non-residential zones formulated according to the intensity of allowed development. Albuquerque has one office and institution zone, three retail commercial zones, three industrial or manufacturing zones and two zones that deal strictly with parking. SU-1 and SU-2 zones also allow nonresidential uses and the SU-3, Special Center zone, is also primarily a non-residential zone for Albuquerque's urban areas.

O-1:

This zone category is often used as a buffer between residential and non-residential land. Uses allowed in this zone generally have little impact on the surrounding neighborhood in terms of traffic, noise or signage. Dwellings that do not exceed 25% of the gross floor area of the premises are also allowed as a permissive use.

Building height in this zone is generally limited to 26 feet, though it is possible to erect a substantially taller building on larger lots. In order to exceed the 26 feet limit, a rigid solar plane requirement must be maintained to prevent the building from overshadowing the surrounding area. Also, no building within 85 feet of a lot zoned specifically for houses can exceed 26 feet in height.

The O-1 zone also establishes the setback standards for most non-residential zones. A standard front and street-side corner setback of 5' is usually all that is required of any building in this zone. Stricter setbacks do apply, however, when the building abuts or faces a residential zone.

Common uses allowed in the O-1 zone include churches, offices, schools, and small service establishments such as a hair styling salon or barbershop. Conditional uses include office machine sales and repair, and retail food and beverage service.

C-1, C-2, C-3:

The C-1 zone is generally designed to allow neighborhood office, retail and service uses designed to satisfy the day-to-day needs of the neighborhood in which the uses are located. Some examples of permissive uses are gas stations with minor auto repair facilities, convenience stores, fast food restaurants and small animal clinics. Selected conditional uses include auto rental and storage, private schools and outside storage or activities that are considered reasonable to a neighborhood function.

In the C-2 zone, the uses are expanded to emphasize the community rather than a neighborhood. Nearly all types of retail and service uses are allowed in the C-2 zone. Vehicle sales are first allowed in the C-2 zone, as well as higher impact uses such as liquor sales, hotels and motels, adult oriented establishments, larger signs and billboards, outdoor activities, and drive-in restaurants that are not allowed in C-1.

Among the conditional uses allowed in the C-2 zone are mobile home developments and retail businesses with incidental, limited manufacturing capabilities. Other manufacturing warehousing and wholesaling (except wholesaling of jewelry) are

not allowed in the C-2 zone.

The C-3 zone allows everything that is allowed in the C-2 zone, but also permits certain light manufacturing as a principal use, as well as wholesaling, warehousing, and contractor's yards.

As in the O-1 zone, there are no interior side or rear yard setbacks, except near residential zones, in the C-1, C-2 and C-3 zone categories. Building height is limited strictly to 26 feet in the C-1 zone and follows O-1 regulations in the C-2 and C-3 zones.

I-P, M-1, M-2:

The intent of the I-P Industrial Park zone is to provide suitable sites for a wide range of industrial and commercial uses conducted harmoniously when approved through a Site Development Plan. Based on the approved development plan, this zone mixes such uses as hotels, hospitals, manufacturing, sales rooms, and gold courses. Because site design must be approved on the development plan, impact of uses on the surrounding uses is taken into account.

The M-1 and M-2 zones are standard manufacturing zone categories. The most intense industrial uses are found in the conditional use portion of the M-2 zone. These uses include manufacturing of products such as explosives, glue, and fiberglass, and slaughtering of animals and fat rendering.

Setbacks in the IP zone reflect the "park" design aspect of this category. Setbacks in the M-1 and M-2 zones refer to the O-1 regulations. Height regulations, however, are more liberal than those allowed in the commercial zones. The I-P zone, for example, allows a maximum height of 120 feet.

SU-1, SU-2, SU-3:

Although each of these zone categories represents special zoning of some sort, each is quite different from the others. The SU-1 zone is applied to a specific site and can be designated for a variety of uses. The SU-2 zone indicates that a sector plan has been adopted and that the sub-zone categories prevail for regulation. The SU-3 zone is specified for the Winrock/Coronado Uptown area, the Downtown Core and the University of Albuquerque area. Each allowed use in the SU-3 zone is specified within the particular plan and all construction must be approved by a development plan.

H-1 (Old Town):

Uses allowed in the H-1 zone are a hybrid of R-2, C-1 and C-2 uses. The major characteristic of the H-1 zone is the architectural control over all development, to reflect the architectural styles prior to statehood in New Mexico. No building may be erected or modified, nothing may be stored outside, and nothing can take place out of doors in the H-1 zone without prior approval from the Landmarks and Urban Conservation Commission.

P, PR:

These two zones regulate parking lots and off-site required parking. Either zone category can be used as a parking lot, but a piece of property zoned PR must be tied to another use nearby as required parking for that other use. Such PR zoning cannot be rezoned or used for any other purpose without addressing the question of the required parking on the nearby lot. Neither zone category is widely used.

Overlay Zones:

There are six overlay zones in the Zoning Code: wall overlay, historic overlay,

urban conservation overlay, two airport overlays and a design overlay. Each of these overlays is added to standard underlying zone regulations to address specific needs.

PART THREE--GENERAL REGULATIONS

Section 14-16-3 of the Zoning Code deals with the various general regulations that are applicable to any use regardless of zone category. In some instances, such as parking, nearly all of the regulations in the code are found in this section. In other instances, signs and height for examples, there are regulations found in each zone category that are supplemented by the general regulations found in this section.

Off-Street Parking:

Section 14-16-3-1 deals with off-street parking regulations. Parking requirements for specific uses are identified in this section. Bicycle parking and handicap parking regulations are also found in this section. All required parking areas must be paved with a surface equal to, or superior to, asphalt—gold, for example. Parking requirements are based upon minimum standards that do not necessarily reflect the marketing-strategy parking needs of a business. Buildings constructed prior to October 22, 1965, need provide parking only to the extent that it is available on site. All buildings constructed after that date must provide all required parking for the uses on site.

Shopping Center Regulations:

All premises of five acres or more that are zoned C-1, C-2, C-3 (when used for retail purposes), P, or any combination of the above, are considered shopping center sites. As such, all development must be approved on a site development plan through a public hearing before the Environmental Planning Commission. Premises that must abide by the shopping center are identified by the symbol “SC” on the official zone maps.

Supplementary Height, Area and Use Regulations:

Section 14-16-3-3 expands upon certain regulations that may override conflicting regulations found elsewhere in the Code. This section sets the solar plane requirements for some single-family development. Also found in section 14-16-3-3 are standard height regulations for walls and fences, and setback and separation requirements for accessory buildings.

Non-Conformance Regulations:

When the first valid zoning code was adopted in 1959, an amortization period was established for non-conforming uses. Amortization periods for removal of buildings which are non-conforming as to use range from 43-60 years, dating generally from the 1959 code. The first group of nonconforming uses, which consists mainly of multiple-family dwellings in single-family zones, must begin to come into compliance in 2002. Buildings that are non-conforming as to use and remain vacant for 12 consecutive months lose their non-conforming privileges and may not be further used except in compliance with current zoning standards.

Physical characteristics that are non-conforming to current regulations (e.g., setbacks, height) need not be brought into compliance. Additions or modifications to such non-conforming structures are allowed only if the addition is in compliance with current regulations.

Signs:

In addition to the sign regulations found in most zones, this section deals with the administrative process for obtaining permits as well as with generally allowed or generally prohibited signs which affect all zone categories. This section also lists regulation for real estate signs and sign lighting restrictions.

Mobile Home Developments:

This section deals only with mobile home developments not zoned MH. In addition to whatever requirements may have been imposed on the particular mobile home development, this section requires that mobile homes be skirted and that inoperative and inappropriate vehicles are not permitted in the development.

Campgrounds:

Campgrounds are used for occupancy by tents and/or recreational vehicles for transient dwelling purposes. Campground development is generally zoned SU-1. This section identifies the various regulations associated with such development.

Detached Open Space:

Albuquerque is in the forefront of maintaining open space for public use. This section outlines the procedures and important requirements for donating required off-site open space or providing cash-in-lieu to allow the City to purchase open space.

Lighting:

Outdoor area lighting of a premise is regulated so as to prohibit the lighting from directly shining on the right-of-way or on another premises. In addition, excessive off-site luminance is restricted by limiting the intensity of lighting that can spill over onto another property and the public right of way.

Landscaping:

All newly constructed apartments and non-residential development, including additions of more than 200 square feet, are required to provide landscaping. Generally, 15% of the site area that is not occupied by a building must be landscaped. The landscaping should provide buffering on the sides of the off-street parking area as well as break up large areas of paved parking.

Special buffer landscaping and screening are required when a non-residential development abuts a residentially zoned lot. All landscaped area 36 square feet in area or larger must include live ground cover over at least 75% of the area. Trees, often including street trees, are also required.

A formal landscaping plan must be submitted and approved by the Zoning Enforcement office before a building permit can be issued.

Site Development Plans:

These regulations reference the other important standards of our City that assure adequate oversight of development, allow changes of approved plans, provide for implementation review, and terminate plans not implemented within a set time.

Community Residential Programs and Emergency Shelters:

Sections 14-16-3-12 & 13 identify the specific requirements and regulations for

operating community residential programs or emergency shelters, even when such uses are permissive in certain zones. The most salient regulations require that such uses be limited in number within each defined geographical area (Planned Information Area) and that newly proposed uses not be within 1500 feet of like uses. As noted in R-1, there is a supplementary zoning enforcement office publication that explains all requirements for these uses.

Air Quality Impact Regulations:

This section establishes threshold criteria for new developments that must be reviewed on a site development plan for compliance with air quality standards.

Recycling Bins:

In order to assure the community that recycling efforts will actually result in the recycling of waste material and will not become simply convenient places to dump garbage, this section sets specific standards for recycling bin design and location.

Private Commons Development:

Formerly regulated as “cluster housing”, these standards allow residential agricultural areas to develop houses and townhouses in close proximity while preserving required open space in larger areas for the common use and enjoyment of the residents. These developments require a minimum of two acres, cannot exceed the number of units established by the required lot size of the zone, and may not exceed 50 total dwelling units. Development is controlled by subdivision and a site development plan.

Wireless Telecommunications Facilities:

This burgeoning industry has spawned a proliferation of antenna towers and ground support equipment necessary to operate digital and cellular telephones, pagers, and related wireless communications. These regulations establish facility placement and design restrictions to ameliorate the impact of these installations and encourage collocation of antennas on towers and existing structures, where possible. Design features include special setbacks, walls, and landscaping, and allow for concealed towers intended to architecturally integrate the structure from dominating the view.

These regulations exclude antennas for AM, FM, and television broadcasting, amateur radio operator and receive only antennas, and emergency and public utility services.

PART FOUR—ADMINISTRATION AND ENFORCEMENT

Administrative procedures for zone changes, special exceptions, annexations and text amendments are found in Sections 14-16-4-1 through 14-16-4-4 of the Zoning Code. Sections 14-16-4-5 through 14-16-4-11 deal with the authority of the Zoning Enforcement Officer and identify specific penalties for violating the Zoning Code.

Amendment Procedure:

This section explains the procedures for applying for a map amendment (zone change) or to the text of the Zoning Code. City Council Resolution 270-1980, the policies adopted as criteria for approving zone changes, is included in the appendix.

Special Exceptions:

There are three special exceptions for which an application can be made: conditional use, variance, and expansion of a non-conforming use, each discussed earlier in this handbook on page 4. Special exception hearings are held monthly before the Zoning Hearing Examiner. Criteria for obtaining a special exception are included in the appendix.

Appeals:

Section 14-16-4-4 of the Zoning Code deals with the procedures for appeals of decisions made by staff, the Zoning Enforcement Officer, Zoning Hearing Examiner, or any appellate body authorized by the Zoning Code. Final appeal of any administrative decision is to the City Council.

Sector Development Plans:

This section explains the policies and procedures in creating or amending sector development plans. The Planning Commission can approve sector development plans in the R-D zone. Only the City Council can approve Sector Development Plans zoned SU-2 or SU-3.

Enforcement, Penalties, Map:

Sections 14-16-4-5 through 14-16-4-12 establish the enforcement and interpretation authority of the Zoning Enforcement Officer, allow for inspectorial searches, allow for removal of signs, detail penalties for violating the Zoning Code regulations, and identify the zone atlas as the official zone map of the city of Albuquerque.

ENFORCEMENT OF THE ZONING CODE

The Zoning Enforcement office regulates the Zoning Code through plans review, inspections for occupancy, complaints from citizens, and routine pro-active investigations. The tool for obtaining compliance of violations of the code is through the court system.

Plans Review:

Nearly any structure placed on a property within the city limits of Albuquerque must be reviewed by the Zoning Enforcement office for compliance with applicable regulations. These regulations include walls and fences of any height, signs (including painted wall signs) and storage sheds. Tents and tethered balloons, though not structures, must also be approved before placement. In some cases a review by zoning enforcement is mandatory even though a building permit may not be required.

Multi-family and non-residential construction must also be inspected in the field prior to legal occupancy of the building. The construction must be according to the approved plan. Failure to build according to plan can result in denial of certificate of occupancy or legal action.

Field Investigations:

Some field investigations are conducted by request from property owners in order to certify uses or activities being allowed on a particular property. These requests can be made to assure a buyer or lender that the property is in conformance with applicable zone regulations. A request can also be made to certify to another agency, such as the State of New Mexico, that the proposed use (automobile sales, auto

salvage yards, day care centers, etc.) is in compliance with city zoning requirements.

Other investigations involve zoning violations. These violations are discovered either by citizen complaints or through pro-active enforcement. Violators of the Zoning Code are notified in writing to correct the violation; usually the corrective action must be taken within a two-week period from the original investigation. Up to a total of three notifications may be sent before legal action is taken.

Legal Action:

Legal action can consist of issuing a citation or a summons in Metropolitan Court, or prosecution in District Court. Action can be handled by the Zoning Inspector in Metro Court without requiring the presence of a lawyer. District Court requires both the City and the violator to obtain attorneys.

The advantage of Metro Court is relative speed. Once a citation or summons is issued, the matter can be heard before a judge in 60-90 days. District Court may take six months or longer for the case to come to trial. The advantage of District Court is that the judge can grant injunctive relief to abate a violation. Metro Court judges can only impose fines or jail terms, but cannot compel compliance.

RESIDENTIAL REGULATIONS

Although there are several hundred zoning regulations, the following represent those residential regulations most often of concern:

1. **ACCESSORY BUILDINGS** - Accessory buildings, including a storage shed or garage, may be located anywhere in the side or rear yard provided the accessory building is no closer than ten feet to a house or other living quarters and is no closer than five feet to any other accessory building. An accessory building may be required to be set back ten feet or more from the street side property line.
2. **ACCESSORY LIVING QUARTERS** - An accessory building may be used for living quarters if approved through a conditional use. An accessory building may not contain cooking facilities. Any accessory building that is equipped with both plumbing and heating may be considered an accessory living quarters.
3. **ADDITIONS TO EXISTING BUILDINGS** - All additions to existing buildings must be approved by the Zoning Enforcement office prior to construction. Generally, the building addition is subject to the same use and setback restrictions as the existing structure.
4. **CARPORTS** - A carport may be erected permissively provided that it complies with the same setback standards as those that apply to the dwelling on the lot, if the carport cannot be erected in compliance with the required setbacks, a conditional use may be obtained, allowing the carport in the side or front setback, but no closer than three feet to the side line. The carport may never be enclosed.
5. **FENCES & WALLS** - Fences and walls may not exceed three feet in height in the front yard and may not exceed eight feet in height in the side and rear yards. Fence and wall height is measured from the lowest grade on either side.
6. **GARAGE SALES** — Garage or yard sales are allowed once every twelve months at a given residential location. The sale may not exceed three days in length and only normally accumulated household goods may be sold. Advertising signs may not be placed on medians or other city property.
7. **HOME OCCUPATIONS** - Certain businesses may be run from the home as permissive uses. Generally, the business must be of a phone and mail operation or a low-key service business. No home business may sell, display or manufacture

from the residence.

8. **HORSES, COWS, CHICKENS & OTHER BARNYARD ANIMALS** - Chickens, ducks, roosters and similar poultry are allowed in most single family residential zones. There is no limit on the number of such animals. Horses, cows, sheep and goats are allowed on lots of at least one half acre in size, provided there is sufficient open space for each animal. Except in agricultural residential zones, use of the premises as a commercial farm enterprise is not allowed.
9. **INOPERATIVE VEHICLES (JUNK CARS)** - All motor vehicles parked in a residential zone must be operative unless such vehicles are parked inside a building, including a carport. Vehicles covered by tarps or stored in the rear yard must still be in operating condition. Major automotive repair, even of personal vehicles, may not be conducted outdoors.
10. **MANUFACTURED HOMES** - Manufactured homes with a minimum size of 24 feet by 36 feet and meeting the HUD standards for construction are treated as any site-built house. A manufactured home, when placed on a permanent foundation as prescribed by the manufacturer or state statute, is allowed in any residential zone. This product and property investment has become quite common.
11. **MOBILE HOMES** - A mobile home may be placed in a residential zone (other than mobile home zoning) only as a temporary residence during the construction of the permanent residence on the same property. Such mobile homes may remain for 6 months, or until the permanent residence is completed, whichever time is less.
12. **RECREATIONAL VEHICLES AND BOATS** - Recreational vehicles and boats that are parked in the front yard area must be parked no closer than 11 feet from the face of the curb and must be perpendicular to the street. They cannot block the public sidewalk.
13. **RESTRICTIVE COVENANTS** - Only regulations specifically found in the Zoning Code are enforced by the Zoning Enforcement office. Restrictive covenants are not considered in assessing zoning requirements; however, restrictive covenants may be more restrictive than zoning regulations and enforced through civil action.
14. **SEMI-TRUCKS AND OTHER COMMERCIAL VEHICLES** - Only those vehicles whose use is incidental to a residential activity are allowed to be stored on a residential property. A non-commercial vehicle has a gross vehicle weight rating of not more than 10,000 pounds and can be legally parked in a standard 8.5 by 20 foot parking space.
15. **SWIMMING POOLS** - Swimming pools must be constructed so that the water's edge is no closer than five feet to any building or lot line. Pools must be enclosed with a wall or fence six feet high.
16. **TREES, SHRUBS AND OTHER LANDSCAPING** - Landscaping in a single-family residential zone must comply with the Water Waste and Water Conservation Landscape Ordinance.
17. **WEEDS & LITTER** - Any growth of weeds to a height greater than four inches, or any accumulation of weeds and/or debris, is prohibited on occupied or unoccupied land within the city. This includes the area located between the property line and the middle of the alley adjacent to the property, and the area located between the property line and the curb, the area of any curbs or sidewalks located adjacent to the property, and the area located ten feet outside the property line where there is no curb.

For more information regarding the interpretation and / or application of the Comprehensive City Zoning Code, the Anti-Weed and Litter Ordinance, and related ordinances, please contact:

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600 2nd Street NW, Suite 720
Albuquerque, New Mexico 87102
(505) 924-3850
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Appendices

APPENDIX A: Resolution 270-1980

ADOPTING POLICIES FOR ZONE MAP CHANGE APPLICATIONS AND APPEALS OF ENVIRONMENTAL PLANNING COMMISSION DECISIONS; SUPERSEDING CITY COUNCIL RESOLUTIONS 217-1975 AND 182-1978 RELATING TO ZONE CHANGE APPLICATIONS AND APPEALS.

WHEREAS, the usefulness of the Comprehensive City Zoning Code in implementing the City's Comprehensive Plan and promoting health, safety, morals, and general welfare is enhanced by a reasonable flexibility in order to deal reasonably with changes in the physical, economic, and sociological aspects of the city; and

WHEREAS, certain general policies for consideration of zone map changes and other zoning regulation changes should be recognized as determinative.

BE IT RESOLVED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF ALBUQUERQUE:

Section 1.

The following policies for deciding zone map change applications pursuant to the Comprehensive City Zoning Code are hereby adopted:

- A. A proposed zone change must be found to be consistent with the health, safety, morals, and general welfare of the City.
- B. Stability of land use and zoning is desirable; therefore, the applicant must provide a sound justification for the change. The burden is on the applicant to show why the change should be made, not on the City to show why the change should not be made.
- C. A proposed change shall not be in significant conflict with adopted elements of the Comprehensive Plan or other City master plans and amendments thereto including privately developed area plans, which have been adopted by the City.
- D. The applicant must demonstrate that the existing zoning is inappropriate because:
 1. There was an error when the existing zone map pattern was created.
 2. Changed neighborhood or community conditions justify the change.
 3. A different use category is more advantageous to the community, as articulated in the Comprehensive Plan or other City master plan, even though (1) or (2) above do not apply.
- E. A change of zone shall not be approved where some of the permissive uses in the zone would be harmful to adjacent property, the neighborhood or the community.
- F. A proposed zone change which, to be utilized through land development, requires major and un-programmed capital expenditures by the City may be:
 1. Denied due to lack of capital funds, or;
 2. Granted with the implicit understanding that the City is not bound to provide the capital improvements on any special schedule.
- G. The cost of land or other economic considerations pertaining to the applicant shall not be the determining factor for a change of zone.

- H. Location on a collector or major street is not in itself sufficient justification of apartment, office or commercial zoning.

- I. A zone change request, which would give a zone different from surrounding zoning to one small area, especially when only one premise is involved, is generally called a “spot zone.” Such a change in zone may be approved only when:
 - 1. The change will clearly facilitate realization of the Comprehensive Plan and any applicable adopted sector development plan or area development plan, or;
 - 2. The area of the proposed zone change is different from the surrounding land because it could function as a transition between adjacent zones; because the site is not suitable for the uses allowed in any adjacent zone due to topography, traffic or special adverse land uses nearby; or because the nature of structures already on the premises makes the site unsuitable for the uses allowed in any adjacent zone.

- J. A zone change request, which would give a zone different from surrounding zoning to a strip of land along a street, is generally called “strip zoning.” Strip commercial zoning will be approved where:
 - 1. The change will clearly facilitate realization of the Comprehensive Plan and any applicable adopted sector development plan or area development plan, or;
 - 2. The area of the proposed zone change is different from the surrounding land because it could function as a transition between adjacent zones or because the site is not suitable for the uses allowed in any adjacent zone due to traffic or special adverse land uses nearby.

Section 2.

City Council Resolutions 217-1975 and 182-1978 adopting policies for zone map change applications and appeals of (the) Environmental Planning Commission are hereby superseded.

APPENDIX B: Zone Use Matrix

Zoning Category Guide for Common Retail, Wholesale, Service and Entertainment Businesses

The Zoning Enforcement Division, City of Albuquerque, provides this chart as a general guide to proper zoning categories for common business uses. Not all uses are listed in this guide and some listed uses may not be appropriate for the zones indicated because of the exact nature of the business activity. In many cases there are important restrictions on how a particular business may operate in a particular zone. This is especially true in residential zones.

This chart is merely a handy reference guide. The information contained is unofficial. The text of the Zoning Code should be consulted for definitive answers to zoning questions.

In addition to the zones listed on the chart, four (4) other categories exist which are not detailed. These categories and an explanation of allowed uses are as follows:

Home Occupations - Many (but not all) businesses shown on the chart may be operated from the home as well as in the zones listed. However, there are several restrictions to such home businesses. One key restriction to a permissive home occupation is that no stock in trade may be sold or displayed from the residence. A complete list of these restrictions can be found in section 10.A.2.e., of the Zoning Code.

SU-1 - Some businesses, which may operate in a particular zone, are more appropriately located in an SU-1 zoning category. Some uses may operate only under SU-1 zoning. SU-1 is a special use zoning requiring a zone change and a complete site development plan, which must be approved by the Environmental Planning Commission and signed off by the Development Review Board prior to construction. Consult Development and Building Services for details regarding this zone.

SU-2 - The SU-2 zoning category is not a traditional zone at all. The SU-2 designation merely signifies that an area has undergone a Sector Development Plan. Each property in an area designated SU-2 will also show a sub-zone; e.g., SU-2/SF. The appropriate Sector Development plan must then be consulted to determine the restrictions of the sub-zone, in this case, SF.

SU-3 - This is an urban center zone, which allows a variety of designated uses. Again, the specific SU-3 plan must be consulted to determine if a given business may properly locate in this zone.

BUSINESS	R-2	R-3	R-4	R-C	O-1	C-1	C-2	C-3	I-P	M-1	M-2	H-1
Acupuncture or acupressure	c	c	c	x	x	x	x	x	x	x	x	x
Adult amusement establishment							c	c	c	c	c	
Ambulance service			c				x	x				
Amusement enterprise (non-adult)												
Animal husbandry									c	x	x	
	R-2	R-3	R-4	R-C	O-1	C-1	C-2	C-3	I-P	M-1	M-2	H-1
Antique sales and repair			c	c		x	x	x				x
Appliance repair			c				x	x	x	x	x	
Appliance store, incl. incidental repair			c	c		x	x	x	c	c	c	
Architect or engineer	x*	x*	x	x	x	x	x	x	x	x	x	x
Arena, indoor			c				x	x	x	x	x	
	R-2	R-3	R-4	R-C	O-1	C-1	C-2	C-3	I-P	M-1	M-2	H-1
Art gallery			x	x		x	x	x				x
Art supply store			x	x		x	x	x	c	c	c	x
Auto supply store			c	c		x	x	x	c	c	c	
Automobile body shop/repair			c				x	x		x	x	
Automobile dismantling								c	c	x	x	
	R-2	R-3	R-4	R-C	O-1	C-1	C-2	C-3	I-P	M-1	M-2	H-1
Automobile sales			c				x	x	c	c	x	
Automobile salvage								c	c	x	x	
Automobile rental			c			c	x	x	c	x	x	
Bakery goods or confectionary shop		x	x	x	c	x	x	x				x
Bank			c	c		x	x	x	x	x	x	
	R-2	R-3	R-4	R-C	O-1	C-1	C-2	C-3	I-P	M-1	M-2	H-1
Bar			c		c		x	x	x	x	x	x
Barber shop	x*	x*	x	x	x	x	x	x	x	x	x	x
Beauty shop	x*	x*	x	x	x	x	x	x	x	x	x	x
Billiard or pool hall			c				x	x				
Blacksmith									c	x	x	
	R-2	R-3	R-4	R-C	O-1	C-1	C-2	C-3	I-P	M-1	M-2	H-1
Blood bank							c	c				
Blood plasma center							c	c				
Boarding or lodging house		x	x									
Book or stationary store		x	x	x		x	x	x	x	x	x	x
Book store, adult							c	c	c	c	c	
	R-2	R-3	R-4	R-C	O-1	C-1	C-2	C-3	I-P	M-1	M-2	H-1
Bottling plant								x	x	x	x	
Bowling alley		c					x	x				
C.B. sales and service			c	c		x	x	x	x	x	x	
Cabinet shop							c	x	x	x	x	
Car wash			c	c		x	x	x	x	x	x	
	R-2	R-3	R-4	R-C	O-1	C-1	C-2	C-3	I-P	M-1	M-2	H-1
Car stereo sales and service			c	c		x	x	x				
Carnival, outdoor			c				x	x				
Carpet and drapery cleaning			c			x	x	x				
Catering			x	x	x	x	x	x				
Cement plant										c	c	
	R-2	R-3	R-4	R-C	O-1	C-1	C-2	C-3	I-P	M-1	M-2	H-1
Cemetery	-----SU-1 Zoning Only-----											
Chiropractor	c*	c*	x	x	x	x	x	x	x	x	x	x
Christmas tree sales			c	c		x	x	x				
Church, incl. usual incidental facilities			x	x	x	x	c	c				
Circus, outdoor			c				x	x				

X=permissive use; c=conditional use; * use is allowed only as a home occupation; ** some use allowed as a home occupation

BUSINESS	R-2	R-3	R-4	R-C	O-1	C-1	C-2	C-3	I-P	M-1	M-2	H-1
Clinic, medical			c	c	x	x	x	x	x	x	x	
Club, lodge or fraternal organization		c	x	x	x	x	x	x	x	x	x	x
Coin and gun shop			c	c		x	x	x				
Cold storage plant								x	x	x	x	
Community center	c	c	c	c								
	R-2	R-3	R-4	R-C	O-1	C-1	C-2	C-3	I-P	M-1	M-2	H-1
Contractor's equipment storage								c	c	c	c	
Contractor's plant								c	c	c	c	
Crematorium	-----SU-1 Zoning Only-----											
Daycare center	c	c	x	x	x	x	x	x	x	x	x	x
Disco, no liquor			c				x	x				
	R-2	R-3	R-4	R-C	O-1	C-1	C-2	C-3	I-P	M-1	M-2	H-1
Doctor*	c*	c*	x	x	x	x	x	x	x	x	x	x
Dog obedience training school			c	c		x	x	x				
Dressmaking, tailoring	x*	x*	x	x		x	x	x				
Drive-in restaurant			c		c		x	x	x	x	x	
Drug store			x	x	x	x	x	x	x	x	x	
	R-2	R-3	R-4	R-C	O-1	C-1	C-2	C-3	I-P	M-1	M-2	H-1
Dry cleaning or clothes pressing establishment		x	x	x	x	x	x	x	x	x	x	
Dry goods store			c	c		x	x	x				
Employment agency			c	x	x	x	x	x	x	x	x	
Engineer	x*	x*	x	x	x	x	x	x	x	x	x	x
	R-2	R-3	R-4	R-C	O-1	C-1	C-2	C-3	I-P	M-1	M-2	H-1
Equipment: rental, sales, display & repair of operative contractor's & heavy farm equipment								c	c	c	c	
Escort service							c	c		c	c	
Farm, dairy (also RA-1 & RA-2)										x	x	
	R-2	R-3	R-4	R-C	O-1	C-1	C-2	C-3	I-P	M-1	M-2	H-1
Farm, worm (also RA-1 & RA-2)										x	x	
Feed store								x	c	x	x	
Firewood sales and storage							c	x	c	x	x	
Fireworks sales			c			c	x	X				
Flea market							c	c		c	c	
	R-2	R-3	R-4	R-C	O-1	C-1	C-2	C-3	I-P	M-1	M-2	H-1
Florist shop			x	x		x	x	x	x	x	x	x
Furniture store			c	c		x	x	X				
Furniture stripping			c				x	x	c	x	x	
Games, electronic or video						c	x	x				
Garage for auto repair			c	c		x	x	x	x	x	x	
	R-2	R-3	R-4	R-C	O-1	C-1	C-2	C-3	I-P	M-1	M-2	H-1
Grocery, fruit, vegetable, meat or fish market; delicatessen or supermarket		x	x	x	c	x	x	x	c	c	c	
Group training home	x	x	c		x		x	x				
Halfway house					x		c	c				
Hardware store			c	c		x	x	x				
	R-2	R-3	R-4	R-C	O-1	C-1	C-2	C-3	I-P	M-1	M-2	H-1
Health gymnasium (commercial)			c				x	x	x	x	x	
Hospital			c		c		x	x	x	x	x	
Hospital for animals			c				x	x				
Hotel			c				x	x	x	x	x	x
Hypnotherapy	c*	c*	x	x	x	x	x	x	x	x	x	x

X=permissive use; c=conditional use; * use is allowed only as a home occupation; ** some use allowed as a home occupation

BUSINESS	R-2	R-3	R-4	R-C	O-1	C-1	C-2	C-3	I-P	M-1	M-2	H-1
Iceplant, wholesale								x	c	x	x	
Income tax service	x*	x*	x	x	x	x	x	x	x	x	x	x
Insurance agency			x	x	x	x	x	x	x	x	x	X
Interior decorating shop			x	x		x	x	x				
Janitorial service			c				x	x				
	R-2	R-3	R-4	R-C	O-1	C-1	C-2	C-3	I-P	M-1	M-2	H-1
Jewelry manufacturing							c	x	c	x	x	
Jewelry store			c	x		x	x	x				
Kennel					c	c	c	x		x	x	
Laboratory									x	x	x	
Landscaping contractor								x		x	x	
	R-2	R-3	R-4	R-C	O-1	C-1	C-2	C-3	I-P	M-1	M-2	H-1
Lawyer	x*	x*	x	x	x	x	x	x	x	x	x	x
Locksmith			c			x	x	x	x	x	x	
Machine shop									x	x	x	
Massage	c*	c*	c		c		x	x				
Maternity clinic			c		c		x	x	x	x	x	
	R-2	R-3	R-4	R-C	O-1	C-1	C-2	C-3	I-P	M-1	M-2	H-1
Medical or dental laboratory			c	c	x	x	x	x	x	x	x	
Miniature golf course			c				x	x	x	x	x	
Mobile home park (permissive SU-1)							c	c				
Mobile home sales: see trailer sales												
Modular home manufacturing								x	c	x	x	
	R-2	R-3	R-4	R-C	O-1	C-1	C-2	C-3	I-P	M-1	M-2	H-1
Moped sales			c			c	x	x	c	x	x	
Mortuary			c				x	x				
Motel			c				x	x	x	x	x	x
Musical instrument shop			c			x	x	x				
Newsstand		x	x	x	x	x	x	x	x	x	x	x
	R-2	R-3	R-4	R-C	O-1	C-1	C-2	C-3	I-P	M-1	M-2	H-1
Night club			c		c		x	x	x	x	x	x
Nursing or rest home		c	c		x		x	x				
Office	x**	x**	x	x	x	x	x	x	x	x	x	x
Office machine equip. sales & repair			c		c	x	x	x				
Outdoor sales of retail goods						c	c	c				
	R-2	R-3	R-4	R-C	O-1	C-1	C-2	C-3	I-P	M-1	M-2	H-1
Package liquor store			c	x		x	x	x				
Paint store			c	c	x	x	x	x				
Palm reader							x	x				
Parking lot structure (as a separate business)			x	c	x	x	x	x	x	x	x	
	R-2	R-3	R-4	R-C	O-1	C-1	C-2	C-3	I-P	M-1	M-2	H-1
Pawn shop			c	c		x	x	x	x	x	x	
Pet grooming	x*	x*	c	c		x	x	x				
Pet shop			c	c		x	x	x				
Pharmacy			x	x	x	x	x	x	x	x	x	
Photo equipment shop			c			x	x	x				
	R-2	R-3	R-4	R-C	O-1	C-1	C-2	C-3	I-P	M-1	M-2	H-1
Photo studio, Adult							c	c	c	c	c	
Photocopy		x	x	c	x	x	x	x	x	x	x	
Photography study	x*	x*	x	x	x	x	x	x	x	x	x	x
Physiotherapy office	c*	c*	x	x	x	x	x	x	x	x	x	x
Picture framing shop			c	c		x	x	x				x

X=permissive use; c=conditional use; * use is allowed only as a home occupation; ** some use allowed as a home occupation

BUSINESS	R-2	R-3	R-4	R-C	O-1	C-1	C-2	C-3	I-P	M-1	M-2	H-1
Plumber, contractor plant								x	c	x	x	
Plumber, retail			c				x	x	c	c	c	
Pool hall/billiards	x*	x*	c				x	x				
Pottery making								x		x	x	
Prosthetic or corrective devices shop			x	x	x	x	x	x				
	R-2	R-3	R-4	R-C	O-1	C-1	C-2	C-3	I-P	M-1	M-2	H-1
Printing, publishing or lithography			c		c		c	x	x	x	x	
Public utility structure or use	x	x	x	x	x	x	x	x	x	x	x	
Radio or television studio or station			c	c	x		x	x				
Racquetball court, indoor			c				x	x	x	x	x	
Racquetball court, outdoor							c	c				
	R-2	R-3	R-4	R-C	O-1	C-1	C-2	C-3	I-P	M-1	M-2	H-1
Real estate broker	x*	x*	x	x	x	x	x	x	x	x	x	x
Record shop			c				x	x				
Religious articles supply store			c	x		x	x	x				
Rental of household equipment			c				x	x				
Rescue mission			c				c	c				
	R-2	R-3	R-4	R-C	O-1	C-1	C-2	C-3	I-P	M-1	M-2	H-1
Restaurant, café (not drive-in)			x	x	c	x	x	x	x	x	x	x
Restaurant (beer and wine)			c	c		x	x	x	x	x	x	x
Retail store, business or shop in which products may be manufactured, compounded, processed, assembled or treated as an accessory use				c			c	x	c	c	c	x**
	R-2	R-3	R-4	R-C	O-1	C-1	C-2	C-3	I-P	M-1	M-2	H-1
Rifle, pistol range, indoor							x	x				
Rifle, pistol range, outdoor							c	c				
Sales / display rooms for wholesalers, distributors, warehouses & manufacturer's agents, including accessory stock, storage and warehouse space									x	x	x	
	R-2	R-3	R-4	R-C	O-1	C-1	C-2	C-3	I-P	M-1	M-2	H-1
Savings and loan association			c	c		x	x	x	x	x	x	
School, commercial / trade			c		x	c	x	x	x	x	x	
School, K-12			c		x	x	x	x	x	x	x	
Second hand store			c				x	x				
Service station			c	c		x	x	x	c	c	c	
	R-2	R-3	R-4	R-C	O-1	C-1	C-2	C-3	I-P	M-1	M-2	H-1
Shoe store			c	c		x	x	x	x	x	x	
Shoeshine stand, shoe repair		x	x	x	x	x	x	x				
Skateboard park, outdoor							c	c				
Smoker's shop		x	x	x	x	x	x	x	x	x	x	x
Spa			c				x	x				
	R-2	R-3	R-4	R-C	O-1	C-1	C-2	C-3	I-P	M-1	M-2	H-1
Sporting goods shop			c				x	x				
Stadium, outdoor							c	c				
Storage structure or yard for equipment, material or activity incidental to a specific construction project, provided it is temporary	c	c	c	c	x	x	x	x	x	x	x	

X=permissive use; c=conditional use; * use is allowed only as a home occupation; ** some use allowed as a home occupation

BUSINESS	R-2	R-3	R-4	R-C	O-1	C-1	C-2	C-3	I-P	M-1	M-2	H-1
Studio for instruction of music / dance			x	x	c	x	x	x				x
Swimming pool, indoor			c				x	x	x	x	x	
Swimming pool, outdoor							c	c	x	x	x	
Taxidermy shop			c	c		x	x	x				
Theater, adult, indoor & outdoor							c	c	c	c	c	
	R-2	R-3	R-4	R-C	O-1	C-1	C-2	C-3	I-P	M-1	M-2	H-1
Theater, indoor			c				x	x				X
Theater, outdoor (PERMISSIVE SU-1)							c	c				
Tire re-capping / re-treading			c					x	x	x	x	
Tool and dye making								c	x	x	x	
Trailer rental (for use elsewhere)			c			c	x	x	c	x	x	
	R-2	R-3	R-4	R-C	O-1	C-1	C-2	C-3	I-P	M-1	M-2	H-1
Trailer sales, mobile home & RV			c	c			x	x	c	x	x	
Transfer or storage of household goods, including storage lockers							c	x	x	x	x	
Truck terminal							c	c	c	x	x	
Upholstery							c	x		x		
	R-2	R-3	R-4	R-C	O-1	C-1	C-2	C-3	I-P	M-1	M-2	H-1
Video cassette, non-adult			c		c	x	x	x	x			
Warehouse (not restricted to household goods)								x	x	x	x	
Warehouse, self-storage							c	x	x	x	x	
Waterslide, outdoor							c	c				
	R-2	R-3	R-4	R-C	O-1	C-1	C-2	C-3	I-P	M-1	M-2	H-1
Welding								x	c	x	x	
Wholesaler of jewelry			c				x	x	x	x	x	
Wholesaler of other than jewelry								x	x	x	x	
Wrought iron								x	c	x	x	

X=permissive use; c=conditional use; * use is allowed only as a home occupation; ** some use allowed as a home occupation

APPENDIX C: Special Exceptions

SPECIAL EXCEPTION CRITERIA FOR APPROVAL: CONDITIONAL USE

“**Conditional use**” means one of those uses enumerated as conditional uses in a given zone. Such uses require individual approval on a given lot.

For approval of a conditional use, it is the burden of the applicant to ensure that evidence is presented to the record showing that the following criteria are met.

Write an explanation and provide drawings as necessary to demonstrate the proposed use. Be prepared to discuss the proposal at the public hearing.

Criteria:

A conditional use shall be approved if and only if, in the circumstances of the particular case and under conditions imposed, the use proposed:

- a. Will not be injurious to the adjacent property, the neighborhood, or the community
- b. Will not be significantly damaged by surrounding structures or activities.

NOTE:

Approval of a request may include specific conditions and restrictions such as landscaping, hours of operation, etc. Failure to adhere to the terms of approval for a period of one year shall void a conditional use.

The rights and privileges granted must be utilized within one year of approval, or the use is void.

When a conditional use ceases on the approved site for a continuous period of one year or more it becomes void.

SPECIAL EXCEPTION CRITERIA FOR APPROVAL: VARIANCE

“Variance” means variation from the strict, literal application of this article; however, the allowable use of premises may never be changed via a variance. A variance can be approved **only if** a property is exceptional in a way that makes compliance with the regulations an unnecessary hardship.

For approval of a variance, it is the burden of the applicant to ensure that evidence is presented to the record showing that the following criteria are met.

Part (a) explains how the property is exceptional.

Part (b) explains the unnecessary hardship.

Part (c) explains how the variance prevents the hardship.

Write an explanation and provide drawings as necessary to demonstrate how the property is exceptional and how the particular variance requested provides a remedy. Be prepared to discuss the problem and remedy at the public hearing.

Part (a): The property is exceptional:

1. The parcel is exceptional as compared with other land in the vicinity subject to the same regulations by reason of the physical characteristics of the land, which physical characteristics existed at the time of the adoption of the regulation or were created by natural forces or by governmental action for which no compensation was paid;
2. The parcel is exceptional as compared with other land in the vicinity subject to the same regulations by reason of the conditions or use of the parcel or other land in the vicinity which condition or use existed at the time of adoption of the regulations; or,
3. The parcel is irregular, unusually narrow or shallow in shape, and the conditions existed at the time of the adoption of the regulation, or were created by natural forces or governmental action for which no compensation was paid.

Part (b): As a result of the exceptional aspect of the property, the regulations produce unnecessary hardship; an unnecessary hardship is one that either;

1. Creates an exceptional, substantial, and unjustified limitation of the property owners reasonable use of the property; or,
2. Deprives the owner of a reasonable return on the property under any use permitted by its existing zone.

Part (c): A particular variance is appropriate to prevent the unnecessary hardship. The decision on whether to grant a particular variance depends upon a comparison of the special circumstances shown by the applicant (i.e.. as per Part A and Part B above) and the public interest. To be justified, a variance must permit only development that meets the following criteria:

1. It differs from development which would be permitted under existing regular zoning regulations no more than is necessary to overcome the unnecessary hardship;
2. The variance will not significantly interfere with the enjoyment of other land in the vicinity; and,
3. It is consistent with the spirit of this Zoning Code, substantial justice and the general public interest.

Financial gain or loss shall not be the sole determining factor in deciding a variance.

**SPECIAL EXCEPTION CRITERIA FOR APPROVAL:
EXPANSION OF NON-CONFORMING USE**

“Non-conforming” means a structure or use of structure or land which does not conform to this article and which was in conformity with any zoning ordinance in effect at the time it was created.

For approval of expansion of non-conforming use, it is the burden of the applicant to ensure that evidence is presented to the record showing that the following criteria are met.

Write an explanation and provide drawings as necessary to demonstrate existing conditions and the proposed expansion of structure and use. Be prepared to discuss the proposal at the public hearing.

Criteria:

The expansion of non-conforming use, including the expansion of a building to accommodate such expanded non-conforming use, shall be approved **if and only if**, in the circumstances of the particular case and under conditions imposed:

- a. The expanded use will not significantly interfere with the enjoyment of other land in the vicinity;
- b. The expanded use will not be significantly damaged by surrounding structures or activities;
- c. The expanded use is consistent with the spirit of this Zoning Code, substantial justice and the general public interest;
- d. The owner will experience unnecessary hardship and in addition will be denied a continued reasonable use of the property if the expansion is not approved;
- e. The expansion does not exceed 25% of the floor or ground area in non-conforming uses on the site at the time it became non-conforming; and,
- f. The owner covenants that the use of the entire premises will be ceased or made conforming at the time specified by this Zoning Code for termination of the original non-conforming use on the premises.

NOTE:

An approved special exception shall be void after one year after the date approval vested if the rights and privileges granted thereby have not been utilized. An approved special exception shall be void if it is utilized in a way materially in violation of the terms of approval for a continuous period of one year or more.

APPENDIX D: Status Established Buildings

NONCONFORMING. A structure or use of structure or land which does not conform to this article and which was in conformity with any zoning ordinance in effect at the time it was created.

STATUS ESTABLISHED BUILDING. A building nonconforming as to use which is approved to maintain its nonconforming use status. Such approval shall apply only to a building for which the existing use is prohibited upon expiration of its nonconformance amortization period. Such approval shall not be available to nonconforming uses that resulted from Zoning Code text amendments. Approval of a status established building can only occur on or before the expiration of its nonconformance amortization period.

§ 14-16-4-13 STATUS ESTABLISHED BUILDING REVIEW PROCEDURES.

(A) *Application and Fee.* (1) Request for review of a premises nonconforming as to use for approval of status established building(s) is initiated by application to the City on prescribed forms. Each application shall be accompanied by an accurate site plan of the property and other documentation necessary for verification. Documentation may include affidavits and historical documents, including property surveys, County Assessor and building permit records, Sanborn Insurance maps, City Directory citations, aerial photos, and other information as may be required by the City. Each application shall include sufficient copies of materials and include evidence of ownership or interest in property, and shall be complete and accurate. Incomplete or inaccurate information may be grounds for deferral or denial. (2) An affidavit shall accompany each application for review of premises seeking status established building approval for any structure to be used for residential purposes. That affidavit shall state that the property owner asserts that the structure is suitable and safe for human habitation. (3) An application fee of \$90.00 shall accompany each application for review of a premises. Application fees for applications that are withdrawn shall not be refunded.

(B) *Hearing and Decision.* (1) A duly filed application for status established building shall be decided upon the record at or after a public hearing by the City Hearing Officer, as defined by the Independent Office of Hearings Ordinance (§§ 2-7-8-1 et seq. ROA 1994) who shall serve in the position of "Hearing Officer for Status Established Buildings". (2) Notice of a hearing for approval of a status established building and the procedure for such hearings shall be as specified in § 14-16-4-2(B) of this Zoning Code as it pertains to the Hearing and Decision on SPECIAL EXCEPTIONS, with the exception that all references in that section to "Zoning Hearing Examiner" or "Hearing Examiner" shall be replaced by "Hearing Officer for Status Established Buildings," and all references to "special exception(s)" shall be replaced by "status established building(s)". In addition, applicants for status established building shall post and maintain one or more signs, as provided and where instructed by the Planning Director, for at least 30 days before the date of the hearing.

(C) *Criteria for Decision.* A status established building shall be approved if and only if, in the circumstances of the particular case and under conditions imposed, the applicant for status established building is able to demonstrate to the satisfaction of the Hearing Officer that: (1) the current use of the building is nonconforming; (2) the subject property is clearly identified by a site plan and the improvements upon it are accurately depicted; (3) the continuance of the use, if approved, will not be contrary to the public health, safety or welfare of the community; (4) the use, as currently operated and/or maintained, did not, and the continuance of the use is not likely to, significantly interfere with the enjoyment of, or be injurious to, other land in the vicinity; (5) no significant public purpose would be served by requiring removal of the use; (6) the use, if continued, will not be damaged by surrounding structures or activities; and (7) continuance of the use does not create a significant disparity between the existing zoning and the status established building.

The following factors shall be evaluated in determining whether there is a significant disparity between existing zoning and the status established building: (a) the scale, height and overall density of the building; (b) the noise, air or other pollution generated by the use; (c) the traffic and traffic congestion generated by the use; (d) parking needs and availability; (e) usable open space; (f) lighting generated by the use; (g) access to the building; (h) existing landscaping; (i) any other factor deemed relevant by the Hearing Officer.

(D) The Hearing Officer may, when approving a status established building, impose conditions necessary to meet the criteria for granting a status established building that are tailored to the specific impact the conditions are intended to mitigate, including, but not limited to, density, intensity of use, parking, open space, and landscaping/buffering.

(E) *Appeal, Fees, Hearing, and Decision.* (1) The appeal procedure for status established buildings shall follow the appeal procedures, including notification, specified for Special Exceptions as specified in § 14-16-4-4 APPEAL of this Zoning Code. Appeal of a decision of the Hearing Officer for a status established building application is to the Board of Appeals. (2) The filing fee for an appeal is \$55. (3) Appeal shall be made to the City on prescribed forms accompanied by a copy of the file of the decision of the Hearing Officer and information detailing the reason for appeal.