

applicant as hereinafter provided, there shall be repaid to the applicant the amount of said deposit.

- (e) *Removal of Sign:* Any such sign shall be maintained at all times by the applicant until a decision on the application has been made public by the governing authority. The sign shall be returned to the zoning administrator within five (5) days thereafter.

11-2.6. *Referral to Planning Commission:* After acceptance of application for an amendment, the city council shall transmit a copy thereof to the planning commission for its review and recommendation. The planning commission shall submit its findings to the city council within thirty (30) days from the date it received the petition. If the planning commission fails to submit a report within a thirty-day period, it shall be deemed to have approved the requested change or departure.

11-2.7. *Hearing Procedure:*

- (a) *Hearing called:* Before taking action on a proposed amendment, the city council shall hold a public hearing thereon, at least fifteen (15) days' notice of time and place of which shall be published in a newspaper of general circulation within the city. Such notice shall state the application number and shall contain a summary of the proposed amendment, if a text amendment, and in the case of a map amendment, the location of the property, its area, name of owner and the proposed change or classification. The cost of such newspaper notice shall be paid by the applicant for zoning amendments.
- (b) *Notice to interested parties:* A notice shall be sent to the applicant and the planning commission, by mail, of the date, time and place of hearing. All application files shall be placed in the custody of the zoning administrator and shall be open to public inspection during regular office hours.

## SECTION 12. REMEDIES AND PENALTIES

### 12.1. Remedies.

12-1.1. In case a building or structure is proposed to be erected, constructed, reconstructed, altered, maintained or used in

violation of this ordinance, or any land is proposed to be used in violation of this ordinance, the city council, or any owner of real estate within the district in which such building, structure or land is situated, may, in addition to other remedies provided by law, institute injunction, mandamus or other appropriate action or proceeding to prevent such unlawful construction, reconstruction, erection, alteration or use in any court of competent jurisdiction.

12-1.2. In case any building or structure is being erected, constructed, reconstructed, altered, demolished or maintained in violation of this ordinance, then the zoning administrator, in addition to other remedies, may cancel any certificate of occupancy, demolition permit, building permit or sign permit which has been issued for the erection, construction, reconstruction, alteration, demolition or maintenance of a building or structure. After such cancellation, any further work upon the demolition, construction, alteration or repair of said building, structure or land shall be deemed a violation.

#### 12-2. Penalties.

In case any building or structure is erected, constructed, reconstructed, demolished, altered, repaired, moved, converted or maintained in violation of this ordinance, or any building, structure or land is used in violation of this ordinance, the offender, upon conviction, shall be guilty of a misdemeanor and shall be subject to such penalties as are provided by law for other misdemeanors. Each and every day a violation continues shall be deemed a separate offense.

### SECTION 13. CONFLICT WITH OTHER LAWS

All ordinances or parts of ordinances not specifically in conflict herewith are hereby continued in force and effect, but all such ordinances or parts of ordinances in conflict herewith are hereby repealed.

## SECTION 14. SEPARABILITY

If any section, clause, provision or portion of these regulations shall be held to be invalid or unconstitutional by any court of competent jurisdiction, said holding shall not affect any other section, clause or portion of these regulations which is not itself declared by a court of competent jurisdiction to be invalid or unconstitutional.

## SECTION 15. EFFECTIVE DATE

These regulations shall take effect and be enforced from and after their adoption.

## SECTION 16. SPECIAL USE PERMITS

### 16-1. Definition.

Special uses are those types of uses which are considered by the city to be essentially desirable, necessary, or convenient to the community, but which by their nature or in their operation have:

- (1) A tendency to generate excessive traffic;
- (2) A potential for attracting a large number of persons to the area of the use, thus creating noise or other pollutants;
- (3) A detrimental effect upon the value or potential development of other properties in the neighborhood; or
- (4) An extraordinary potential for accidents or danger to public health or safety.

(Ord. No. 887, § 1, 12-6-94)

### 16-2. Procedures.

A special use permit application may be initiated by a verified application of the owners of record or owners under contract of a lot or tract of land, or their authorized representatives, or by the planning and zoning commission or by the city council. Any application submitted by an owner under contract must also evidence that the owner of record has authorized and approved of

the proposed application and granting of the permit requested thereby. Procedures for application, review, and approval of a special use permit shall be as follows:

- (1) *Application.* Application for a special use permit for a specific tract of land shall be addressed to the city council or planning and zoning commission. The application shall be filed on forms prescribed for that purpose and be accompanied by the following information and materials; provided, however, that at the request of the applicant, the city council may waive compliance with such of the following requirements as it may determine to be unnecessary or unduly burdensome in a particular instance:
  - a. Filing fee per requirements of the city.
  - b. Legal description of the property.
  - c. An outboundary survey plat, with a land surveyor's seal and statement of verification regarding the source to boundary dimensions, bearings, and source of contour data. The plat shall also identify adjoining properties and the record owners thereof.
  - d. A site plan containing the following information:
    - i. *Site and landscape plan.* One or a series of maps shall be submitted indicating:
      - i. An outboundary survey plat, with a land surveyor's seal and statement of verification regarding the source of boundary dimensions, bearings, and source of contour data. The plat shall also identify adjoining properties and the record owners thereof.
      - ii. The location, size and height of all existing and proposed structures on the site.
      - iii. The location and general design (dimensions and materials) of all driveways, curb cuts and sidewalks including connections to building entrances.
      - iv. The location, area and number of proposed parking spaces.

- v. Existing and proposed grades at an interval of two (2) feet or less, extended beyond the project site to include adjacent properties and structures.
- vi. The location and general type of all existing trees over six (6) inch caliper and, in addition, an indication of those to be retained.
- vii. The proposed general use and development of internal spaces, including all recreational and open space areas, plazas and major landscaped areas by function, and the general location and description of all proposed outdoor furniture (seating, lighting, telephones, etc.).
- viii. The location and approximate size of all proposed plant material by type, such as hardwood/deciduous trees, evergreen trees, flowering trees and shrub masses, and types of ground cover (grass, ivies, etc.). Planting in parking areas should be included.
- ix. The location and details (including a description of materials and appearance) of all retaining walls, fences including privacy fences, etc.) and earth berms.
- x. The description and location of all refuse collection facilities including screening to be provided.
- xi. Provisions for both onsite and offsite stormwater drainage and detention related to the proposed development.

The scale of the drawing or drawings indicating the above shall be reasonably related to the site size and the complexity of the proposed development, and the scale shall in no event be smaller than 1" = 50'. All drawings shall likewise indicate a project name, the names of adjoining streets, the applicant's name, a scale, a north arrow, and the date drawn.

The applicant may be required to provide, at applicant's additional clarification and/or further detail of plan, as deemed necessary by the planning and zoning commission.

2. *Site and building sections.* Schematic or illustrative sections shall be drawn to a scale of 1" = 8' or larger, indicating both edge conditions and internal grade changes in relation to principal variations of internal building levels and sight line relations to adjacent structures.
3. *Typical elevations.* Typical elevations of proposed buildings shall be provided at a reasonable scale.
4. *Project data.*
  - i. Site area (square feet and acres);
  - ii. Allocation of site area by building coverage, parking, loading and driveways, and open space areas including total open space, recreation area, landscaped areas and others;
  - iii. Total dwelling units and floor area distributed by general type (one-bedroom, two-bedroom, etc.), and total floor area ratio and residential density distribution (if applicable);
  - iv. Floor area in nonresidential use by category and total floor area ratio (if applicable);
  - v. Calculations of parking spaces and area in relation to dwelling units and commercial floor area.
5. *Project report.* A brief report shall be provided to include an explanation of the character of the proposed development, verification of the applicant's ownership and contractual interest in the subject site, and anticipated development schedule. At the discretion of the planning and zoning commission and/or city coun-

cil, analyses by qualified technical personnel or consultants may be required as to the market and financial feasibility, traffic impact, environmental impact, stormwater and erosion control, etc., of the proposed development.

6. *Phased development.* If the planned development is proposed to be constructed in stages or units during a period extending beyond a single construction season, a development schedule indicating:
  - i. The approximate date when construction of the project can be expected to begin;
  - ii. The order in which the phases of the project will be built;
  - iii. The minimum area and the approximate location of common open spaces and public improvements that will be provided at each stage;
  - iv. If any stage or unit as proposed contains a share of open space or other public or private recreation or service facility less than that which its size, number of units or density would otherwise require, a statement shall be submitted setting forth what bond, credit, escrow or other assurance the applicant proposes in order to ensure that the difference between that which would otherwise be required and that which the applicant proposes to provide in the instant stage or unit is ultimately provided;
  - v. Placement of all temporary structures utilized during construction, i.e., construction offices, siltation control devices, etc.

(Ord. No. 887, § 1, 12-6-94)

**16-3. Burden of proof.**

In presenting any application for a special use permit, the burden of proof shall rest with the applicant to clearly establish that the proposed special use shall meet the following criteria:

- (1) The proposed special use complies with all applicable provisions of the applicable district regulations.
- (2) The proposed special use at the specified location will contribute to and promote the welfare or convenience of the public.
- (3) The proposed special use will not have a deleterious impact on the value of other property in the neighborhood in which it is to be located.
- (4) The location and size of the special use, the nature and intensity of the operation involved in or conducted in connection with it, and the location of the site with respect to streets giving access to it are such that the special use will not dominate the immediate neighborhood so as to prevent development and use of neighboring property in accordance with the applicable zoning district regulations. In determining whether the special use will so dominate the immediate neighborhood, consideration shall be given to:
  - a. The location, nature and height of buildings, structures, walls, lighting and fences on the site; and
  - b. The nature and extent of proposed landscaping and screening on the site.
- (5) Off-street parking and loading areas are provided in accordance with the standards set forth in these regulations.
- (6) Adequate utility, drainage, and other such necessary facilities are provided.
- (7) The proposed special use is consistent with good planning practice; can be operated in a manner that is not detrimental to permitted developments and uses in the district; can be developed and operated in a manner that is visually compatible with permitted uses in the surround-



ing area; and is deemed essential or desirable to preserve and promote the public health, safety, and general welfare of the city.

(Ord. No. 887, § 2, 12-6-94)

16-4. Review procedures.

(a) Upon receipt of a completed application, the planning and zoning commission or the city council shall institute an administrative review of the application and site plan by all affected city departments and any consultants designated by the city. The results of this review shall be reported to the city council for its consideration. The city council shall consider an application after all required documents are filed. The city council shall approve, approve with specified conditions or denial of the application and shall file its report and recommendation with the city clerk.

(b) Before acting upon any application for special use permit, the city council shall hold a hearing thereon, after at least fifteen (15) days public notice of such hearing is published in a newspaper of general circulation within the city and written notice is given to all property owners within the city limits whose property lies within one hundred eighty-five (185) feet of the property for which a special use permit has been requested. The city council may refer the application back to a designated consultant for additional study before making its final decision. No additional public notice is required to be given.

(e) The affirmative vote of a majority of all the members of the city council shall be required to authorize and approve the issuance of any special use permit. The affirmative vote of two-thirds (2/a) of all the members of the city council shall be required to authorize and approve the issuance of a special use permit when a protest against the issuance thereof shall be presented in writing to the city clerk, duly signed and acknowledged by the owners of thirty (30) percent or more either of the area of the land (exclusive of streets and alleys) included in the application for such permit or within an area determined by lines drawn parallel to and one hundred eighty-five (185) feet distant from the boundary of the property for which the permit has been requested.

(Ord. No. 887, § 3, 12-6-94)

**16-5. When permit effective.**

The permit shall become effective upon approval by the city council. In the event that a special use permit is filed in conjunction with a change of zoning, the permit shall not become effective until the date of enactment of an ordinance authorizing the zoning change. In the event that some additional approval is required by some other governmental authority or agency, the permit shall not become effective until that approval is received. (Ord. No. 887, § 4, 12-6-94)

**16-6. Recording.**

Prior to the issuance of any building permit, or permit authorizing the use of the property in question, the applicant shall record with the county recorder of deeds a copy of the approved special use permit, including all attached conditions, the approved site plan, a legal description of the property, and out-boundary survey and any subsequent amendments. (Ord. No. 887, § 5, 12-6-94)

**16-7. Failure to commence construction or operation.**

Unless otherwise stated in the conditions of a particular special use permit, substantial work, construction, or operation of the special use where construction is not required, shall commence within twelve (12) months of the effective date of the permit and shall thereafter be pursued with reasonable diligence unless such time period is extended through appeal to and approval by the city council. If no appeal is made, and no extension of time is received or granted, the permit shall immediately terminate upon expiration of the twelve-month period. (Ord. No. 887, § 6, 12-6-94)

**16-8. Revocation of special use permit.**

Upon finding that an approved special use permit will or has become unsuitable and/or incompatible in its location as a result of any nuisance or activity generated by the use, the city council shall have the authority to revoke the permit after affording the permittee the right to be heard. (Ord. No. 887, § 7, 12-6-94)

### 16-9. Transferability.

All special use permits shall be approved for the originating applicant for a specific location only, and may not be transferred to any other location. The permit may not be transferred to any other person or entity prior to commencement of the use without the consent of the city council.

(Ord. No. 887, § 8, 12-6-94)

### 16-10. Procedure to amend approved special use permit.

In order to amend an existing special use permit, the application procedures, required materials, and approval process shall be the same as for a new permit.

(Ord. No. 887, § 9, 12-6-94)

### 16-11. Special uses.

The city council may, by special use permit, after public hearing, authorize the location of any of the following buildings or uses in the districts hereinafter designated and from which they are otherwise prohibited by this section; provided, however, that appropriate conditions and safeguards shall be imposed to protect the public welfare and to conserve and protect property and property values in the neighborhood:

(1) *In any district.*

- a. Any public building or facility erected or used by any department of the city, county, state or federal government, not specifically addressed in any other provision of this appendix, other than sewage or sanitation facilities.
- b. Privately operated outdoor recreation fields.
- c. Private recreational activities for temporary or seasonal periods.
- d. Churches and houses of religious worship.
- e. Private or public elementary or secondary schools, including nursery, pre-kindergarten, kindergarten special schools operated on the same premises.

- f. Any building or facility erected or may be used, specifically addressed in any other provision of this appendix for any purpose(s) which will not affect the health and public welfare, other than sewage or sanitation facilities.
  - g. Radio and television broadcasting towers or stations.
  - h. Temporary roadside stands offering for sale products produced on the premises.
  - i. Electrical substations.
- (2) *Districts, specific combinations.*
- a. *In the "B," "IL," and "M" districts.* Greenhouses and nurseries, provided that all structures and storage areas must be located at least one hundred (100) feet from any property located in any "B" district.
  - b. *In the "IL" district.* Public or private sanitation or sewage collection, detention, treatment or processing facility.
  - c. *In the "RB," "RC," and "IP" districts.* Child care facilities.
  - d. *In the "BN," "B," and "IL" districts*
    - 1. Filling stations for automobiles and vehicle service and repair facilities. Provided, however, that all storage tanks for volatile substances must be located below ground and at least two hundred (200) feet from any church, school, hospital, playground or similar place of public attendance or assembly, or a children's or old people's home. Distance to be measured shortest distance, property line to property line.
    - 2. Hospitals, clinics and institutions, including educational, religious and philanthropic institutions when located on a site containing an area of not less than five (5) acres; provided, however, that such buildings shall not occupy over forty (40) percent of the total area of the lot and will not have any serious and depreci-

- ating effect upon the value of the surrounding property, and provided further that the buildings shall be set back at least one hundred (100) feet from the front lot line and shall be set back from the otherwise required side and rear yards an additional distance equal to two (2) feet for each foot of building height.
3. Car washes for automobiles. The facility shall not be located closer than one hundred (100) feet to any adjacent building and shall not have any serious depreciating effect upon the value of the surrounding property.
- e. *In the "B," "IP," and "IL" districts.* Taverns and bars.
  - f. *In the "BM," "JP," and "B" districts.* Mortuary establishments.
  - g. *In the "BN," "IP," "IL," and "BM" districts.* Financial institutions not having drive-through facilities.
  - h. *In the "B," "IP," "IL," and "BN" districts.* Restaurants, but no fast food restaurants or restaurants with drive-in or drive-through facilities.
  - i. *In the "BN," "IP," and "B" districts.*
    1. Amusement parks.
    2. Residential or outpatient facilities for the treatment of alcohol or other drug abuse. Provided, however, that no residential facility shall be located within one thousand three hundred (1,300) feet of any other residential facility, and that the building or structure used for any residential facility shall maintain an exterior appearance in reasonable conformance with the general standards of the area.
  - j. *In the "B" and "IL" districts.*
    1. Animal hospitals, veterinary clinics and kennels.
    2. Hotels.
  - k. *In the "B" district.*
    1. Restaurants, including fast food, drive-in or drive-through facilities.

- 2. Financial institutions with drive-through facilities.

(3) *Light Industrial District*

a. *In the "IL" district.*

- 1. Airport or heliport, including hangars and normal accessory and service buildings.
- 2. Extraction of sand, gravel, or other raw materials.
- 3. Any industrial or manufacturing use provided, except in the case of electrical substations, that all operations and processes are carried on in buildings not closer than one hundred (100) feet to any boundary of any residential district, and provided further that suitable safeguards and conditions are imposed to protect objectionable, dangerous and offensive conditions.
- 4. Building material sales yard for the sale of rock, sand, gravel, cement, concrete products and the like, with concrete mixing facilities, but with no rock crushing machinery. No portion of the sales yard proper or concrete mixing plant is to be closer than two hundred (200) feet from any adjoining residential district, excluding width of roads.

b. *In the "B," "IL," and "BN" districts.* Automobile sales facilities and/or showrooms.

(Ord. No. 887, § 10, 12-6-94)

**16-12. Fees.**

The filing fee for a change of zoning district boundaries or special use permit shall be based on the area contained in the property in question according to the following schedule:

Two (2) or less acres . . . . .	\$200.00
Two and one-tenth (2 1/10) to eight (8) acres . . . . .	375.00
Over eight (8) acres . . . . .	575.00

(Ord. No. 887, § 11, 12-6-94)

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