

## Title 17 - LAND DEVELOPMENT CODE

**Chapters:**

## Chapter 17.04 - GENERAL PROVISIONS

**Sections:**

## 17.04.010 - Title.

This title shall be known and may be cited as the "Land Development Control Ordinance of the City of Elizabeth, New Jersey."

(Prior code § 40-1)

## 17.04.020 - Purposes.

There is ordained by the city council for the city, pursuant to the provisions of P.L. 1975, c. 291, a land development control ordinance codified in this title for the following purposes:

- A. To provide for the appropriate design, location and nature of the uses or development of all lands in this city, in a manner which will promote the public health, safety, morals and general welfare.
- B. To secure safety from fire, flood, panic and other natural and man-made disasters.
- C. To provide adequate light, air and open space.
- D. To ensure that the development of the city does not conflict with the development and general welfare of neighboring municipalities, the county and the state as a whole.
- E. To promote the establishment of appropriate population densities and concentrations that will contribute to the well-being of persons, neighborhoods, the city and the region and preservation of the environment.
- F. To encourage the appropriate and efficient expenditure of public funds by the coordination of public development with land use policies.
- G. To provide sufficient space in appropriate locations for a variety of agricultural, residential, recreational, commercial and industrial uses and open space, both public and private, according to their respective environmental requirements in order to meet the needs of all citizens.
- H. To encourage the location and design of transportation routes which will promote the free flow of traffic while discouraging location of such facilities and routes which result in congestion or blight.

- I. To promote a desirable visual environment through creative development techniques and good civic design and arrangements.
- J. To promote the conservation of open space and valuable natural resources and to prevent urban sprawl and degradation of the environment through improper use of land.
- K. To encourage planning of developments which incorporate the best features of design and relate the type, design and layout of residential, commercial, industrial and recreational development to the particular site.
- L. To encourage senior citizen community housing construction consistent with provisions permitting other residential uses of a similar density in the same zoning district.
- M. To encourage coordination of the various public and private procedures and activities shaping land development with a view to lessening the cost of such development and to the more efficient use of land.

(Prior code § 40-2)

#### 17.04.030 - Interpretation of provisions—Definitions.

- A. In the interpretation and the application of the provisions of this title, they shall be held to be the minimum requirements for the promotion of the health, safety, morals and general welfare. It is not intended to interfere with or abrogate or annul other rules, regulations or ordinances, provided that where this title imposes greater restrictions upon the use of buildings or premises or upon the height or bulk of a building or requires larger open spaces, the provisions of this title shall apply.
- B. Construal and Usage. Unless the context otherwise requires, the following definitions shall be used in the interpretation and construction of this title. Words used in the present tense include the future; the singular number shall include the plural, and the plural the singular; the word "building" includes the word "structure"; the word "used" includes the word "arranged, designed, constructed, altered, converted, rented, leased or intended to be used"; the word "shall" is mandatory and not optional; and the word "abut" includes the words "directly across from."
- C. Terms Defined. As used in this title the following terms shall have the meanings indicated:

"Accessory use or structure" means a use or structure subordinate to the principal use of a building on the same lot and serving a purpose customarily incidental to the use of the principal building.

"Administrative officer" shall be the director of the department of construction, who shall be the chief zoning administrator of the city.

"Alley" means a public thoroughfare which affords only a secondary means of access to abutting property.

"Amusement games or entertainment machines or devices" mean such games, machines or devices as defined in Chapter 5.12 of this code.

"Amusement machine complex" means a special grouping of games, machines or devices as defined in Chapter 5.12 of this code.

"Applicant" means a developer submitting an application for development.

"Application for development" means the application form and all accompanying documents required by ordinance for approval of a subdivision plat, site plan, conditional use, zoning variance or direction of the issuance of a permit pursuant to Section 25 or 27 of P.L. 1975, c.291.

"Approval authority" means the planning board or the board of adjustment pursuant to Section 17.28.110 of this title.

"Automobile or trailer sales area" means an open area, other than a street, used for the display, sale or rental of new or used motor vehicles or trailers in operable condition and where no repair work is done.

"Automobile service station" means a building or place of business where gasoline is supplied and dispensed directly to the motor vehicle trade at retail.

"Basement" means a partially subterranean story of a building connected with an interior passageway.

"Bedroom density" means the number of bedrooms per gross acre of residential land including streets and easements.

"Billboard" means a sign that directs attention to a business, commodity, service or entertainment conducted at a location other than the premises on which the billboard is located.

"Board of adjustment" means the board established pursuant to Section 56 of P.L. 1975, c.192.

"Buffer" means an unoccupied area, located within the lot perimeter, which is required by this title.

"Building" means a structure having a roof supported by columns or walls, used or intended to be used for the shelter or enclosure of persons, animals or property. When such a structure is divided into separate parts by one or more unpierced walls extending from the ground up, each part is deemed a separate building, except as regards minimum side yard requirements.

"Building inspector" means any city official or designee charged with inspection or enforcement duties under the various construction or land development codes.

"Building, principal" means a structure in which is conducted the principal use of the site on which it is situated. In any residential district any dwelling shall be deemed to be a principal building on the zone lot on which it is located.

"Capital improvement" means a governmental acquisition of real property or major construction project.

"Cellar" means a subterranean room not connected to the interior of a building.

"Child care" means the provision of supervisory and/or educational services to two or more unrelated children which is not subject to the compulsory education requirements of the state.

"Circulation" means systems, structures and physical improvements for the movement of people, goods, water, air, sewage or power by such means as street, highways, railways, waterways, towers, airways, pipes and conduits and the handling of people and goods by such means as terminals, stations, warehouses and other storage buildings or transshipment points.

"City" means the city of Elizabeth.

"City engineer" means the appointed municipal engineer or a consultant reviewing engineering drawings.

"City planner" means an appointed city planner or a consultant reviewing site plans.

"Commercial vehicle" means any vehicle not classified as a private passenger vehicle.

"Conditional use" means a use permitted in a particular zoning district only upon a showing that such use in a specified location will comply with the conditions and standards for the location or operation of such use as contained in Schedule III of Chapter 17.36, and upon the issuance of an authorization therefor by the planning board.

"County planning board" means the planning board of the county in which the land or development is located.

"Court" means any open, unoccupied area which is bounded by three or more attached building walls.

"Days" means calendar days.

"Density" means the permitted number of dwelling units per gross area of land to be developed.

"Developer" means the legal or beneficial owner or owners of a lot or of any land proposed to be included in a proposed development including the holder of an option or contract to purchase or other person having an enforceable proprietary interest in such land.

"Development" means the division of a parcel of land into two or more parcels; the construction, reconstruction, conversion, structural alteration, relocation or enlargement of any building or other structure or of any mining, excavation or landfill; and any use or change in the use of any building or other structure or land, or the extension of use of land, for which permission may be required pursuant to this title.

"Distribution center" means a building with dock doors on at least two (2) sides, primarily used for (i) short-term storage of product and (ii) relatively high velocity distribution from the facility to multiple locations. Fulfillment centers and parcel hubs may be considered a distribution center, subject to the other requirements of this section.

"District or zone" means any portion of the territory of the city within which certain uniform regulations and requirements of various combinations thereof apply under the provisions of this title.

"Dock door" means a type of sectional door used located on a building façade above grade, which allows truck trailers door to open into the building for the loading and unloading of materials and goods.

"Drainage" means the removal of surface water or groundwater from land by drains, grading or other means and includes control of runoff to minimize erosion and sedimentation during and after construction or development and other means necessary for water supply preservation or prevention or alleviation of flooding.

"Drainage, right-of-way," see "public drainage-way."

"Drive-in door" means a grade level door that is located at grade with ground both inside and outside of the building that vertically opens and closes down to the ground, and allows for the passage of vehicles through it.

"Dwelling" means any building used as the domicile of one or more persons.

"Dwelling unit" means a portion of a structure used for living purposes which is entirely separated from other portions of the structure by walls and floors which are not pierced except for access to the outside or to a common room or corridor.

"Educational use" means parochial and private, elementary and secondary schools duly licensed by the state of New Jersey, attendance at which is in sufficient compliance with the compulsory education requirements of the state. Summer day camps shall not be considered as educational uses or accessories to such uses.

"Erosion" means detachment and movement of soil or rock fragments by water, wind, ice and gravity.

"Essential service" means the erection, construction, alteration or maintenance, by public utilities or municipal or other governmental agencies, of underground or overhead gas, electrical, steam or water transmission or distribution systems, including poles, wires, mains, drains, sewers, pipes, conduits, cables, fire alarm boxes, police call boxes, traffic signals, hydrants and other similar equipment and accessories in condition therewith, reasonably necessary for the furnishing of adequate service, by such public utilities or municipal or other governmental agencies or for the public health or safety or general welfare, but not including buildings.

"Family" means one or more persons living together as a single housekeeping unit.

"Final approval" means the official action of the approving authority taken on a preliminary approved subdivision or site plan after all conditions, engineering plans and other requirements have been completed or fulfilled and the required improvements have been installed or guaranties properly posted for their completion or approval conditioned upon the posting of such guaranties.

"Floor area" means the sum of the gross horizontal area of all floors of all buildings on a site excluding portions used for off-street parking, stairways, vertical shafts or with floor-to-ceiling height less than seven feet.

"Fly ash" means particles of gas-borne matter, not including process material, arising from the combustion of solid fuel, such as coal or wood.

"Fulfillment center" means a type of building for third-party logistics that receives, processes, and fills customer orders on behalf of retailers. Fulfillment centers are characterized by the presence of multiple mezzanine levels and require additional on site parking for employee vehicles.

"Garage, private" means a detached or attached accessory building used only for the storage of private passenger vehicles owned or rented.

"Garage, public" means any garage other than a private garage which is open to the public and used for the storage of motor vehicles.

"Garbage collection area" means that portion of the exterior property areas of premises, together with all walkways leading thereto, which are provided by every dwelling with three or more dwelling units for the storage of garbage and rubbish.

"Gas station" means the same as "automobile service station."

"Hotel" means a building designed for occupancy as the temporary residence of individuals who are lodged with or without meals and in which no provision is made for cooking in any individual room or suite.

"Interested party" means in a criminal or quasi-criminal proceeding, any citizen of the state of New Jersey; and in the case of a civil proceeding in any court or in an administrative proceeding before a municipal agency, any person, whether residing within or without the municipality, whose right to use, acquire or enjoy property is or may be affected by any action taken under this title or whose rights to use, acquire or enjoy property under this title or under any other law of this state or of the United States have been denied, violated or infringed by an action or a failure to act under this title.

"Land" includes improvements and fixtures on, above or below the surface.

"Limited access highway" means a highway designed in such a manner as to provide no direct access to properties abutting its right-of-way and including all highways designated as "limited-access highways" by the planning board.

"Lot area" means the computed area contained within the lot lines.

"Lot or zone lot" means a piece or parcel of land occupied or intended to be occupied by a principal building or a group of such buildings and accessory buildings or utilized for a principal use and uses accessory or incidental to the operation thereof, together with such open spaces as required by this title, and having frontage on a public street.

"Lot. corner" means a lot abutting upon two or more streets at their intersection or upon two parts of the same street, such streets or parts of the same street forming an interior angle of less than one hundred thirty-five (135) degrees. The point of intersection of the street lot lines is the "corner."

"Lot lines" means the property lines bounding the lot.

1. "Lot line, front" means the line separating the lot from a street.
2. "Lot line, rear" means the lot line opposite and most distant from the front lot line.
3. "Lot line, side" means any lot line other than a front or rear lot line. A side lot line separating a lot from a street is called a "side-street lot line."
4. "Lot line, street or alley" means a lot line separating the lot from a street or alley.

"Lot of record or existing lot of record" means a piece or parcel of land which was duly recorded with the county recording officer prior to May 30, 1962.

"Lot width" means the distance between the two side lot lines measured at the required setback line.

"Maintenance guranty" means any security, other than cash, which may be accepted by a municipality for the maintenance of any improvements required by P.L. 1975, c.291.

"Master plan" means a composite of one or more written or graphic proposals for the development of the municipality as set forth in and adopted pursuant to Section 19 of P.L. 1975 c.291.

"Minor auto repair" means repair of automobiles not normally involving overnight storage or long-term repair, such as fender and body repair, suspension and chassis repair or transmission or motor rebuilding or overhaul.

"Minor subdivision" means a subdivision of land that does not involve the creation of more than two lots, any new streets or the extension of any off-tract improvement.

"Motels, motor courts and motor hotels" means a series of attached or semidetached dwelling structures, where each unit has convenient access to parking space for the use of the unit's occupants. The units, with the exception of the manager's or caretaker's, are designed to provide sleeping accommodations for automobile transients or overnight guests.

"Music machines or devices" means such machines or devices as defined in Chapter 5.12 of this code.

"Nonconforming lot" means a lot, the area, dimension or location of which was lawful prior to the adoption, revision or amendment of the zoning ordinance but which fails to conform to the requirements of the zoning district in which it is located by reason of such adoption, revision or amendment.

"Nonconforming structure" means a structure, the size, dimension or location of which was lawful prior to the adoption, revision or amendment of the zoning ordinance but which fails to conform to the requirements of the zoning district in which it is located by reason of such adoption, revision or amendment.

"Nonconforming use" means a use or activity which was lawful prior to the adoption, revision or amendment of the zoning ordinance but which fails to conform to the requirements of the zoning district in which it is located by reason of such adoption, revision or amendment.

"Nursing home" means any premises licensed by the state of New Jersey to function as a nursing home.

"Official map" means a map adopted by ordinance pursuant to Article V, P.L. 1975, c.291.

"Office building" means a building comprised of more than fifty (50) percent of its floor area as offices, as compared with offices which are permitted in the C-1 district and as compared with home occupations where professional offices are considered as a secondary or incidental use.

"Off-site" means located outside the lot lines of the lot in question but within the property (of which the lot is part) which is the subject of a development application or on a contiguous portion of a street or right-of-way.

"Off-tract" means on the property which is the subject of a development application nor on a contiguous portion of a street or right-of-way.

"On-site" means located on the lot in question.

"On-tract" means on the property which is the subject of a development application or on a contiguous portion of a street or right-of-way.

Owner. See "Developer."

"Parcel hub" means a type of warehouse that typically serves as regional and local freight-forwarder facilities for time sensitive shipments via airfreight and ground carriers that is characterized by a building that is one hundred fifty (150) to three hundred (300) feet wide, with access to dock doors provided on two (2) opposites of the building and up to all four (4) sides. This use may include truck maintenance, wash, or fueling facilities.

"Parking area, commercial" means an open area, other than a street or other public way, used for the parking of automobiles and available to the public whether for a fee, free or as an accommodation for clients or customers.

"Parking area, aprivate" means an open area for the same uses as a private garage and regulated as a private garage.

"Party immediately concerned," for purposes of notice, means any applicant for development, the owners of the subject property and all owners of property and government agencies entitled to notice under Section 7.1, P.L. 1975, c. 291.



"Performance guaranty" means any security, which may be accepted by a municipality, including cash, provided that a municipality shall not require more than ten (10) percent of the total "performance guaranty" in cash.

"Planned development" means an area to be developed according to a plan as a single entity containing one or more structures with appurtenant common areas.

"Planned development groups" means a structure or group of structures designed to be maintained and operated as a unit in a single ownership or control by an individual, partnership, corporation or cooperative group and which has certain facilities in common, such as yards and open spaces, recreation areas, garages and parking areas.

"Planning board" means the planning board of the city of Elizabeth.

"Plat" means a map or maps of a subdivision or site plan.

"Preliminary approval" means the conferral of certain rights pursuant to Sections 34, 36 and 37 of P.L. 1975, c.291, prior to final approval after specific elements of a development plan have been agreed upon by the approving authority and the applicant.

"Preliminary floor plans and elevations" means architectural drawings prepared during early and introductory stages of the design of a project illustrating in a schematic form its scope, scale and relationship to its site and immediate environs.

"Private garages" means accessory structure for use by private passenger vehicles operated by residents or owners of the primary structure.

"Private passenger vehicle" means a vehicle used for providing transportation for the owner or members of his family and so registered by the appropriate state motor vehicle agency.

"Private swimming pool" means any pool designed, used and maintained for swimming purposes by an individual for use by his or her household and guests, including all equipment and appurtenances thereto, and located on property owned, leased or otherwise occupied by the owner of the swimming pool. "Private swimming pool" includes permanent pools either above surface or subsurface and also portable or temporary pools which exceed eighty (80) square feet in area and/or thirty-six (36) inches in depth at the deepest point.

"Professional office" means the office of a member of a recognized profession. When conducted in a residential district, a professional office shall be incidental to the residential use and shall be conducted by a member of the family occupying the residential building. Such uses shall include the office of doctors or physicians, dentists, optometrists, ministers, architects, landscape architects, professional engineers, lawyers and such other similar professional occupations which may be so designated by the board of adjustment. The issuance of a state or local license for regulation of any gainful occupation need not be deemed indicative of professional standing.

"Public drainageway" means the land reserved or dedicated for the installation of stormwater sewers or drainage ditches or required along a natural stream or watercourse for preserving the channel and providing for the flow of water to safeguard the public against flood damage, sedimentation and erosion.

"Quorum" means the majority of the full authorized membership of a municipal agency.

"Recreation."

1. "Recreation, commercial" means recreation facilities operated as a business and open to the general public for a fee.
2. "Recreation, private, noncommercial" means clubs or recreation facilities operated by a nonprofit organization and open only to bona fide members of such nonprofit organization.

"Religious use" means a church, temple, synagogue, mosque or other similar place of worship.

"Residential street" means a street between two intersecting streets, upon which an R district abuts, or where fifty (50) percent or more of the abutting street frontage is in predominantly residential use.

"Restaurant without live entertainment" means an establishment serving food and liquid refreshment. The liquid refreshment shall not include wine, beer or other types of alcoholic beverages.

"Resubdivision" means the further division or relocation of lot lines of any lot or lots within a subdivision previously made and approved or recorded according to law or the alteration of any streets or the establishment of any new streets within any subdivision previously made and approved or recorded according to law, but does not include conveyances so as to combine existing lots by deed or other instrument.

"Rooming house" means a structure containing a guest room or rooms let to two or more persons. For the purpose of regulating density, provisions for each two guests shall be counted as a dwelling unit where more than two roomers occupy a structure.

"Row house" means a structure containing a number of dwelling units, each separated by vertical interior unpierced walls.

"Sedimentation" means the deposition of soil that has been transported from its site of origin by water, ice, wind, gravity or other natural means as a product of erosion.

"Shelter, fallout" means any structure or part thereof constructed, erected, altered or enlarged for the purpose of furnishing protection from natural or man-made disasters. For the purposes of this title, a "fallout shelter" shall be considered as an accessory use.

"Sign" means a name, identification, description, display or illustration or any other visual display which is affixed to or painted or represented directly or indirectly upon a building, structure or piece of land and which directs attention to an object, product, place, activity, person, institution, organization or business. However, a "sign" shall not include any display of official court or public office notices nor any official traffic

control device, nor shall it include the flag, emblem or insignia of a nation, state, county, municipality, school or religious group. A "sign" shall not include a sign located completely within an enclosed building, except for illuminated or animated signs within show windows. Each display surface of a sign shall be considered to be a "sign."

"Sign, advertising" means a sign which directs attention to a business, commodity, service or entertainment conducted, sold or offered elsewhere than on the premises where the sign is located.

"Sign, business" means a sign which directs attention to a business or profession conducted, or to a commodity, service or entertainment sold or offered, upon the premises where such sign is located or to which it is affixed.

"Sign, flashing" means a sign on which the artificial light is not maintained constant in intensity and/or color at all times when such sign is in use.

"Sign, gross advertising area of" means the entire space within a single continuous perimeter enclosing the extreme limits of such and in no case passing through or between any adjacent elements of same. However, such perimeter shall not include any structural or framing elements lying outside the limits of such sign and not forming an integral part of the display.

"Site plan" means a development plan of one or more lots on which is shown:

1. The existing and proposed conditions of the lot, including but not necessarily limited to topography, vegetation, drainage, floodplains, marshes and waterways.
2. The location of all existing and proposed buildings, drives, parking spaces, walkways, means of ingress and egress, drainage facilities, utility services, landscaping, structures and signs, lighting and screening devices.
3. Any other information that may be reasonably required in order to make an informed determination pursuant to an ordinance requiring review and approval of site plans by the planning board adopted pursuant to Article VI of P.L. 1975, c.291.

"Story" means that portion of a building included between the surface of any floor and the surface of the floor next above it, or if there is no floor above it, then the space between the floor and the ceiling next above it.

"Story, half" means a partial story directly under a gable, hip or gambrel roof, the wall plates of which on at least two opposite exterior walls are not more than four feet above the floor of such story; provided, however, that any partial story shall not be used for residence purposes.

"Street" means any street, avenue, boulevard, road, parkway, viaduct, drive or other way which is an existing state, county or municipal roadway; which is shown upon a plat heretofore approved pursuant to law; which is approved by official action as provided by this chapter; which is shown on a plat duly filed and recorded in the office of the county recording officer prior to the appointment of a planning board and the

grant to such board of the power to review plats; and includes the land between the street lines, whether improved or unimproved and may comprise pavement, shoulders, gutters, curbs, sidewalks, parking areas and other areas within the street lines. For the purpose of this chapter, "streets" shall be classified as follows:

1. "Arterial streets," those which are used for fast or heavy traffic.
2. "Collector streets," those which carry traffic from minor streets to the major system of arterial streets, including the principal entrance streets of a residential development and streets for circulation within such a development.
3. "Minor streets," those which are used primarily for access to the abutting properties.
4. "Marginal access streets," streets which are parallel to and adjacent to arterial streets and highways and which provide access to abutting properties and protection from through traffic.
5. "Alleys," minor ways which are used primarily for vehicular service access to the back or the side of properties otherwise abutting on a street.

"Structural alterations" means any changes in the supporting members of a building, such as walls, columns, beams or girders.

"Structure" means a combination of materials to form a construction for occupancy, use or ornamentation whether installed on, above or below the surface of a parcel of land.

"Subdivision" means the division of a lot, tract or parcel of land into two or more lots, tracts, parcels or other divisions of land for sale or development. The following shall not be considered subdivisions within the meaning of this ordinance if no new streets are created: divisions of land found by the planning board, or division committee thereof appointed by the chairman, to be for agricultural purposes where all resulting parcels are five acres or larger in size; divisions of property by testamentary or intestate provisions; divisions of property upon court order, including but not limited to judgments of foreclosure; consolidation of existing lots by deed or other recorded instrument; and the conveyance of one or more adjoining lots, tracts or parcels of land, owned by the same person or persons and all of which are found and certified by the administrative officer to conform to the requirements of the municipal development regulations and are shown and designated as separate lots, tracts or parcels on the tax map or atlas of the municipality. The term "subdivision" shall also include the term "resubdivision."

"Tract" means a designated parcel or area of land, including a lot, which is the subject of an application for development and which includes any contiguous portions of street rights-of-way in which the developer has property rights.

"Tutoring" means the teaching or instruction of academic or business subjects to not more than four students simultaneously.

"Variance" means the permission to depart from the literal requirements of the Zoning Article pursuant to Sections 47, 29.2b, 57c and 57d of P.L. 1975, c.291.

"Warehouse" means a building where raw materials or finished goods are stored, where the primary purpose of the facility is storage of product. Any building where storage of product is the primary use that contains dock doors on only one (1) side of the building shall be considered a warehouse, not a distribution center. Cold-storage warehouse facilities shall be considered a warehouse, not a distribution center.

"Yard" means an area, other than a court, located within and adjacent to the lot perimeter, which is unoccupied and unobstructed from the ground upward, except as permitted by this title.

"Zoning administrator" means the director of the department of planning and community development or his or her designee.

"Zoning map" means the zoning map or maps of the city, dated March 27, 1962, together with all amendments subsequently adopted.

"Zoning officer" means a city inspector empowered to make preliminary determinations regarding application of zone controls subject to review and approval of the zoning administrator.

"Zoning permit" means a document signed by the zoning administrator which is required by ordinance as a condition precedent to the commencement of a use or the erection, construction, reconstruction, alteration, conversion or installation of a structure or building and which acknowledges that such use, structure or building complies with the provisions of the municipal zoning ordinance or variance therefrom duly authorized by a municipal agency pursuant to Sections 47 and 57 of P.L. 1975, c.291.

(Ord. No. 5499, § 12, 11-23-2021; Ord. No. 4434, §§ 1, 5, 10-22-2013; prior code § 40-3)

#### 17.04.040 - Administrative procedure.

The city council, planning board and zoning board of adjustment shall adopt and may amend reasonable rules and regulations, not inconsistent with the Municipal Land Use Law, P.L. 1975, c.291, or this chapter for the administration of their functions, powers and duties and shall furnish a copy thereof to any person upon request and may charge a reasonable fee, as established by Chapter 17.52 of this title for such copy. Copies of all such rules and regulations and amendments thereto shall be maintained in the office of the city clerk.

(Prior code § 40-4)

#### 17.04.050 - Scheduling of meetings by majority vote.

Every city agency shall, by its rules, fix the time and place for holding its regular meetings for business authorized to be conducted by such agency. Regular meetings of the city agency shall be scheduled unless cancelled for lack of applications for development to process. The city agency may provide for special meetings at the call of the chairman or on request of any two of its members, which shall be held on notice

to its members and the public public in accordance with the provisions of the Open Public Meetings Act P.L. 1975, c.231, and agency regulations. No action shall be taken at any meeting without a majority of the members of the municipal agency being present. All actions shall be taken by a majority vote of the members of the municipal agency present at the meeting except as otherwise required by Sections 17.04.140(C), 17.12.070 and 17.16.020(A)(4) of this title. Failure of a motion to receive the number of votes required to approve an application for development pursuant to the exceptional vote requirements of Sections 17.12.070 and 17.16.020(A)(4) shall be deemed an action denying the application. Nothing herein shall be construed to contravene any statute providing for procedures for governing bodies.

(Prior code § 40-5)

#### 17.04.060 - Public meetings and minutes.

- A. All regular meetings and all special meetings shall be open to the public. Notice of all such meetings shall be given in accordance with the provisions of the Open Public Meetings Act (P.L. 1975. c.231) and agency regulations.
- B. Minutes of every regular or special meeting shall be kept and shall include the names of all persons appearing and addressing the city agency and of the persons appearing by attorney, the action taken by the city agency, the findings, if any, made by it and the reasons therefor. The minutes shall thereafter be made available for public inspection during normal business hours at the office of the secretary of the city agency. Any interested party shall have the right to compel production of the minutes for use as evidence in any legal proceedings concerning the subject matter of such minutes. Such interested party may be charged a fee as established by Chapter 17.52 of this title for reproduction of the minutes for his or her use.

(Prior code § 40-6)

#### 17.04.070 - Hearings.

- A. The city agency shall hold a hearing on each application for development or adoption, revision or amendment of the master plan.
- B. The agency shall make the rules governing such hearings. Any maps and documents for which approval is sought at a hearing shall be on file and available for public inspection at least ten (10) days before the date of the hearing during normal business hours in the office of the secretary of the city agency. The applicant may produce other documents, records or testimony at the hearing to substantiate or clarify or supplement the previously filed maps and documents.
- C. The officer presiding at the hearing or such person as he or she may designate shall have power to administer oaths and issue subpoenas to compel the attendance of witnesses and the production of relevant evidence, including witnesses and documents presented by the parties, and the provisions of the County and Municipal Investigations Law, P.L. 1953, c.38, shall apply.

- D. The testimony of all witnesses relating to an application for development shall be taken under oath or affirmation by the presiding officer, and the right of cross-examination shall be permitted to all interested parties through their attorneys, if represented, or directly, if not represented, subject to the discretion of the presiding officer and to reasonable limitations as to time and number of witnesses.
- E. Technical rules of evidence shall not be applicable to the hearing, but the chairman of the agency may exclude irrelevant, immaterial or unduly repetitious evidence.
- F. The city agency shall provide for the verbatim recording of the proceedings by either stenographic, mechanical or electronic means. The city agency shall furnish a transcript or duplicate recording thereof on request to any interested party at his or her expense, which shall not exceed the maximum permitted in N.J.S.A. 2A: 11-15. Such request shall be in writing and shall be accompanied by prepayment of the estimated fee. Such transcript shall be certified in writing by the transcriber to be accurate.
- G. Decision on Application. Each decision on any application for development shall be reduced to writing and shall include findings of facts and conclusions based thereon.
1. Reduction to writing shall be accomplished through:
    - a. A resolution adopted at a meeting held within the applicable time period for taking action on the application for development provided in Section 17.28.130; or
    - b. A resolution adopted at a meeting held not later than forty-five (45) days after the date of the meeting at which action to grant or deny approval was taken memorializing such action.
    - c. Where the agency fails to adopt a resolution, any interested party may apply to Superior Court in a summary manner for an order compelling the agency to reduce its findings and conclusions to writing within a stated time and the cost of the application, including attorney's fees, shall be assessed against the municipality.
  2. The following members shall be eligible to vote on the resolution:
    - a. Where the action taken resulted from the failure of a motion to approve an application pursuant to Section 17.04.050, those members voting against the motion for approval shall be the members eligible to vote on the resolution.
    - b. In all other circumstances, only the members who voted for the action taken shall be eligible to vote on the resolution.
  3. The following shall apply to adoption of the resolution:
    - a. The vote on a resolution shall be deemed to be a memorialization of the action of the agency and not to be an action of the agency.
    - b.

The vote of a majority of those eligible members who are present at the meeting at which the resolution is presented for adoption shall be sufficient to adopt the resolution.

- c. The date of the adoption of the resolution shall constitute the date of the decision for purposes of the mailings, filings, and publications required.
- H. A copy of the decision shall be mailed by the secretary of the city agency within ten (10) days of the date of decision to the applicant, or if represented, then to his or her attorney, without separate charge, and to all who request a copy of the decision for a fee as specified by Chapter 17.52 of this title. A copy of the decision shall also be filed by the city agency in the office of the secretary of the city agency. The secretary of the city agency shall make a copy of such filed decision available to any interested party for a fee as specified in Chapter 17.52 of this title and available for public inspection at his or her office during city business hours.
- I. A brief notice of the decision shall be published in the official newspaper of the city. Such publication shall be arranged by the secretary of the city agency, provided that the applicant may in any case provide for publication of the decision. The applicant shall pay a fee as designated by Chapter 17.52 for publication of such notice, unless the applicant submits proof acceptable to the secretary of the city agency within ten (10) days of the decision that he or she has provided for the required publication. The period of time in which an appeal of the decision may be made shall run from the first publication of the decision, whether arranged by the city or the applicant.
- J. A member of a municipal agency who was absent for one or more of the meetings at which a hearing was held shall be eligible to vote on the matter upon which the hearing was conducted, notwithstanding his or her absence from one or more of the meetings; provided, however, that such board member has available to him or her the transcript or recording of all of the hearing from which he or she was absent and certifies in writing to the board that he or she has read such transcript or listened to such recording.

(Prior code § 40-7)

#### 17.04.080 - Notice of hearing on development application or adoption of master plan.

Notices pursuant to Sections 17.04.090 and 17.04.100 of this chapter shall state the date, time and place of the hearing, the nature of the matters to be considered and, in the case of notices pursuant to Section 17.04.090 of this chapter, an identification of the property proposed for development by street address, if any, or by reference to tax account numbers as shown on the current tax duplicate in the city tax assessor's office and the location and times at which any maps and documents for which approval is sought are available pursuant to Section 17.04.070(B) of this chapter.

(Prior code § 40-8)

#### 17.04.090 - Notice of applications for development.



Notice pursuant to subsections A and B of this section shall be given by the applicant and shall be given ten (10) days prior to the date of the hearing.

- A. Notice of a hearing on an application for development shall be given except for:
  1. Applications for final approval pursuant to Section 17.28.050(H) of this title.
  2. Applications which do not involve:
    - a. The creation of more than two lots;
    - b. Any new street;
    - c. Extension of any off-tract improvement;
    - d. An increase in parking by twenty (20) spaces or thirty-five (35) percent of the existing space, whichever is the greater;
    - e. A conditional use; or
    - f. Relief from Chapter 17.36 of this title.
- B. Notice shall be given by the agency holding the hearing on the application for development in the official newspaper of the city at least ten (10) days prior to the date of the hearing.
- C. Notice shall be given by the applicant at least ten (10) days prior to the date of the hearing to the following parties, where applicable. An affidavit of proof of service demonstrating compliance with this requirement shall be filed with the city agency holding the hearing on the application for development at least two days prior to the date of the hearing.
  1. Owners of all real property located in the state and within two hundred (200) feet in all directions of the property which is the subject of such hearing. Notice shall be given by serving a copy thereof on each of the property owners as shown on the current tax duplicate of the municipality in which the property is located or his or her agent in charge of the property or by mailing a copy thereof by certified mail to the property owner at his or her address as shown on the current tax duplicate.
    - a. Notice to a partnership owner may be made by service upon any partner. Notice to a corporate owner may be made by service upon its president, a vice president, secretary or other person authorized by appointment or by law to accept service on behalf of the corporation. This requirement shall be deemed satisfied by notice to the condominium association, in the case of any unit owner whose unit has a unit above or below it, or horizontal property regime, in the case of any co-owner whose apartment has an apartment above or below it. Notice to a condominium association, horizontal property regime, community trust or homeowners' association, because of its ownership of common elements or areas located within two hundred (200) feet of

the property which is the subject of the hearing, may be made in the same manner as to a corporation, without further notice to unit owners, co-owners or homeowners on account of such common elements or areas.

- b. A list of the names and addresses of such owners of property located within the city shall be made and certified from the current tax duplicates. by the city assessor or a fee of ten dollars (\$10.00) within seven days of a written request of an applicant. The applicant shall be entitled to rely upon the information contained in such list of owners of property in the city, and failure to give notice to any owner not on the list shall not invalidate any hearing or proceeding.
2. Clerks of adjoining municipalities within two hundred (200) feet in all directions of the property which is the subject of such hearing. Notice shall be given by personal service or certified mail to the clerk of such a municipality.
3. County planning board where the subject property is adjacent to an existing county road or proposed road shown on the official county map or on the county master plan, adjoining other county land or situated within two hundred (200) feet of a municipal boundary. Notice shall be given by personal service or certified mail to the county planning board.
4. Commissioner of transportation where the subject property is adjacent to a state highway. Notice shall be given by personal service or certified mail to the commissioner of transportation.
5. New Jersey Department of Community Affairs where the subject property exceeds one hundred fifty (150) acres or five hundred (500) dwelling units. Notice shall be given by personal service or certified mail to the Director of the Division of State and Regional Planning and shall include a copy of any maps or documents required to be on file with the city clerk pursuant to Section 17.04.070(B) of this chapter.

(Prior code § 40-9)

#### 17.04.100 - Notice concerning master plan.

The planning board shall give:

- A. Public notice of a hearing on adoption, revision or amendment of the master plan. Such notice shall be given by publication in the official newspaper of the city at least ten (10) days prior to the date of the hearing.
- B. Notice by personal service or certified mail to the clerk of an adjoining municipality of all hearings on adoptions, revision or amendment of a master plan involving property situated within two hundred (200) feet of such adjoining municipality at least ten (10) days prior to the date of any hearing.

C. Notice by personal service or certified mail to the county planning board of:

1. All hearings on adoption, revision or amendment of the city master plan at least ten (10) days prior to the date of the hearing, and such notice shall include a copy of any proposed master plan or any revision or amendment thereto.
2. The adoption, revision or amendment of the master plan not more than thirty (30) days after the date of such adoption, revision or amendment thereto.

(Prior code § 40-10)

17.04.110 - Effect of mailing notice.

Any notice made by certified mail pursuant to Sections 17.04.090 and 17.04.100 of this chapter shall be deemed complete upon mailing.

(Prior code § 40-11)

17.04.120 - Notice of hearings on development regulations or capital improvement plan revisions.

- A. Notice by personal service or certified mail shall be made to the clerk of an adjoining municipality of all hearings on the adoption, revision or amendment of a development regulation involving property situated within two hundred (200) feet of such adjoining municipality at least ten (10) days prior to the date of any such hearing.
- B. Notice by personal service or certified mail shall be made to the county planning board of all hearings on the adoption, revision or amendment of any development regulation at least ten (10) days prior to the date of the hearings and the adoption, revision or amendment of the city capital improvement program or city official map not more than thirty (30) days after the date of such adoption, revision or amendment. Any notice provided for hereunder shall include a copy of the proposed development regulation, the municipal official map or the city capital program or any proposed revision or amendment thereto, as the case may be.
- C. Notice of hearings to be held pursuant to this section shall state the date, time and place of the hearing and the nature of the matters to be considered. Any notice by certified mail pursuant to this section shall be deemed complete upon mailing.

(Prior code § 40-12)

17.04.130 - Filing of development regulations.

The city clerk shall file with the county planning board, as soon after passage as possible, all development regulations, including this title and any amendments or revisions thereto, and file and maintain for reasonably easy public inspection copies of said regulations in the office of the clerk.

(Prior code § 40-13)

17.04.150 - Conditional approvals.

- A. In the event that a developer submits an application for development proposing a development that is barred or prevented, directly or indirectly, by a legal action instituted by any state agency, political subdivision or any other party to protect the public health and welfare or by a directive or order issued by any state agency, political subdivision or court of competent jurisdiction to protect the public health or welfare, the approving authority shall process such application for development in accordance with this title, and, if such application for development complies with the requirements of this title, the approving authority shall approve such application conditioned on removal of such legal barrier to development.
- B. In the event that development proposed by an application for development requires an approval by a governmental agency other than the approving authority, the approving authority shall, in appropriate instances, condition its approval upon the subsequent approval of such governmental agency, provided that the approving authority shall make a decision on any application for development within the time period provided in this title or within an extension of such period as has been agreed to by the applicant unless the approving authority is prevented or relieved from so acting by the operation of law.

(Prior code § 40-15)

17.04.160 - Certificates showing approval.

- A. The prospective purchaser, prospective mortgagee or any other person interested in any land which forms part of a subdivision or which formed part of such a subdivision three years preceding August 1, 1976, may apply in writing to the zoning administrator for the issuance of a certificate certifying whether or not such subdivision has been approved by the planning board. Such application shall contain a diagram showing the location and dimension of the land to be covered by the certificate and the name of the owner thereof.
- B. The zoning administrator shall make and issue such certificate within fifteen (15) days after the receipt of such written application and the fees therefor. Such officer, shall keep a duplicate copy of each certificate, consecutively numbered, including a statement of the fee charged, in a binder as a permanent record of his or her office.
- C. Each such certificate shall be designated a "certificate as to approval of subdivision of land" and shall certify:
  1. That there exists in the city a duly established planning board and that there is an ordinance controlling subdivision of land adopted under the authority of the Municipal Land Use Law, P.L. 1975, c.29l.

2. Whether the subdivision, as it relates to the land shown in the application, has been approved by the planning board, and, if so, the date of such approval and any extensions and terms thereof, showing that the subdivision of which the lands are a part is a validly existing subdivision.
  3. Whether such subdivision, if the same has not been approved, is statutorily exempt from the requirement of approval as provided in N.J.S.A. 40:55D-7.
- D. The zoning administrator shall be entitled to demand and receive for such certificate issued by him or her a reasonable fee not in excess of those provided in N.J.S.A. 54:5-14 and 54:5-15. The fees so collected by the zoning administrator shall be paid by him or her to the city.

(Prior code § 40-16)

#### 17.04.170 - Enforcement.

The city shall enforce this title through its zoning administrator. In case any building or structure is erected, constructed, altered, repaired, converted or maintained or any building, structure or land is used in violation of the ordinance codified in this chapter, the city and its officers, agents or an interested party, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use, to restrain, correct or abate such violation, to prevent the occupancy of such building, structure or land or to prevent any illegal act, conduct, business or use in or about such premises.

(Prior code § 40-17)

#### 17.04.180 - Sale of land prior to subdivision approval.

- A. If before final subdivision approval has been granted any person transfers or sells or agrees to transfer or sell, except pursuant to an agreement expressly conditioned on final subdivision approval, as owner or agent, any land which forms a part of a subdivision for which city approval is required by this title, such person shall be subject to a penalty not to exceed on thousand dollars (\$1,000.00), and each lot disposition so made may be deemed a separate violation.
- B. In addition to the foregoing, the city may institute and maintain a civil action:
  1. For injunctive relief; and
  2. To set aside and invalidate any conveyance made pursuant to such a contract of sale if a certificate of compliance has not been issued in accordance with Section 17.04.160 of this chapter.

(Prior code § 40-18)

#### 17.04.190 - Enforcement by building inspector.

The building inspector is given the duty, power and authority to enforce the provisions of this title. He or she shall examine all applications for permits and, with the approval of the zoning administrator, issue permits for the construction, alteration, enlargement and occupancy of all uses which are in accordance with the requirements of this title and all nonconforming uses existing at the time of passage of this title. The building inspector shall also record and file all applications for permits with accompanying plans and documents and make such reports to the board of adjustment and the planning board as may be required.

(Prior code § 40-19)

#### 17.04.200 - Issuance of building permits for variance.

Building permits for a variance from the requirements of this title and for such conditional uses as may be enumerated in Chapter 17.36 of this title shall be issued only upon written order of the approving authority as the case may be.

(Prior code § 40-20)

#### 17.04.210 - Complaints of violations.

Any person may file a complaint if there is any reason to believe a violation of this title exists. All such complaints must be in writing and shall be filed with the building inspector, who shall properly record such complaint and immediately investigate and report thereon to the zoning administrator.

(Prior code § 40-29)

#### 17.04.220 - Procedures for abatement of violations.

In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted or maintained, or any building, structure or land is used, in violation of this title or of any ordinance or regulation made under authority conferred hereby, the governing body or, with its approval, the building inspector or other proper official, in addition to other remedies, may institute any appropriate legal action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use, to restrain, correct or abate such violation, to prevent the occupancy of the building, structure or land or to prevent any illegal act, conduct, business or use about such premises.

(Prior code § 40-30)

### Chapter 17.08 - BUILDING PERMITS AND CERTIFICATES OF OCCUPANCY

#### Sections:

#### 17.08.010 - Building permits required.

To ensure compliance with the provisions of this chapter, no person shall erect, alter or convert any structure or building or part thereof, or alter the use of any land, subsequent to the adoption of this title, until a building permit has been issued by the building inspector.

(Prior code § 40-21)

#### 17.08.015 - Construction permit—Duration of validity.

- A. Any construction permit issued by the city of Elizabeth shall become invalid if the authorized work is not commenced within six months in the case of residential property or twelve (12) months in the case of commercial or mixed use property.

If upon the determination of the construction official, work that was authorized to commence under a valid construction permit is suspended or abandoned for a period of six months, the construction permit shall be revoked or suspended and reapplication shall be required.

- B. Notwithstanding situations of work suspended or abandoned as set forth in subsection A of this section, an extension may be applied for and received from the construction official. An additional fee, as required by law, shall be charged accordingly for an extension.

(Ord. 3892 §§ 1, 2, 2007)

#### 17.08.020 - Application for permits.

All such applications shall be made in duplicate and be accompanied by two sets of plans, drawn to the requirements contained in the building code of the city.

(Prior code § 40-22)

#### 17.08.030 - Issuance of permits.

- A. It shall be the duty of the building inspector to issue a building permit, provided that he or she has secured prior approval therefor from the zoning administrator and that he or she is satisfied that the structure, building, sign, parking area and the proposed use conform with all requirements of this chapter, and that all other reviews and actions, if any, called for in this title have been complied with and all necessary approvals secured therefor.
- B. All building permits shall be issued in duplicate and one copy shall be kept conspicuously on the premises affected and shall be protected from the weather, whenever construction work is being performed thereon. No owner, contractor, workmen or other person shall perform any building

operations of any kind unless a building permit covering such operation has been displayed as required by this chapter, nor shall they perform operations of any kind after notification of the revocation of such building permit.

(Prior code § 40-23)

#### 17.08.040 - Denial of permits—Appeals.

When the building inspector is not satisfied that the applicant's proposed development will meet the requirements of this chapter, he or she shall refuse to issue a building permit and the applicant may appeal to the board of adjustment for a reversal of the inspector's decision.

(Prior code § 40-24)

#### 17.08.050 - Revocation of permits.

If it shall appear, at any time, to the building inspector that the application or accompanying plan is in any respect false or misleading or that work is being done upon the premises differing materially from that called for in the applications filed with him or her under existing laws or ordinances, he or she may forthwith revoke the building permit, whereupon it shall be the duty of the person holding the same to surrender it and all copies thereof to the building inspector. After the building permit has been revoked, the building inspector may, in his or her discretion, before issuing the new building permit, require the applicant to file an indemnity bond in favor of the city with sufficient surety conditioned for compliance with this chapter and all laws and ordinances then in force, and in a sum sufficient to cover the cost of removing the building or structure if it does not so comply.

(Prior code § 40-25)

#### 17.08.060 - Certificate of occupancy for new uses.

- A. Compliance with Zoning Article Required. No building shall be occupied or used until such time as a certificate of occupancy is issued by the building inspector. Such certificate shall be issued upon application by the owner, prospective occupant or purchaser only after the building inspector determines that the facts represented on the application are correct and that the building, structure or use is in conformance with the provisions of this chapter.
- B. Compliance with other Ordinances Required. A certificate of occupancy shall not be issued until the building inspector receives written confirmation from the fire department and division of health that all applicable city codes and ordinances administered and enforced by the above-named departments have been complied with, as well as written approval for the issuance thereof by the zoning administrator.

C.



Where a building is completed or sections are completed and safe for human occupancy, the building inspector, with the approval of the zoning administrator may issue a temporary certificate of occupancy for that portion of the building which is safe for human habitation while work proceeds to bring the entire building into compliance with the city's codes. Such temporary certificate of occupancy may contain such restrictions as may be necessary to protect the health and safety of the building's occupants.

(Prior code § 40-26)

#### 17.08.065 - Zoning permits.

- A. A zoning permit shall be obtained prior to the commencement of any use or the erection, reconstruction, alteration, conversion or installation of any structure or building, confirming that such uses, structures, or building complies with the city zoning ordinance.
- B. Zoning permits shall be required for the following buildings and uses:
  1. Residential alterations to one- or two-family dwellings that do not result in any zoning bulk violation and which do not alter the footprint of the existing principal structure and accessory uses such as but not limited to driveways, patios, hardscaping, sidewalks, porches, fences, decks, sheds, pools (above ground and in-ground), garages, carports, etc. and any alterations to residential dwellings which change, enlarge or alter existing building footprint.
  2. New residential one- and two-family dwellings.
  3. New nonresidential structures.
  4. Multi-family structures.
  5. Alterations to multi-family, nonresidential structures: fences, retaining walls, accessory buildings, sheds, flat concrete, landscaping, signs, pools, pavers, decks, etc.
  6. New or continued use/occupancy.
- C. The zoning officer may revoke any zoning permit if it is determined that the actual conditions or construction does not adhere to the plans, specifications, terms and conditions or approvals upon which the construction permit was issued or there exist any violations of any applicable municipal or state regulations.
- D. Approval is based on complying with all conditions. Failure to comply with this section shall result in a fine and/or revocation of the permit.

(Ord. No. 4764, § 1, 10-25-2016)

#### 17.08.070 - Certificate of occupancy for existing uses.

- A. Upon written request from the owner, tenant, occupant or purchaser under contract, the building inspector, after inspection, and approval by the zoning administrator, shall issue an occupancy permit for a use legally existing at the time this title is made effective, certifying the extent and

kind of use and whether any such existing use conforms with the provisions of this title.

- B. No change or extension of use and no alterations shall be made in a nonconforming use or premises, without an occupancy permit having first been issued by the building inspector with the approval of the zoning administrator, stating that such change, extension or alteration is in conformity with the provisions of this title.
- C. Before any building or structure for any use may be transferred it shall be necessary for the purchaser to procure a certificate of occupancy from the division of building inspections after inspection by the building inspector and approval by the zoning administrator. This certificate shall not be issued unless the building or structure conforms to all requirements of the building code, the zoning article and the housing code.
- D. Temporary Certificates of Occupancy. Where a structure is transferred and does not comply with the Uniform Construction Code or an approved site plan, a temporary certificate of occupancy shall be issued for a period not to exceed ninety (90) days, provided that:
  - 1. The building is structurally safe to occupy and the violations do not affect the health and safety of the occupants.
  - 2. The building and electrical inspectors are satisfied that the site plan conditions or required repairs are of such a minor or noncritical nature that the health and safety of the occupants is not endangered for this brief period.
  - 3. The site plan conditions or repairs can reasonably be completed within the authorized ninety (90) day period.
  - 4. The owner furnishes an affidavit, duly sworn to, stating that he or she is aware of the site plan conditions or the required repairs and agrees to complete the same within ninety (90) days of the date of transfer.
- E. Transfers without Certificates of Occupancy.
  - 1. Where any building or structure to be transferred is in such a deteriorated condition that it cannot be occupied in accordance with the provisions of subsection D above, then the transfer of such property without a certificate of use and occupancy shall be permitted under the following conditions:
    - a. The building is demolished forthwith and an acceptable site plan is submitted, if required, for any new development on the site.
    - b. If the building is to be rehabilitated:
      - i. A notice shall be posted conspicuously on the front of the structure stating that the building is unfit for human habitation,
      - ii.

An affidavit shall be furnished by the owner indicating that he or she is aware that the building may not be occupied until repairs are completed and a certificate of occupancy is issued, and that he or she agrees to submit an acceptable plan for the building's renovations within thirty (30) days of acquiring title, and

iii. The owner simultaneously makes application e for exemption from obtaining a certificate of occupancy.

2. Where any transfer without a certificate of use and occupancy shall be authorized, the building inspector shall require the payment of a fee of twenty dollars (\$20.00), which may be credited toward the total fee for a certificate of occupancy after repairs are completed.

F. Fire protection systems.

1. Every building for single-family, two-family, three-family and four-family occupancy shall have installed therein and thereafter maintain an approved fire detection, products of combustion system. The detector shall be sensitive to any of the products of combustion except that detectors sensitive only to heat are not acceptable. Alarm signaling devices shall be clearly audible in all bedrooms when all intervening doors are closed. For the purpose of installation and maintenance, only the applicable sections of NFPA No. 74, Standard for the Installation, Maintenance and Use of a House Fire Warning System, shall be considered and accepted engineering practices. Installation of the fire detection system must have prior approval of the chief of the fire department of the city.
2. No residence shall be sold or rented and no structural change (repair of a value in excess of one thousand dollars (\$1,000.00) shall be made thereto unless and until the residence meets the requirements of this title.
3. The installation of any and all smoke detectors, battery-operated or hard-wire, shall be in accordance with tie approved method of the manufacturer and the fire prevention bureau as to the area to be installed and the number of detectors required. All such equipment and installations shall comply with regulations established by NFPA Standard No. 74 and the state Uniform Construction Code Act, where applicable.
4. It shall be the sole responsibility of the owner to maintain the operation of all smoke detectors after they have been inspected by the fire prevention bureau.

(Prior code § 40-27)

17.08.080 - Change of use.

No owner, tenant or other person shall use or occupy any building or structure thereafter erected or altered, the use of which shall be changed after the passage of this title without first procuring an occupancy permit, provided that an occupancy permit, once granted, shall continue in effect so long as there is no change of use, regardless of change in tenancy or occupancy.

(Prior code § 40-28)

#### 17.08.090 - Building lot to abut street.

No permit for the erection of a building or structure shall be issued unless the lot abuts a street giving access to such proposed building or structure. Such street shall have been duly placed on the official map or shall be an existing state, county or municipal street or highway; a street shown upon a plat approved by the planning board; or a street on a plat duly filed in the office of the county recording officer prior to the passage of this title or its predecessor or any prior law which required prior approval of plats by the governing body or other authorized body. Before any such permit shall be issued, such street shall have been certified to be suitably improved to the satisfaction of the city council, or such suitable improvement shall have been assured by means of performance guaranty, in accordance with standards and specifications for road improvements approved by the city council, as adequate in respect to the public health, safety and general welfare of the special circumstances of the particular street.

(Prior code § 40-68)

#### 17.08.100 - Appeals.

- A. Where the enforcement of Section 17.08.090 hereof would entail practical difficulty or unnecessary hardship, or where the circumstances or the case do not require the building or structure to be related to a street, the board of adjustment may, upon application or appeal, vary the application of Section 17.08.090 hereof and direct the issuance of a permit subject to conditions that will provide adequate access for fire-fighting equipment, ambulances and other emergency vehicles necessary for the protection of health and safety and that will protect any future street layout shown on the official map or a general circulation plan element of the municipal master plan pursuant to Section 17.20.010(B)(4) of this title.
- B. Chapter 17.28 of this title shall apply to applications or appeals pursuant to this section.

(Prior code § 40-69)

### Chapter 17.12 - PLANNING BOARD

#### Sections:

#### 17.12.010 - Establishment.

A planning board is established pursuant to the provisions of P.L. 1975, c. 291., Section 14.

(Prior code § 40-36)

## 17.12.020 - Membership.

The planning board shall consist of nine members. For convenience in designating the manner of appointment, the membership shall consist of and be divided into the following four classes:

- A. Class I: the mayor or mayor's designee in the absence of the mayor.
- B. Class II: one of the officials of the city appointed by the mayor.
- C. Class III: a member of the city council to be appointed by it.
- D. Class IV: six other citizens of the city to be appointed by the mayor. The members of Class IV shall hold no other city office.

(Prior code § 40-37)

## 17.12.030 - Terms of office—Removal—Citizen's advisory committee.

- A. The term of the member composing Class I shall correspond to the mayor's official tenure or if the member is the mayor's designee in the absence of the mayor, the designee shall serve at the pleasure of the mayor during the mayor's official tenure. The terms of the members composing Class II or Class III shall be for one year or terminate at the completion of their respective terms of office, whichever occurs first, except for a Class II member who is also a member of the environmental commission, if there is one in this municipality. The term of a Class II, Class IV member who is also a member of the environmental commission shall be for three years or terminate at the completion of his or her term of office as a member of the environmental commission, whichever occurs first. The term of a Class IV member who is also a member of the board of adjustment or board of education shall terminate whenever he or she is no longer a member of such other body or at the completion of his or her Class IV term, whichever comes first. The terms of all Class IV members first appointed pursuant to this chapter shall be so determined that to the greatest practicable extent the expiration of such terms shall be distributed evenly over the first four years after their appointment provided that the initial Class IV term of no member shall exceed four years. Thereafter, the Class IV term of each such member shall be four years, except as otherwise herein provided. If a vacancy in any class shall occur otherwise than by expiration of the planning board term, it shall be filled by appointment, as above provided, for the unexpired term.
- B. No member of the planning board shall be permitted to act on any matter in which he or she has, either directly or indirectly, any personal or financial interest. Any member other than a Class I member, after a public hearing if he or she requests one, may be removed by the city council for cause.
- C.

Citizens' Advisory Committee. The mayor may appoint a citizens' advisory committee composed of one or more persons to assist or collaborate with the planning board in its duties, but such person or persons shall have no power to vote or take other action required by the board. Such person or persons shall serve at the pleasure of the mayor.

D. Provision is made for two alternate members of the planning board.

1. Alternate members shall be appointed by the appointing authority for Class IV members and shall meet the qualifications of Class IV members of nine member planning boards. Alternate members shall be designated at the time of appointment by the mayor as "alternate no. 1" and "alternate no. 2." The terms of the alternate members shall be for two years, except that the terms of the alternate members shall be such that the term of not more than one alternate member shall expire in any one year; provided, however, that in no instance shall the terms of the alternate members first appointed exceed two years. A vacancy occurring otherwise than by expiration of term shall be filled by the appointing authority for the unexpired term only.
2. No alternate member shall be permitted to act on any matter in which he or she has, either directly or indirectly, any personal or financial interest. An alternate member may, after public hearing if he or she requests one, be removed by the governing body for cause.
3. Alternate members may participate in discussions of the proceedings but may not vote except in the absence or disqualification of a regular member of any class. A vote shall not be delayed in order that a regular member may vote instead of an alternate member. In the event that a choice must be made as to which alternate member is to vote, alternate no. 1 shall vote.

(Prior code § 40-38)

#### 17.12.040 - Officers and employees.

- A. The planning board shall elect a chairman and vice chairman from the members of Class IV and shall select a secretary who may either be a member of the planning board or a municipal employee designated by it.
- B. The planning board may employ or contract for, and fix the compensation of, legal counsel other than the municipal attorney, a licensed planning consultant, a licensed engineer and other staff and services as it shall deem necessary, not exceeding, exclusive of gifts or grants, the amount appropriated by the city council for its use.

(Prior code § 40-39)

#### 17.12.050 - Powers.

- A. The planning board shall follow the provisions of this title and shall accordingly exercise its power in regard to:
1. The master plan pursuant to Chapter 17.20 of this title.
  2. Subdivision control and site plan review pursuant to Chapter 17.28 of this title.
  3. The official map pursuant to this title.
  4. The zoning article, including conditional uses.
  5. Variances and certain building permits in conjunction with subdivision, site plan and conditional use approval pursuant to Chapter 17.28 of this title.
- B. The planning board may:
1. Participate in the preparation and review of programs or plans required by state or federal law or regulations.
  2. Assemble data on a continuing basis as part of a continuous planning process.
  3. Perform such other advisory duties as are assigned to it by ordinance or resolution of the city council for the aid and assistance of the city council or other agencies or officers.

(Prior code § 40-40)

#### 17.12.060 - Ancillary powers.

- A. The planning board, when reviewing applications which require approval of a subdivision, site plan, or conditional use, but not a variance pursuant to Section 17.16.020(A)(4), shall have the power to grant to the same extent and subject to the same restrictions as the board of adjustment:
1. Variances pursuant to Section 17.16.020(A)(3).
  2. Direction pursuant to Section 17.08.100 of this title for issuance of a permit for a building or structure not related to a street.
  3. Direction pursuant to this title issuance of a permit for a building or structure in the bed of a mapped street or public drainageway, floor control basin or public area reserved pursuant to this title.
- B. Whenever relief is requested pursuant to this section, notice of the hearing on the application for development shall include reference to the request for a variance, or direction for issuance of a permit, as the case may be.

(Prior code § 40-41)

#### 17.12.070 - Referral powers.

Prior to the adoption of a development regulation, or revision or amendment thereto, the planning board shall make and transmit to the city council, within thirty-five (35) days after referral, a report including recommendations concerning the proposed development regulation, revision or amendment. The city council when considering the adoption of a development regulation or revision or amendment thereto, shall review the report of the planning board and may disapprove or change any recommendation by a vote of a majority of its full authorized membership and shall record in its minutes the reasons for not following such recommendations. Failure of the planning board to transmit its report within the thirty-five day (35) period provided herein shall relieve the city council from the requirements of this section in regard to the proposed development regulation, revision or amendment thereto referred to the planning board.

(Prior code § 40-42)

## Chapter 17.16 - ZONING BOARD OF ADJUSTMENT

### Sections:

#### 17.16.010 - Establishment, membership and organization.

- A. Pursuant to the provisions of P.L. 1975, c.291, Section 56, a zoning board of adjustment, also known as the "board of adjustment," is established and shall consist of seven members.
- B. The members of the board of adjustment shall be appointed by the mayor with the advice and consent of city council. The terms of the members first appointed under this title shall be so determined that, to the greatest practicable extent, the expiration of such terms shall be distributed evenly over the first four years after their appointment, provided that present members may continue in office until the completion of their terms. Thereafter, the term of each member shall be four years. No member may hold any elective office or position under the city. No member shall be permitted to act on any matter in which he or she has, either directly or indirectly, any personal or financial interest. A member may, after public hearing if he or she requests it, be removed by the city council for cause. A vacancy occurring otherwise than by expiration of a term shall be filled for the unexpired term only.
- C. The board of adjustment shall elect a chairman and vice chairman from its members and select a secretary who may or may not be a member of the board of adjustment or a municipal employee.
- D. The board of adjustment may employ or contract for, and fix the compensation of, legal counsel other than the municipal attorney, a licensed planning consultant, a licensed engineer and other staff and services as it shall deem necessary, not exceeding, exclusive of gifts or grants, the amount appropriated by the city council for its use.
- E.



Alternate members may be appointed by the appointing authority to serve in the absence or disqualification of regular members and shall not exceed four in number. Alternate members shall serve for terms of two years. The terms of not more than two alternate members shall expire in any one year. Alternate members shall be designated "alternate no. 1," "alternate no. 2," "alternate no. 3," and "alternate no. 4" by the mayor. Alternate members may participate in discussions of the proceedings but may not vote except in the absence or disqualification of a regular member. A vote shall not be delayed in order that a regular member may vote instead of an alternate member. In the event that a choice must be made as to which alternate member is to vote, alternate members shall vote in the order of their numeral designations commencing with alternate no. 1.

(Ord. 3682 § 1, 2005; prior code § 40-46)

#### 17.16.020 - Powers granted by law.

A. The board of adjustment shall have such powers as are granted by law:

1. To hear and decide appeals where it is alleged by the appellant that there is error in any order, requirement, decision or refusal made by an administrative official or agency based on or made in the enforcement of Chapters 17.32 and 17.36 of this title.
2. To hear and decide requests for interpretation of the zoning map or article or for decisions upon other special questions upon which such board is authorized by this title to pass.
3. To grant, upon an application or an appeal, relief from regulations pursuant to Chapter 17.36 of this title, except those departures enumerated in Section 17.16.020(A)(4), where:
  - a. The strict application of such regulation would result in particular and exceptional practical difficulties to, or exceptional and undue hardship upon the developer of a property for any of the following reasons:
    - i. By reason or exceptional narrowness, shallowness or shape of the specific piece of property; or
    - ii. By reasons of exceptional topographic conditions or physical features uniquely affecting the specific piece of property; or
    - iii. By reason of an extraordinary and exceptional situation uniquely affecting a specific piece of property or the structures lawfully existing thereon; or
  - b. The purposes of N.J.S.A. 40:55D-1 et seq. would be advanced by a deviation from the zoning ordinance requirements and the benefits of the deviation would substantially outweigh any detriment.
4. To grant, upon an application or an appeal, in particular cases and for special reasons, by affirmative vote of at least five members, a variance to allow departure from regulations pursuant to Chapter 17.36 of this title to permit the following:
  - a. A use or principal structure in a district restricted against such use or principal structure;

- b. An expansion of a nonconforming use;
  - c. Deviation from a specification or standard pertaining solely to a conditional use;
  - d. An increase in the permitted floor area ratio;
  - e. An increase in the permitted density except as applied to the required lot area for a lot or lots for detached one or two dwelling unit buildings which lot or lots are either an isolated undersized lot or lots resulting from a minor subdivision.
- B. No variance or other relief may be granted under the provisions of this section unless such variance or other relief can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning article. Any application under any subsection of this section may be referred to any appropriate person or agency, including the planning board, for its report, provided that such reference shall not extend the period of time within which the zoning board of adjustment shall act.

(Prior code § 40-47)

#### 17.16.030 - Additional powers.

The zoning board of adjustment shall, in addition to the powers specified in Section 17.16.020 of this chapter, have power given by law to:

- A. Direct issuance of a permit pursuant to N.J.S.A. 40:55D-34 for a building or structure in the bed of a mapped street or public drainageway, flood control basin or public area reserved on the official map.
- B. Direct issuance of a permit pursuant to N.J.S.A. 40:55D-36 for a building or structure not related to a street.

(Prior code § 40-48)

#### 17.16.040 - Powers relating to subdivisions and site plans.

The board of adjustment shall have the power to review subdivisions and site plans pursuant to Chapter 17.28 of this title and conditional use applications pursuant to Chapter 17.36 of this title whenever the board of adjustment is reviewing an application for approval of a variance pursuant to Section 17.16.020(A) (4) of this chapter; and where such variance is granted, the board of adjustment shall have power to grant subdivision or site plan approval pursuant to Chapter 17.28 of this title and conditional use approval pursuant to Chapter 17.36 of this title.

(Prior code § 40-49)

#### 17.16.050 - Appeals.

- A. Appeals to the board of adjustment may be taken by any interested party aggrieved by any decision of the zoning administrator of the city based on or made in the enforcement of the zoning ordinance or official map. Such appeal shall be taken within twenty (20) days of filing a notice of appeal with the zoning administrator, specifying the grounds of such appeal. The officer from whom the appeal is taken shall immediately transmit to the board all the papers constituting the record upon which the action appealed from was taken.
- B. The board of adjustment shall render a decision not later than one hundred twenty (120) days after the date of an appeal is taken from the decision of the zoning administrator.
- C. Failure of the board to render a decision within such one hundred twenty (120) day period or within such further time as may be consented to by the applicant shall constitute a decision favorable to the applicant.

(Prior code § 40-50)

#### 17.16.060 - Modification on appeal.

The board of adjustment may reverse or affirm, wholly or in part, or may modify the action, order, requirement, decision, interpretation or determination appealed from and to that end have all the powers of the zoning administrator from whom the appeal is taken.

(Prior code § 40-51)

#### 17.16.070 - Stay of proceedings by appeal.

An appeal to the board of adjustment shall stay all proceedings in furtherance of the action in respect to which the decision appealed from was made, unless the zoning administrator from whose action the appeal is taken certifies to the board of adjustment, after the notice of appeal shall have been filed with him or her that by reason of facts stated in the certificate a stay would, in his or her opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed other than by an order of the Superior Court upon notice to the officer from whom the appeal is taken and on due cause shown.

(Prior code § 40-52)

### Chapter 17.20 - MASTER PLAN

#### Sections:

#### 17.20.010 - Preparation—Contents—Modification.

- A. The planning board shall prepare and, after public hearing, adopt or amend a master plan or component parts thereof, to guide the use of lands within the city in a manner which protects public health and safety and promotes the general welfare.
- B. The master plan shall generally comprise a report or statement and land use and development proposals, with maps, diagrams and text, presenting, where appropriate, the following elements:
  1. A statement of objectives, principles, assumptions, policies and standards upon which the constituent proposals for the physical, economic and social development of the city are based.
  2. A land use plan element:
    - a. Taking into account the other master plan elements and natural conditions. including but not necessarily limited to topography, soil conditions, water supply, drainage, floodplain areas, marshes and woodlands.
    - b. Showing the existing and proposed location, extent and intensity of development of land to be used in the future for varying types of residential, commercial, industrial, agricultural, recreational, educational and other public and private purposes or combination of purposes.
    - c. Including a statement of the standards of population density and development intensity recommended for the city.
    - d. Showing the existing and proposed location of any airports and the boundaries of any airport hazard areas delineated pursuant to the Air Safety and Hazard Zoning Act.
  3. A housing plan element, including but not limited to residential standards and proposals for the construction and improvement of new and existing housing.
  4. A circulation plan element showing the location and types of facilities for all modes of transportation required for the efficient movement of people, goods and services in, about and through the city.
  5. A utility service plan element analyzing the need for and showing the future general location of water supply and distribution facilities, drainage and flood control facilities, sewage and waste treatment, solid waste disposal and provision for other related utilities.
  6. A community facilities plan element showing the location and type of educational or cultural facilities, historic sites, libraries, hospitals, fire-houses, police stations and other related facilities, including their relation to the surrounding areas.
  7. A recreation plan element showing a comprehensive and diverse system of areas and public sites for recreation.
  - 8.

A conservation plan element providing for the preservation, conservation, utilization and restoration of natural resources, including, to the extent appropriate, open space, water, forests, soil, marshes, wetlands, harbors, rivers and other waters, fisheries, wildlife and other natural resources.

9. An energy conservation plan element which systematically analyzes the impact of each other component and element of the master plan on the present and future use of energy in the municipality, details specific measures contained in the other plan elements designed to reduce energy consumption and proposes other measures that the municipality may take to reduce energy consumption and to provide for the maximum utilization of renewable energy sources.
  10. Appendices or separate reports containing the technical foundation for the master plan and its constituent elements.
- C. The master plan and its plan elements may be divided into subplans and subplan elements projected according to periods of time or staging sequences.
- D. The master plan shall include a specific policy statement indicating the relationship of the proposed development of the city as developed in the master plan to:
1. The master plan of contiguous municipalities,
  2. The master plans of Union County and Essex County, and
  3. Any comprehensive guide plan pursuant to Section 15 of P.L. 1961, c.47.

(Prior code § 40-58)

#### 17.20.020 - Periodic examination.

- A. The city council shall, at least every six years, provide for a general reexamination of the master plan and this development ordinance by the planning board which shall prepare a report on the findings of such reexamination, a copy of which shall be sent to the county planning board and the municipal clerks of each adjoining municipality. The six-year period shall commence with the adoption or termination of the last general reexamination of such plan and regulations. The first such reexamination shall be completed within six years after August 1, 1976.
- B. Such report shall state:
1. The major problems and objectives relating to land development in the city at the time of such adoption, last revision or reexamination, if any.
  2. The extent to which such problems and objectives have been reduced or have increased subsequent to such date.
  3. The extent to which there have been significant changes in the assumptions, policies and objectives forming the basis for such plan or regulations as last revised, with particular regard to the density and distribution of population and land uses, housing conditions, circulation of

vehicles, pedestrians, and utilities, conservation of natural resources and change in federal, state, county and city policies and objectives.

4. The specific changes recommended for such plan or regulations, if any, including underlying objectives, policies and standards or whether a new plan or regulations should be prepared.

(Prior code § 40-57)

## Chapter 17.24 - CAPITAL IMPROVEMENT PROJECT

### Sections:

#### 17.24.010 - Preparation of program.

- A. The city council may authorize the planning board from time to time to prepare a program of municipal capital improvement projects projected over a term of at least six years, and amendments thereto. Such program may encompass major projects being currently undertaken or future projects to be undertaken with federal, state, county and other public funds or under federal, state or county supervision. The first year of such program shall, upon adoption by the city council, constitute the capital budget of the city as required by N.J.S.A. 40A:4.43 et seq. The program shall classify projects in regard to the urgency and need for realization and shall recommend a time sequence for their implementation. The program may also contain the estimated cost of each project and indicate probable operating and maintenance costs and probable revenues, if any, as well as existing sources of funds or the need for additional sources of funds for the implementation and operation of each project. The program shall, as far as possible, be based on existing information in the possession of the departments and agencies of the city and shall take into account public facility needs indicated by the prospective development shown in the master plan of the city or as permitted by other municipal land use controls. In preparing the program, the planning board shall confer, in a manner deemed appropriate by the board, with the mayor, the chief fiscal officer, other municipal officials and agencies and the board of education. Any such program shall include an estimate of the displacement of persons and establishments caused by each recommended project.
- B. In addition to any of the requirements in subsection A of this section, whenever the planning board is authorized and directed to prepare a capital improvements program, every department, authority or agency shall, upon request of the planning board, transmit to the board a statement of all capital projects proposed to be undertaken by such municipal department, authority or agency, during the term of the program, for study, advice and recommendation by the planning board.

(Prior code § 40-61)

#### 17.24.020 - Adoption of program.

Whenever the planning board has prepared a capital improvement program pursuant to Section 17.24.010 of this chapter, it shall recommend such program to the city council, which may adopt such program with any modification approved by affirmative vote of a majority of the full authorized membership of the city council and with the reasons for the modification recorded in the minutes.

(Prior code § 40-62)

#### 17.24.030 - Review of capital projects.

Whenever the planning board shall have adopted any portion of the master plan, the city council or other public agency having jurisdiction over the subject matter, before taking action necessitating the expenditure of any public funds incidental to the location, character or extent of such project, shall refer the action involving such specific project to the planning board for review and recommendation in conjunction with such master plan and shall not act thereon without such recommendation or until forty-five (45) days have elapsed after such reference without receiving such recommendation. This requirement shall apply to action by a housing, parking, highway, special district or other authority, redevelopment agency, school board or other similar public agency, state, county or municipal.

(Prior code § 40-63)

### Chapter 17.28 - DEVELOPMENT APPLICATIONS

#### Sections:

#### 17.28.010 - Approvals required.

Approvals for development shall be required as hereinafter provided:

- A. Subdivision Approval Required. Any owner of land within the city shall, prior to the subdivision of land as defined by this title, obtain final approval of a subdivision plat pursuant to Section 12.28.050. Such approval shall be a condition for the filing of such plat with the county recording officer.
- B. Site Plan Approval Required. Any owner of land within the city shall, except as hereinafter provided, obtain final approval of a site plan pursuant to Section 12.28.050 of this chapter for development involving either:
  1. Commencement, expansion, or relocation of any nonresidential principal or accessory use other than parking or loading which is not conducted wholly within an enclosed building, or
  2. Development which entails the following:

- a. A change of use from one schedule II category to another on a lot which exceeds eighty (80) feet in width,
  - b. Construction or reconstruction of a building or building addition which covers more than eight hundred (800) square feet of lot area,
  - c. Establishment, alteration, or elimination of stalls, aisles, or driveways comprising a parking area for five or more vehicles,
  - d. Fill or removal of soil exceeding one foot in depth, or
  - e. Provision of five thousand (5,000) square feet or more of required open space.
- C. Approval Required Prior to Issuance of a Building Permit. No building permit shall be issued for any structure or other construction until final approval has been granted to a site plan for such development or such development has been certified as exempt pursuant to Section 17.28.020 by the zoning administrator. No building permit shall be issued except in conformance with the approved site plan, and no building permit shall be issued until satisfactory proof has been exhibited by the applicant that he or she has all necessary easements, rights-of-way, leases or other documents required to commence and complete the work provided in said site plan, parking plan, drainage plan or other plan.
- D. Development shall be exempt from site plan review requirements where:
1. Development is for a single detached one- or two-family dwelling structure, or
  2. Development is encompassed by subsection (B)(2) of this section and wherein existing and proposed physical site improvements have been certified by the city engineer, the city planner, and the city zoning administrator as being in conformance with the requirements of this chapter, and changes are limited to:
    - a. An increase in the number of parking stalls of not more than ten (10) spaces or twenty-five (25) percent of the existing total spaces,
    - b. An addition to an existing building which extends not more than eighteen (18) feet beyond the existing structure,
    - c. A new building not exceeding one thousand (1,000) square feet in floor area,
    - d. Fencing,
    - e. Landscaping,
    - f. Exterior site lighting, and/or
    - g. Signage in conformance with master plan standards.

(Ord. 3905 § 1, 2007; prior code § 40-71)

17.28.020 - Conformance required prior to issuance of certificate of occupancy.



No certificate of occupancy shall be issued for any purposes, except transfer pursuant to Section 17.08.070 of this title; where site plan approval has been required unless such development is in conformance with an approved final site plan.

(Prior code § 40-72)

#### 17.28.030 - Informal review.

At the request of the developer, the planning board shall grant an informal review of a concept plan for a development for which the developer intends to prepare and submit an application for development. The developer shall not be required to submit any fees for such an informal review. The developer shall not be bound by any concept plan for which review is requested, and the planning board shall not be bound by any such review.

(Prior code § 40-73)

#### 17.28.040 - Permissible use inquiry.

A developer may submit a written inquiry to the board of adjustment as to whether a proposed land use is permissible under the prior zoning ordinance or official zoning map. The board of adjustment shall issue a written response to the inquiry within forty-five (45) days after the next meeting following receipt of the request or within such additional time as may be consented to by the inquirer.

(Prior code § 40-74)

#### 17.28.050 - Approval procedure.

- A. The applicant shall submit ten (10) copies of an application for development as specified in this title to the secretary of the city agency having jurisdiction, pursuant to Section 17.28.110 of this chapter, over the application. An application fee in the amount set forth in Chapter 17.52 of this title shall accompany the application, which fee shall be paid by check to the order of the city.
- B. A developer may file an application for development with the board of adjustment for action under any of its powers without prior application to the zoning administrator.
- C. A developer whose proposed development requires a variance pursuant to this title may elect to submit a separate application requesting the variance and a subsequent application for any required approval of a subdivision, site plan or conditional use. The separate granting of the variance shall be conditioned upon the granting of all required subsequent approvals by the same approving authority. No such subsequent approval shall be granted unless such approval can be granted without substantial detriment to the public good and without substantial detriment to the zone plan and zoning ordinance. The number of votes of the board members

required to grant any such subsequent approval shall be as otherwise provided in this title for the approval in question, and any special vote shall not be required. In the event that the developer elects to submit separate consecutive applications, the time period for granting or denying such separate application shall be as provided in Section 17.28.130 of this chapter.

- D. Approval Procedure. The secretary of the approving authority shall distribute the application for review, report and approval when required, as follows:
1. The city engineer,
  2. Department of community development,
  3. The zoning administrator,
  4. The department of public works,
  5. The department of health, welfare and housing,
  6. The police department,
  7. The bureau of fire prevention,
  8. The city planner, and
  9. The recycling coordinator for preliminary site plans involving multi-family dwellings with three or more units.
- E. A hearing shall be held on all applications for development. The procedures under Chapter 17.04 of this title shall apply.
- F. Approval shall be granted or denied in accordance with findings pursuant to Section 17.28.180 of this chapter. Where the application involves a site plan or subdivision plat, such approval shall be deemed preliminary.
- G. Where an application does not require public notice and hearing, receipt of favorable reports pursuant to subsection C of this section shall suffice in lieu of findings pursuant to Section 17.28.180 of this chapter. Approval shall be granted by the approving authority or a subcommittee of the approving authority appointed by the chairman. Such approval shall be deemed final approval of the application by the approving authority, provided that the approving authority or subcommittee may condition such approval on terms ensuring the provision of improvements pursuant to this title.
- H. Prior to the expiration of preliminary approval, the applicant may submit to the secretary of the city agency which granted such approval three copies of an application for final approval and, in the case of site plans, ten (10) black-on-white prints and, in the case of subdivision plats, one original drawing in black ink on translucent tracing cloth or its equivalent of good quality, with signatures in ink, or, as an equivalent, reproduction on translucent cloth or its equivalent, and

two cloth print duplicates and ten (10) black-on-white prints. An application fee in the amount set forth in Chapter 17.52 of this title shall accompany the application, which shall be paid by check to the order of the city.

- I. The approving authority shall grant final approval to the development application if the detailed drawings, specifications and estimates of the application for final approval conform to the standards established by this title for final approval and the conditions of preliminary approval and the city engineer certifies that:
  1. All improvements have been installed in accordance with the requirements of these regulations or a performance guaranty has been posted with the city clerk in an amount not to exceed one hundred twenty (120) percent of the cost of installation of required improvements.
  2. A maintenance guaranty has been posted with the city clerk for a period not to exceed two years after final acceptance of the improvement, in an amount not to exceed fifteen (15) percent of the cost of the improvement.
  3. In the case of subdivision plats, that the plat conforms to the standards prescribed by the Map Filing Law, P.L. 1960, c. 141.

(Prior code § 40-76)

#### 17.28.060 - Rights under preliminary approval.

Preliminary approval of a subdivision or site plan shall confer upon the applicant the following rights for a three-year period from the date of the preliminary approval:

- A. That the general terms and conditions on which preliminary approval was granted shall not be changed, including but not limited to use requirements; layout and design standards for streets, curbs and sidewalks; lot size; yard dimensions and off-tract improvements; and, in the case of a site plan, existing natural resources to be preserved on the site; vehicular and pedestrian circulation, parking and loading; screening, landscaping and location of structures; and exterior lighting both for safety reasons and street lighting, except that nothing herein shall be construed to prevent the city from modifying by ordinance such general terms and conditions of preliminary approval as relate to public health and safety.
- B. That the applicant may submit for final approval on or before the expiration date of preliminary approval the whole or a section or sections of the preliminary subdivision plat or site plan.
- C. That the applicant may apply for and the reviewing board may grant extensions on such primary approval for additional periods of at least one year but not to exceed a total extension of two years, provided that if the design standards have been revised by ordinance, such revised standards may govern.

(Prior code § 40-77)

#### 17.28.070 - Rights and effect of final approval.

The zoning requirements applicable to the preliminary approval first granted and all other rights conferred upon the developer pursuant to preliminary approval, whether conditionally or otherwise, shall not be changed for a period of two years after the date of final approval, provided that in the case of subdivision the rights conferred by this section shall expire if the plat has not been duly recorded within the time period provided. If the developer has followed the standards prescribed for final approval, and, in the case of a subdivision, has duly recorded the plat as required, the approving authority may extend such period of protection for extensions of one year but not to exceed three extensions. Notwithstanding any other provisions of this title or the Municipal Land Use Law, the granting of final approval terminates the period of preliminary approval.

(Prior code § 40-78)

#### 17.28.080 - Filing of plats.

##### A. Recording of Final Approval of Subdivision.

1. Final approval of a subdivision shall be evidenced by the signature of the chairman and secretary of the approving authority on the instruments.
  - a. Final approval of a major subdivision shall expire ninety-five (95) days from the date of signing of the plat unless within such period the plat shall have been duly filed with the county recording officer. The approving authority may, for good cause shown, extend the period for recording for an additional period not to exceed one hundred ninety (190) days from the date of signing of the plat.
  - b. Final approval of a minor subdivision shall expire one hundred ninety (190) days from the date of approval unless within such period a plat or a deed clearly describing the approved subdivision is filed with the county recording officer, the municipal engineer and the municipal tax assessor.
2. The signature of the chairman and secretary of the approving authority shall not be affixed except; pursuant to Section 17.28.050(H) of this chapter.

- ##### B. Filing of All Subdivision Plats.
- It shall be the duty of the county recording officer to notify the planning board and the city tax assessor in writing within seven days of the filing of any plat, identifying such instrument by its title, date of filing and official number. If the county recording officer records any plat without such approval, such recording shall be deemed null and void, and upon request of the municipality, the plan shall be expunged from the official records.

(Prior code § 40-79)

## 17.28.090 - Variances and exceptions.

- A. Variance and Exception. The approving authority, when acting upon applications for development, shall have the power to grant variances from Chapters 17.36 and 17.44 in accordance with the provisions of this title.
- B. Exceptions. The approving authority, when acting upon applications for preliminary subdivision or site plan approval shall have the power to grant such exceptions from the requirements for development approval as may be reasonable and within the general purpose and intent of the provisions for development review and approval of an ordinance adopted pursuant to this chapter, if the literal enforcement of one more provisions of the ordinance is impracticable or will exact undue hardship because of peculiar conditions pertaining to the land in question.
- C. Expiration. Any variance or exception from the terms of this chapter hereafter granted by the approving authority permitting the erection or alteration of any structure or structures or permitting a specified use of any premises shall expire by limitation unless such construction or alteration shall have been actually commenced on each and every structure permitted by the variances or exception or unless such permitted use has actually been commenced within the longer of nine months or the effective period of final approval of subdivision plats or site plans; except, however, that the running of the period of limitation herein provided shall be tolled from the date of filing an appeal from the decision of the board of adjustment to the city council or to a court of competent jurisdiction, until the termination in any manner of such appeal or proceeding.

(Prior code § 40-80)

## 17.28.100 - Simultaneous review.

The approving authority shall have the power to review and approve or deny conditional uses or site plans simultaneously with review for subdivision approval without the developer being required to make further application to the approving authority or the approving authority being required to hold further hearings. The longest time period for action by the approving authority, whether it is for subdivision, conditional use or site plan approval, shall apply. Whenever approval of a conditional use is requested by the developer pursuant to this section, notice of the hearing on the plat shall include reference to the request for such conditional use.

(Prior code § 40-81)

## 17.28.110 - Jurisdiction for applications.

- A. The order of precedence of applications for development shall be as follows:

Application	Jurisdiction
Variance (N.J.S.A. 40:55D-70d)	Board of Adjustment
Subdivision	Planning Board
Site Plan	Planning Board
Conditional use	Planning Board
Variance (N.J.S.A. 40:55D-70c)	Board of Adjustment
Building permit for structure not related to a street	Board of Adjustment
Building permit for structure in bed of mapped street, public drainageway, flood control basin or public area	Board of Adjustment

B. The jurisdiction of the matter or greatest precedence shall apply, and the agency having jurisdiction over the application shall have jurisdiction over all types of development of lesser precedence as regulated by this chapter.

(Prior code § 40-82)

17.28.120 - Incomplete applications.

An application for development shall be deemed to be complete for the purpose of commencing the period within which board action is to be taken upon submission unless the board or the board's designee determines that it does not fulfill the criteria for a complete application. The board may subsequently require corrections, additions or revisions to the documents as needed to make an informed decision as to whether the application is entitled to approval.

- A. Notification. The board or the board's designee shall have notified the applicant in writing of the deficiencies of the submitted application within forty-five (45) days of such application.
- B.

Waivers. The applicant may request that one or more of the completeness requirements be waived, in which event the board or its authorized committee shall grant or deny the request within forty-five (45) days.

- C. Checklist. All applicants shall be provided with the criteria for a complete application which shall serve as a checklist.
- D. Criteria for basic application documents shall be as follows:
  - 1. All development applications shall include the following documents:
    - a. Completed application forms with original, signature of the applicant or an authorized representative and notarized,
    - b. Evidence of payment of required fees,
    - c. Disclosure statement of all ownership interests pursuant to N.J.S.A. 40:55D-48.1 et seq., and
    - d. A development proposal containing the minimum elements as required and specified herein (the approving authority may, at its discretion, require building elevation drawings with specifications of facade materials).
  - 2. In addition, final major subdivision and site plan applications shall include the following documents.
    - a. A statement as to the fulfillment of all conditions imposed by preliminary approval to which is appended a certified copy of the approving resolution,
    - b. Completed engineering plans,
    - c. A statement as to the installation of required improvements indicating whether the improvements have been installed, or that guarantees have been posted, or that guarantees are to be a condition of approval to which is appended the certifications of the municipal engineer or municipal clerk as appropriate, and
    - d. Certification showing all current tax/water rents paid.
  - 3. In addition, applications for other than final subdivision and final site plan shall include the following additional documents.
    - a. A statement as to the existence and nature of protective covenants and deed restrictions,
    - b. A taxmap sheet(s) showing the property in question and all properties within four hundred (400) feet, and
    - c. A current survey showing all property lines with dimensions and bearings and depicting existing conditions.
- E. Development proposals shall contain the following minimum elements.
  - 1. Variances proposals shall include the following elements:

- a. Building layout plan,
  - b. Other plans and schedules as required to demonstrate the nature of the relief sought, and
  - c. Zoning schedule.
2. Minor Subdivision proposals shall include the following elements:
    - a. Zoning schedule, and
    - b. Utilities plan.
  3. Preliminary major subdivision proposals shall include the following elements:
    - a. Zoning schedule,
    - b. Proposed property lines with dimensions and bearings,
    - c. Building layout plan,
    - d. Drainage schedule,
    - e. Drainage plan,
    - f. Utilities plan, and
    - g. For areas within the public rights-of-way;
      - i. Pavement plan,
      - ii. Lighting schedule,
      - iii. Landscape schedule, and
      - iv. Landscape plan.
  4. Preliminary site plan proposals shall include the following elements:
    - a. Zoning schedule,
    - b. Building layout plan,
    - c. Drainage schedule,
    - d. Drainage plan,
    - e. Utilities plan,
    - f. Pavement striping schedule,
    - g. Pavement plan,
    - h. Lighting schedule,
    - i. Landscape schedule, and
    - j. Landscape plan.
- F. Proposal elements shall be prepared in accord with the format and content specifications for plans and schedules as follows. Schedules shall clearly note items which are variances from zoning requirements or exceptions from design standards.



1. Sheets for any drawing subject to site plan or subdivision approval shall conform to the following specifications:
  - a. All engineering drawings shall have individual sheets folded to fit with an eight and one-half by eleven (11) inch area.
  - b. All preliminary site plans, subdivision sketch plats and plot plans shall be submitted on standard eight and one-half by eleven (11) inch sheets.
  - c. Maps to be recorded with the county shall be on a sheet size meeting one of four standards:
    - i. Eight and one-half by thirteen (13) inches;
    - ii. Thirty (30) by forty-two (42) inches;
    - iii. Twenty-four (24) by thirty-six (36), inches; and
    - iv. Or fifteen (15) by twenty-one (21) inches.
  - d. A title block shall contain:
    - i. Title of proposal;
    - ii. Name and address of applicant;
    - iii. Name, address and seal of architect/engineer/surveyor; and
    - iv. Date prepared with revision dates and descriptions.
  - e. Orientation shall be provided by:
    - i. Graphic scale;
    - ii. Numeric scale;
    - iii. North arrow; and
    - iv. Key map with reference to all streets within three thousand (3,000) feet at a scale of not more than two thousand five hundred (2,500) feet to the inch to be provided on at least one sheet of any set.
2. Zoning schedules shall be titled and arranged in columns describing limits, proposed conditions, and compliance/variance status for:
  - a. Building height;
  - b. Front street setback;
  - c. Rear street setback;
  - d. Property line setback;
  - e. Building coverage;
  - f. Parking;
  - g. Loading; and

- h. Any other code requirements;
3. Building layout plan drawings shall be titled and keyed to a legend depicting:
  - a. Building lines with setback dimensions and heights;
  - b. Building projection lines with dimensions, heights or clearances;
  - c. New construction;
  - d. Reconstruction; and
  - e. Demolition.
4. Drainage Schedules shall be titled and arranged in columns describing:
  - a. Runoff coefficient and limit; and
  - b. Design storm frequency.
5. Drainage plan drawings shall be titled and keyed to a legend depicting:
  - a. Drainage areas with discharge points and flow direction;
  - b. Open and piped interconnections between areas;
  - c. Location and height of terraced and bermed areas; and
  - d. Depth of sheet flow in pedestrian areas for design storm shown in one inch contours.
6. Utilities plan drawings shall be titled and keyed to a legend depicting:
  - a. Water service, hydrants and meters;
  - b. Sanitary sewer service;
  - c. Gas service and meters;
  - d. Electric service and transformers; and
  - e. Heating fuel tanks.
7. Pavement striping schedules shall be titled and arranged in columns describing:
  - a. Parking stall category (resident, employee, customer short-term, customer long-term, wheelchair accessible);
  - b. Parking stall width;
  - c. Stall angle;
  - d. Stall depth and overhang depth;
  - e. Pedestrian aisle width along side of stalls; and
  - f. Driveway aisle width.
8. Pavement plan drawings for vehicular areas shall be titled and keyed to a legend depicting:
  - a. Curbing with type of material;
  - b. Driveway aprons and driveways within public rights-of-way with pavement type;

- c. Parking stalls, aisles and driveways outside public rights-of-way with pavement type; and
  - d. Sight distance triangle minimums for intersections of vehicular drives with streets, parking aisles, walls, building corners and walks.
9. Lighting schedules shall be titled and arranged in columns describing:
- a. Functional area (parking/pedestrian area, driveway/aisle intersections, pedestrian hazards, building entry, loading dock);
  - b. Level (peak, off-hour, late-night security);
  - c. Minimum point illumination;
  - d. Maximum uniformity ratio of average illumination to minimum;
  - e. Maximum uniformity ratio of maximum illumination to minimum;
  - f. Fixture type (Flood, spot, cut-off [minimum eighty-one (81) degree]); and
  - g. Height limit for fixtures.
10. Landscape schedules shall be titled and arranged in columns describing:
- a. Planting type (deciduous, coniferous, tree, shrub, groundcover);
  - b. Minimum planting size; and
  - c. Planting condition (bare root, balled, canned).
11. Landscape plan drawings shall be titled and keyed to a legend depicting:
- a. Building entrances and exits;
  - b. Walks, patios and other paved surfaces showing material type;
  - c. Outdoor storage enclosures for refuse and recycleables;
  - d. Exterior utilitarian appurtenances which require visual screening (air conditioners, transformers, meters, etc.);
  - e. Fences and walls with height and function (screening, security, or delineative and classified as decorative or utilitarian);
  - f. Other landscape structures (patios, walks, pools);
  - g. Existing trees over eighteen (18) inches caliper;
  - h. Shade tree canopy drip line at maturity;
  - i. Screen planting areas with height at maturity;
  - j. Groundcover planting areas; and
  - k. Decorative planting beds.
- G. Engineering plan drawings shall contain the following:
1. For any street improvements: plans, cross sections and center-line profile;

- 2. For any public utilities: plans and profiles with any easements delineated;
- 3. For any pavement: profiles and material specifications;
- 4. For any drainage facilities: contours or spot elevations, profiles and specifications including pipe sizes, invert elevations and capacity;
- 5. For any exterior lighting: location, mounting, fixture type and specifications for wattage and isofootcandle pattern;
- 6. For any walls or fences: profiles and specifications; and
- 7. For any planting: expanded planting schedule, including quantity, common and botanical name, height or caliper at time of planting, root condition, seasonal restrictions on installation; specifications for installation including profiles; and mixture for seeding.

(Prior code § 40-83)

17.28.130 - Time limits for approval.

A. Action by Planning Board. Upon the submission of a complete application for development, the planning board shall grant or deny approval within the maximum number of days of the date of such submission as specified below or within such further time as may be consented to by the applicant. Where more than one type of application is involved, the longer time period shall apply:

Type of Development Application	Time Period (days)
Subdivision plats and site plans	
Preliminary approval	45
Final approval	45
Conditional use authorization	95
Variance	120
Direction for issuance of a building permit	95

B. Action by Board of Adjustment. Upon the submission of a complete application for development, the board of adjustment shall grant or deny approval within one hundred twenty (120) days of the date of such submission by the applicant.

(Prior code § 40-84)

#### 17.28.140 - Failure to decide.

Should the planning board or the zoning board of adjustment, as the case may be, fail to reach a decision within the specified time periods or extensions thereof, the applicant may request from the secretary of the approving authority a certificate indicating the approving authority's failure to act. Such certificate shall be sufficient in lieu of the written endorsement or other required evidence of approval.

(Prior code § 40-85)

#### 17.28.150 - Amended application.

If the approving authority requires any substantial amendments in the layout of improvements proposed by the applicant that have been the subject of a hearing, an amended application for development shall be submitted and proceeded upon as in the case of the original application.

(Prior code § 40-86)

#### 17.28.160 - Review by county planning board.

Whenever review, or approval of the application by the county planning board is required by Section 5 of P.L. 1968, c.285, in the case of a subdivision, or Section 8 of P.L. 1968 c.285, in the case of a site plan, the approving agency shall condition any approval that it grants upon timely receipt of a favorable report on the application by the planning board or failure to report thereupon within the required time.

(Prior code § 40-87)

#### 17.28.170 - Referral to other agencies.

An application may be referred to any appropriate person or agency for its report, provided that such reference shall not extend the period of time within which the appointing authority shall act.

(Prior code § 40-88)

#### 17.28.180 - Findings for approval.

The approving authority may grant approval to an application for development where it finds that:

A.

The proposed development is consistent with the master plan proposals adopted by the planning board.

- B. The proposed use shall be compatible with surrounding uses.
- C. The proposed use shall not have any injurious effect on surrounding property values.
- D. The proposed use is so designed, located and proposed to be operated that the public health, welfare, safety and convenience of the citizens will be protected.
- E. The interests of the public, and of the residents, occupants and owners of the proposed development are protected.
- F. The proposed layout of the development is consistent with the requirements of Chapters 17.32 and 17.36 of this title.
- G. The streets are of sufficient width and suitable grade and suitably located to accommodate prospective traffic and to provide easy access for fire-fighting and emergency equipment to buildings and coordinated so as to compose a convenient and efficient system consistent with the official map and the circulation element of the master plan, provided that no street of a width greater than fifty (50) feet within the right-of-way lines shall be required unless said street constitutes an extension of an existing street or a street shown on the official map which is of greater width.
- H. Adequate potable and fire water supplies, drainage, shade trees, sewerage facilities and other utilities necessary for essential service to residents and occupants are provided.
- I. Off-tract water, sewer, drainage and street improvements which are necessitated by development are provided.
- J. Development of lands designated as subject to flooding is designed so as to avoid danger to life or property.
- K. Protection and conservation of soils from erosion by wind, water, excavation or grading and from contamination by unsanitary fill or dumping is provided for.
- L. The applicant has submitted evidence that no taxes or assessments for local improvements are due or delinquent on the property for which application is made.
- M. Where deemed appropriate, that the proposed structures are suitably located.
- N. Safe and efficient vehicular, and pedestrian circulation, parking and loading is provided.
- O. Exterior lighting is adequate for safety and security reasons.
- P. Existing natural resources are to be preserved by the development.
- Q. The proposed development is suitably screened and landscaped.
- R. The proposed development is in conformity with the standards for delineated airport hazard areas promulgated by the Commission of Transportation pursuant to the Air Safety and Hazardous Zoning Act or a waiver from those standards has been issued by the Commissioner.

- S. Large scale development proposals achieve the following design objectives:
1. The overall plan shall provide for an effective and unified treatment of the development possibilities of the site, making appropriate provision for the preservation of amenities of the site and the surrounding areas.
  2. All buildings in the layout and design shall be an integral part of the development and shall have convenient access to and from adjacent uses and blocks.
  3. Individual buildings shall be related to each other in design, masses, materials, placement and connections, to provide a visually and physically integrated development.
  4. Treatment of the sides and rear of all buildings within the planned development shall be comparable in building materials as to the treatment given to the fronts of these same buildings.
  5. The design of buildings and the parking facilities shall take advantage of the topography of the site, where appropriate, to provide separate levels of access.
  6. All buildings shall be arranged so as to be accessible to emergency vehicles.
  7. Facilities for the temporary storage of refuse, of garbage and recyclables awaiting removal shall be designed and located in such a manner as to make the facilities inconspicuous to the general public and to prevent the spread of refuse to other areas.
  8. Air conditioning and other mechanical equipment shall be screened from public view with suitable materials to harmonize with the total development.

(Prior code § 40-89)

#### 17.28.190 - Guaranties required.

- A. Before granting of final approval for subdivision plats or site plans, the approving authority shall require and accept in accordance with the standards adopted by this title for the purpose of assuring the installation and maintenance of on-tract improvements:
1. The furnishing of a performance guaranty in favor of the city in an amount not to exceed one hundred twenty (120) percent of the cost of installation for improvements it may deem necessary or appropriate, including streets, grading, pavement, gutters, curbs, sidewalks, street lighting, shade trees, surveyors' monuments, as shown on the final map and as required by the Map Filing Law, P.L. 1960, c.141 (N.J.S.A. 46:23-9.9 et seq.), water mains, culverts, storm sewers, sanitary sewers or other means of sewage disposal, drainage structures, erosion control and sedimentation control devices, public improvements of open space and, in the case of site plans only, other on-site improvements and landscaping, provided that no more than ten (10) percent of the total performance guaranty shall be required to be in cash and the balance shall be in the form of a bond from a bonding company approved by the city council. The city engineer shall review the improvements

required by the approving authority which are to be bonded and itemize their cost. Such itemization shall be the basis for determining the amount of the performance guaranty and maintenance guaranty required by the approving authority. The city engineer shall forward his or her estimate of the cost of improvements to the applicant within thirty (30) days of the date of receipt of a request sent by certified mail for the estimate.

2. The furnishing of a maintenance guaranty to be posted with the city council for a period not to exceed two years after final acceptance of the improvement, in an amount not to exceed fifteen (15) percent of the cost of the improvement. In the event that other governmental agencies or public utilities automatically will own the utilities to be installed or that the improvements are covered by a performance or maintenance guaranty to another governmental agency, no performance or maintenance guaranty; as the case may be, shall be required for such utilities or improvements.
- B. The amount of any performance guaranty may be reduced by the city council by resolution, when portions of the improvements have been certified by the city engineer to have been completed. The time allowed for installation of the improvements for which the performance guaranty has been provided may be established by the city or county resolution.
  - C. If the required improvements are not completed or corrected in accordance with the performance guaranty, the obligor and surety, if any, shall be liable thereon to the city for the reasonable cost of the improvements not completed or corrected, and the city may, either prior to or after the receipt of the proceeds thereof, complete such improvements.
  - D. When all of the required improvements have been completed, the obligor shall notify the city council in writing, by certified mail addressed in care of the city clerk, of the completion of said improvements and shall send a copy thereof to the city engineer. Thereupon the city engineer shall inspect all of the improvements and shall file a detailed report, in writing, with the city council indicating either approval, partial approval or rejection of the improvements with a statement of reasons for any rejection. If partial approval is indicated, the cost of the improvements rejected shall be set forth.
  - E. The city council shall either approve, partially approve or reject the improvements, on the basis of the report of the city engineer and shall notify the obligor in writing, by certified mail, of the contents of the report and the action of the approving authority with relation thereto, not later than sixty-five (65) days after the receipt of the notice from the obligor of the completion of the improvements. Where partial approval is granted, the obligor shall be released from all liability pursuant to its performance guaranty, except for the improvements not yet approved. Failure of the city council to send or provide such notification to the obligor within sixty-five (65) days shall be deemed to constitute approval of the improvements, and the obligor and surety, if any, shall be released from all liability pursuant to such performance guaranty.



- F. If any portion of the required improvements are rejected, the approving authority may require the obligor to complete such improvements, and, upon completion, the same procedure of notification as set forth in this section shall be followed.
- G. The obligor shall reimburse the city for all reasonable inspection fees paid the city engineer for the foregoing inspection of improvements.

(Prior code § 40-90)

#### 17.28.200 - Planned development approval procedures.

- A. The planning board is authorized to approve planned developments in order to promote flexibility in the arrangement of land uses in accordance with this title and pursuant to the provisions of N.J.S.A. 40:55D-39 and to grant approvals to general development plans consistent with the provisions of N.J.S.A. 40:55D-45.
  - 1. Prior to granting approval to any planned development, the planning board shall find the following facts and conclusions:
    - a. Departures by the proposed development from zoning regulations otherwise applicable to the subject property conform to the zoning ordinance standards pursuant to subsection N.J.S.A. 40:55D-65c.;
    - b. The proposals for maintenance and conservation of the common open space are reliable, and the amount, location and purpose of the common open space are adequate;
    - c. Provisions through the physical design of the proposed development for public services, control over vehicular and pedestrian traffic, and the amenities of light and air, recreation and visual enjoyment are adequate;
    - d. The proposed planned development will not have an unreasonably adverse impact upon the area in which it is proposed to be established; and
    - e. In the case of a proposed development which contemplates construction over a period of years, that the terms and conditions intended to protect the interests of the public and of the residents, occupants and owners of the proposed development in the total completion of the development are adequate.
  - 2. Site plans for planned developments shall conform to the requirements for conventional site plans as well as to the requirements for planned developments. In the event of a conflict, the planned development requirements shall supersede site plan requirements. The following additional requirements shall be satisfied prior to final approval:
    - a. The staging proposals for any planned development shall ensure that each stage shall encompass a balanced mix of land uses in proportion to the mix for the entire development and that each stage shall provide for completion of all streets, utilities and services necessary for the section whether located within or outside the section.

- b. The planning board may authorize a greater concentration of density or intensity within a stage but only where offset by a lesser concentration in any completed prior stages or offset by an appropriate reservation of open space on the remaining land by grant of easement or covenant in favor of the municipality.
        - c. The legal documents proposed to provide for deed restrictions, cross access agreements and cross maintenance agreements have been submitted and found to satisfactorily provide for the public's interests.
        - d. All open space created shall be set aside as a separate parcel and maintained for the benefit of the owners and/or occupants of the development in accordance with N.J.S.A. 40:55D-43.
3. Subdivision plats for planned developments shall conform to the requirements for conventional subdivision plats as well as to the requirements for planned developments. In the event of a conflict, the planned development requirements shall supersede subdivision plat requirements. The following additional requirements shall be satisfied prior to preliminary approval.
  - a. The staging proposals for any planned development shall ensure that each stage shall encompass a balanced mix of land uses in proportion to the mix for the entire development and that each stage shall provide for completion of all streets, utilities and services necessary for the section whether located within or outside the section.
  - b. The planning board may authorize a greater concentration of density or intensity within a stage but only where offset by a lesser concentration in any completed prior stages or offset by an appropriate reservation of open space on the remaining land by grant of easement or covenant in favor of the municipality.
  - c. The legal documents proposed to provide for deed restrictions, cross access agreements and cross maintenance agreements have been submitted and found to satisfactorily provide for the public's interests.
  - d. All open space created shall be set aside as a separate parcel and maintained for the benefit of the owners and/or occupants of the and found to conform with the objectives of the plans and proposals for the planned development and the intent of this chapter.
    - i. The enabling declaration shall set forth the developer's intent to charge an association with certain responsibilities, including the covenants, which set forth the purchaser's responsibilities and obligations including the provisions for ownership and management of the common areas, the establishment of association assessments as a lien against all lots, the rights of members including voting rights, the basis for assessments, the basis for enforcement of covenants by the association, and the process of amendments.

- ii. The articles of incorporation shall establish the association, set forth the name of the association, the name and address of principal officers at the time of incorporation, and the purpose and powers of the association. It shall set forth terms of membership and voting rights, create the initial board of directors, establish procedures for dissolution, the duration of the association in the absence of dissolution, the basis for amendments to the articles of incorporation, and the severability of provisions.
- iii. The bylaws shall set forth the meeting of the association; the basis for a quorum, provisions for vote by development in accordance with N.J.S.A. 40:55D-43.
- iv. The planning board shall determine the appropriateness of proposed dedications of open space prior to granting subdivision approval. Unless dedicated for public use, organizations shall be established for the ownership and maintenance of all open space parcels.
  - (A) The developer shall provide for an organization pursuant to N.J.S.A. 40:55D-43 for the ownership and maintenance of open space created under a planned development.
  - (B) Such organization shall not be dissolved and shall not dispose of any open space, by sale or otherwise, except to an organization conceived and established to own and maintain the open space for the benefit of such development, and thereafter, such organization shall not be dissolved or dispose of any of its open space without first offering to dedicate the same to the municipality.
  - (C) All owners of property within a planned development shall be required to become members of the owners' association charged with ownership and maintenance of open space and other common facilities. All properties shall include a provision in their deeds requiring membership in the owners' association. This requirement shall pass from owner to owner as a deed restriction.
  - (D) The legal documents proposed in the establishment of the required owners' association shall have been submitted proxy, and the notice of meetings. Bylaws shall set forth the terms of office for the board of directors, the composition of the board, the method of nomination, the method of election, and the handling of resignations, removals, vacancies, and compensation, as well as the conduct of board meetings. They shall also set forth the power and duties of the board. The officers, their means of election, terms of office, and their duties shall be described. The committees required or the basis for their establishment shall be defined. The fiscal year shall be established, the indemnification of officers shall be described, and the basis for amendment shall be set forth.
  - (E)

The proposed form of deed clause referring to the declaration and clarifying the title to common property adjacent to a lot.

- (F) An information brochure designed to help to ensure that all purchasers are informed of the association. It shall restate in clear text the relationship between the association, the purchaser, and the developer. It shall cover the major elements of common area identification, ownership and use, the structure of the association, dues, officer and director selection and election, architectural controls, liens, annexation, dissolution, and other areas.
- v. The plat shall contain specifics of the enabling declaration dealing with the title to the common property, the granting of easements of enjoyment, an indication as to whether the designated areas are dedicated for use by the general public or they are, or are intended to be, conveyed to an association.
- vi. Any condominium or owners' association filings with the New Jersey Department of Community Affairs shall also be filed with the planning board.
- f. Residential clusters shall conform to the following requirements:
  - i. Each cluster shall be restricted to one type of land use/housing type in a contiguous group.
  - ii. The total number of dwelling units, or lots for single-family dwellings, shall not exceed the allowable density multiplied by the tract area to be improved for residential use plus any open space set aside for residential use.
  - iii. Where proposed open space for residential use is not dedicated to public use, the cluster shall contain a minimum of eighty (80) dwelling units.
  - iv. Building lots shall conform with the requirements for the alternative zone as if developed in that zone and shall maintain continuing compliance with said zone requirements.
  - v. Developed open space parcels shall be designed to accommodate pedestrian ways of not less than ten (10) feet in width and recreation sites of not less than two thousand five hundred (2,500) square feet in area.

(Prior code § 40-94)

## Chapter 17.32 - DESIGN STANDARDS

### Sections:

17.32.010 - Minimum standards established.

The following shall be deemed the minimum standards for development.

(Prior code § 40-100)

#### 17.32.020 - Blocks.

- A. Block length and width or acreage within bounding roads shall be such as to accommodate the size lot required in the area by Chapter 17.36, and to provide for convenient access, circulation control and safety of street traffic.
- B. In blocks over one thousand (1,000) feet long, pedestrian crosswalks may be required in locations deemed necessary by the planning board. Such walkway shall be ten (10) feet wide and shall be straight from street to street.
- C. For commercial or group-housing use, block size shall be sufficient to meet all area and yard requirements for such use.

(Prior code § 40-101)

#### 17.32.030 - Lots.

- A. Lot dimensions and area shall not be less than the requirements of Chapter 17.36.
- B. Insofar as is practical, side lot lines shall be at right angles to straight streets and radial to curved streets.
- C. Each lot must front upon an approved street at least fifty (50) feet in width, except lots fronting on streets described in Section 17.32.040(D)(4) and (5) of this chapter.
- D. Where extra width has been dedicated for widening of existing streets, lots shall begin at such extra-width line, and all setbacks shall be measured from such line.
- E. Where there is a question as to the suitability of a lot or lots for their intended use due to factors such as rock formations, flood conditions or similar circumstances, the approving authority may, after adequate investigation, withhold approval of such lots.

(Prior code § 40-102)

#### 17.32.040 - Streets.

- A. The arrangement of streets not shown on the master plan or official map shall be such as to provide for the appropriate extension of existing streets.
- B. Minor streets shall be so designed as to discourage through traffic.
- C. Subdivisions abutting arterial streets shall provide a marginal service road or reverse frontage with a buffer strip for planting or some other means of separation of through and local traffic as the planning board may determine appropriate.

D. Right-of-Way Width.

- 1. The right-of-way width shall be measured from lot line to lot line and shall not be less than the following:

Arterial streets	80 feet
Collector streets	60 feet
Minor streets	50 feet
Marginal access streets	40 feet

- 2. The right-of-way width for internal roads and alleys in multifamily and commercial development shall be determined on an individual basis and shall in all cases be of sufficient width and design to safely accommodate the maximum traffic, parking and loading needs and maximum access for fire-fighting equipment.

- E. No subdivision showing reserve strips controlling access to streets shall be approved except where the control and disposal of land comprising such strips has been placed with the city council under conditions approved by the planning board.
- F. Subdivisions that adjoin or include existing streets that do not conform to widths as shown on the master plan or official map or the street width requirements of this chapter shall dedicate additional width along either one or both sides of said road. If the subdivision is along one side only, one-half of the required extra width shall be dedicated.
- G. Grades of arterial and collector streets shall not exceed four percent. Grades on other streets shall not exceed ten (10) percent. No streets shall have a minimum grade of less than one-half of one percent.
- H. Street intersections shall be as nearly at right angles as is possible, and in no case shall be less than sixty (60) degrees. The block corners at intersections shall be rounded at the curblines with a curve having a radius of not less than twenty (20) feet.
- I. Street jogs with center-line offset of less than twenty-five (25) feet shall be prohibited.
- J. A tangent at least one hundred (100) feet long shall be introduced between reverse curves on arterial and collector streets.
- K. When connecting street lines deflect from each other at any one point by more than ten (10) degrees and not more than forty-five (45) degrees they shall be connected by a curve with a radius of not less than one hundred (100) feet for minor streets and three hundred (300) feet for

arterial and collector streets.

- L. All changes in grade shall be connected by vertical curves of sufficient radius to provide a smooth transition and proper sight distance.
- M. Dead-end streets (culs-de-sac) shall not be longer than six hundred (600) feet and shall provide a turnaround at the end with a radius of not less than fifty (50) feet and tangent whenever possible to the right side of the street. If a dead-end street is of a temporary nature, a similar turnaround shall be provided and provisions made for future extension of the street and reversion of the excess right-of-way to the adjoining properties.
- N. No street shall have a name which will duplicate or so nearly duplicate as to be confused with the names of existing streets. The continuation of an existing street shall have the same name.

(Prior code § 40-103)

17.32.050 - Driveways.

- A. Access drives or driveways shall not be less than ten (10) feet wide for one-way traffic heading in the same direction and twenty (20) feet wide for two-way traffic in opposing directions. No access drive or driveway shall be obstructed and no architectural feature shall be permitted to project into the minimum established width of an access drive or driveway. If building depth is more than fifty (50) feet, there must be a pedestrian walkway.
- B. Curblin openings for ten-foot wide access driveways or egress driveways shall be a minimum of sixteen (16) feet. Curblin openings for twenty-foot (20) wide access or egress driveways shall be a minimum of twenty-eight (28) feet.

(Prior code § 40-104)

17.32.060 - Parking.

In all districts, every parcel of land or part thereof used as a public or private parking area or parking garage, excluding one- and two-family residential developments, shall be developed and maintained in accordance with the following requirements. Plans for such areas shall be reviewed by the city engineer and planning board to ensure compliance with these regulations.

A. Stall Dimensions.

- 1. For all principal uses, each off-street parking area shall have a required depth of nineteen (19) feet exclusive of access drives or required aisles.
- 2. For all principal uses, each off-street parking space shall have the following minimum stall widths:

Use Group	Minimum Parking Stall Width
-----------	-----------------------------

A-I, K, L, N	10 feet 0 inches
O-Q, R, S-W	9 feet 6 inches
M, J	9 feet 0 inches
X-CC	8 feet 6 inches

B. Ingress and Egress.

1. For each off-street parking space, there shall be adequate provision for ingress and egress, conforming to standards as set forth in Parking, published by Reinhold Publishing Corporation, New York, New York, Copyright 1958.
2. All driveways, aisles and any other vehicular circulation area shall be designed to accommodate the following minimum turning radii:

Type of Vehicle	Radius Inside	Radius Outside
Autos (vehicle length to 20 feet)	15 feet	26 feet
Straight trucks (vehicle length to 35 feet)	20 feet 6 inches	38 feet 0 inches
Semitrailer (vehicle length to 50 feet)	26 feet	50 feet

C. Setbacks.

1. No off-street parking area or portion thereof shall be allowed within ten (10) feet of a street right-of-way line.
2. No off-street parking area or portion thereof shall be located closer than ten (10) feet to any dwelling, school, hospital or institution for human care located on an adjacent or adjoining lot.
3. No off-street parking area or portion thereof, including driveways and aisles, shall be located closer than three feet to any side or rear lot line or any principal or accessory structure.

D. Safety Lands. A ten-foot safety island shall be provided between the end of a parking bay and any driveway, aisle or any other area as required by the planning board or city engineer.



## E. Curbing.

1. Poured-in-place concrete curbing shall be used in all off-street parking areas to separate vehicular from nonvehicular areas, as required and specified by the city engineer.
2. Where site improvements are placed within vehicular areas, poured-in-place concrete curbing shall be installed at a minimum radius of two feet from the edge of said improvements, as required and specified by the city engineer.

## F. Obstructions.

1. Each off-street parking space shall maintain an unobstructed area equal to the required length of the space times the minimum width of the space.
2. Curbing where installed two feet from the head of a parking space, to serve as a wheelstop, shall not be considered an obstruction in the space.

G. Surfacing. Any off-street parking area shall be surfaced with an asphaltic or portland cement pavement or similar durable and dustless surface, as specified and approved by the city engineer. Each parking space shall be delineated with painted markings to provide for orderly and safe parking of vehicles.

H. Roof Parking. Parking shall be permitted on the roof of any structure, provided that a four-foot wall, sufficient to contain headlight glare and constructed of materials which are consistent with the architectural character of the structure, shall be constructed around the entire perimeter of the roof.

I. Drainage. Any off-street parking area shall be graded and drained so as to dispose of all surface water without detriment to surrounding uses, as required by the city engineer.

(Prior code § 4-105)

## 17.32.070 - Illumination.

## A. Illumination Levels at Ground Level.

1. Minimum average design illumination levels shall be:
  - a. Parking areas:
    - i. Industrial: 1.5 footcandles.
    - ii. Other uses: two footcandles.
  - b. Loading area: five footcandles.
  - c. Pedestrian areas: 1.5 footcandles.
  - d. Driveway entrances: three footcandles.
  - e. Gasoline pump islands and service area: twenty (20) footcandles.
  - f. Streets:
    - i.

Arterial: 1.4 footcandles.

ii. Collector: 0.9 footcandles.

iii. Minor: 0.6 footcandles.

g. Intersections shall be at least the sum of minimum illumination of the intersecting streets.

2. Minimum illumination at a point shall be not less than one-third of the above minimum design levels.

3. Maximum average design illumination levels shall not be greater than four times the above minimum design levels.

4. Maximum illumination at property lines on ground level and above shall not exceed one footcandle.

B. Location of Sources.

1. Sources of illumination shall be shielded so as not to be visible at property lines at an elevation of four feet and above.

2. Lighting shall be so arranged as to reflect the light away from adjoining premises.

C. Poles for all but Street-Related Lighting.

1. Poles shall be rustproof metal or decorative wood, utilizing underground wiring.

2. Height of poles for:

a. Pedestrian areas shall be not more than fifteen (15) feet.

b. Parking, driveway and loading areas for all vehicles except for trucks and trailers shall not be greater than twenty-five (25) feet or the maximum permitted building height, whichever is less.

c. Truck and trailer parking and loadings areas shall not be greater than forty (40) feet or the height of the building, whichever is less.

(Ord. No. 5499, § 15, 11-23-2021; prior code § 4-106)

17.32.080 - Landscaping.

A. All street trees and on-site deciduous shade trees shall be not less than two-inch caliper measured one foot above the root crown at the time of planting. Shade trees shall be located on the street line so as not to interfere with utilities or sidewalks.

B. Evergreen trees shall not be less than four feet in height at the time of planting.

C. Deciduous trees shall not be less than seven feet in height at the time of planting.

D. Shrubs shall not be less than two feet in height at the time of planting.

E.

All plants shall conform to the standards as set forth in American Standard for Nursery Stock, published by the American Association of Nurserymen, Inc., 855 Southern Building, Washington, D.C.

- F. All planting shall conform with the United States Department of Agriculture map of hardiness zones for this area.
- G. Trees when planted shall be balled and burlapped and properly staked.

(Prior code § 4-107)

#### 17.32.090 - Screens—Opening for visibility required—Materials used for opening.

- A. Any metal screen protective device installed by any person, firm or entity in the city shall be constructed of an open mesh grill or patterned, textured substance so as to blend architecturally with the community. Solid steel face or solid monolith metal screens are prohibited. Any metal protective screen shall be finished so as not to rust or stain either buildings or sidewalks.
- B. Approval of Design—Permit Required.
  - 1. No metal protective screen shall be installed without prior approval as to design by the construction official.
  - 2. A permit shall be issued by the construction official prior to installation of any metal protective screen.
  - 3. The term "metal protective screen" means any sliding or rolling horizontal or vertical gate on the front of any structure to prevent unauthorized entrance.
- C. Where possible, the materials of which these metal screens are constructed shall be of a texture and design which shall blend with the structure being protected by the screen and shall be open mesh grill.
- D. Any person who violates any provision of this chapter shall, upon conviction thereof, be subject to a fine not less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000.00) or by imprisonment not exceeding ninety (90) days, or both. A separate offense shall be deemed committed on each day in which a violation occurs or continues.

(Prior code § 115-1)

#### 17.32.100 - Store fronts.

- A. Purpose. This section establishes general regulations and design standards for store fronts for commercial stores.
  - 1. Any commercial store located in the general and special retail zone shall have a glass or other clear material store front.
  - 2.

A security gate/grill, a metal gate or other obstructive device which is utilized for the purpose of restricting or controlling or obstructing entry or exit into a commercial establishment shall not be permitted without there also being a glass or clear material store front.

3. It is unlawful for any person, entity or corporation to install a metal security gate or grill type door at the side of a commercial building facing onto a public street without the commercial space also having a store front which shall be comprised of glass and/or other material providing protection to customers and employees from the elements.

B. Penalty. A person or entity that shall violate any provision of this section or any other order promulgated hereunder shall, after summons are issued, be required to appear in municipal court and be subject to a fine up to one thousand dollars (\$1,000.00). Each violation of any of the provision of this section shall be deemed to be a separate and distinct offense. A separate offense is deemed committed on each date during on or which a violation occurs or is continuous.

(Ord. 3909 §§ 1, 2, 2007)

Chapter 17.36 - ZONING DISTRICTS GENERALLY

**Sections:**

17.36.010 - Establishment of zones.

A. Designation of Zones. For the purposes of this chapter, the city is divided into zones, differentiated according to use and building regulations and to be designated as follows:

Single-family residential zone	R-1
Two-family residential zone	R-2
Multifamily residential zone	R-3
Four-family residential zone	R-3A
Elevator apartment zone	R-4
Neighborhood commercial zone	C-1
Community commercial zone	C-2

Central commercial zone	C-3
Special commercial zone	C-4
Office commercial-1 zone	OC-1
Office commercial-2 zone	OC-2
Regional commercial zone	RC
Highway commercial zone	HC
Light industrial zone	M-1
Medium industrial zone	M-2
Manufacturing, research, and commercial 1 zone	MRC-1
Manufacturing, research, and commercial 2 zone	MRC-2
Open space zone	O
Public zone	P
Transportation zone	T
Cannabis retail overlay zone	CRO
Cannabis manufacturing, cultivation, and distribution overlay zone	CMO

- B. Zoning Map. The location and boundaries of the zones are established as shown on the zoning map of the city dated March 27, 1962, which is attached hereto and is made a part of this chapter. Such map or maps and all notations, references and designations shown thereon shall be, as such, a part of this chapter as if the same were all fully described and set forth herein.
- C.

Designation of Zone Boundaries. The zone boundary lines are intended generally to follow the boundary lines of streets, the centerlines of railroad rights-of-way, existing lot lines for lots of record, the mean water level of rivers, streams and other waterways or city boundary lines and to intersect street lines at right angles, all as shown on the zoning map. Its position may be shown on said zoning map by a specific dimension expressing its distance in feet from a street line or other boundary line as indicated. To satisfy the intent of this chapter, a mapped zone boundary line which does not follow a lot line of a lot of record shall be adjusted as follows:

1. Where the zone boundary line is within twenty-five (25) feet of a lot line of a lot of record, the lot line shall be considered the zone boundary line, or
  2. Where within a lot of record a zone boundary line intersects a street line at an angle other than ninety (90) degrees, said line shall be adjusted to follow a lot line of a lot of record within twenty-five (25) feet of an imaginary line extending perpendicular from street line to a point at which such line first intersects both the mapped line and an interior lot line.
- D. Extension of Zone Boundaries. Where a public street right-of-way is vacated, the adjacent zone shall be deemed to extend to the former centerline of the street right-of-way, and where the mean water level of a waterway is altered by approved fill, the adjacent zone shall be deemed to extend to the limit of the fill.
- E. Reserved.
- F. Planned Development. As an alternative to conventional development, the planning board may authorize planned developments for areas designated PD in accordance with plans and proposals which conform to the requirements of this section. The standards herein establish the limits of discretionary action which may be taken by the approving authority administering these provisions. No deviation from these standards may be granted pursuant to N.J.S.A. 40:55D-70.
1. Standards for Type, Density or Intensity of Use. Planned developments may be approved by the planning board in conformity with the standards governing the type, and density, or intensity, of use set forth by this subsection and those set forth for each PD designated area.
    - a. The minimum tract size shall be five acres.
    - b. All residential developments shall be designed as residential clusters.
    - c. All lands remaining outside of public streets, building lots and any other parcels approved for special purposes shall be set aside as open space. The boundaries of any open space parcels shall be designed to coincide with adjoining open space parcels, whether existing or proposed, so as to extend and expand upon an overall open space network for the city.
  2. Variations of Standards. The type and density or intensity shall be varied from that otherwise permitted within a planned development in consideration of the amount, location and proposed use of common open space; the location and physical characteristics of the site;

and the location, design and type of dwelling units and other uses as set forth by this subsection.

- a. Gross density/intensity shall be reduced in direct proportion to the extent that the improvable area of the tract is less than the minimum established for the PD designated area.
  - b. Gross density shall be reduced in direct proportion to the extent that the site is to be developed for nonresidential uses, other than open space, for each PD designated area.
3. Deviations within Planned Developments. Within planned developments, deviations in the standards for type, density or intensity of use may be authorized by the planning board by designating areas to be developed under different standards in accordance with the limitations set forth by this subsection and those set forth for each PD designated area.
- a. A land use map delineating and classifying areas for each variation shall be established for all planned developments. Land use maps shall be approved where the planning board finds the following requirements to be satisfied:
    - i. The land use proposals are consistent with the policies articulated in the adopted master plan as relates to land use, community facilities and housing.
    - ii. The open space proposals protect any special environmental features by preserving land in an open undeveloped state, create suitable areas for organized outdoor recreation, and are consistent with the policies articulated in the adopted master plan as relates to open space and environmental features.
    - iii. The circulation proposals provide for a closed traffic circulation system, provide a pedestrian path network linking all parts of the development, and are consistent with the policies articulated in the circulation element of the adopted master plan.
    - iv. The utilities proposals are consistent with the policies articulated in the adopted master plan as relates to stormwater management, utilities, local services and fiscal impact on the county, municipality and special districts including the local school district.
    - v. The overall proposals are consistent, inasmuch as is reasonably practicable, with other existing, planned or potential developments.
  - b. Classifications for land use areas shall correspond with the optional zone classifications enumerated for each PD designated area. Substitute classifications may be approved by the planning board to accommodate substitute bulk standards and shall be consistent with this section as follows:
    - i. Substitute classifications shall provide for the type, density, or intensity, or use.
    - ii. Substitute classifications shall provide uniform standards which are of equal stringency for the type, density, or intensity, or use.

- iii. Substitute classifications shall provide standards which are consistent with the limitations established for the PD designated area.
- c. Bulk Standards. The standards for the design, bulk and location of buildings for planned developments shall be evaluated by the planning board and approved where they are found to be in conformity with the regulations set forth by this subsection and those set forth for each PD designated area.
  - i. The standards employed shall be those standards for the zones which correspond to the land use classifications established for each delineated land use area. The planning board may approve substitute bulk standards as follows:
    - a. Substitute bulk standards shall provide for: minimum lot area, width, and depth; minimum setbacks along streets and other lot lines; maximum lot coverage; maximum floor area ratio; minimum improvable tract area and general design standards for multifamily residential development; exceptions for accessory buildings; requirements for parking, landscaping, lighting and other improvements.
    - b. Substitute bulk standards shall provide standards which are of equal or greater stringency to the corresponding zones with respect to: minimum lot area; maximum building height measured in feet and stories; maximum floor area ratio; and minimum improvable tract area for multifamily residential development.
    - c. The planning board shall notify the governing body and tax assessor, by adopted resolution, within five days of approval, of the approval of substitute bulk standards for any planned development.
  - d. Zoning. Changes in zoning effectuated through the planned development approval shall be recorded on the zoning map.
    - i. Upon approval, the area comprising an approved planned development shall be delineated along with the name and date of approval of the proposed planned development on the zoning map.
    - ii. The zoning standards shall be recorded through deed restrictions upon final approval and the zoning map shall be periodically amended to reflect the completion of sections of a planned development.
    - iii. Plans. Development shall be in conformity with site plans, subdivisions and any general development plan as approved by the planning board.

(Ord. No. 5499, §§ 1, 2, 11-23-2021; Ord. No. 5500, § 1, 7-27-2021; Ord. No. 4695, § 1, 4-12-2016; prior code § 40-116)

17.36.020 - Schedules and application.



- A. Schedules of Requirements. The restrictions and controls intended to regulate development in each zone district are set forth in the attached Schedules IA, II, III and IB, which are supplemented by other sections of this chapter.
- B. Application of Regulations. Except as hereinafter otherwise provided:
1. No building shall be erected and no existing building shall be moved, altered, added to or enlarged, nor shall any land or building be designed, used or intended to be used, for any purpose or in any manner other than as specified among the uses hereinafter listed as permitted in the district in which such building or land is located.
  2. No building shall be erected, reconstructed or structurally altered to exceed in height the limit hereinafter designated for the district in which such building is located.
  3. No building shall be erected, no existing buildings shall be altered, enlarged or rebuilt, nor shall any open space surrounding any building be encroached upon or reduced in any manner, except in conformity to the yard, lot area and building location regulations hereinafter designated for the district in which such building or open space is located.
  4. No yard or other open space provided about any building for the purpose of complying with the provisions of this chapter shall be considered as providing a yard or open space for any other building, and no yard or other open space on one lot shall be considered as providing a yard or open space for a building on any other lot.
  5. Where a use is specifically enumerated in a less restrictive zone, such use shall not be permitted in a more restrictive zone unless it is specifically enumerated as a permitted use therein.

(Ord. No. 4373, § 1, 5-14-2013; prior code § 40-117)

#### 17.36.030 - Supplementary regulations.

- A. Accessory Uses. Uses which are customarily associated with and subordinate to a principal use, including but not limited to off-street parking, customary home occupations and storage, may be permitted subject to the following restrictions:
1. Accessory parking in residential zones shall be limited to passenger vehicles, except that not more than one of the following may be maintained for the exclusive use of the occupants of the principal residential structure, provided that off-street parking in accordance with Sections 17.40.010 and 17.40.040 is provided:
    - a. A commercial truck or van not more than five thousand (5,000) pounds in gross weight to be stored in a garage.
    - b. A trailer, recreational vehicle or boat not more than twenty-five (25) feet in length to be stored in a rear yard.

2. Home occupations may be conducted within a principal or accessory residential structure, provided that:
    - a. Not more than one home occupation is conducted on an individual lot.
    - b. No persons other than occupants of the dwelling are involved or employed on premises in the home occupation except in the case of a professional office where not more than one resident person may be employed.
    - c. The occupation is conducted within an enclosed building and does not involve outdoor storage or utilize more than thirty (30) percent of the floor area of the dwelling unit.
    - d. Yard or garage sales do not occur more often than once in any three-month period.
    - e. The occupation does not involve child care for more than five children.
    - f. The occupation does not involve commercial vehicles for the delivery of materials to or from the premises.
    - g. The following characteristics do not differ from that expected in a residential neighborhood:
      - i. The appearance of the premises, including colors, materials, construction, lighting or signs.
      - ii. The risk due to the nature or volume of materials stored.
      - iii. The creation of noise, vibration, dust, smoke, odor, glare or electrical interference.
      - iv. The volume and frequency of vehicular or pedestrian traffic. Any parking needs shall be met off-street in other than a front yard.
      - v. The combined use by a dwelling and home occupation of water, sewer, electricity or refuse collection.
  3. Amusement games or entertainment machines or devices or music machines or devices may be operated as an accessory to any principal retail, personal service, entertainment or indoor amusement use, provided that the area devoted to such use does not exceed one thousand (1,000) square feet or thirty (30) percent of the street or ground level of the building in which it is conducted.
- B. Temporary Tract Office. A temporary tract office shall be a temporary building, structure or trailer, which shall not exceed five hundred (500) square feet. A temporary office is permitted in any district on the property to which it is appurtenant and shall be limited to a six-month period, except for construction projects which shall be permitted for a one-year period. At the expiration of this time the tract office shall be removed at the expense of the owner. If the temporary office is not removed within thirty (30) days of notification from the building or zoning official, then the city may fine the offender one thousand dollars (\$1,000.00) per month and the city may remove said office at owner's expense. The building official may issue a six-month extension if the owner

supplies a justifiable reason in writing to the city. Such temporary office may also be conducted in a building in a housing development as a real estate office for said development and may remain in place until said development is sold out.

- C. Outdoor Storage Areas. Such uses shall be governed by the following provisions to protect the public health, safety, comfort, convenience and general welfare and especially with regard to abutting properties and the occupants thereof:
1. Flammable and Explosive Liquids. No highly flammable or explosive liquids, solids or gases shall be stored in bulk above ground. Tanks or drums of fuel directly connecting with heating devices or appliances located on the same premises as the tanks or drums of fuel are excluded from this provision.
  2. Fencing and Setbacks. All outdoor storage facilities abutting, adjacent to or across from any residential district or otherwise visible from any residential district or public way shall be enclosed by a fence or wall adequate to conceal such facilities and the contents thereof from adjacent property as provided in Chapter 17.32 of this title.
  3. Deposit of Wastes.
    - a. No materials or wastes shall be deposited on any premises in such form or manner that they may be transferred off of such premises by natural causes or forces. All materials or wastes which might cause fumes or dust or which constitute a fire hazard or which may be edible by or otherwise be attractive to rodents, insects or animals shall be stored outdoors only in closed containers within a garbage collection area.
    - b. All dwellings containing three or more dwelling units shall provide closed containers for the storage of refuse and recyclable materials. The capacity of such containers shall be consistent with anticipated accumulation and removal rates. Storage areas shall be designed to protect against the spread of litter, infestations of vermin, persistent odors, saturation by precipitation or flooding and the theft of valuable materials. Storage areas shall be situated so as to provide unobstructed access. Appropriate directional signage and labeling shall be provided and containers for recyclable materials shall be clearly distinguished from refuse storage containers.
  4. Outdoor Storage for Wholesale, Warehouse, and Storage Uses in the MRC-1 Zone.
    - a. Incidental storage of materials (i.e. trash and recyclables removal) and short-term storage of equipment related to the permitted use out of doors shall be shielded from any adjacent public streets or residential areas by fencing, landscaping, or other appropriate measures up to ten (10) feet in height and shall not be within the existing or required yard areas facing the street or streets.
    - b.

For warehouse uses, the outdoor storage of materials which are used as part of the everyday business operations or manufactured or processed as part of the business operation shall be permitted up to an area equal to ten (10) percent of the gross floor area of the building it is serving, and located within a paved portion of the site, subject to the screening requirements set forth in subsection 4.a above.

- c. For all other uses, the outdoor storage of materials which are used as part of the everyday business operations or manufactured or processed as part of the business operation shall be prohibited. All other materials shall be stored within the building.
  - d. The outdoor storage of any vehicles in disrepair and/or without current registration shall be prohibited for all uses within the zone.
- D. Hotels, Motels, Motor Court and Motor Hotel Units. Such uses shall be governed by the following provisions:
1. Each rentable unit shall have a minimum floor area of one hundred fifty (150) square feet, exclusive of bathroom facilities.
  2. Each rentable unit shall have a minimum of one bedroom and a bathroom with shower and toilet.
- E. Enclosure of open porches existing prior to 1950 may be allowed as follows:
1. In any required side yard.
  2. In any required front yard in locations specified as part of the city master plan where such development meets one of the following conditions:
    - a. Where off-street parking spaces are provided in accordance with Section 17.40.040.
    - b. Where required off-street parking spaces are not provided and the building setback, exclusive of projections, is less than nineteen (19) feet.
    - c. Where required off-street parking spaces are not provided and the setback of the enclosed porch would be nineteen (19) feet or greater.
- F. Use and occupancy of any structure containing three or more dwelling units is subject to and conditioned upon an equitable distribution of accessory parking spaces, among tenants occupying the structure. Where a ratio of one parking space to each dwelling unit is equaled or exceeded, use and occupancy is further conditioned upon the tenants of each dwelling unit having included in their leasehold sufficient parking for at least one automobile. Parking spaces required for a residential structure shall not be leased to any party other than a resident of the structure.
- G. Eating and Drinking Establishments. Such uses shall be governed by the following provisions:
1. Standard table/counter service restaurants, which include the serving of foods by an employee at the table or counter at which they are to be consumed, shall be permitted in all commercial districts, provided that no such restaurant containing more than twenty (20) seats

shall be allowed in the C-1 district.

2. Self-service restaurants, which include the serving of foods at a window or counter where a seating area for consumption is provided, shall be permitted as follows:
    - a. In all C-4 zones.
    - b. In all C-3 zones provided that not less than forty (40) seats are provided.
    - c. In all C-2 zones provided that not less than twenty (20) seats are provided.
  3. Walkup window service restaurants, which include the serving of foods at a window or counter where no seating area for consumption is provided, shall be permitted in the C-4 district only.
  4. Curbside/carhop service, which includes the serving of foods to consumers in automobiles which drive up to a serving area, shall be permitted in the C-4 district only.
  5. Driveup window service, which includes the serving of foods to consumers in automobiles where no drive up serving area is used shall be permitted in the C-4 district only, provided that sufficient vehicular staging for a ten (10) minute wait is provided where adequate seating is available and adequate staging for a twenty (20) minute wait otherwise and further provided that no parking area shall be provided downstream of the service window.
  6. All restaurants which serve food in disposable containers shall be subject to the following refuse preventative measures:
    - a. Fencing of all outdoor areas other than front yards.
    - b. Provision for waste cleanup on site and in all public areas within a radius of eighty (80) feet.
    - c. Provision of waste receptacles at all public walkup windows, parking areas and outdoor eating areas.
  7. Exit driveways for walkup window, driveup window, curbside/carhop or self-service restaurants which are situated on the approach side of an intersection shall be located at least forty (40) feet from such intersection.
- H. Mandatory Recycling Program. Compliance with the foregoing, and in particular Sections 8.36.010 through 8.36.070 of this code shall be required in all applications for site plan approval by all applicants required to file site plans.
- I. Utility Screening. Utility meters mounted to the outside of any non-residential building shall conform with the following standards:
  - a. Utility meters shall not be located on the façade of a building facing any public right-of-way.
  - b. Utility meters located on the façade of a building shall be screened from view by any or any combination of the following:
    - i.

Building mounted screening shall utilize materials and/or colors that are similar to the building façade.

ii. Landscaping may be used as screening where possible.

c. All new construction shall provide appropriate sized alcoves designed to house any outdoor meters that are building mounted.

(Ord. No. 5743, § 3, 12-13-2022; Ord. No. 5499, §§ 10, 11, 11-23-2021; Ord. No. 4373, § 2, 5-14-2013; prior code § 40-118)

17.36.040 - Buffers.

A. Parking Buffers.

1. Between any garage entry or any driveway gate and any street line, a buffer sufficient to accommodate vehicles for which the garage or driveway is designed shall be required.
2. Between a dwelling window located at or below grade and any parking stall, a six-foot buffer shall be required.

B. Residential Property or Zone Lines. Buffers shall be required between any structure and a residential property or zone line as follows:

Principal Use	Buffer Dimension (feet)
R,V,W,X and Y	10
Z	20
AA and BB	50

C. Uses in Buffer Areas. No use shall be established in a buffer area except the following:

1. Driveways necessary to provide proper means of ingress and egress.
2. Directional signs in conjunction with driveways which are necessary for the proper guidance and control of vehicular traffic.
3. Landscape screening or fencing.
4. Accessory uses permitted within the adjacent zone.

(Prior code § 40-120)

17.36.050 - Bedroom density.

For each residential structure on an individual zone lot, bedroom density shall not exceed the maximum density permitted in the district in which such structure is located, as specified in Schedule IB.

(Prior code § 40-121)

#### 17.36.060 - Performance standards.

- A. General application. Permitted and conditional uses enumerated in any C or M district, and uses accessory thereto, shall be subject to the following performance standards and procedures.
- B. Procedures Enforcement.
  - 1. Prior to Construction and Operation. Any application for a building permit for a use which shall be subject to performance standards shall be accompanied by a sworn statement filed by the owner of subject property or the operator of the proposed use that said use will be operated in accordance with the performance standards set forth herein.
  - 2. Continued Compliance. Continued compliance with performance standards is required and shall be enforced by the building inspector.
  - 3. Termination of Violation. All violations shall be terminated within thirty (30) days or shall be deemed a separate violation for each day following, and violators shall be subject to fines as set forth herein.
- C. Regulation of Nuisance Elements.
  - 1. Definition of Nuisance Elements. A nuisance element is any noise, radioactivity, vibration, glare, smoke, odor, air pollution or dust which exceeds the performance standards established under this section.
  - 2. Locations where determinations are to be made for enforcement of performance standards. The determination of the existence of nuisance elements shall be made at:
    - a. Any residential property line, for noise, vibration, glare and dust.
    - b. Anywhere within the city, for elements involving radioactivity, smoke and other forms of air pollution.
    - c. The zone district boundary line, for odor.
- D. Radioactivity. No activities shall be permitted which cause radioactivity in violation of Title 10, Chapter I, Part 20, Code of Federal Regulations, Standards for Protection Against Radiation, dated June 16, 1957, or any subsequent revision or amendment thereto.
- E. Noise.
  - 1. At the points of measurement specified in subsection (C)(2), the maximum sound-pressure level radiated in each standard octave band by any use or facility, other than transportation facilities or temporary construction work, shall not exceed the values for octave bands lying

within the several frequency limits given in Table I, II and III. The sound pressure level shall be measured with a sound level meter meeting ANSI (American National Standards Institute) S1.4 or the latest revision thereof.

- 2. Sound level is the measured level of a sound expressed in dB (decibels) re 0.0002 microbar, obtained using a sound level meter. Sound levels include all factors inherent in measuring with a sound level meter including microphone frequency response, amplifier characteristics, meter damping, observer effects and weighting networks.
- 3. The sound pressure level, in dB (decibels), of sound is twenty (20) times the logarithm to the base ten (10) of the ratio of the pressure of the sound to the reference sound pressure. Sound pressure level is measured with a sound level meter meeting ANSI (American National Standards Institute) S1.4 or the latest revision thereof.
- 4. No person shall cause, suffer, allow or permit sound from any industrial or commercial operation which, when measured at any residential property line, is in excess of any of the following:
  - a. From 7:00 a.m. to 10:00 p.m.
    - i. Continuous airborne sound which has a sound level in excess of sixty-five (65) dBA.
    - ii. Continuous airborne sound which has an octave band sound pressure level in decibels which exceeds the values listed below in one or more octave bands:

**Table I**

Octave Band Center Frequency (Hz)	Octave Band Sound Pressure Level (dB)
31.5	96
63	82
125	74
250	67
500	63
1,000	60
2,000	57



4,000	55
8,000	53

- iii. Impulsive sound in air which has an impulsive sound level in excess of eighty (80) decibels.
- b. From 10:00 p.m. to 7:00 a.m.
  - i. Continuous airborne sound which has a sound level in excess of fifty (50) dBA.
  - ii. Continuous airborne sound which has an octave band sound pressure level in decibels which exceeds the values listed below in one or more octave bands:

**Table II**

Octave Band Center Frequency (Hz)	Octave Band Sound Pressure Level (dB)
31.5	86
63	71
125	61
250	53
500	48
1,000	45
2,000	42
4,000	40
8,000	38

iii.

Impulsive sound in air which has an impulsive sound level in excess of eighty (80) decibels.

- c. No person shall cause, suffer, allow or permit sound from any industrial or commercial operation which, when measured at the property line of any other commercial operation, is in excess of any of the following:
  - i. Continuous airborne sound which has a sound level in excess of sixty-five (65) dBA.
  - ii. Continuous airborne sound which has an octave band sound pressure level in decibels which exceeds the values listed below in one or more octave bands:

**Table III**

Octave Band Center Frequency (Hz)	Octave Band Sound Pressure Level (dB)
31.5	96
63	82
125	74
250	67
500	63
1,000	60
2,000	57
4,000	55
8,000	53

iii. Impulsive sound in air which has an impulsive sound level in excess of eighty (80) decibels.

5. Enforcement of subsections C and E shall be by the department of health, welfare and housing.

F.

Vibration. No vibration which is detectable without instruments at the points of measurement specified in subsection (C)(2) shall be permitted.

- G. Glare. No direct or sky-reflected glare, whether from flood lights or from high-temperature processes such as combustion or welding, shall be visible at the points of measurement specified in subsection (C)(2).
- H. Smoke. No emission of visible gray smoke of a shade equal to or darker than No. 2 on the Power's Micro-Ringelmann Chart, published by McGraw-Hill Publishing Company, Inc., copyright 1954 (being a direct facsimile reproduction of a standard Ringelmann Chart as issued by the United States Bureau of Mines), shall be permitted. Visible gray smoke of a shade equal to No. 3 on the chart may be emitted for not more than three minutes in any fifteen (15) consecutive minutes when a firebox is cleaned or when a new fire is built.
- I. Odors. No emission of odorous gases or other odorous matter in such quantity as to be readily detectable without instruments shall be permitted.
- J. Dust. Solid or liquid particles shall not be emitted in concentrations exceeding three-tenths grain per cubic foot of the conveying gas or air.
- K. Fly Ash.
  1. No emission of any fly ash shall be permitted to be discharged from any stack or chimney into the open air in excess of the quantity set forth in the following table.

**Fly Ash**

Heat in Fuel Burned (British thermal units per hour)	Rate of Emission (pounds per hour)
1,000,000	1
100,000,000	100
400,000,000	330
1,000,000,000	750
2,000,000,000	1,365
3,000,000,000	1,850

4,000,000,000	2,260
5,000,000,000	2,640
6,000,000,000	2,950
7,000,000,000	3,200
8,000,000,000	3,410
10,000,000,000	3,750

2. For heat content between any two consecutive heat contents, the fly ash limitation shall be as determined by interpolation.

(Prior code § 40-122)

17.36.070 - Conditional uses.

Conditional uses shall be permitted under the same restrictions as permitted principal uses, provided that the required conditions specified in Schedule III are met.

(Prior code § 40-123)

17.36.080 - Prohibited uses.

Specifically prohibited from any zone district in the city is the manufacture of explosives and the permanent and/or continual use of any lands upon which there shall be conducted or maintained any business, operation or process for the cleaning, maintenance, repair, renovating, painting, servicing, storing or emptying used portable toilets or other tanks or containers used in connection therewith containing human waste, including the emptying of the contents thereof into any container, waste line or sewer line, including the waste or sewer lines or pipes contained within the city sewerage system, and aircraft landing facilities except as otherwise provided in this title.

(Prior code § 40-124)

17.36.090 - Nonconformance.

Nonconforming uses shall be regulated as follows:

A.

Continuation of Use. A use, building or structure lawfully in existence at the effective date of any ordinance codified in this chapter, which shall be made nonconforming at the passage of this chapter, or any applicable amendment thereto, may be continued, except as otherwise provided in this chapter. Any person with an interest in any land upon which a nonconforming use or structure exists may apply in writing to the zoning administrative officer for "certificate of non-conformity" stating that the use or structure preexisted the adoption of any ordinance which rendered the use or structure nonconforming. The applicant shall bear the burden of proof. Application pursuant to this provision can be made to the city zoning officer within one year of the adoption of an ordinance which rendered the use or structure nonconforming. After one year all request for a certificate of non-conformity must be made to the city zoning board.

- B. Regulation of Nonconforming Uses. No existing building or premises devoted to a nonconforming use shall be enlarged, extended, reconstructed, substituted or structurally altered, except when changed to a conforming use or when required to do so by law and as follows:
1. Restoration. Any nonconforming structure damaged to an extent of less than fifty (50) percent of its previous existing floor area may be restored, reconstructed or used as before, provided that the floor area of such use, building or structure shall not exceed the floor area which existed prior to such damage. All repairs shall be completed within one year after damages occur, or such use shall not be rebuilt, except as a conforming use.
  2. Repairs. Normal maintenance repair and incidental alteration of a structure containing a nonconforming use is permitted, provided that it does not extend the area or volume of space occupied by the nonconforming use.
  3. Alterations. A building or other structure containing residential nonconforming uses may be altered in any way to improve interior livability. No structural alterations shall be made which would increase the number of dwelling units or bedrooms.
- C. Termination of Nonconforming Uses. A nonconforming use not used for a reasonable period of time, accompanied by an intent on the part of the owner to abandon such use as evidenced by some overt act or some failure to act which carries with it a sufficient implication that the owner neither claims nor retains any interest in the subject matter of the abandonment, shall be considered an abandonment thereof and such nonconforming use shall not thereafter be revived, except as a conforming use. Any nonconforming use changed to a conforming use, or a use allowed in a more restricted district and used as such for any period of time, shall not be used as a nonconforming use thereafter.
- D. Preexisting Nonconforming Lots. On any nonconforming lot, a detached one- or two-family dwelling which is not in conformance with the requirements of this chapter may be erected, provided that:

1. No vacant lot is adjacent.
  2. No adjacent lot has an adjacent side yard exceeding fifteen (15) feet in width exclusive of driveway.
  3. The required front and rear yards are provided.
  4. Side yards of not less than three feet are provided.
  5. Required off-street parking spaces are provided.
  6. The building conforms to the height limitations.
  7. The use is permitted in the district.
- E. Where an existing building is not in conformance with the requirements of this chapter, the nonconforming portion of the structure may remain and further development may be permitted on the site, provided that the proposed development is in conformance with the restrictions and use requirements of this title.

(Ord. No. 4373, § 3, 5-14-2013; prior code § 40-125)

#### 17.36.098 - Residential buildings—Elevator requirements.

- A. Pedestrian/Loading Elevators. All residential buildings with ten (10) or more units and are three (3) or more stories in height located within the City of Elizabeth must construct an elevator large enough to house pedestrians and their furniture. This elevator must be electric or hydraulic and meet all applicable building codes.

(Ord. No. 4920, § 1, 10-10-2017)

#### 17.36.099 - Calculation of prevailing conditions.

- A. To establish prevailing lot widths, frontages, front yard setbacks and rear yard setbacks, the applicant must perform the following:
1. Utilize all existing lots, including the property in question, as per the city tax maps. Proposed lots to be created by the application are not to be included.
  2. Include only lots located within the same zone, within the same (entire) block and on both sides of the street as the subject parcel.
  3. The prevailing percentile shall be ninety-five (95) percent. This is to say that the prevailing lot dimension shall be the lot which constitutes ninety-five (95) percent of the neighborhood. Example, if there are twenty-five (25) lots that meet the criteria of subsections 17.36.099.A. and 17.36.099.B. and you create a table listing the lots minimum to maximum dimensions, the 24th lot going from low to high is the prevailing lot dimension to utilize.

(Ord. No. 5366, § 3, 12-8-2020; Ord. No. 4920, § 5, 10-10-2017)

17.36.100 - Lot dimensions.

- A. The following parcel and yard dimensions shall apply to all residential projects except one- and two-family homes in all permitted zones within the City of Elizabeth.
  - 1. Lot width prevailing, but at no time less than sixty (60) feet.
  - 2. Lot frontage prevailing, but at no time less than sixty (60) feet.
  - 3. Lot depth prevailing, but at no time less than one hundred (100) feet.
  - 4. Front Yard Setback Prevailing. If no prevailing exists within the block, then the front yard setback shall be thirty (35) feet.
  - 5. Side Yard Setback. Minimum of thirty-three (33) percent of building height, but at no time less than ten (10) feet. All structures which abut each other must be at least fifteen (15) feet apart, including off-site structures.
  - 6. Rear Yard Setback. Thirty-five (35) percent of the lot depth but not less than thirty-five (35) feet. Measured form the rear lot line to the most outward rear building projection. Excluding projections permitted under subsection B.
  - 7. Requirements specific to corner lots (corner lots shall be considered to have two (2) front yards, one rear yard and one side yard):
    - a. Front Yard Setback. Prevailing on both lot frontages.
    - b. Interior side yard same as subsection 17.36.110 C.2.
    - c. Rear yard setback same as subsection 17.36.110 C.3.
- B. Requirements Specific to Corner Lots.
  - 1. Minimum Lot Width. One and one-half (1.5) times the prevailing, measured at the front yard setback from the shortest street line.
  - 2. Minimum Lot Frontage. One and one-half (1.5) times the prevailing, measured along the shortest street line.
  - 3. Lot Depth. One hundred (100) feet minimum, measured perpendicular to the lot frontage.
- C. Lot width and frontage for one- and two-family residential lots in all permitted zones within the city shall be based on the following table:

**Table No. 1—R-1**

Zone	Ward	Standard (A)	95% Prevailing (B)
R-1	#1	33 feet	30 feet
R-1	#2	50 feet	25 feet

R-1	#3	50 feet	35 feet
R-1	#4	50 feet	33 feet
R-1	#5	33 feet	30 feet
R-1	#6	33 feet	25 feet

Table No. 1—R-2

Zone	Ward	Standard (A)	95% Prevailing (B)
R-2	#1	33 feet	30 feet
R-2	#2	50 feet	33 feet
R-2	#3	50 feet	35 feet
R-2	#4	50 feet	33 feet
R-2	#5	33 feet	30 feet
R-2	#6	33 feet	25 feet

## Conditions of Table #1:

1. Column (A) is the standard minimum required lot width and frontage where a prevailing does not exist.
2. To meet the prevailing lot width requirement in Column (B), ninety-five (95) percent of all existing lot widths must be less than or equal to the listed lot dimension.
3. Standard lot width shall be utilized when no prevailing lot width can be established."
4. To establish prevailing lot widths and lot frontages, a table is required to be submitted with each application for each development or variance application, depicting the following criteria:
  - a.



All existing lots, including the property in question, as per the city tax maps. Proposed lots to be created by the application are not to be included.

- b. Include only lots located within the same zone, within the same (entire) block and on both sides of the street as the subject parcel.
- c. An existing lot or proposed lot that falls within the range between columns (A) and (B) of the table may be considered to be prevailing if ninety-five (95) percent of existing lots fall within that range. In no case shall a lot be considered to be prevailing if its width or frontage is less than that indicated in Column (B) of Table No. 1.

D. The following requirements for lot dimensions shall apply to all non-residential properties in zones in which the use is permitted within the city.

1. Lot Area. Minimum five thousand (5,000) square feet.
2. Lot Width. Minimum fifty (50) feet.
3. Lot Depth. Minimum one hundred (100) feet.

(Ord. No. 5366, §§ 1, 2, 12-8-2020; Ord. No. 4920, §§ 2—4, 10-10-2017; Ord. No. 4373, § 4, 5-14-2013; prior code § 40-126)

#### 17.36.110 - Yard dimensions.

All buildings and structures shall provide open areas which conform with the limitations set forth hereinafter:

- A. The following requirements for yard dimensions shall apply to all one- and two-family residential dwellings in all zones permitted within the city.
  1. Front Yard Setback. Twenty (20) feet minimum, measured from the street line to the most outward front building projection, excluding projections permitted under Paragraph B. The front yard can be less if it meets the prevailing setback based on sixty-five (65) percent of the existing properties.
  2. Side Yard Setback. Minimum twelve (12) percent of required lot width but not less than three (3'-1") feet. All structures which abut each other must be at least five (5) feet apart, including off-site structures (fireman's rule).
  3. Rear Yard Setback. Twenty-five (25) percent of the lot depth but not less than twenty-five (25) feet, measured from the rear lot line to the most outward rear building projection, excluding projections permitted under Paragraph B.
  4. Requirements specific to corner lots (corner lots shall be considered to have two (2) front yards, one rear yard and one side yard):
    - a.

Front Yard Setback. Twenty (20) feet minimum measured from the shortest street line to the most outward rear building projection, excluding projections permitted under Paragraph B.

- b. Interior Side Yard Setback. Minimum twelve (12) percent of required lot width but not less than three (3'-1") feet.
  - c. Corner Side Yard Setback. Fifteen (15) feet minimum or eighteen (18) feet minimum for corner side yards containing a driveway.
  - d. Rear Yard. Twenty-five (25) percent of the lot depth but not less than twenty-five (25) feet, measured from the rear lot line to the most outward rear building projection, excluding projections permitted under Paragraph B.
5. The following requirements of yard dimensions shall apply to all non-residential properties in all zones within the city, except if that particular zone has its own separate standards.
- a. Minimum Front Yard Setback. Prevailing. If no prevailing exists within the block than the front yard setback shall be twenty (20) feet.
  - b. Minimum Side Yard Setback. Ten (10) percent of lot width with a not to exceed distance of twenty (20) feet.
  - c. Minimum rear yard setback is twenty-five (25) feet. The minimum shall be thirty-five (35) feet when property is adjacent to a residential zone, noncommercial use or a non-industrial use.
  - d. To establish prevailing setbacks for all yard dimensions, a table shall be provided depicting the following: Include all existing lots, excluding newly created lots, as per the current City of Elizabeth Tax Maps on file in the city engineer's office; only include lots within the same zone as the subject parcel; and include all lots shall be within the existing block only, and on both sides of the street as the subject parcel.
- B. Building projections into required yards shall be permitted as follows:
1. Cornices, eaves, canopies, awnings and fireplaces may project into any yard for a distance not to exceed six feet, provided that they are no closer than two feet to any property line.
  2. Open porches, stairwells and balconies may project into any yard for a distance not to exceed eight feet, provided that they are no closer than three feet to any property line.
  3. Fire escapes may be located in any side or rear yard and may project into such yards a distance not to exceed three feet. Provided that they are no closer than two feet to the property line.
  4. Projections into yards shall be permitted to accommodate the needs of individuals with disabilities which do not conform provided that a deed restriction is recorded preventing the transfer of title until such altered structures are restored or made to conform.

Projections shall be limited to open structures located where possible outside the front yard and may vary from requirements only to the minimum degree necessary to afford access. Proof of handicap must be supplied to the City of Elizabeth Construction Department.

C. Accessory structures may be erected in accordance with the following restrictions:

1. Accessory Buildings.

- a. Residential accessory buildings or other accessory buildings situated in a residential district shall be permitted in any side or rear yard. Up to three one-story accessory buildings shall be permitted provided total accessory building coverage is not more than thirty-three (33) percent of the principal building coverage. Not more than one accessory building shall exceed one hundred (100) square feet or a height of more than eight feet. No accessory building shall exceed ten (10) feet in height allowing for a pitched roof projecting above that height. All accessory buildings shall be set back not less than two feet to a rear lot line and not less than three feet to a side lot line. Accessory buildings may be attached to a principal building.
- b. Commercial and industrial accessory buildings shall be permitted in any yard provided they are limited to one story and fifteen (15) feet in height. In a front yard such buildings shall be set back not less than three-quarters of the height of the building wall from any property line.

2. Accessory patios and decks may be located in any side or rear yard, and shall be limited so that the floor of such structures rises no higher than the ground floor elevation, extends no more than eighteen (18) feet from a building and is no closer than three feet to any lot line. At least two sides shall remain open and any cover shall be limited to a vertical height of ten (10) feet at any point.
3. Accessory parking and loading areas, including driveways, may be located in any yard area, provided that no such area may be located within three feet of any lot line except as necessary to provide street access. Parking may be situated directly in front of a dwelling only in a driveway leading to a garage and circular driveways are prohibited unless leading to a garage.
4. Accessory facilities including swimming pools may be located in any side or rear yard provided they are set back from any lot line a distance not less than twice the prevailing side yard setback. Motorized elements shall be set back three times the required setback.
5. Accessory patios, decks, parking areas, loading areas, fences and walls may be erected in any yard as follows:
  - a. Accessory patios, decks, and parking may be located in any side yard or rear yard, provided that no such structure may be located closer than three (3) feet to any lot line.

- b. Accessory parking and loading areas, including driveways, may be located in any yard area, provided that no such area shall be located within three (3) feet of any lot line.
  - c. In industrial districts, fences or walls may not exceed twelve (12) feet in height.
  - d. In commercial districts, fences or walls may not exceed eight (8) feet in height. In front yards, fences or walls shall be of a decorative material or obscured by plant material with visually solid portions limited to a height of three (3) feet.
  - e. For residential uses in any district, fences or walls may not exceed six (6) feet in height in any side or rear yard. In front yards, fences or walls shall be of a decorative material or obscured by plant material and may not exceed three (3) feet in height. Where a lot has more than one frontage, a height of six (6) feet may project into one front yard, provided that the projection consists of only two (2) angled segments such that the fence extends in a straight line from one point on the front yard setback line to a second point within the front yard and returns to a third point on the setback line. Barbed wire or razor wire may not be used as part of a fence or wall, or as fencing material in any residential zone.
  - f. No barbed or razor wire fences shall be permitted anywhere within the city boundaries.
6. Walks, standards for signs or lighting and other similar accessory structures may be erected in any yard.
- D. Open space shall be provided as follows:
1. Open space shall be provided for all projects containing three (3) or more dwelling units. Mixed use projects shall provide open space for the residential component.
  2. Open space for all residential units except one- and two-family dwellings shall be two hundred (200) square feet per unit. The open space shall have a cap of four thousand (4,000) square feet for buildings over four (4) stories.
  3. Open space shall be limited to the following:
    - a. Exterior yards, courts and recreational areas, not devoted to auto usage with a minimum dimension of twenty (20) feet in width and minimum area of five hundred (500) square feet.
    - b. Common areas including balconies and porches with a minimum depth of twenty (20) feet.
    - c. Interior multi-family communal spaces, exclusive of passageways, with a minimum dimension of ten (10) feet.
  4. A minimum of seventy-five (75) percent of the total required open space is required to be exterior lawn and/or court yard areas suitable for recreational use.

E. Private Swimming Pools.

1. A private swimming pool shall be permitted on any lot that contains a dwelling structure.
2. A private swimming pool and appurtenances may be located in a side or rear yard with a setback of not less than four (4) feet, measured from the nearest vertical wall of the pool.
3. A private swimming pool shall not be located closer than eight (8) feet to a dwelling structure and four (4) to an accessory building.
4. The yard in which a pool is located shall be provided with a six-foot high fence, meeting the requirements of the International Building Code.
5. All private swimming pools shall be equipped with the necessary equipment for disinfection and filtering.
6. There shall be no physical connection between a potable water supply and any private swimming pool.
7. No private swimming pool shall be constructed until such time that all required permits have been obtained from the construction department.

F. Impervious Lot Coverage. Impervious surface is defined as a surface that is resistant to infiltration by water, including but not limited to roofs, pavement and sidewalks.

1. The following are limits to the amount of impervious surface permitted:

<b>Residential Lots</b>	2500 to 3500 sq. ft	77% max
	3501 to 4500 sq. ft.	65% max
	4501 and beyond	60% max

2. All non-residential lots shall have a max impervious coverage of seventy-five (75) percent, unless otherwise specified by individual zone requirements
3. All non-residential lots in the MRC-1 and MRC-2 zones shall have a max impervious coverage of eighty (80) percent.

G. Building Coverage.

1. Principal Buildings and Structures. All non-residential lots shall have a minimum floor area ration (FAR) of eleven (11) percent. There is no FAR for residential zones within the city.
2. Accessory buildings and structures cannot exceed ten (10) percent of the principal building square footage.

(Ord. No. 5499, § 13, 11-23-2021; Ord. No. 4920, §§ 6—8, 10-10-2017; Ord. No. 4646, § 1, 11-24-2015; Ord. No. 4373, § 5, 5-14-2013; Ord. 3906 § 1, 2007; prior code § 40-127)

17.36.120 - Principal building regulations.

- A. Height limitations shall be maintained as follows at any time a building or other structure is constructed or altered. A basement which rises not more than four (4) feet above grade shall not count as a story. No occupancy of a basement or one-half (½) a story shall be permitted in the city for residential purposes in any zone.
1. In the R-1 residential district, buildings shall be limited to three stories. No occupancy for any purposes (office, storage, residential uses, etc.) shall be permitted above the third story. Building height shall be prevailing or if a prevailing does not exist thirty-eight (38) feet. Building height shall be measured by using the average of the existing grades where the future building will be placed (all four (4) corners and ten (10) feet within that area) and the "roof top" of the structure (peak).
  2. In all residential districts except R-4, all commercial districts except C-3 and C-4, building height shall be the same as the R-1 requirements.
  3. In the R-4 and C-3 districts, building height shall be limited to sixteen (16) stories and one hundred sixty (160) feet. Residential buildings with four or fewer units to be same as R-1 requirements.
  4. In the C-4 and Manufacturing districts, building and other structure height shall be limited to five stories and sixty (60) feet.
- B. No structures may project above the roof eaves or cornice line except as follows:
1. Decorative elements such as chimneys, church spires, belfries, cupolas, domes and monuments may project fifty (50) percent higher than otherwise limited.
  2. Utilitarian appurtenances such as vents and utilities may project not more than two feet unless they are enclosed within parapet walls.
  3. Freestanding poles or masts for flags, whip antenna, or light fixtures may extend to one and one-half times the height permitted for buildings.
  4. Parapet walls may project not more than four feet plus one-half the setback from the roof edge to a maximum of twelve (12) feet above the roof of the building.
  5. Dormers or penthouses may project as necessary to provide clearance for stairways or equipment in vertical shafts.

(Ord. No. 4920, § 9, 10-10-2017; prior code § 40-128)

17.36.125 - Minimum square footage for commercial space.

- A. The minimum square footage for any commercial space located in the general and specialty retail zones shall be five hundred (500) square feet.
- B. Each store front shall have a minimum of twenty (20) feet frontage on a public street.
- C. The establishment of any alcove stores not meeting the minimum square footage established in this section is prohibited.
- D. Penalty. A person or entity that shall violate any provision of this section or any other order promulgated hereunder shall, after summons are issued, be required to appear in municipal court and be subject to a fine up to one thousand dollars (\$1,000.00). Each violation of any of the provision of this section shall be deemed to be a separate and distinct offense. A separate offense is deemed committed on each date during on or which a violation occurs or is continuous.

(Ord. No. 4373, § 6, 5-14-2013)

#### 17.36.130 - Visibility at intersections.

At all street intersections, no obstruction to vision between a plane three feet above the established grade of the street at the property line and a plane ten (10) feet above said grade shall be erected on any lot within a triangle bounded by the street center lines and a line connecting points on each center line one hundred ten (110) feet from the intersection of such lines.

(Prior code § 40-129)

#### 17.36.140 - Landscaping.

- A. Screening and Landscaping. Outdoor storage or work areas other than an automobile service station shall be enclosed by a solid and continuous wall, fence or landscaping sufficient to screen such activity from view.
- B. Service areas, transformer compounds, external heating and cooling equipment and other strictly utilitarian improvements shall be screened as fully as practicable.
- C. Parking areas with six or more spaces shall be:
  - 1. Screened from adjacent residential open space and dwelling areas by a solid and continuous wall, fence or landscaping of not less than six feet in height.
  - 2. Screened from public streets by a wall, fence or landscaping sufficient to effectively reduce headlight glare.
- D. Adjacent parking areas with ten (10) or more parking spaces shall be delineated by an appropriately landscaped strip. This requirement shall not be applicable to areas with delineated truck parking stalls or loading docks.

- E. Landscaped areas shall be provided on each tract and planted with trees, shrubs and groundcovers or may include pedestrian structures such as plazas, malls, pedestrian walkways, sitting areas, patios, pools, fountains and incidental furnishings. Such areas when enclosed shall be regarded as complying only when their minimum dimension exceeds fourteen (14) feet.
1. Street areas outside of roadway and driveway areas shall be landscaped in their entirety.
  2. Front yards outside of parking and driveway areas shall be landscaped in their entirety.
  3. Buffer areas shall be landscaped in their entirety.
  4. Parking areas shall be accompanied by landscape areas amounting to twenty (20) percent of the paved parking and driveway area.
  5. Outdoor work and storage areas need not be landscaped.
  6. All remaining areas not occupied by buildings shall be suitably landscaped.

(Ord. No. 5499, § 14, 11-23-2021; prior code § 40-135)

17.36.145 - Design standards for facades within all commercial zones.

- A. Facades. These design standards for facades, security gates, and exterior lighting shall be applicable to zones C-1, C-2, C-3, C-4, and C-5.
1. Design Standards.
    - a. The facades of newly-constructed buildings, or renovations of existing facades shall maintain the architectural harmony of the zone.
    - b. New Construction or Renovation. New buildings and facade renovations shall be designed so that their appearance reflects the historic development patterns of the existing mixed-use buildings within the commercial districts. All new construction and/or exterior improvements to mixed use buildings shall be designed so as to be harmonious with the existing neighboring buildings in terms of material, height, scale, facade proportions, window patterns, color, decorative features and architectural styles. Styles of other periods may be permitted provided that they are determined to be harmonious with the existing architectural style of the zone.
    - c. Matching of Cornice Lines. At the top of the base, and as recommended where neighboring buildings provide cornices or belt lines, a visual cue or indicator such as cornice, belt coursing, a change in glass-to-solid ratio, or any other indicator consistent with the design, proportions, and materials of the base shall be provided.
    - d. Facade Renovation. The applicant should:
      - (1) Retain and maintain all building cornices, features and details; and not remove a building cornice without providing a compatible new cornice of similar scale and detailing.



- (2) Maintain the rhythm, size and shape of upper floors, windows and associated trim and moldings.
  - (3) Reopen previously in-filled windows, and not fill or alter window openings.
  - (4) Not enclose or remove elements, such as transom windows, or display windows.
  - (5) Not locate air conditioners in street elevation windows or create new openings for thru-wall air conditioners that are visible from the street.
- e. Incongruous Features. Incongruous features including but not limited to air conditioners, radio or telephone antenna, wireless telecommunications apparatus, ductwork, loose wiring, or other fixtures not otherwise identified herein as permitted facade features, are not permitted in any facade treatment or other area visible from the street.
- f. Grandfathering. Any change to the exterior structure shall void the legality of any "grandfathered" non-conforming feature, whether that feature be a sign, a security gate, an awning, a door or window, or other feature regulated by these standards, and the new building owner or commercial tenant must correct non-conforming features to adhere to these standards, or be subject to enforcement and penalty.
- g. Rooftop Fixtures. Heating, ventilation and air conditioning ("HVAC") fixtures, mechanical units, elevator shafts, skylights, wireless telecommunications apparatus and equipment cabinets, solar panels, and other fixtures on rooftops shall not be visible to pedestrians on the street. They must be setback far enough to be out of view of a pedestrian on the opposite block below, or screened by appropriate, architecturally harmonious screening.
- h. Ductwork. Restaurant ventilation ductwork shall not be visible to pedestrians on the street; where possible it should be installed within the wall, or to the rear or side of the building in a position that is out of the public view, or screened from view.
- i. Preservation of Architectural Features. No fixture of any type should be affixed to any building in a way that damages, or obscures architectural design features of the building. In any building renovation, traditional design features of the commercial building should be preserved. Traditional features include the kick plate (the area below the display window), display windows, clerestory windows (above the display window), transoms (window above the entry door), the sign band, angled entry doors on building corners, recessed central entry doors, building belt lines, lintels, cornices, and parapets.
- j. Building Materials. Acceptable building materials for renovation or redevelopment include, but are not limited to:
- (1) Brick and stone masonry, or stucco cast concrete to simulate these.
  - (2) Wood or simulated wood details, such as window frames or shutters.
  - (3) Finished painted metal and sheet metal, such as alpolc panels.

- (4) Clear or lightly tinted glass.
  - (5) Stone or ceramic tile.
  - (6) Concrete or stone lintels.
  - (7) Wood, simulated wood, concrete, or stone columns.
  - (8) Stucco shall only be permitted above first floors.
- k. Unacceptable Building Materials. Unacceptable building materials include, but are not limited to:
- (1) Rustic materials, such as wood shakes, shingles, barn board, Texture 111 siding or other plywood siding, or rustic finishing techniques.
  - (2) Vinyl or aluminum siding.
  - (3) Glass block.
  - (4) Indoor-outdoor carpeting or astro-turf.
  - (5) Corrugated metal or fiberglass.
  - (6) Drive-it or similar materials.
- l. Maintenance. Building facades, signage, windows, and all display elements visible to the public must be maintained in good structural and visual condition. Fading, frayed, disconnected, unseasonal, untimely, or otherwise neglected elements are not permitted to be on display in the district.
- m. Blank Walls. Blank walls facing the commercial corridor.
- (1) Display windows are recommended at grade.
  - (2) Where display windows cannot occur, decorative architectural treatments, plantings, murals, or other visual element in keeping with the architectural style of the area or shopping district are required to eliminate blank walls with no visual interest.

## 2. Color Management. Reserved.

### B. Windows and Doors.

#### 1. Definitions. As used in this section, the following terms shall have the meanings indicated:

"Person" means any individual, partnership, firm or corporation.

"Public view" means any window display area or any part thereof which may be lawfully viewed by the public or any member thereof from a sidewalk, street, alleyway, open air parking lot or from any adjoining neighboring premises.

"Window display area" means any area within the corners of a window frame normally used for the display of merchandise for retail sale to the public.

#### 2. Use of Window Display Areas.

- a. No storage of materials, stock or inventories shall be permitted in window display areas ordinarily exposed to public view, except when necessary in the course of changing displays and then only temporarily for a reasonable period of time.
- b. Display Windows. All retail uses shall have display windows constituting a minimum of 70 percent surface area at grade, and the bottom edge of the display window(s) shall be no more than four feet in height above grade. The glass is to be clear and not tinted, except that film to block ultra-violet sunlight is permitted. All window frames shall be of a color that is complementary to the facade color scheme.
- c. Interior Visibility. Product displays and/or store signage is permitted to occupy no more than 25 percent of the glazed area of the storefront. The interior of the store should be clearly visible from the sidewalk through the display window.
- d. Main Entry Doors. Business entry doors shall be composed chiefly of clear glass, and the interior of the store shall be visible from the sidewalk through the door.
- e. Cleanliness. The glass of the display windows and doors shall be kept clean at all times.

#### C. Security Gates.

1. Permitted Security Gates. Security gates that are manually or power operated, that utilize an open linkage design, and that are mounted only on the interior of the window glass and/or entry door(s) are permitted.
2. Prohibited Security Gates. The following security gate systems are prohibited:
  - a. Solid, metal security gates that obscure the view into the store.
  - b. Gates covering the exterior of the facade at grade.
3. Preferred Alternative to Security Gates. "Hurricane" high-impact glass is a recommended alternative to security gates in the zone.
4. Nonconforming Gates. Nonconforming gates shall not be rebuilt, replaced, enlarged, or altered unless made to conform to regulations.

#### D. Exterior Lighting.

1. Lighting fixtures must illuminate facades, entrances and signage; they may also be used to decoratively illuminate facade architecture.
2. Lighting must enhance, not obstruct, visibility of street for residents/offices above grade, and therefore must avoid casting glare into upper story windows. Display window lighting should contribute to exterior lighting of the pedestrian area.
3. The use of flashing or blinking lights is prohibited.

(Ord. No. 4072, 9-22-2009)

**Editor's note**— Ord. No. 4072, adopted September 22, 2009, enacted provisions intended for use as sections 17.49—17.52. To preserve the style of this Code, and at the discretion of the editor, said provisions have been redesignated as section 17.36.145.

17.36.150 - Schedule IE, C-5 Commercial Zone.

- A. Purpose. The purpose of this new zoning district is to provide less industrial and greater commercial zones in the city of Elizabeth.
- B. 1. Principal permitted uses shall include:
  - a. Professional offices, studios and clinics;
  - b. Business offices;
  - c. Neighborhood convenience;
  - d. Local convenience;
  - e. Community retail;
  - f. General and specialty retail;
  - g. Indoor amusement;
  - h. Hotels;
  - i. Major entertainment;
  - j. Major retail commercial;
  - k. Arterial commercial;
  - l. Residential, see subsection (B)(8) of this section.
2. Accessory uses.
  - a. Customary and incidental uses.
3. Area, yard and building requirements for principal and accessory buildings.
  - a. Lot area: minimum six thousand (6,000) square feet;
  - b. Lot width: minimum forty (40) feet;
  - c. Lot depth: minimum one hundred fifty (150) feet.
4. Impervious lot coverage.
  - a. Buildings and impervious surfaces: one hundred (100) percent;
  - b. Accessory buildings: ten (10) percent.
5. Principal building height.
  - a. Six stories/sixty-five (65) feet along Broad Street, East Grand Street, East Jersey Street, Madison Avenue, Jefferson Avenue, Hampton Place, Dickinson Street, Elizabeth Avenue, Winfield Scott Plaza and Commerce Place;
  - b. All other areas: three stories/thirty-five (35) feet.

6. Minimum yard dimensions.
  - a. Front yard: prevailing;
  - b. Side yard: prevailing;
  - c. Rear yard: prevailing.
7. Off-street parking and loading shall be as follows:
  - a. Parking and deliveries shall occur only in the rear and side yard areas, when possible;
  - b. Parking requirements as set forth in Sections 17.40.020 and 17.40.030 of the city of Elizabeth ordinance.
8. Requirements specific to residential uses.
  - a. Residential shall be permitted above first floor permitted uses;
  - b. Minimum net floor area for residential units shall be eight hundred fifty (850) square feet;
  - c. Maximum number of bedrooms per residential unit shall be two.

(Ord. 3810 § 1, 2006: prior code § 40-136)

#### 17.36.160 - Schedule IF, Office Commercial-1 (OC-1) Zone.

- A. Purpose. The purpose of this district is to encourage the preservation of classic older residential structures along Newark Avenue and North Avenue, where feasible, for office use which is compatible with uses on the opposite sides of these avenues. The preservation of the residential structures will allow the enhancement of many architectural element which should be preserved. The architectural design of the existing and proposed structures shall be residential in nature fitting the area and style of the good quality structures in the general area.
- B. 1. Principal permitted uses shall include:
  - a. Professional offices, studios and clinics;
  - b. Business offices;
  - c. Instructional and educational uses;
  - d. Governmental uses, including governmental and administrative offices.
2. Accessory uses.
  - a. One business sign per property;
  - b. Rear parking lot.
3. Conditional uses.
  - a. Restaurants with not less than forty (40) seats;
  - b. Specialized shops and boutiques.
4. Area, yard and building requirements for principal and accessory buildings.
  - a. Lot area: minimum six thousand (6,000) square feet;

- b. Lot width: minimum forty (40) feet;
  - c. Lot depth: minimum one hundred fifty (150) feet.
5. Impervious lot coverage.
    - a. Buildings and impervious surfaces: one hundred (100) percent;
    - b. Accessory buildings: ten (10) percent.
  6. Building height: maximum three stories/thirty-five (35) feet.
  7. Minimum yard dimensions.
    - a. Front yard: prevailing;
    - b. Side yard: prevailing;
    - c. Rear yard: prevailing.
  8. Off-street parking and loading shall be as follows:
    - a. Parking and deliveries shall occur only in the rear and side yard areas, when possible;
    - b. Parking requirements as set forth in Sections 17.40.020 and 17.40.030 of the city of Elizabeth ordinance.

(Ord. No. 4695, § 1, 4-12-2016; Ord. No. 4373, § 6, 5-14-2013; Ord. 3910 §§ 1, 2, 2007; Ord. 3790 § 1, 2006)

**Editor's note**— Ord. No. 4695, § 1, adopted April 12, 2016, changed the title of section 17.36.160 from "Schedule IF, PO Professional Office Zone" to "Schedule IF, Office Commercial-1 (OC-1) Zone." The historical notation has been preserved for reference purposes.

#### 17.36.170 - Office Commercial-2 (OC-2) Zone.

- A. Purpose. The purpose of the Office—Commercial-2 (OC-2) Zone District is to encourage the mix of office and commercial uses with low intensity residential development within areas depicted on the zoning map, last amended March 15, 2016.
- B. Principal Permitted Uses.
  1. Professional offices, studios and clinics;
  2. Business offices;
  3. Reserved;
  4. Instructional and educational uses;
  5. Governmental uses, including governmental and administrative offices;
  6. Specialized shops and boutiques;
  7. Residential uses as allowed in the R-3 Zone District provided that no site is developed with more than twelve (12) residential units and provided that all open space and off-street parking requirements are satisfied.

C.

Area, yard and Bulk Requirements for All Principal Permitted Uses Other Than Residential Uses. All residential uses shall comply with the area, yard and bulk requirements of the R-3 Zone District.

1. Lot area: minimum of six thousand (6,000) square feet;
2. Yards:
  - a. Front Yard Setback: prevailing;
  - b. Side Yard Setback: prevailing;
  - c. Rear Yard Setback: prevailing.
3. Lot depth: minimum of one hundred (100) feet;
4. Lot width: minimum of sixty (60) feet;
5. Height: three (3) stories/thirty-five (35) feet;
6. Open space: twenty (20) percent;
7. Buildings and impervious coverage: seventy-five percent (75%);
8. Off-Street Parking and Loading requirements shall be the same as in the OC-1 Zone District.

(Ord. No. 4695, § 1, 4-12-2016)

**Editor's note**— Ord. No. 4695, § 1, adopted April 12, 2016, did not specify manner of inclusion; hence, inclusion as sections 17.36.170—17.36.200 is at the discretion of the editor.

#### 17.36.180 - Public (P) Zone.

- A. Purpose. As recommended in the Land Use Plan Element of the Master Plan adopted by the Planning Board, the Open Space (OS) Zone District is being split into two (2) separate zone districts. The Public (P) Zone District is designed to contain publicly owned buildings, land and other institutions and separate the publically owned lands into a separate zone district to be known as the Open Space (O) Zone District as depicted on the zoning map, last amended March, 2016.
- B. Permitted Uses.
  1. Public buildings and structures.
  2. Public and private schools and grounds.
  3. Governmental Buildings and Institutions and other governmental uses.
  4. Related Commercial or Industrial Uses. Related commercial or industrial uses are intended to support or enhance the activities occurring within the associated improved or unimproved open space.
- C. Accessory Uses. Customary and incidental uses.
- D. Conditional Uses. None.
- E. Permitted Signage. Signs permitted in the C-1 and C-2 districts.

F. Required Bulk Conditions.

1. Minimum lot area: one acre.
2. Lot frontage: one hundred fifty (150) feet.
3. Yards.
  - a. Front Yard Setback: twenty (20) feet or prevailing;
  - b. Side Yard Setback: none;
  - c. Rear Yard Setback: none.
4. Lot depth: n/a.
5. Lot width: n/a.
6. Maximum principal building height shall be two and one-half (2½) stories or thirty-five (35) feet, whichever is less;
7. Maximum accessory building height shall be one and one-half (1½) stories or thirty (30) feet, whichever is less;
8. Open space: n/a.
9. Building coverage: n/a.

(Ord. No. 4695, § 1, 4-12-2016)

**Note**— See editor's note at section 17.36.170.

17.36.190 - Highway Commercial (HC) Zone.

- A. Purpose. The purpose of the Highway Commercial (HC) Zone District is to promote services, retail uses and commercial activity along a major transportation corridor and to limit auto related uses and one- and two-family homes and apartment uses on the first floor in areas as depicted on the Zoning Map, last amended March, 2016;
- B. Permitted Uses.
  1. Professional offices.
  2. Business offices.
  3. Neighborhood convenience uses.
  4. Local convenience uses.
  5. Community retail.
  6. General and specialty retail.
  7. Indoor amusement.
  8. Hotels.
  9. Major entertainment uses.



10. Major retail and community services.
  11. Residential apartments on second and third floors only and consistent with the R-3 Zone District standards.
- C. Required Bulk Conditions.
1. Lot area: ten thousand (10,000) square feet;
  2. Yards:
    - a. Front Yard Setback: prevailing;
    - b. Side Yard Setback: prevailing;
    - c. Rear Yard Setback: twenty (20) feet;
  3. Lot depth: one hundred (100) feet;
  4. Lot width: one hundred (100) feet;
  5. Height: three (3) stories and thirty-five (35) feet except for Hotels which are permitted to be five (5) stories;
  6. Open space: twenty (20) percent;
  7. Maximum impervious coverage: eighty (80) percent;

(Ord. No. 4695, § 1, 4-12-2016)

**Note**— See editor's note at section 17.36.170.

#### 17.36.200 - Transportation (T) Zone.

- A. Purpose. The purpose of the Transportation (T) Zone District is to contain all of the publicly owned tracts of land in the city which are utilized for public transportation. The Transportation Zone District is being created to establish a separate zone for all of the publicly owned street rights-of-way and transportation rights-of-way as depicted on the zoning map, last amended March, 2016;
- B. Permitted Uses.
1. Public streets and rights-of-way.
  2. Public transportation rights-of-way.
- C. Required Bulk Conditions.
1. Lot area: n/a.
  2. Yards:
    - a. Front: n/a.
    - b. Side: n/a.
    - c. Side: n/a.

- 3. Lot depth: n/a.
- 4. Lot width: n/a.
- 5. Height: n/a.
- 6. Open space: n/a.
- 7. Building coverage: n/a.

(Ord. No. 4695, § 1, 4-12-2016)

**Note**— See editor's note at section 17.36.170.

17.36.210 - Cannabis overlay zones.

- A. Purpose. New Jersey has signed an adult-use cannabis reform bill into law, legalizing and regulating cannabis use and possession for adults 21 years and older via "The New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act," N.J.S.A. 24:6I-31 to 24:6I-56, P.L. 2021, c.16. The city has determined that state-licensed businesses that legally sell, and/or distribute cannabis under such state licenses require certain land use regulations to control the appropriate locations and zones to permit such uses and set forth specific requirements for such uses, in order to preserve the public health, safety, and welfare of the community and its inhabitants.
- B. Definitions. Unless specifically defined below, words or phrases used in this chapter shall be interpreted consistently with the terms defined in N.J.S.A. 24:6I-33.

"TRC" means the technical review committee of the City of Elizabeth Planning Board.

C. Cannabis Retail Overlay Zone (CRO).

- 1. Location. The CRO Zone would encompass the parcels as identified on the city zoning map in the CRO Zone, which includes the below tax lots:

\_\_\_\_\_

**Properties in the CRO Zone**

BLOCK	LOT
-------	-----

4	1320, 1321, 1322, 1323, 1328, 1330, 1332, 1335, 1336, 1337, 1338, 1339, 1339.A, 1340, 1341, 1343, 1344, 1346, 1346.A, 1347, 1348, 1349, 1350, 1353, 1353.A, 1381, 1382.A, 1383, 1389, 1390, 1391, 1393, 1394, 1395, 1396, 1397, 1398, 1400, 1401, 1402, 1403, 1404, 1406, 1410, 1411, 1412, 1507, 1508, 1509, 1510, 1511, 1531, 1540, 1541, 1542, 1543, 1543.A, 1544, 1617, 1618, 1621, 482, 483, 484, 486, 488, 488.A, 545.K, 546, 646, 647, 650, 652, 666, 737, 738, 739, 740, 886, 887, 956, 957, 958, 959
5	344, 345, 346, 347, 348, 349, 351, 352, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 368, 371, 372, 372.A, 373, 374, 376, 377, 378, 379, 380, 381, 456, 537, 538.B, 560
6	1364, 1000, 1001, 1002, 1003, 1004, 1005, 1006, 1007, 1008, 1009, 1010, 1011, 1012, 1013, 1044, 1044.A, 1186.C, 1229, 1231, 1232, 1233, 1254, 1254.A, 1358, 1360, 1361.A, 1362, 1363, 1365, 1366, 1367, 1372, 1374, 1374.A, 1375, 1376, 1377, 1377.A, 1378, 1427, 1567, 1592, 1594, 1595, 1629, 1630, 1632, 231, 231.A, 232, 232.A, 406, 407, 408, 411, 42, 42.A, 42.B, 43, 45, 451, 46, 47, 477.A, 49, 50, 51, 52, 52.A, 528, 529, 53, 530, 531, 55, 57, 597, 598, 60, 62, 64, 66, 67, 68, 70, 829, 831, 834, 835, 837, 838, 839, 840, 841, 842, 91, 920, 923, 924, 926, 926.A, 931, 934, 935, 936, 937, 938, 94, 940, 942, 943, 954, 955, 986, 989, 990, 994, 997.B, 998
7	1071, 1072, 1073, 1133, 1134, 1135, 153, 161, 313, 313.A, 313.B, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 327, 329, 330, 331, 332, 333, 333.A, 334, 335, 336, 337, 341, 342, 343, 344, 345, 345.A, 346, 347, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 363, 363, 364, 365, 366, 366.A, 366.B, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 379, 380, 382, 383, 384, 385, 386, 387, 388, 391, 392, 393, 394, 395, 396, 398, 399, 400, 401, 402, 403, 406, 407, 423, 424, 424.A, 46, 47, 553, 563, 564, 603, 816, 859

8

1061, 1067, 1128, 1145, 1146, 1148, 1185, 1186, 1189, 1199, 1232, 1236, 1261, 1262, 1294, 1299.A, 1299.C, 1299.D, 1299.F, 1299.J, 1299.K, 1312, 1313, 1338.f, 1338.g, 1342, 1343, 1344, 1345, 1346, 1389.A, 1430, 144, 1466, 1500, 1504, 1507, 1512, 1514, 1515, 1516, 1517, 1518, 1518.A, 1519, 1520, 1521, 1522, 1523, 1524, 1525, 1526, 1527, 1528, 1532, 1535, 1537, 1538, 1529, 1540, 1541, 1543, 1544, 1545, 1546, 1548, 1550, 1551, 1552, 1553, 1554, 1555, 1556, 1559, 1560, 1563, 1564, 1567, 1569, 1570, 1572, 1573, 1574, 1575, 1576, 1577, 1578, 1580, 1581, 1582, 1583, 1584, 1585, 1586, 1587, 1588, 1589, 1592, 1595, 1596, 1597, 1598, 1599, 1600, 1601, 1602, 1603, 1604, 1606, 1608, 1610, 1612, 1616, 1617, 1618, 1622, 1622.A, 1623, 1623.A, 1624, 1626, 1627, 1628, 1630, 1631, 1633, 1635, 1640, 1649, 1650, 1651, 1652, 1653, 1654, 1655, 1656, 1657, 1659, 1660, 1661, 1662, 1670, 1671, 1675, 1682, 1685, 1686, 1688, 1690, 1693, 1693, 1696, 1697, 1699, 1699.A, 1699.B, 1699.B1, 1699.C, 1699.D, 1782, 1783, 1784, 1785, 1786, 1787, 1788, 1789, 1790, 1791, 1792, 1793, 1794, 1795, 1796, 1837, 351, 371.D, 371.E, 371.F, 371.G, 371.H, 439, 441, 442, 521, 566, 582.A, 582.F, 583, 597, 614, 615, 616, 617, 618, 619, 648, 649, 650, 651, 720, 776

9

1019, 1020, 1021, 1022, 1023, 1024, 1025, 1026, 1027, 1040, 1043, 1061, 1095, 1096, 1119, 1120, 1121, 1153, 1170, 1171, 1172, 1173, 1229, 1241, 1243, 1244, 1245, 1257, 1258, 1259, 1260, 1261, 1262, 1263, 1264, 1265, 1266, 1267, 1268, 1269, 1270, 1271, 1272, 1273.A, 1273.B, 1273.C, 1274, 1284, 1369.B, 1371, 1372, 1373, 1374, 1375, 1376, 1407, 161, 254, 260, 262, 268, 275, 277, 278, 279, 284, 286, 29, 30, 300, 302, 303, 305, 306, 307, 308, 309, 310, 320, 329, 330, 331, 346, 347, 349, 35, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 363, 365, 366, 366.A, 367, 368, 369, 370, 371, 373, 375, 377, 399, 400.A, 401, 401.A, 402, 403, 404, 405, 406, 407, 409, 410, 411, 424, 426, 435.A, 436, 437, 439, 440, 441, 442, 443, 444, 445, 446, 447, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 467, 482, 483, 484, 485, 486, 488, 489, 49, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 50, 500, 503, 505, 506, 507, 508, 509, 51, 511, 512, 513, 517, 518, 519, 52, 520, 521, 521.A, 522, 523, 524, 525, 528, 529, 53, 530, 531, 532, 533, 534, 535, 536, 537, 538, 541, 543.A, 544, 545, 56, 56.A, 568, 57, 571, 573, 575, 576, 577, 578, 579, 58, 580, 581, 582, 583, 584, 59, 595, 596, 597, 60, 61, 62, 62.A, 63, 64, 66, 67, 68, 69, 71, 72, 73, 74, 740, 742, 743, 744, 745, 75, 750, 751, 752, 554, 755, 759, 76, 760, 761, 761.A, 762, 763, 763.A, 764, 765, 766, 767, 768, 769, 77, 777, 778, 78, 78.A, 781, 783, 784, 785, 788, 79, 790, 791, 792, 793, 794, 795, 796, 797, 80, 81, 82, 83, 84, 85, 86, 866, 867, 868, 869, 869.A, 87, 88, 89, 90, 909, 910, 914, 949, 950, 951, 952, 953, 958, 960, 962, 963, 964 965, 991, 992, 993, 994, 995, 996

11	1047, 1047.B, 1050, 1051, 1053, 1054, 1055, 1056, 1057, 1059, 1060, 1061, 1063, 1064, 1068, 1068.B, 1069, 1070, 1071.A, 1071.B, 1074, 1075, 1158.A, 1182, 1223.A, 1223.B, 1224, 1224.A, 1224.B, 1224.C, 1224.D, 1225, 1226, 1227, 1229, 1230, 1231, 1232, 1233, 1235, 1241, 1246, 1252, 1272, 1273, 1548, 1549, 1564, 1565, 1566, 1567, 1568, 1570, 1571, 1575, 1576, , 330, 348, 658, 659, , 823, 825, 826, 827, 829, 830, 834, 835, 836, 838, 840, 841, 842, 851, 852, 854, 92, 93, 95, 95.A, 954, 956, 957, 958, 959, 961, 963, 964, 965, 966, 969, 970, 972, 974, 975, 975.A, 976, 980, 981, 983, 988, 992, 994
12	1272, 1274, 1285, 1286, 1287, 1288, 1289, 1290, 218, 219, 220, 221, 222, 241, 242, 243, 244, 245, 272, 273.A, 274.A, 275, 858.B, 885
13	1198, 1199, 1200, 1201, 1202, 1203, 1204, 1205, 1206, 1207, 1209, 1210, 1211, 1212, 1213

2. Permitted Uses.

- i. Retail cannabis establishments licensed pursuant to N.J.S.A. 24:6I-42 with a "Class 5 Cannabis Retailer license" for adult-use sales.

3. Conditional Uses.

- i. Pursuant to N.J.S.A. 24:6I-21, cannabis consumption areas for social, adult-use cannabis consumption, shall meet the following conditions:
  - a. Cannabis consumption areas shall comply with all bulk requirements and design standards provided under subsection 17.36.210.B-4 of this chapter.
  - b. Consumption shall be limited to products purchased on-site, and will not permit any outside products to be consumed on premises.
  - c. Cannabis consumption areas may be located in an indoor, structurally enclosed area of a retail cannabis establishment provided that the area is (1) separate from the area in which retail sales and dispensing of cannabis items occurs, (2) is a minimum of one thousand (1,000) square feet, exclusive of the minimum required area for the establishment.
  - d. Cannabis consumption areas may be located as an exterior, enclosed structure on the same premises as the cannabis establishment, either separate from or connected to the cannabis retailer, at which cannabis items obtained from the retailer may be

consumed.

- ii. Any deviation from any of the conditions listed under this subsection shall necessitate use "D" variance relief pursuant to Municipal Land Use Law (N.J.S.A. 40:55D-70D, et seq.)

#### 4. Bulk Requirements and Design Standards.

- i. Any deviation from the below standards and requirements shall necessitate bulk "C" variance relief pursuant to Municipal Land Use Law (N.J.S.A. 40:55D-70C, et seq.);
  - a. Cannabis establishments shall only be located on the ground floor (i.e. street-level) of any building in which it has been approved to be located).
  - b. Minimum gross floor area of one thousand (1,000) square feet.
  - c. Minimum parking requirements shall be one (1) space per one thousand (1,000) square feet of gross floor area (GFA).
  - d. There shall be no on-site sales of alcohol or tobacco products, and no on-site consumption of food, alcohol, tobacco by patrons.
  - e. Hours of public operation shall be limited to 9:00 a.m. to 10:00 p.m. on Monday thru Saturday, and Sunday 11:00 a.m. to 8:00 p.m.
  - f. Any cannabis use shall comply with all setback or distance requirements established by law and in effect in the zone in which it is to be located as of the time of the application.
  - g. Signage shall comply with all existing regulations but shall not include language referring to "marijuana" or use any symbols that indicates such, and shall be subject to TRC review and approval.
    - 1. Signage shall be limited to façade/wall signs at the exterior of the building, designating the business name and/or address;
    - 2. Vinyl window signs and decals shall be limited to designating the business name, logo, and/or address, which shall comply with "h" above;
    - 3. Window signs including product display, brand name advertisements, or similar shall be prohibited.

#### 5. Other Requirements.

- i. Security and Lighting.
  - a. Exterior lighting plans shall be reviewed and approved by the city engineer in consultation the Elizabeth Police Department and submitted with TRC review application and/or site plan application.
- ii. Air Quality and Ventilation.
  - a.

The facility shall provide an air treatment system with sufficient odor absorbing ventilation and exhaust systems such that any odors generated inside the facility are not detectable by a person of reasonable sensitivity anywhere on adjacent property, within public rights of way, or within any other unit located within the same building as the licensed facility if the use only occupies a portion of a building. The ventilation system must be installed to meet ASHRAE62 Indoor Air Quality Standards and approved by the city health department and building department and may be subject to periodic inspection by both departments.

iii. Submission Requirements.

- a. All applications for cannabis related uses shall be required to appear before the TRC.
- b. To protect the public health, safety, and general welfare, and to prevent economic stagnation, site plan approval as set forth in the Municipal Land Use Law (N.J.S.A. 40:55D, et seq.) is required for any cannabis uses.

iv. Redevelopment Areas.

- a. Any property located within a redevelopment area with an active redevelopment plan in place shall be required to amend the redevelopment plan by ordinance before the city council to permit cannabis uses.

D. Cannabis Manufacturing, Cultivation, Distribution, and Wholesaling Overlay Zone (CMO).

- 1. Location. The CMO Zone would encompass the parcels as identified on the city zoning map as the CMO Zone, which includes the below tax lots:

**Properties in the CMO Zone**

BLOCK	LOT
1	1, 101.A, 101.A1, 101.B, 101.C, 101.C1, 101.C2, 101.D, 101.E, 101.F, 101.G, 101.G1, 101.J1, 101.J2, 101.J3, 101.J4, 101.J4A, 101.J5, 102, 1272.B, 1380.E, 1380.F, 1380.G1, 1400, 169, 170.a, 192, 193, 194, 431, 434, 513, 514, 516, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 648, 649, 654, 655, 656, 657, 658, 660, 661.A, 665.A, 675, 675.A, 675.B, 677, 677.A, 678, 678.A, 679, 680, 681, 682, 683, 684, 685, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 699, 700, 701, 702, 863, 951, 953.A, 953.A1, 953.B, 953.C, 978.A, 981, 983, 988, 993, 993.A, 995, 995.A, 998.A, 998.A2, 998.A3, 999.B, 999.B1, 999.B1A, 999.B2, 999.C



2	281, 282, 473, 74, 862, 864, 865, 866, 866.A, 866.B, 866.C, 866.D, 866.E, 945, 946, 947, 948, 948.A, 988
3	105, 735, 93
4	1271, 1273.A, 1277, 330, 38.A, 454, 1, 1011, 1012, 1014, 1053, 1054, 1055, 1056, 1057, 1088, 1271.A, 1272, 1272.A, 1273, 1274, 1274.A, 1275, 1275.A, 1276, 1277.B, 1277.C, 1294.A, 1294.B, 1294.C, 1361.A, 14.A, 1435.A, 1435.B, 1436, 1438, 1438.A, 1438.B, 1438.C, 1438.D, 1441, 1442, 1445, 1447, 1448, 1449, 1452, 1453, 1454, 1455, 1457, 1458, 1458.A, 1459, 1459.AA, 1461, 1462, 1463, 1464, 1466, 1467, 1468, 1469, 1470, 1470.A, 1471, 1472, 1474, 15.D, 1582.A, 1582.D, 1583, 1583.A, 1587, 159, 1597, 1597.A, 1598.A, 161, 162, 163, 1630.A, 1631, 1631.A, 1632, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178.A, 179, 180, 181.A, 181.B, 181.C, 183, 183.A, 183.B, 183.C, 184, 185, 186, 187, 189, 190, 191, 192, 193, 195, 196, 197, 198, 2.A, 2.B, 2.C, 200, 329, 331, 38.B, 39, 40, 42, 43, 44, 445, 446, 447, 448, 449, 449.A 450, 451, 452, 453, 46, 48, 49, 49.A, 50, 51, 55, 55.A, 63, 67, 67.A, 70, 72, 74, 75, 76, 77, 78, 79, 80, 832, 833, 834, 835, 836, 838
5	1154, 1381, 1381.A

8	1041.A, 1042, 1042.E, 1043, 1060.B, 1060.E, 1061, 1174, 1178, 1179, 1179.A, 1181, 1195, 1202, 1205, 1206, 1207, 1208, 1209.A, 1209.B, 1212, 1213, 1214, 1299.H, 1308.F, 1308.G, 1308.H, 1308.I, 1308.K, 1309, 1338.A, 1338.B, 1338.C, 1338.D, 1338.E, 1338.F, 1405, 1481.C, 1481.D, 1481.G, 162, 163, 164, 164.A, 164.B, 167, 168, 1682, 1688, 1693, 1699.A, 1699.B, 170, 1723.A, 174, 1858, 1859, 1860, 1861, 1862, 1863, 1864, 1865, 1867, 1869, 1870, 1875, 224, 239, 255, 262.B, 264, 265, 266, 267, 268, 300, 427, 427.A, 427.A1, 428, 428.B, 428.C, 428.D, 428.E, 428.G, 428.H, 428.I, 428.K, 428.L, 428.L1, 428.M, 428.O, 428.S, 428.T, 428.V, 428.X, 428.Y03, 428.Y04, 428.Y10, 428.Y11, 428.Y12, 428.Y13, 428.Y15, 428.Y18, 428.Y19, 428.Y15A, 428.Y18A, 580, 580.A, 581, 582.A, 582.B, 582.C, 582.D, 582.F, 678, 680, 681, 683, 685, 687, 737, 738, 740, 741, 742, 804.A, 818, 819, 820, 822, 822.A, 823.A
9	1279
10	2129, 2132, 554

2. Permitted Uses.

- i. Cannabis growing or cultivation facility licensed pursuant to N.J.S.A. 24:6I-37 with a "Class 1 Cannabis Cultivator license;"
- ii. Cannabis manufacturing facility licensed pursuant to N.J.S.A. 24:6I-39 with a "Class 2 Cannabis Manufacturer license;"
- iii. Cannabis wholesaler facility licensed pursuant to N.J.S.A. 24:6I-40 with a "Class 3 Cannabis Wholesaler license;" and
- iv. Cannabis distribution facility licensed pursuant to N.J.S.A. 24:6I-41 with a "Class 4 Cannabis Distributor license".

3. Bulk Requirements and Design Standards.

- i. Any deviation from the below standards and requirements shall necessitate bulk "C" variance relief pursuant to Municipal Land Use Law (N.J.S.A. 40:55D-70C, et seq.);
  - a. Minimum gross floor area of five thousand (5,000) square feet, except that a microbusiness licensed pursuant to N.J.S.A. 24:6I-36 shall have a minimum gross floor area of one thousand (1,000) square feet.
  - b.

Minimum parking requirements shall be provided as one (1) space per one thousand (1,000) square feet of gross floor area (GFA).

- c. Loading spaces shall be provided as one (1) space per five thousand (5,000) square feet of gross floor area (GFA).
- d. Any cannabis use shall comply with all setback or distance requirements established by law and in effect in the zone in which it is to be located as of the time of the application.
- e. Signage shall comply with all existing regulations but shall not include language referring to "marijuana" or use any symbols that indicate such.

#### 4. Other Requirements.

##### i. Security and Lighting.

- a. All facilities associated with the manufacturing, growing, distribution, or wholesaling of cannabis shall provide security fencing at their location's perimeter. Facilities shall coordinate with the city police department to provide access for emergency services.
- b. Exterior lighting plans shall be reviewed and approved by the city engineer in consultation the Elizabeth Police Department and submitted with TRC review application and/or site plan application.

##### ii. Air Quality and Ventilation.

- a. The facility shall provide an air treatment system with sufficient odor absorbing ventilation and exhaust systems such that any odors generated inside the facility are not detectable by a person of reasonable sensitivity anywhere on adjacent property, within public rights of way, or within any other unit located within the same building as the licensed facility if the use only occupies a portion of a building. The ventilation system must be installed to meet ASHRAE62 Indoor Air Quality Standards and approved by the city health department and building department and may be subject to periodic inspection by both departments.

##### iii. Submission Requirements.

- a. All applications for cannabis related uses shall be required to appear before the TRC.
- b. To protect the public health, safety, and general welfare, and to prevent economic stagnation, site plan approval as set forth in the Municipal Land Use Law (N.J.S.A. 40:55D, et seq.) is required for any. cannabis uses.

##### iv. Redevelopment Areas.

- a. Any property located within a redevelopment area with an active redevelopment plan in place shall be required to amend the redevelopment plan by ordinance before the city council to permit cannabis uses.

(Ord. No. 5500, § 2, 7-27-2021)

**Note**— Sections 3 and 4 of Ord. No. 5500, adopted July 27, 2021, state the following: "SECTION 3. In all those areas in the City where cannabis establishments, cannabis distributors, or cannabis delivery uses are not permitted pursuant to this Ordinance, and as shown in the amended Zoning Map attached hereto, such uses shall be prohibited, except for the delivery of cannabis items and related supplies by a licensed cannabis delivery service based and initiated from a cannabis delivery service licensed location outside of the City.

SECTION 4. All underlying zoning and zoning regulations on the properties encompassed by the Cannabis Overlay Zones shall remain valid and active."

The map referred to in this section is not set out at length herein, but may be found in the offices of the city.

#### 17.36.215 - Manufacturing, Research, and Commercial 1 (MRC-1) Zone.

1. Permitted Uses in the MRC-1 Zone.
  - a. Corporate business and professional offices.
  - b. Research laboratories.
  - c. Large scale retail uses such as supermarkets and community shopping centers containing permitted retail and service uses in the C-2 Zone.
  - d. Light manufacturing, including the manufacture, assembly, packing or treatment of articles or merchandise from previously prepared material subject to performance standards of section 17.36.060, including, but not limited to pharmaceuticals and cosmetics, food products, electrical and electronic equipment, precision equipment, textiles and apparel.
  - e. General commercial uses, such as wholesale business uses, office supplies and services, photo processing plants, lithograph, typesetting ruling and binding establishments, electrical sales and contracting, plumbing sales and contracting.
  - f. Indoor amusement facilities, including theaters, bowling alleys and skating rinks, and full-service restaurants, other than drive-in or drive-thru establishments.
  - g. Warehousing with wholesale and storage, subject to the definition of warehouse, which shall not include distribution center uses, fulfillment centers or parcel hubs, standalone outdoor storage, standalone parking facilities.
2. Accessory Uses in the MRC-1 Zone.
  - a. Customary and incidental accessory uses pursuant to section 17.36, schedule IB.A.6.a inclusive of bars and cocktail lounges without live entertainment or dancing as part of indoor amusement facilities.
3. Conditional Uses in the MRC-1 Zone.

- a. Distribution Centers. A distribution center is a conditional use in the MRC-1 Zone subject to the following conditions:
  - i. Building square footage shall be no more than six hundred thousand (600,000) square feet.
  - ii. Dock doors for distribution center uses may be provided on at least two (2) sides of the building, and can be located on adjacent or opposite sides of the building.
  - iii. The ratio of dock doors shall be permitted up to a maximum amount as follows:
    1. For buildings 0—100,000 square feet: One (1) per five thousand (5,000) SF GFA, or five (5) dock doors, whichever greater;
    2. For buildings 100,001—244,000 square feet: One (1) per eight thousand (8,000) SF GFA;
    3. For buildings 244,001—600,000 square feet: One (1) per ten thousand (10,000) SF GFA;
- b. The following are additional bulk standards for conditional uses within the MRC-1 Zone, and shall not be conditions by which the use is determined permissible:
  - i. Distribution center uses shall be subject to the bulk regulations set forth under schedule IB-1 for "warehouse uses".
  - ii. Truck Parking.
    1. Truck parking stalls shall be provided that are not directly adjacent to the building.
    2. A minimum of one (1) truck parking stall per dock door shall be provided, and a maximum of two (2) truck parking stalls per dock door shall be permitted.
    3. Truck parking stalls shall be provided at a minimum dimension of fifty (50) feet in length by ten (10) feet in width.
  - iii. Reserved.
  - iv. Traffic Study.
    1. A traffic study prepared by a licensed traffic engineer shall be prepared and submitted to the planning board.
    2. Trip generation rates for distribution centers at the a.m. and p.m. peak hours shall be provided within the study.
    3. The maximum allowable peak hour trip generation rate shall be 0.30 trips per one thousand (1,000) SF.
4. Permitted Signage. This section shall supersede the signage requirements listed under section 17.36.060.
  - a.

Number of signs. One (1) business/wall sign shall be permitted for each building façade for single-tenant buildings. Multi-tenant buildings shall be permitted one (1) business/wall sign per tenant on up to two (2) facades per tenant.

b. Sign Dimensions.

- i. Building mounted wall signs shall be permitted up to six (6) feet in height for façades with up to one (1) sign. For façades with more than one (1) wall sign, each sign shall be permitted up to four (4) feet in height.
- ii. Building mounted wall signs shall be permitted up to a maximum width of sixty (60) percent of building façade length for façades with up to one (1) sign. For façades with more than one (1) wall sign, each sign shall be permitted up to up to a maximum width of forty (40) percent of building façade length.
- iii. Building mounted wall signs shall be permitted up to the top of the building, but shall not be permitted to exceed the building height and are prohibited from being located on the building roof.

5. Prohibited Uses in the MRC-2 Zone.

- a. Standalone surface parking facilities or surface parking lots as the primary and sole use on a property shall be prohibited in the MRC-2 Zone.

(Ord. No. 5499, § 7, 11-23-2021)

**Editor's note**— Ord. No. 5499, § 7, adopted November 23, 2021, enacted provisions intended for use as section 17.36.210. Inasmuch as there are already provisions so designated, and at the discretion of the editor, said provisions have been redesignated as section 17.36.215.

17.36.220 - Manufacturing, Research, and Commercial 2 (MRC-2) Zone.

1. Permitted Uses in the MRC-2 Zone.

- a. Corporate business and professional offices.
- b. Research laboratories.
- c. Large scale retail uses such as supermarkets and community shopping centers containing permitted retail and service uses in the C-2 Zone.
- d. Light manufacturing, including the manufacture, assembly, packing or treatment of articles or merchandise from previously prepared material subject to performance standards of section 17.36.060, including, but not limited to pharmaceuticals and cosmetics, food products, electrical and electronic equipment, precision equipment, textiles and apparel.
- e. General commercial uses, such as wholesale business uses, office supplies and services, photo processing plants, lithograph, typesetting ruling and binding establishments, electrical sales and contracting, plumbing sales and contracting.

- f. Indoor amusement facilities, including theaters, bowling alleys and skating rinks, and full-service restaurants, other than drive-in or drive-thru establishments.
- 2. Accessory Uses in the MRC-2 Zone.
  - a. Customary and incidental accessory uses pursuant to section 17.36, schedule IB.A.6.a inclusive of bars and cocktail lounges without live entertainment or dancing as part of indoor amusement facilities.
- 3. Permitted Signage. Signs permitted in the C-3 and C-4 Districts.
- 4. Prohibited Uses in the MRC-2 Zone.
  - a. Standalone surface parking facilities or surface parking lots as the primary and sole use on a property shall be prohibited in the MRC-2 Zone.

(Ord. No. 5499, § 9, 11-23-2021)

Schedule IA - Permitted Uses.

**Schedule IA**

**Permitted Uses**

Use	R-1	R-2	R-2C	R-3	R-3A	R-4	C-1	C-2	C-3	C-3A	C-4	M-1	M-2	M-3
A <sup>1</sup> Single-family	x	x	x	x	x	x	x	x						
B Duplex				x	x	x	x	x						
C Rowhouse				x	x	x	x	x						
D Two-family dwelling		x	x	x	x	x	x	x						
E Three-to-four family				x	x	x	x	x						
F Garden apartment				x		x	x	x						
G Multifamily				x		x	x	x						

H Elevator apartment						X	X	X						
I Nonprofit organization														
J Government, educational and religious														
K Clinics and hospitals														
L Professional offices							X	X	X	X	X			
M Business offices								X	X	X	X			
N Neighborhood convenience							X	X	X		X			
O Local convenience							X	X	X		X			
P Community retail								X	X		X			
Q General and specialty retail							X	X	X		X			
R Indoor amusement								X	X		X			



S Hotels									X	X	X			
T Major entertainment									X	X	X			
U Major retail and commercial									X		X			
V Arterial commercial									X		X			
W Auto-related services											X	X	X	X
X Selected commercial and light manufacture											X	X	X	X
Y Wholesale and storage											X	X	X	X
Z Distribution and trucking												X	X	X
AA Light manufacture												X	X	X
BB General industrial													X	X
CC Sulfur and nitric acid manufacture														X

Notes:

- 1 Editor's Note: for expansion of Symbols A through CC, see Schedule II which follows.
- 2 [Added 7-24-79 by Ord. No. 1175]
- 3 [Added 6-10-81 by Ord. No. 1369]
- 4 [Added 3-12-85 by Ord. No. 1794]

(Prior code Schedule IA)

Schedule IB-1 - MRC-1 Zone District Controls.

**Schedule IB-1**

**MRC-1 Zone District Controls**

<b>Bulk Standard</b>	<b>Large Scale Retail Uses</b>	<b>Warehouse Uses</b>	<b>All Other Permitted Uses</b>
Minimum Lot Frontage	150 Feet	150 Feet	50 feet
Minimum Front Yard	0 Feet	35 Feet	35 feet
Minimum Rear Yard	25 Feet <sup>(1)</sup>	25 Feet <sup>(1)</sup>	25 feet <sup>(1)</sup>
Maximum Height (Principal)	3 Stories / 40 Feet	3 Stories / 55 Feet	3 Stories / 40 Feet
Maximum Height (Accessory)	2 Stories / 45 Feet	2 Stories / 25 Feet	2 Stories / 25 feet
Minimum Lot Size	1 acre	0.75 acre	0.75 acre

Minimum Principal Building Size	15,000 square feet	17% of the lot area		17% of the lot area
Maximum Building Coverage	35 percent	50 Percent		50 Percent
Parking Requirements	1/300 square feet floor area	1/3000 square feet floor area warehouse use <sup>(2)</sup>		1/1400 square feet site area, or based upon current ITE edition, whichever greater
Maximum Number of Dock Doors	N/A	Bldg Size	# of Dock Doors	N/A
		0—100,000 square feet	1 per 5,000 SF GFA, or 5 dock doors, whichever greater	
		100,001—244,000 square feet	1 per 8,000 SF GFA	
		244-001—600,000 feet	1 per 10,000 SF GFA	

(1) Rear yards abutting rail rights-of-way may be reduced to zero (0) feet.

(2) Parking for office space within warehouse uses shall be provided at a ratio of one (1) per two hundred fifty (250) square feet of floor area devoted to office use.

A. Rear yards abutting rail rights-of-way may be reduced to 0 feet.

Permitted Uses:

1. Corporate business and professional offices.
2. Research laboratories.
3. Large scale retail uses such as supermarkets and community shopping centers containing permitted retail and service uses in the C-2 Zone.
4. Light manufacturing, including the manufacture, assembly, packing or treatment of articles or merchandise from previously prepared material subject to performance standards of Section 17.36.060, including, but not limited to pharmaceuticals and cosmetics, food products, electrical and electronic equipment, precision equipment, textiles and apparel.
5. General commercial uses, such as wholesale business uses, office supplies and services, photo processing plants, lithograph, typesetting ruling and binding establishments, electrical sales and contracting, plumbing sales and contracting.
6. Indoor amusement facilities, including theaters, bowling alleys and skating rinks, and full service restaurants, other than drive-in, drive-thru and/or fast food establishments.
  - a. Accessory Uses. Customary and incidental accessory uses pursuant to Section 17.36, Schedule IB.A.6.a inclusive of bars and cocktail lounges without live entertainment or dancing as part of indoor amusement facilities.
  - b. Conditional Uses. None.
  - c. Permitted Signage. Signs permitted in the C-3 and C-4 Districts.

(Ord. No. 5499, §§ 5, 6, 11-23-2021; prior code Schedule ID)

Schedule IB-2 - MRC-2 Zone District Controls.

Schedule IB-2

MRC-2 Zone District Controls

Bulk Standard	Large Scale Retail Uses	All Other Permitted Uses
Minimum Lot Frontage	150 Feet	50 feet
Minimum Front Yard	0 Feet	35 feet
Minimum Rear Yard	25 Feet <sup>(1)</sup>	25 feet <sup>(1)</sup>
Maximum Height (Principal)	3 Stories / 40 Feet	3/40 stories/feet

Maximum Height (Accessory)	2 Stories / 45 Feet	2 Stories / 25 Feet
Minimum Lot Size	1 acre	None
Minimum Principal Building Size	15,000 square feet	None
Maximum Building Coverage	35 percent	None
Parking Requirements	1/300 square feet floor area	1/1400 square feet site area, or based upon current ITE edition, whichever greater

(1) Rear yards abutting rail rights-of-way may be reduced to zero (0) feet.

(Ord. No. 5499, § 8, 11-23-2021)

—

Schedule C - O District Zone Controls.

- A. Purpose. As recommended in the Land Use Plan Element of the Master Plan adopted by the planning board, the Open Space (OS) Zone District is being split into two (2) separate zone districts. The Open Space (O) Zone District is designed to contain publicly owned open space and separate the publicly owned buildings, land and other institution into a separate zone district to be known as the Public Space (P) Zone District as depicted on the zoning map, last amended March, 2016.
- B. Permitted Uses.
  - 1. Improved Open Space. Improved open space is intended to provide site for recreational facilities. Improved open space may include, but shall not be limited to: landscaped lawn areas, golf courses, stormwater detention and groundwater recharge areas, walkways, pedestrian bicycle paths, paved terraces and sitting areas, and recreational facilities such as playfields, playgrounds, tot lots, swimming pools, sports courts, community centers, boat slips, boat launching and storage facilities and docks, but not repair facilities and any ancillary roadway or parking.
  - 2. Unimproved Open Space. Unimproved open space is intended to preserve lands in a natural state for recreation and conservation purposes and shall include: wetlands, woodlands, wildlife preserves, manmade and natural bodies of water, scenic areas, hedgerows and

treelines, natural wooded areas. Improvements in unimproved open space shall be limited to the following: woodland trails, foot paths, jogging trails, bridle paths, bicycle paths, nature walks; nurseries for the trees, shrubs and other plants to be used in the development; roads and ancillary parking for access to unimproved open space sites; lighting, retaining walls, and other features necessary to protect the land or people who will use the unimproved open space.

3. Related Commercial or Industrial Uses. Related commercial or industrial uses are intended to support or enhance the activities occurring within the associated improved or unimproved open space.
- C. Accessory Uses. Customary and incidental uses.
- D. Conditional Uses. None.
- E. Permitted Signage. Signs permitted in the C-1 and C-2 districts.
- F. Required Bulk Conditions.
  1. Minimum lot area: one acre;
  2. Lot frontage: one hundred fifty (150) feet;
  3. Yards:
    - a. Front Yard Setback: Twenty (20) feet or prevailing;
    - b. Side Yard Setback: none;
    - c. Rear Yard Setback: none;
  4. Lot depth: none.
  5. Lot width: none.
  6. Maximum principal building height shall be two and one-half (2½) stories or thirty-five (35) feet, whichever is less;
  7. Maximum accessory building height shall be one and one-half (1½) stories or thirty (30) feet, whichever is less;
  8. Open space: n/a.
  9. Building coverage: n/a.

(Ord. No. 4695, § 1, 4-12-2016; prior code Schedule IC)

**Editor's note**— Ord. No. 4695, § 1, adopted April 12, 2016, changed the title of schedule C from "OS District Zone Controls" to "O District Zone Controls." The historical notation has been preserved for reference purpose.

Schedule ID - RC District Zone Controls.

## Schedule ID

**RC District Zone Controls**

- A. Development Standards.
  - 1. Minimum lot area: three acres.
  - 2. Minimum lot frontage: two hundred (200) feet.
  - 3. Minimum front yard: thirty-five (35) feet.
  - 4. Minimum rear yard: twenty (20) feet.
  - 5. Minimum side yard: twenty (20) feet.
  - 6. Maximum principal building height: sixteen (16) stories or one hundred sixty (160) feet, whichever is less.
  - 7. Maximum accessory building height: three stories or forty (40) feet, whichever is less.
- B. Permitted Uses.
  - 1. Major retail and commercial uses.
  - 2. Business offices: major office buildings with gross floor area of not less than twenty-five thousand (25,000) square feet.
- C. Accessory Uses. Customary and incidental uses including eating establishments and other convenience retail sales or services.
- D. Conditional Uses. None.
- E. Permitted Signage. Signs permitted in the C-1 and C-2 districts.

(Prior code Schedule IF)

Schedule II - Principal Uses.

**Schedule II****Principal Uses**

- A. Single-family detached dwelling;
- B. Detached duplex;
- C. Rowhouses or townhouses;
- D. Two-family dwelling;
- E. Three- or four-family dwelling;
- F. Garden apartments;
- G. Apartment house;
- H. Elevator apartments;
- I.

Quasi-public uses, such a community buildings, country clubs, social halls, lodges, fraternal organizations and similar uses;

- J. Governmental services and uses of an educational or religious nature;
- K. Medical facilities, such as infirmaries, health clinics and hospitals;
- L. Professional offices, including the offices of doctors or physicians, dentists, optometrists, ministers, priests, rabbis, architects, landscape architects, professional engineers, professional planners, lawyers, certified public accountants and such other similar professional occupations which may be so designated by the board of adjustment;
- M. Business offices such as administrative, clerical or other nonprofessional offices; undertakers, funeral parlors or embalmers; medical and dental office buildings and testing laboratories; and other office buildings;
- N. Neighborhood convenience retail and services, such as barbershops or beauty parlors; cigar stores or newsstands; food stores; drugstores or soda fountains; and shoe repair shops;
- O. Local convenience retail and services, such as stationery and book stores; branch banks; dry goods and variety stores; home radio and TV repair; hand or automatic laundries; florists; hardware stores or locksmiths; office equipment and business machine sales and service; package liquor sales; tailois or dressmakers; and dry-cleaning and clothes-pressing establishments, provided that no flammable cleaning agents are used;
- P. Community retail and services such as paint and wallpaper stores; furniture stores; sporting and athletic goods; photographing equipment and supplies; end professional, business and technical schools; and studios for photography, art, music and dance;
- Q. General and specialty retail and services, such as wearing apparel stores; and jewelry and gift shops;
- R. Indoor amusement enterprises, including theaters, biffiard or pooi parlors, bowling alleys, skating rinks or similar uses or places of assembly; and bars and cocktail lounges without live entertainment;
- S. Hotels;
- T. Major entertainment facilities intended and designed to serve the city as a whole, such as nightclubs;
- U. Major retail and commercial services, such as major department stores; specialty shops and personal service enterprises which are intended and designed to serve the city as a whole; office buildings exceeding twenty thousand (20,000) square feet in floor area; and banks and other financial institutions;
- V.



Arterial commercial services, such as new car dealers' sales and showrooms; newspaper publishing plants; bus terminals; storage garages; and the following limited light industrial uses, when conducted within an enclosed building and not on the ground floor:

1. Manufacturing of dresses and garments, jewelry, musical instruments, precision equipment and toys and novelties,
  2. Photo processing,
  3. Printing, lithographing, typesetting, ruling and binding establishments, and
  4. Laboratories;
- W. Auto-related services, such as vehicle sales, servicing and washing; boat sales and service; automobile radio sales and service; and motels;
- X. Selected commercial and light industrial uses, such as woodworking, furniture repair and custom upholstery; metal working; electrical sales and contracting; plumbing sales and contracting; wholesale bakeries, dairies and bottling plants; and large-scale laundering, cleaning and dyeing establishments; manufacturing of awnings, venetian blinds and shades; and major automobile repair;
- Y. Wholesale, storage and agricultural uses, such as wholesale business, storage and warehousing; animal sales and treatment; live poultry markets; and outdoor amusement uses; and horticulture and greenhouses;
- Z. Distribution and trucking services, such as distribution plants, parcel delivery and service industries and truck terminals;
- AA. Light manufacturing uses, such as laboratories; manufacture of food products, pharmaceuticals and cosmetics but not the rendering of fats and oils; the manufacture, assembly, packing or treatment of articles or merchandise from previously prepared materials; glass and textile manufacturers; lumber and building material sales and storage yards; contractors' equipment, sales and service; tool and die and other machine shop operation;
- BB. General industrial uses, such as any manufacturing use involving primary production from raw materials; bulk storage of petroleum and similar fluids; vehicle manufacturing and assembly; structural steel fabricating shops; and boat building; and
- CC. The manufacture of sulfuric and nitric acids.

(Prior code Schedule II)

Schedule III - Conditional Uses.

### Schedule III

#### Conditional Uses

A.

Rooming Houses. Rooming houses shall be permitted in the R-3 and R-4 Districts, provided that the following conditions are maintained:

1. Nonvehicular open space shall be provided in the amount required for the district in which such rooming house is located.
2. The premises shall be utilized exclusively for residential purposes only.
3. At least eight-tenths off-street parking space per bedroom shall be provided.
4. A current rooming house license shall be maintained.
5. The bedroom density requirements applicable to the district in which such rooming house is located shall be complied with.

B. Mausoleums. Mausoleums shall be permitted in all districts, provided that the following conditions are maintained:

1. In accordance with N.J.S.A. 8A1-1, et seq., a cemetery shall be defined as any land or place dedicated for use, used or intended to be used for the interment of the human dead in the ground, in a mausoleum or crypt located in the cemetery and a columbarium for cinerary interments or lands held for burial purposes.
2. All mausoleums shall be located in cemeteries.
3. Permitted uses shall be in the establishment, preservation, construction, and operation and maintenance of cemeteries, public mausoleums, crypts, chapels, columbaria, conservatories, and other necessary buildings and improvements (hereinafter "structures") for the burial, and care of the remains of the dead.
4. Minimum side and rear yard setbacks shall be five feet.
5. Property line structures shall not exceed twenty-five (25) feet in height, except as hereinafter provided.
6. Structures exceeding twenty-five (25) feet in height shall be permitted, provided a setback is maintained equal to one foot for every foot in height of the structure, not to exceed seventy (70) feet in any case, except that fifty-five (55) feet shall be the maximum height of any structure abutting a residential property line.
7. Property line structures along the common property line with a residential zone or use shall maintain a ten (10) feet set back and be limited to fourteen (14) feet in height.

C. Child-Care Facilities. Child-care facilities for less than six children shall be permitted in the R-2 or R-3 districts, and facilities for at least six children shall be permitted in the C-2 district, provided that the following conditions are maintained:

1. Centers for six or more children shall be licensed by the state, and facilities for at least two but not more than five children shall be affiliated with a licensed child-care center.
- 2.

Child-care facilities shall not be located where the concentration of carbon monoxide and dioxide gases equals or exceeds ten (10) milligrams per liter.

3. At least one hundred (100) square feet of open play area shall be provided for each child, based on the maximum design capacity of the facility, and such area shall be completely enclosed by a solid masonry wall or fence at least six feet in height.
  4. Play activity in outdoor play areas which are located in or adjacent to residential uses shall be restricted to between the hours of 9:00 a.m. and 5:00 p.m., and the areas shall be screened from such uses with massed evergreen plantings at least six feet in height.
  5. Facilities shall provide doors for ingress and egress which are not more than six feet above or below existing grades and which discharge onto open areas with a minimum dimension of fifteen (15) feet.
  6. The entire operation of the facility shall be on one floor which is not more than one-half-story (six feet) above or below grade.
- D. Nursing Homes. Nursing homes shall be permitted in an R-2, R-3 or R-4 zone, provided that the following conditions are maintained:
1. A current license to operate a nursing home shall be maintained.
  2. Such facility shall be located on a lot at least ten thousand (10,000) square feet in area.
- E. Essential Services.
1. Enclosed or Permanent, Structures. In, adjacent to, abutting or across from R Districts, such uses shall include electric substations, transformers, switches, auxiliary apparatus serving a distribution area and water-pumping stations and shall be subject to the following regulations:
    - a. Such facility shall be so located as to draw a minimum of vehicular traffic to and through such streets.
    - b. The location, design and operation of such facility may not adversely affect the character of the surrounding residential area.
    - c. Adequate fences, barriers and other safety devices shall be provided and shall be landscaped in accordance with the provisions of Section 17.36.130.
    - d. Noise and interference emitted from such public utility services shall not be greater than permitted in accordance with the performance standards set forth in Section 17.36.060.
  2. Such uses shall be limited to the erection, construction, alteration or maintenance, by public utilities or municipal or other governmental agencies, or underground or overhead gas, electrical, steam or water transmission or distribution systems, collection, communication, supply or disposal systems, including poles, wires, mains, drains, sewers, pipes, conduits, cables, fire alarm boxes, traffic signals, hydrants and other similar equipment and accessories

in connection therewith reasonably necessary for the furnishing of adequate service by such public utilities or municipal or other governmental agencies or for the public health or safety or general welfare, but not including buildings. The landscaping regulations of Chapter 17.36 shall apply if the essential service facility occupies a plot of ground greater than six square feet. Performance standards as set forth in Section 17.36.060 herein shall also apply.

- F. Automobile Gas Stations. Automobile gas stations shall be permitted in the C-2 and C-4 districts, provided that the following conditions are maintained.
1. Each station shall provide at least two driveway aprons measuring at least twenty (20) feet in width and located no closer than forty (40) feet to the nearest street line of a perpendicular street.
  2. All accessory structures, such as filling pumps, vents and underground bulk storage of flammable materials, shall be located at least fifty (50) feet from any residential property line and at least twenty (20) feet from any other property line other than a street line.
  3. All pump islands shall be located so that there is sufficient space within the property lines in each direction to accommodate at least three waiting vehicles in addition to those being serviced.
  4. All washing, lubricating, draining or repairs of other than an incidental nature shall be conducted entirely within an enclosed structure.
  5. A curbed safety island at least five feet in width shall be located between pump islands and any property line abutting a street.
- G. Minor Auto Repair and Service. Minor auto repair and service shall be allowed in the C-4 district, provided that the following conditions are maintained:
1. All repair and servicing operations shall be conducted entirely within an enclosed structure.
  2. No vehicles other than those under or awaiting repair or awaiting delivery or pickup after repair shall be stored on the premises.
  3. All such establishments shall comply with the performance standards specified in Section 17.36.060 herein.
  4. All such establishments shall provide at least eight off-street parking spaces, plus two spaces for each work or service area.
- H. Automobile Salvage and Wrecking Operations, Outdoor Storage and Junkyards. Such uses shall be permitted in an M-2 zone, provided that the following conditions are maintained:
1. Such operation is conducted not less than two hundred (200) feet from any R district and C district.
  2. All operations are conducted within a solid wall or tight board fence not less than eight feet high.

- I. Commercial Parking for Residents. Commercial parking for residents shall be permitted in R-3 and R-4 districts, provided that such parking is restricted by deed, filed with the Register of Union County, binding the owner and his or her heirs, successors and assigns for the life of such use to lease such spaces only to residents of dwelling structures located within a radius of five hundred (500) feet from the lot boundary and to lease such spaces at monthly rates only.
- J. Gas Storage Tanks. Gas storage tanks shall be permitted in an M-2 or M-3 district, provided that the following conditions are maintained:
  1. No tank or other structure for the storage of gas, natural or otherwise, or any mixture of gas or gases, natural or otherwise, either in their vaporous or liquefied form, of any type suitable for light, heating, power or other purpose shall be constructed, erected or maintained in any populated area so as to create the possibility of a public disaster from fire or explosion; nor shall any such tank or structure be constructed, erected or maintained so as to create the possibility of extensive damage to property or the interruption of essential public services from such fire or explosion.
  2. An environmental impact study shall be submitted with each application and no conditional use shall be approved unless the same can be granted without substantial detriment to the natural resources, including but not limited to light, water, air and land.
  3. No such conditional use shall be granted unless the economic necessity therefor shall be clearly exhibited.
  4. No such conditional use shall be granted if it impairs the preservation of tangible and intangible property values, both public and private.
  5. No such conditional use shall be granted if the applicant has an unsatisfactory operating safety record.
  6. All applications shall include detailed construction plans and all safety procedures and standards to be followed not only during construction but thereafter, together with copies of all approvals of state and federal regulatory bodies and agencies.
- K. Retail Sale for Guests—Bakeries.
  1. Retail sales for members and guests of quasi-public uses shall be permitted in any residential zone, provided that the following conditions are maintained:
    - a. Only customary and appropriate retail activities such as gift shops, soda fountains, etc., are conducted;
    - b. All retail activity is conducted from within the principal structure;
    - c. Access to the retail activity may be had only from within the principal structure; and
    - d. No external evidence of retail activity is discernible from the outside of the structure.
  - 2.

Bakeries. Bakeries shall be permitted in a C-1 commercial zone, provided that the following condition is maintained: Goods produced shall be sold only at retail on the premises.

- L. Helicopter Landing Facilities. A private helistop used solely for the landing and takeoff of helicopters may be established as an accessory use in an M-2 or M-3 district, provided that the following conditions are maintained:
1. Such facility is located not less than nine hundred (900) feet from any R district.
  2. Restrictions have been established to prevent the development or occurrence of man-made or natural obstacles within the final eight hundred (800) feet of any approach/departure flight paths.
  3. Flight paths are designed so as to comply with noise performance standards in nonindustrial zones as measured from the maximum permissible building height.
  4. Landing areas in which helipads are located are suitably paved, marked and fenced.
  5. A fire protection plan approved by the fire department has been established for protection of adjacent property.
  6. No tanks, drums or other structure for the storage of flammable and explosive helicopter fuel, natural or otherwise, or any mixture of helicopter fuel or fuels, natural or otherwise, in liquid, solid or gaseous state shall be located on the same or within close proximity of any helicopter landing areas so as to create the possibility of a public disaster from fire or explosion; nor shall any such tank, drum or structure be constructed, erected or maintained so as to create the possibility of extensive damage to property or the interruption of essential public services from such fire or explosion.
- M. Amusement Machine Complexes. Amusement machine complexes shall be permitted in any C-3 district, provided that the following conditions are maintained:
1. The applicant has met all the requirements of Chapter 5.12 of this code.
  2. Parking spaces for motor vehicles and motorcycles to accommodate customers or patrons shall be provided at the ratio of one parking space for every two games, machines or devices so licensed. Bicycle racks shall be provided for use by customers or patrons at the ratio of one rack space for every two games, machines or devices so licensed. No access or egress driveway may cross a pedestrian walk which has a peak hourly volume in excess of fifty (50) persons.
  3. Provisions sufficient to prevent the assembly of persons in public areas within three hundred (300) feet of any entrance and/or exit of the premises or building in which such complex is located.
- N. Community Residences for the Developmentally Disabled and Community Shelters for Victims of Domestic Violence. Community residences for the developmentally disabled and community shelters for victims of domestic violence shall be a permitted use in all residential zones of a

municipality, and the requirements therefor shall be the same as for single family dwelling units located within such zones; provided, however, community residences for the developmentally disabled and community shelters for victims of domestic violence, as authorized by N.J.S.A. 40:55D-66.1 and N.J.S.A. 40:55D-66.2, housing more than six persons excluding resident staff, shall be permitted as a conditional use in all residential zones provided the following conditions are met or maintained:

1. A conditional use permit shall not be granted for any such community residence for the developmentally disabled or community shelter for victims of domestic violence located within one thousand five hundred (1,500) feet of an existing community residence for developmentally disabled or community shelter for victims of domestic violence as defined in N.J.S.A. 40:55D-66.2.
2. A conditional use permit shall not be granted if the number of persons, other than resident staff, resident at existing community residence for the developmentally disabled or community shelter for victims of domestic violence within the city, as defined in N.J.S.A. 40:55D-66.2, exceed fifty (50) persons or five-tenths of one percent of the population of the city, whichever is greater.
3. A conditional use permit shall not be granted for any such community residence for developmentally disabled or community shelter for victims of domestic violence located within one thousand five hundred (1,500) feet of any school or day care center, and no school or day care center shall be permitted within one thousand five hundred (1,500) feet of any community residence for the developmentally disabled or community shelter for victims of domestic violence.
4. A community residence for the developmentally disabled or community shelter for victims of domestic violence for more than six persons, excluding resident staff, must be licensed or have a purchase of service contract or affiliation agreement from the appropriate state agency. The applicant for a conditional use permit shall provide documentation that a purchase of service contract or affiliation agreement exists, or that an application for a license has been submitted to the appropriate state licensing agency. If the community residence for the developmentally disabled or community shelter for the victims of domestic violence is to be licensed, the issuance of a certificate of occupancy ("CO") for the proposed residence will be conditioned on the applicant subsequently providing documentation that the residence is fully licensed by the appropriate state agency.
5. The application for a conditional use permit shall contain a brief statement identifying the number of persons to reside in the community residence for the developmentally disabled or community shelter for victims of domestic violence, and a general description of their classification (i.e., adult versus child, mentally ill versus developmentally disabled).
- 6.

Each community residence for the developmentally disabled or community shelter for victims of domestic violence in an R-1 (single family) or R-2 (two family) zone intended to provide housing for between seven and twelve (12) persons, excluding resident staff, shall provide one off-street parking space per community residence. Each community residence in an R-1 or R-2 zone intended to provide housing for between thirteen (13) and fifteen (15) persons, excluding resident staff, shall provide two off-street spaces per community residence.

7. Any building constructed or altered for use as a community residence for the developmentally disabled or community shelter for victims of domestic violence in any R-1 (single family) or R-2 (two family) zone shall reflect a residential character. Any construction, renovations or alterations made to accommodate handicapped persons or to satisfy applicable state and local building codes or fire prevention/fire safety codes shall not be considered as making the community residence for the developmentally disabled or community shelter for victims of domestic violence conflict with this requirement.
8. Any conditional use approval granted under subsection N of this schedule shall contain the following restrictions:
  - a. Any reversion of a community residence for the developmentally disabled or community shelter for victims of domestic violence to a permitted use shall comply with all applicable zone requirements.
  - b. The name of the facility may be displayed in conformity with the sign ordinance of the city.
  - c. Occupancy of any community residence for the developmentally disabled or community shelter for victims of domestic violence which receives a conditional use permit under this section is restricted to persons who are developmentally disabled as defined in N.J.S.A. 40:55D-66.2a, or persons who are victims of domestic violence as defined in N.J.S.A. 40:55D-66.2b.
  - d. Community residences for the developmentally disabled and community shelters for victims of domestic violence shall be permitted as a conditional use in all other zoning districts provided the criteria set forth herein for location in residential districts is satisfied.
- O. Billboards. Signs for off-premises advertising (billboards) shall be permitted provided the following conditions are met and maintained:
  1. Billboards shall be permitted in any district when located on or within three hundred (300) feet of state or federal highway routes or passenger rail facilities.
  2. Billboards shall be permitted in accordance with a billboard siting plan conforming with the following requirements. The siting plan shall control the entire system of billboards to be maintained by any applicant along any one route or rail line and consider the impacts of all



billboards in their totality whether maintained by the applicant or others and whether inside or outside of the municipality.

- a. The plan shall ensure that billboards do not intrude on residential areas. Billboards shall not be located in any area designated by the master plan as a residential area and visibility of billboards and support structures located within six hundred (600) feet of such areas shall be effectively mitigated through appropriate measures, including height limitations or funding of off-site plantings to screen views of billboards from dwellings.
  - b. The plan shall ensure that billboard messages do not intrude on places of assembly. To ensure that messages are not comprehensible, mitigation measures shall be employed where billboard faces would otherwise be directly viewable from any church, school, playground or park within one thousand (1,000) feet.
  - c. The plan shall ensure that billboards do not unreasonably intrude on scenic vistas. Billboards shall not be located so as to significantly degrade the appearance of any scenic views. The optimal viewing locations should be identified for any historically or architecturally significant structures within two thousand (2,000) feet and for any scenic skylines or vistas. The obscuring impact of billboards on the panoramic background seen from these locations shall be minimized.
  - d. The plan shall ensure that billboards do not interfere with traffic safety devices or signs. Billboards shall not obstruct views of such signs and devices located within two hundred fifty (250) feet.
  - e. The plan shall ensure that billboards do not unreasonably obscure the business signs, building entry facades or entrance driveways on neighboring properties. Billboards shall be erected outside of clear sight triangles to be established in accordance with master plan principles and standards.
  - f. The plan shall ensure that billboards remain in reasonable harmony with the existing aesthetic character of the area in which they are located. Billboards shall conform to design limits specified in the plan with particular attention to size, height and illumination.
3. Billboards and freestanding signs (greater than three hundred (300) square feet) shall be subject to special location and design controls and shall be classified as a conditional use. Criteria for same shall be the following:
- a. Billboards shall be located, under all circumstances, at least two thousand (2,000) feet apart from all other billboards or freestanding signs, whether a component of a billboard system or as an independent billboard or freestanding sign. (Pursuant to subsection 3 above.) A survey, signed and sealed by a professional land surveyor, shall be required to document existing billboard sign locations.
  - b. Billboards shall be located, in excess of five hundred (500) feet from any residential use.

- c. Following an approval by the planning board, a billboard of freestanding sign (greater than three hundred (300) square feet) shall obtain a square footage license and pay an annual license fee of eighty cents (\$0.80) for each square foot of advertising space provided that the minimum annual license fee shall be two hundred forty dollars (\$240.00).
- d. Billboards and freestanding signs greater than three hundred (300) square feet existing prior to the ordinance codified in this chapter shall be permitted to continue if they are less than two thousand (2,000) square feet apart and providing that the applicant obtain an annual license starting on July 1, 1998.

**TABLE #1  
RESIDENTIAL LOT WIDTHS AND DIMENSIONS**

Zone	Wards	Prevailing (A) Lot Width	Prevailing (B) Lot Width	Standard (C) Lot Width
R-1 R-1	All except #2 #2	40 ft 35 ft		50 ft 50 ft
R-2, 2A R-3, 3A	#1	25 ft		25 ft
R-2, 2A R-3, 3A	#2	25 ft	33 ft	50 ft
R-2, 2A R-3, 3A	#3 & 4	33 ft	40 ft	50 ft
R-2, 2A R-3, 3A	#5 & 6	25 ft	30 ft	33 ft

The prevailing lot width (A) is the bench mark width for all zones in the city. Use standard (C) lot width when a prevailing width does not exist.

Conditions of Table #1:

- (A) To meet the prevailing lot width requirement sixty-five (65) percent of all existing lot widths must be less than or equal to the listed lot dimension.
- (B) To meet the prevailing lot width requirement fifty (50) percent of all existing lot widths must be less than or equal to the listed lot dimension.
- (C) Standard lot width shall be utilized when no prevailing lot width can be established.

To establish prevailing conditions (for all lot requirements), in all zones within the city the applicant must produce a table depicting the following criteria:

1. All existing lots (including property in question), per current city tax maps on file in the city engineer's office. Do not include any new lots which are to be created by the application.
2. Include only lots in the same zone as the subject parcel.
3. Include all lots within die entire city block on both sides of street as subject parcel.
4. Select the prevailing condition requested, the proposed lot width must equal or exceed the numerical number listed.

*Building; front yard setbacks, side yard setbacks and rear yard setbacks:*

To establish prevailing setbacks for all yard dimensions the applicant must produce a table depicting the following:

1. Include only existing lots (do not include newly created lots), per current city tax maps on file in the city engineer's office.
2. Include only lots in the same zone as the subject parcel.
3. Include all lots within the entire city block on both sides of street as subject parcel.

The prevailing lot dimension shall be a dimension which exists for sixty-five (65) percent of all existing lots. To further explain, sixty-five (65) percent of all compatible structures must exhibit a dimension which equals or is less than the setback established for the proposed application.

(Ord. No. 4373, § 7, 5-14-2013; Ord. No. 3273, § 2, 12-12-2000; prior code Schedule III)

## Chapter 17.40 - OFF-STREET PARKING AND LOADING REGULATIONS

### 17.40.010 - Off-street parking regulations.

Off-street parking shall be regulated as follows:

- A. General Requirements. In all districts, in connection with every manufacturing, business, institutional, recreational or other use, there shall be provided, at the time that any building or structure is erected or is enlarged or increased in capacity or changed in use, parking spaces, in accordance with the requirements set forth in section 17.40.040 of this chapter,

except that residential uses shall conform to the requirements of the residential site improvement standards, N.J.A.C. 5:21 except N.J.A.C. 5:21(f) of the residential site improvement standards and parking in the C-3 and C-5 zones shall not be required for commercial uses less than two thousand two hundred (2,200) square feet.

- B. Proximity of Parking to Principal Use. All permitted and required accessory off-street parking spaces, open or enclosed, shall be located on the same lot as the use to which such spaces are accessory.
- C. Location of Exits and Entrances. No commercial parking area or garage for twenty-five (25) or more motor vehicles shall have an entrance or exit for vehicles within one thousand five hundred (1,500) feet along the same side of a street on which is located a school, public playground, church, hospital, public library or institution for dependents or for children, except where such property is in another block or on another street on which the zone lot does not abut. Such access shall not be closer to the intersections of any two streets than fifty (50) feet. No access drive or driveway shall be located in any R district to provide access to uses other than those permitted in such R district.

(Ord. No. 5743, § 1, 12-13-2022; Ord. 3809 § 1, 2006; prior code § 40-130)

#### 17.40.020 - Off-street loading.

In any district, in connection with every building or building group or part thereof hereafter erected which is to be occupied by manufacturing or commercial uses or distribution by vehicles of material or merchandise, there shall be provided and maintained, on the same zone lot with such building, off-street loading berths not less than ten (10) feet in width and thirty-five (35) feet in length in accordance with the requirements of Section 17.40.040, Table II. Such berths shall have a minimum clearance of fourteen (14) feet and may occupy all or any part of any required yard.

(Prior code § 40-131)

#### 17.40.030 - Parking and loading.

- A. No off-street parking or loading area shall be used for the sale, repair, dismantling or servicing of any vehicle, equipment, materials or supplies.
- B. Joint Facilities for Parking or Loading. Off-street parking and loading facilities for separate uses may be provided jointly if the total number of spaces so provided is not less than the sum of the separate requirements for each use and provided that all regulations governing the location of accessory spaces in relation to the use served are adhered to. Further, no accessory space or portion thereof shall serve as a required space for more than one use unless otherwise approved by the approving authority in accordance with the purposes and procedures set forth herein.

(Prior code § 40-132)

17.40.040 - Number of parking and loading spaces required.

A. The number of off-street parking spaces required shall be as set forth in Table I below.

Table I

Uses	Minimum Required Off-Street Parking Spaces
Automobile major repair shop	3 per each 300 square feet of floor area <sup>1</sup>
Automobile minor repair shop	2 per each 300 square feet of floor area <sup>1</sup>
Automobile service stations	1 for each employee <sup>1</sup>
Bowling alleys	5 for each alley <sup>1</sup>
Churches, synagogues, and houses of worship	1 for each 5 permanent seats. When individual seats are not provided, each 20 inches of bench shall be considered 1 seat. The number of required off-street parking spaces may be eliminated or reduced if there exists within 500 feet of the church, synagogue or house of worship, public or private parking lots containing a sufficient number of off-street parking spaces to satisfy the requirements. The church, synagogue or house of worship must provide the difference if the number of parking spaces in the private or public lots is below the number required. Any spaces provided in public or private lots must be shown to be available for worshipers on the day or days of greatest use. <sup>1</sup>

Community buildings, country clubs, social halls, lodges, fraternal and accessory organizations, and similar uses	1 for each 200 square feet of floor area occupied by all principal structures. <sup>1</sup>
Doctors in other than office buildings	3 for patients' use for each doctor's office. <sup>1</sup>
Dentist in other than office buildings	2 for patients' use for each dentist's office. <sup>1</sup>
Funeral homes and mortuaries	15 for visitors. <sup>1</sup>
Hospitals, nursing, and convalescent homes	1 for each 3 beds. <sup>1</sup>
Hotels, motels and rooming houses	1 for each rentable unit. <sup>1</sup>
Industrial, manufacturing, warehousing, wholesale, distribution and selected commercial (use groups X-CC)	1 ground level space per each 1,400 square feet of site area. The number of spaces to be installed at any time is to be based on a current and valid parking management plan approved by the zoning administrator and a final site plan approved by the approving authority. <sup>1</sup>
Offices	1 for every 400 square feet of rentable floor area. <sup>1</sup>
Quick-service eating and drinking establishments	10 plus 1 for every 2 employees on the maximum shift, plus 1 for every 2 seats. <sup>1</sup>

Residential	<p>All residential developments shall comply with the requirements of the Residential Site Improvement Standards (RSIS Table 4.4), except N.J.A.C. 5:21-4.14(f) within RSIS. Tandem parking may be permitted for dwelling structures containing no more than 2 units. No more than 2 parking spaces will be permitted to be in tandem configuration. Curbside parking shall be permitted to be credited toward the required parking at the discretion of the planning board, zoning board of adjustment or the administrative authority. Curbside parking which exists only along the frontage of the property in question may be counted. <sup>1</sup></p>
	<p>No obstructions are permitted within proposed parking spaces. If the parking spaces are internally located within a structure no columns shall be permitted within the space. A clearance distance of 18 inches must be adhered to from all columns to all parking spaces. The column must also be protected from being contacted by vehicles via concrete curbing. <sup>1</sup></p>
	<p>No parking lots or driveways for residential uses greater than 2 units are permitted within 25 feet of rear property line and 10 feet from side property line. <sup>1</sup></p>
Restaurants without live entertainment, bars and nightclubs	<p>1 for every 2 employees on the maximum shift, plus 1 for every 4 seats. <sup>1</sup></p>

Retail shops, store groups, shops, etc.	1 for each 300 square feet of floor area where the floor area shall exceed 1,000 square feet. <sup>1</sup>
Schools	
Senior high schools	1 for every 10 classroom seats. <sup>1</sup>
Elementary and junior high schools	1 for every 15 classroom seats. <sup>1</sup>

<sup>1</sup> All parking requirements for off-street parking are to be on the subject property. No on-street parking shall be credited for the required off-street parking for such use.

B. The number of off-street loading spaces required shall be as set forth in Table II below:

**Table II**

Uses	Square Feet of Total Floor Area	Required Off-Street Loading Berths
Schools	15,000 or more	1
Hospitals (in addition to space for ambulances)	From 10,000 to 30,000	1
	For each additional 30,000 or major fraction thereof	1 additional
Undertakers and funeral parlors	5,000	1
	For each additional 5,000 or major fraction thereof	1 additional



Offices, hotels retail, commercial, wholesale, manufacturing, storage and miscellaneous uses		
	From 10,000 to 25,000	1
	From 25,000 to 40,000	2
	From 40,000 to 60,000	3
	From 60,000 to 100,000	4
	For each additional 50,000 or major fraction thereof	1 additional

C. In the case of any building, structure or premises which is not specifically mentioned herein, the approving authority shall determine the amount of off-street parking or loading required.

(Ord. No. 5743, § 2, 12-13-2022; Ord. No. 4647, § 1, 11-24-2015; prior code § 40-133)

17.40.050 - Lighting of off-street parking.

- A. Off-street parking areas with six or more spaces shall be adequately and properly lighted.
- B. All lighting shall be shielded so as not to affect adjacent properties.
- C. No lighting shall be installed which exceeds the maximum illumination levels pursuant to Chapter 17.32 of this title.

(Prior code § 40-134)

Chapter 17.44 - FLOODPLAIN MANAGEMENT REGULATIONS

*Footnotes:*

--- (1) ---

**Editor's note**— Ord. No. 5832, §§ 1, 2, adopted April 25, 2023, repealed and reenacted chapter 17.44 in its entirety to read as herein set out. Formerly, chapter 17.44, sections 17.44.010—17.44.060 pertained to flood damage prevention, and derived from Ord. No. 3832, §§ 1, 2, 4, 5, adopted in 2006; Ord. No. 4394, §§ 1, 2, 4, 5, adopted July 23, 2013, and Ord. No. 4457, §§ 1—5, adopted April 8, 2014.

ARTICLE I. - SCOPE AND ADMINISTRATION

## 17.44.010 - Title.

These regulations, in combination with the flood provisions of the Uniform Construction Code (UCC) N.J.A.C. 5:23 (hereinafter "Uniform Construction Code," consisting of the building code, residential code, rehabilitation subcode, and related codes, and the New Jersey Flood Hazard Area Control Act (hereinafter "FHACA"), N.J.A.C. 7:13, shall be known as the floodplain management regulations of the City of Elizabeth (hereinafter "these regulations").

(Ord. No. 5832, § 2, 4-25-2023)

## 17.44.020 - Scope.

These regulations, in combination with the flood provisions of the Uniform Construction Code and FHACA shall apply to all proposed development in flood hazard areas established in article II of these regulations.

(Ord. No. 5832, § 2, 4-25-2023)

## 17.44.030 - Purposes and objectives.

The purposes and objectives of these regulations are to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific flood hazard areas through the establishment of comprehensive regulations for management of flood hazard areas, designed to:

- (1) Protect human life and health.
- (2) Prevent unnecessary disruption of commerce, access, and public service during times of flooding.
- (3) Manage the alteration of natural floodplains, stream channels and shorelines.
- (4) Manage filling, grading, dredging and other development which may increase flood damage or erosion potential.
- (5) Prevent or regulate the construction of flood barriers which will divert floodwater or increase flood hazards.
- (6) Contribute to improved construction techniques in the floodplain.
- (7) Minimize damage to public and private facilities and utilities.
- (8) Help maintain a stable tax base by providing for the sound use and development of flood hazard areas.
- (9) Minimize the need for rescue and relief efforts associated with flooding.

- (10) Ensure that property owners, occupants, and potential owners are aware of property located in flood hazard areas.
- (11) Minimize the need for future expenditure of public funds for flood control projects and response to and recovery from flood events.
- (12) Meet the requirements of the National Flood Insurance Program for community participation set forth in Title 44 Code of Federal Regulations, Section 59.22.

(Ord. No. 5832, § 2, 4-25-2023)

#### 17.44.040 - Coordination with building codes.

Pursuant to the requirement established in N.J.A.C. 5:23, the Uniform Construction Code, that the city administer and enforce the state building codes, the city council of the City of Elizabeth does hereby acknowledge that the Uniform Construction Code contains certain provisions that apply to the design and construction of buildings and structures in flood hazard areas. Therefore, these regulations are intended to be administered and enforced in conjunction with the Uniform Construction Code.

(Ord. No. 5832, § 2, 4-25-2023)

#### 17.44.050 - Ordinary building maintenance and minor work.

Improvements defined as ordinary building maintenance and minor work projects by the Uniform Construction Code including non-structural replacement-in-kind of windows, doors, cabinets, plumbing fixtures, decks, walls, partitions, new flooring materials, roofing, etc. shall be evaluated by the floodplain administrator through the floodplain development permit to ensure compliance with the substantial damage and substantial improvement section 17.44.290.

(Ord. No. 5832, § 2, 4-25-2023)

#### 17.44.060 - Warning.

The degree of flood protection required by these regulations is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur. Flood heights may be increased by man-made or natural causes. Enforcement of these regulations does not imply that land outside the special flood hazard areas, or that uses permitted within such flood hazard areas, will be free from flooding or flood damage.

(Ord. No. 5832, § 2, 4-25-2023)

#### 17.44.070 - Other laws.

The provisions of these regulations shall not be deemed to nullify any provisions of local, state, or federal law.

(Ord. No. 5832, § 2, 4-25-2023)

#### 17.44.080 - Violations and penalties for noncompliance.

No structure or land shall hereafter be constructed, re-located to, extended, converted, or altered without full compliance with the terms of this chapter and other applicable regulations. Violation of the provisions of this chapter by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a violation under N.J.S.A. 40:49-5. Any person who violates this chapter or fails to comply with any of its requirements shall be subject to one or more of the following: a fine of not more than one thousand two hundred fifty dollars (\$1,250.00), imprisonment for a term not exceeding ninety (90) days, or a period of community service not exceeding ninety (90) days.

Each day in which a violation of an ordinance exists shall be considered to be a separate and distinct violation subject to the imposition of a separate penalty for each day of the violation as the court may determine except that the owner will be afforded the opportunity to cure or abate the condition during a thirty (30) day period and shall be afforded the opportunity for a hearing before the court for an independent determination concerning the violation. Subsequent to the expiration of the thirty (30) day period, a fine greater than one thousand two hundred fifty dollars (\$1,250.00) may be imposed if the court has not determined otherwise, or if upon reinspection of the property, it is determined that the abatement has not been substantially completed.

Any person who is convicted of violating an ordinance within one (1) year of the date of a previous violation of the same ordinance and who was fined for the previous violation, shall be sentenced by a court to an additional fine as a repeat offender. The additional fine imposed by the court upon a person for a repeated offense shall not be less than the minimum or exceed the maximum fine fixed for a violation of the ordinance but shall be calculated separately from the fine imposed for the violation of the ordinance.

(Ord. No. 5832, § 2, 4-25-2023)

#### 17.44.090 - Solid waste disposal in a flood hazard area.

Any person who has unlawfully disposed of solid waste in a floodway or floodplain who fails to comply with this chapter or fails to comply with any of its requirements shall upon conviction thereof be fined not more than two thousand five hundred dollars (\$2,500.00) or up to a maximum penalty by a fine not exceeding ten thousand dollars (\$10,000.00) under N.J.S.A. 40:49-5.

(Ord. No. 5832, § 2, 4-25-2023)

#### 17.44.100 - Abrogation and greater restrictions.

These regulations supersede any ordinance in effect in flood hazard areas. However, these regulations are not intended to repeal or abrogate any existing ordinances including land development regulations, subdivision regulations, zoning ordinances, stormwater management regulations, or building codes. In the event of a conflict between these regulations and any other ordinance, code, or regulation, the more restrictive shall govern.

(Ord. No. 5832, § 2, 4-25-2023)

## ARTICLE II. - APPLICABILITY

#### 17.44.110 - General.

These regulations, in conjunction with the Uniform Construction Code, provide minimum requirements for development located in flood hazard areas, including the subdivision of land and other developments; site improvements and installation of utilities; placement and replacement of manufactured homes; placement of recreational vehicles; new construction and alterations, repair, reconstruction, rehabilitation or additions of existing buildings and structures; substantial improvement of existing buildings and structures, including repair of substantial damage; installation of tanks; temporary structures and temporary or permanent storage; utility and miscellaneous Group U buildings and structures; and certain building work exempt from permit under the Uniform Construction Code; and other buildings and development activities.

(Ord. No. 5832, § 2, 4-25-2023)

#### 17.44.120 - Establishment of flood hazard areas.

The City of Elizabeth was accepted for participation in the National Flood Insurance Program on May 7, 1971.

The National Flood Insurance Program (NFIP) floodplain management regulations encourage that all federal, state, and local regulations that are more stringent than the minimum NFIP standards take precedence in permitting decisions. The FHACA requires that the effective flood insurance rate map, most recent preliminary FEMA mapping and flood studies, and Department delineations be compared to determine the most restrictive mapping. The FHACA also regulates unstudied flood hazard areas in watersheds measuring fifty (50) acres or greater in size and most riparian zones in New Jersey. Because of

these higher standards, the regulated flood hazard area in New Jersey may be more expansive and more restrictive than the FEMA special flood hazard area. Maps and studies that establish flood hazard areas are on file at City Hall, 50 Winfield Scott Plaza, Elizabeth, NJ 07201.

The following sources identify flood hazard areas in this jurisdiction and must be considered when determining the best available flood hazard data area:

- (1) Effective Flood Insurance Study. Special flood hazard areas (SFHAs) identified by the Federal Emergency Management Agency in a scientific and engineering report entitled Flood Insurance Study, Union County, New Jersey (All Jurisdictions) dated September 20, 2006 and the accompanying flood insurance rate maps (FIRM) identified in Table 17.44.120(1) whose effective date is September 20, 2006 are hereby adopted by reference.

**Table 17.44.120(1)**

Map Panel #	Effective Date	Suffix	Map Panel #	Effective Date	Suffix
34039C0015	9/20/2006	F	34039C0026	9/20/2006	F
34039C0022	9/20/2006	F	34039C0034	9/20/2006	F
34039C0023	9/20/2006	F	34039C0035	9/20/2006	F
34039C0024	9/20/2006	F	34039C0036	9/20/2006	F
34039C0025	9/20/2006	F			

- (2) Federal Best Available Information. The city shall utilize federal flood information as listed in the table below that provides more detailed hazard information, higher flood elevations, larger flood hazard areas, and results in more restrictive regulations. This information may include but is not limited to preliminary flood elevation guidance from FEMA (such as advisory flood hazard area maps, work maps or preliminary FIS and FIRM). Additional federal best available studies issued after the date of this chapter must also be considered. These studies are listed on FEMA's Map Service Center. This information shall be used for floodplain regulation purposes only.

**Table 17.44.120(2)**

Map Panel #	Preliminary Date	Map Panel #	Preliminary Date
34039C0014G	2/3/2015	34039C0015G	2/3/2015
34039C0022G	4/18/2016	34039C0023G	2/3/2015
34039C0024G	2/3/2015	34039C0025G	2/3/2015
34039C0026G	2/3/2015	34039C0034G	2/3/2015
34039C0035G	2/3/2015	34039C0036G	2/3/2015

(3) Other Best Available Data. The city shall utilize high water elevations from flood events, groundwater flooding areas, studies by federal or state agencies, or other information deemed appropriate by the city. Other "best available information" may not be used which results in less restrictive flood elevations, design standards, or smaller flood hazard areas than the sources described in subsections 17.44.120(1) and (2), above. This information shall be used for floodplain regulation purposes only.

(4) State Regulated Flood Hazard Areas. For state regulated waters, the NJ Department of Environmental Protection (NJDEP) identifies the flood hazard area as the land, and the space above that land, which lies below the "Flood Hazard Area Control Act Design Flood Elevation", as defined in article IX, and as described in the New Jersey Flood Hazard Area Control Act at N.J.A.C. 7:13. A FHACA flood hazard area exists along every regulated water that has a drainage area of fifty (50) acres or greater. Such area may extend beyond the boundaries of the special flood hazard areas (SFHAS) as identified by FEMA.

The following is a list of New Jersey State studied waters in this community under the FHACA, and their respective map identification numbers.

**Table 17.44.120(3) List of State Studied Waters**

Name of Studied Water	File Name	Map Number
Elizabeth River	C0000022	2

(Ord. No. 5832, § 2, 4-25-2023)

#### 17.44.130 - Establishing the Local Design Flood Elevation (LDFE).

The Local Design Flood Elevation (LDFE) is established in the flood hazard areas determined in section 17.44.120, using the best available flood hazard data sources, and the Flood Hazard Area Control Act minimum statewide elevation requirements for lowest floors in A, Coastal A, and V zones, ASCE 24 requirements for critical facilities as specified by the building code, plus additional freeboard as specified by this chapter.

At a minimum, the local design flood elevation shall be as follows:

- (1) For a delineated watercourse, the elevation associated with the best available flood hazard data area determined in section 17.44.120 plus one (1) foot or as described by N.J.A.C. 7:13 of freeboard, or
- (2) For any undelineated watercourse (where mapping or studies described in subsections 17.44.120(1) and (2) are not available) that has a contributory drainage area of fifty (50) acres or more, the applicants must provide one of the following to determine the local design flood elevation:
  - a. A copy of an unexpired NJDEP flood hazard area verification plus one (1) foot of freeboard and any additional freeboard as required by ASCE 24, or
  - b. A determination of the flood hazard area design flood elevation using Method 5 or Method 6 (as described in N.J.A.C. 7:13) plus one (1) foot of freeboard and any additional freeboard as required by ASCE 24. Any determination using these methods must be sealed and submitted according to sections 17.44.380 and 17.44.390.
- (3) AO Zones. For Zone AO areas on the municipality's FIRM (or on preliminary flood elevation guidance from FEMA), the local design flood elevation is determined from the FIRM panel as the highest adjacent grade plus the depth number specified plus one (1) foot of freeboard. If no depth number is specified, the local design flood elevation is three (3) feet above the highest adjacent grade.
- (4) Class IV Critical Facilities. For any proposed development of new and substantially improved flood design class iv critical facilities, the local design flood elevation must be the higher of the two-tenths (0.2) percent annual chance (five hundred (500) year) flood elevation or the flood hazard area design flood elevation with an additional two (2) feet of freeboard in accordance with ASCE 24.
- (5) Class III Critical Facilities. For proposed development of new and substantially improved flood design class III critical facilities in coastal high hazard areas, the Local Design Flood Elevation must be the higher of the two-tenths (0.2) percent annual chance (five hundred (500) year)



flood elevation or the flood hazard area design flood elevation with an additional one (1) foot of freeboard in accordance with ASCE 24.

(Ord. No. 5832, § 2, 4-25-2023)

### ARTICLE III. - DUTIES AND POWERS OF THE FLOODPLAIN ADMINISTRATOR

#### 17.44.140 - Floodplain administrator designation.

The construction official is designated the floodplain administrator. The floodplain administrator shall have the authority to delegate performance of certain duties to other employees.

(Ord. No. 5832, § 2, 4-25-2023)

#### 17.44.150 - General.

The floodplain administrator is authorized and directed to administer the provisions of these regulations. The floodplain administrator shall have the authority to render interpretations of these regulations consistent with the intent and purpose of these regulations and to establish policies and procedures in order to clarify the application of its provisions. Such interpretations, policies and procedures shall be consistent with the intent and purpose of these regulations and the flood provisions of the building code and shall not have the effect of waiving specific requirements without the granting of a variance pursuant to article VII of these regulations.

(Ord. No. 5832, § 2, 4-25-2023)

#### 17.44.160 - Coordination.

The floodplain administrator shall coordinate with the construction official to administer and enforce the flood provisions of the Uniform Construction Code.

(Ord. No. 5832, § 2, 4-25-2023)

#### 17.44.170 - Duties.

The duties of the floodplain administrator shall include but are not limited to:

- (1) Review all permit applications to determine whether proposed development is located in flood hazard areas established in article II of these regulations.
- (2) Require development in flood hazard areas to be reasonably safe from flooding and to be designed and constructed with methods, practices and materials that minimize flood damage.
- (3)

Interpret flood hazard area boundaries and provide available flood elevation and flood hazard information.

- (4) Determine whether additional flood hazard data shall be obtained or developed.
- (5) Review required certifications and documentation specified by these regulations and the building code to determine that such certifications and documentations are complete.
- (6) Establish, in coordination with the construction official, written procedures for administering and documenting determinations of substantial improvement and substantial damage made pursuant to section 17.44.290 of these regulations.
- (7) Coordinate with the construction official and others to identify and investigate damaged buildings located in flood hazard areas and inform owners of the requirement to obtain permits for repairs.
- (8) Review requests submitted to the construction official seeking approval to modify the strict application of the flood load and flood resistant construction requirements of the Uniform Construction Code to determine whether such requests require consideration as a variance pursuant to article VII of these regulations.
- (9) Require applicants who submit hydrologic and hydraulic engineering analyses to support permit applications to submit to FEMA the data and information necessary to maintain the flood insurance rate maps when the analyses propose to change base flood elevations, flood hazard area boundaries, or floodway designations; such submissions shall be made within six (6) months of such data becoming available.
- (10) Require applicants who propose alteration of a watercourse to notify adjacent jurisdictions and the NJDEP Bureau of Flood Engineering, and to submit copies of such notifications to the Federal Emergency Management Agency (FEMA).
- (11) Inspect development in accordance with article VI of these regulations and inspect flood hazard areas to determine if development is undertaken without issuance of permits.
- (12) Prepare comments and recommendations for consideration when applicants seek variances in accordance with article VII of these regulations.
- (13) Cite violations in accordance with article VIII of these regulations.
- (14) Notify the Federal Emergency Management Agency when the corporate boundaries of the city have been modified.
- (15) Permit ordinary maintenance and minor work in the regulated areas discussed in section 17.44.120.

(Ord. No. 5832, § 2, 4-25-2023)

17.44.180 - Use of changed technical data.

The floodplain administrator and the applicant shall not use changed flood hazard area boundaries or base flood elevations for proposed buildings or developments unless the floodplain administrator or applicant has applied for a conditional letter of map revision (CLOMR) to the flood insurance rate map (FIRM) revision and has received the approval of the Federal Emergency Management Agency. A revision of the effective FIRM does not remove the related feature(s) on a flood hazard area delineation that has been promulgated by the NJDEP. A separate application must be made to the state pursuant to N.J.A.C. 7:13 for revision of a flood hazard design flood elevation, flood hazard area limit, floodway limit, and/or other related feature.

(Ord. No. 5832, § 2, 4-25-2023)

#### 17.44.190 - Other permits.

It shall be the responsibility of the floodplain administrator to assure that approval of a proposed development shall not be given until proof that necessary permits have been granted by federal or state agencies having jurisdiction over such development, including Section 404 of the Clean Water Act. In the event of conflicting permit requirements, the floodplain administrator must ensure that the most restrictive floodplain management standards are reflected in permit approvals.

(Ord. No. 5832, § 2, 4-25-2023)

#### 17.44.200 - Determination of local design flood elevations.

If design flood elevations are not specified, the floodplain administrator is authorized to require the applicant to:

- (1) Obtain, review, and reasonably utilize data available from a federal, state, or other source, or
- (2) Determine the design flood elevation in accordance with accepted hydrologic and hydraulic engineering techniques. Such analyses shall be performed and sealed by a licensed professional engineer. Studies, analyses, and computations shall be submitted in sufficient detail to allow review and approval by the floodplain administrator. The accuracy of data submitted for such determination shall be the responsibility of the applicant.

It shall be the responsibility of the floodplain administrator to verify that the applicant's proposed best available flood hazard data area and the local design flood elevation in any development permit accurately applies the best available flood hazard data and methodologies for determining flood hazard areas and design elevations described in sections 17.44.120 and 17.44.130 respectively. This information shall be provided to the construction official and documented according to section 17.44.300.

(Ord. No. 5832, § 2, 4-25-2023)

#### 17.44.210 - Requirement to submit new technical data.

Base flood elevations may increase or decrease resulting from natural changes (e.g. erosion, accretion, channel migration, subsidence, uplift) or man-made physical changes (e.g. dredging, filling, excavation) affecting flooding conditions. As soon as practicable, but not later than six (6) months after the date of a man-made change or when information about a natural change becomes available, the floodplain administrator shall notify the federal insurance administrator of the changes by submitting technical or scientific data in accordance with Title 44 Code of Federal Regulations Section 65.3. Such a submission is necessary so that upon confirmation of those physical changes affecting flooding conditions, risk premium rates and floodplain management requirements will be based upon current data.

(Ord. No. 5832, § 2, 4-25-2023)

#### 17.44.220 - Activities in riverine flood hazard areas.

In riverine flood hazard areas where design flood elevations are specified but floodways have not been designated, the floodplain administrator shall not permit any new construction, substantial improvement or other development, including the placement of fill, unless the applicant submits an engineering analysis prepared by a licensed professional engineer that demonstrates that the cumulative effect of the proposed development, when combined with all other existing and anticipated flood hazard area encroachment, will not increase the design flood elevation more than two-tenths (0.2) feet at any point within the community.

(Ord. No. 5832, § 2, 4-25-2023)

#### 17.44.230 - Floodway encroachment.

Prior to issuing a permit for any floodway encroachment, including fill, new construction, substantial improvements and other development or land-disturbing activity, the floodplain administrator shall require submission of a certification prepared by a licensed professional engineer, along with supporting technical data, that demonstrates that such development will not cause any increase in the base flood level.

(Ord. No. 5832, § 2, 4-25-2023)

#### 17.44.240 - Floodway revisions.

A floodway encroachment that increases the level of the base flood is authorized if the applicant has applied for a conditional letter of map revision (CLOMR) to the flood insurance rate map (FIRM) and has received the approval of FEMA.

(Ord. No. 5832, § 2, 4-25-2023)

#### 17.44.250 - Watercourse alteration.

Prior to issuing a permit for any alteration or relocation of any watercourse, the floodplain administrator shall require the applicant to provide notification of the proposal to the appropriate authorities of all adjacent government jurisdictions, as well as the NJDEP bureau of flood engineering and the division of land resource protection. A copy of the notification shall be maintained in the permit records and submitted to FEMA.

(Ord. No. 5832, § 2, 4-25-2023)

#### 17.44.260 - Engineering analysis.

The floodplain administrator shall require submission of an engineering analysis prepared by a licensed professional engineer, demonstrating that the flood-carrying capacity of the altered or relocated portion of the watercourse will be maintained, neither increased nor decreased. Such watercourses shall be maintained in a manner that preserves the channel's flood-carrying capacity.

(Ord. No. 5832, § 2, 4-25-2023)

#### 17.44.270 - Alterations in coastal areas.

The excavation or alteration of sand dunes is governed by the New Jersey Coastal Zone Management (CZM) rules, N.J.A.C. 7:7. Prior to issuing a flood damage prevention permit for any alteration of sand dunes in coastal high hazard areas and coastal A Zones, the floodplain administrator shall require that a New Jersey CZM permit be obtained and included in the flood damage prevention permit application. The applicant shall also provide documentation of any engineering analysis, prepared by a licensed professional engineer, that demonstrates that the proposed alteration will not increase the potential for flood damage.

(Ord. No. 5832, § 2, 4-25-2023)

#### 17.44.280 - Development in riparian zones.

All development in riparian zones as described in N.J.A.C. 7:13 is prohibited by this chapter unless the applicant has received an individual or general permit or has complied with the requirements of a permit by rule or permit by certification from NJDEP division of land resource protection prior to application for a floodplain development permit and the project is compliant with all other floodplain development provisions of this chapter. The width of the riparian zone can range between fifty (50) and three hundred (300) feet and is determined by the attributes of the waterbody and designated in the New Jersey Surface Water Quality Standards N.J.A.C. 7:9B. The portion of the riparian zone located outside of a regulated water is measured landward from the top of bank. Applicants can request a verification of the riparian zone limits or a permit applicability determination to determine state permit requirements under N.J.A.C. 7:13 from the NJDEP division of land resource protection.

(Ord. No. 5832, § 2, 4-25-2023)

17.44.290 - Substantial improvement and substantial damage determinations.

When buildings and structures are damaged due to any cause including but not limited to man-made, structural, electrical, mechanical, or natural hazard events, or are determined to be unsafe as described in N.J.A.C. 5:23; and for applications for building permits to improve buildings and structures, including alterations, movement, repair, additions, rehabilitations, renovations, ordinary maintenance and minor work, substantial improvements, repairs of substantial damage, and any other improvement of or work on such buildings and structures, the floodplain administrator, in coordination with the construction official, shall:

- (1) Estimate the market value, or require the applicant to obtain a professional appraisal prepared by a qualified independent appraiser, of the market value of the building or structure before the start of construction of the proposed work; in the case of repair, the market value of the building or structure shall be the market value before the damage occurred and before any repairs are made.
- (2) Determine and include the costs of all ordinary maintenance and minor work, as discussed in section 17.44.120, performed in the floodplain regulated by this chapter in addition to the costs of those improvements regulated by the construction official in substantial damage and substantial improvement calculations.
- (3) Compare the cost to perform the improvement, the cost to repair the damaged building to its pre-damaged condition, or the combined costs of improvements and repairs, where applicable, to the market value of the building or structure.
- (4) Determine and document whether the proposed work constitutes substantial improvement or repair of substantial damage. This determination requires the evaluation of previous permits issued for improvements and repairs over a period of ten (10) years prior to the permit application or substantial damage determination as specified in the definition of substantial improvement. This determination shall also include the evaluation of flood related damages over a ten (10) year period to determine if the costs of repairs at the times of each flood constitutes a repetitive loss as defined by this chapter.
- (5) Notify the applicant in writing when it is determined that the work constitutes substantial improvement or repair of substantial damage and that compliance with the flood resistant construction requirements of the building code is required and notify the applicant in writing when it is determined that work does not constitute substantial improvement or repair of substantial damage. The floodplain administrator shall also provide all letters documenting substantial damage and compliance with flood resistant construction requirements of the building code to the NJDEP bureau of flood engineering.

(Ord. No. 5832, § 2, 4-25-2023)

#### 17.44.300 - Department records.

In addition to the requirements of the building code and these regulations, and regardless of any limitation on the period required for retention of public records, the floodplain administrator shall maintain and permanently keep and make available for public inspection all records that are necessary for the administration of these regulations and the flood provisions of the Uniform Construction Code, including flood insurance studies, flood insurance rate maps; documents from FEMA that amend or revise FIRMs; NJDEP delineations, records of issuance of permits and denial of permits; records of ordinary maintenance and minor work, determinations of whether proposed work constitutes substantial improvement or repair of substantial damage; required certifications and documentation specified by the Uniform Construction Code and these regulations including as-built elevation certificates; notifications to adjacent communities, FEMA, and the state related to alterations of watercourses; assurance that the flood carrying capacity of altered waterways will be maintained; documentation related to variances, including justification for issuance or denial; and records of enforcement actions taken pursuant to these regulations and the flood resistant provisions of the Uniform Construction Code. The floodplain administrator shall also record the required elevation, determination method, and base flood elevation source used to determine the local design flood elevation in the floodplain development permit.

(Ord. No. 5832, § 2, 4-25-2023)

#### 17.44.310 - Liability.

The floodplain administrator and any employee charged with the enforcement of these regulations, while acting for the jurisdiction in good faith and without malice in the discharge of the duties required by these regulations or other pertinent law or ordinance, shall not thereby be rendered liable personally and is hereby relieved from personal liability for any damage accruing to persons or property as a result of any act or by reason of an act or omission in the discharge of official duties. Any suit instituted against an officer or employee because of an act performed by that officer or employee in the lawful discharge of duties and under the provisions of these regulations shall be defended by legal representative of the jurisdiction until the final termination of the proceedings. The floodplain administrator and any subordinate shall not be liable for cost in any action, suit or proceeding that is instituted in pursuance of the provisions of these regulations.

(Ord. No. 5832, § 2, 4-25-2023)

## ARTICLE IV. - PERMITS

## 17.44.320 - Permits required.

Any person, owner or authorized agent who intends to conduct any development in a flood hazard area shall first make application to the floodplain administrator and shall obtain the required permit. Depending on the nature and extent of proposed development that includes a building or structure, the floodplain administrator may determine that a floodplain development permit or approval is required in addition to a building permit.

(Ord. No. 5832, § 2, 4-25-2023)

## 17.44.330 - Application for permit.

The applicant shall file an application in writing on a form furnished by the floodplain administrator. Such application shall:

- (1) Identify and describe the development to be covered by the permit.
- (2) Describe the land on which the proposed development is to be conducted by legal description, street address or similar description that will readily identify and definitively locate the site.
- (3) Indicate the use and occupancy for which the proposed development is intended.
- (4) Be accompanied by a site plan and construction documents as specified in article V of these regulations, grading and filling plans and other information deemed appropriate by the floodplain administrator.
- (5) State the valuation of the proposed work, including the valuation of ordinary maintenance and minor work.
- (6) Be signed by the applicant or the applicant's authorized agent.

(Ord. No. 5832, § 2, 4-25-2023)

## 17.44.340 - Validity of permit.

The issuance of a permit under these regulations or the Uniform Construction Code shall not be construed to be a permit for, or approval of, any violation of this appendix or any other ordinance of the jurisdiction. The issuance of a permit based on submitted documents and information shall not prevent the floodplain administrator from requiring the correction of errors. The floodplain administrator is authorized to prevent occupancy or use of a structure or site which is in violation of these regulations or other ordinances of this jurisdiction.

(Ord. No. 5832, § 2, 4-25-2023)

## 17.44.350 - Expiration.



A permit shall become invalid when the proposed development is not commenced within one hundred eighty (180) days after its issuance, or when the work authorized is suspended or abandoned for a period of one hundred eighty (180) days after the work commences. Extensions shall be requested in writing and justifiable cause demonstrated. The floodplain administrator is authorized to grant, in writing, one or more extensions of time, for periods not more than one hundred eighty (180) days each.

(Ord. No. 5832, § 2, 4-25-2023)

#### 17.44.360 - Suspension or revocation.

The floodplain administrator is authorized to suspend or revoke a permit issued under these regulations wherever the permit is issued in error or on the basis of incorrect, inaccurate or incomplete information, or in violation of any ordinance or code of this jurisdiction.

(Ord. No. 5832, § 2, 4-25-2023)

### ARTICLE V. - SITE PLANS AND CONSTRUCTION DOCUMENTS

#### 17.44.370 - Information for development in flood hazard areas.

The site plan or construction documents for any development subject to the requirements of these regulations shall be drawn to scale and shall include, as applicable to the proposed development:

- (1) Delineation of flood hazard areas, floodway boundaries and flood zone(s), base flood elevation(s), and ground elevations when necessary for review of the proposed development. For buildings that are located in more than one flood hazard area, the elevation and provisions associated with the most restrictive flood hazard area shall apply.
- (2) Where base flood elevations or floodway data are not included on the FIRM or in the flood insurance study, they shall be established in accordance with section 17.44.380.
- (3) Where the parcel on which the proposed development will take place will have more than fifty (50) lots or is larger than five (5) acres and base flood elevations are not included on the FIRM or in the flood insurance study, such elevations shall be established in accordance with subsection 17.44.380(3) of these regulations.
- (4) Location of the proposed activity and proposed structures, and locations of existing buildings and structures; in coastal high hazard areas and coastal A Zones, new buildings shall be located landward of the reach of mean high tide.
- (5) Location, extent, amount, and proposed final grades of any filling, grading, or excavation.
- (6)

Where the placement of fill is proposed, the amount, type, and source of fill material; compaction specifications; a description of the intended purpose of the fill areas; and evidence that the proposed fill areas are the minimum necessary to achieve the intended purpose. The applicant shall provide an engineering certification confirming that the proposal meets the flood storage displacement limitations of N.J.A.C. 7:13.

- (7) Extent of any proposed alteration of sand dunes.
- (8) Existing and proposed alignment of any proposed alteration of a watercourse.
- (9) Floodproofing certifications, V Zone and breakaway wall certifications, operations and maintenance plans, warning and evacuation plans and other documentation required pursuant to FEMA publications.

The floodplain administrator is authorized to waive the submission of site plans, construction documents, and other data that are required by these regulations but that are not required to be prepared by a registered design professional when it is found that the nature of the proposed development is such that the review of such submissions is not necessary to ascertain compliance.

(Ord. No. 5832, § 2, 4-25-2023)

#### 17.44.380 - Information in flood hazard areas without base flood elevations.

Where flood hazard areas are delineated on the effective or preliminary FIRM and base flood elevation data have not been provided, the applicant shall consult with the floodplain administrator to determine whether to:

- (1) Use the approximation method (Method 5) described in N.J.A.C. 7:13 in conjunction with Appendix 1 of the FHACA to determine the required flood elevation.
- (2) Obtain, review, and reasonably utilize data available from a federal, state or other source when those data are deemed acceptable to the floodplain administrator to reasonably reflect flooding conditions.
- (3) Determine the base flood elevation in accordance with accepted hydrologic and hydraulic engineering techniques according to Method 6 as described in N.J.A.C. 7:13. Such analyses shall be performed and sealed by a licensed professional engineer.

Studies, analyses, and computations shall be submitted in sufficient detail to allow review and approval by the floodplain administrator prior to floodplain development permit issuance. The accuracy of data submitted for such determination shall be the responsibility of the applicant. Where the data are to be used to support a letter of map change (LOMC) from FEMA, the applicant shall be responsible for satisfying the submittal requirements and pay the processing fees.

(Ord. No. 5832, § 2, 4-25-2023)

## 17.44.390 - Analyses and certifications by a licensed professional engineer.

As applicable to the location and nature of the proposed development activity, and in addition to the requirements of this section, the applicant shall have the following analyses signed and sealed by a licensed professional engineer for submission with the site plan and construction documents:

- (1) For development activities proposed to be located in a regulatory floodway, a floodway encroachment analysis that demonstrates that the encroachment of the proposed development will not cause any increase in base flood elevations; where the applicant proposes to undertake development activities that do increase base flood elevations, the applicant shall submit such analysis to FEMA as specified in section 17.44.400 of these regulations and shall submit the conditional letter of map revision, if issued by FEMA, with the site plan and construction documents.
- (2) For development activities proposed to be located in a riverine flood hazard area where base flood elevations are included in the FIS or FIRM but floodways have not been designated, hydrologic and hydraulic analyses that demonstrate that the cumulative effect of the proposed development, when combined with all other existing and anticipated flood hazard area encroachments will not increase the base flood elevation more than two-tenths (0.2) feet at any point within the jurisdiction. This requirement does not apply in isolated flood hazard areas not connected to a riverine flood hazard area or in flood hazard areas identified as Zone AO or Zone AH.
- (3) For alteration of a watercourse, an engineering analysis prepared in accordance with standard engineering practices which demonstrates that the flood-carrying capacity of the altered or relocated portion of the watercourse will not be decreased, and certification that the altered watercourse shall be maintained, neither increasing nor decreasing the channel's flood-carrying capacity. The applicant shall submit the analysis to FEMA as specified in section 17.44.400 of these regulations. The applicant shall notify the chief executive officer of all affected adjacent jurisdictions, the NJDEP's bureau of flood engineering and the division of land resource protection; and shall provide documentation of such notifications.
- (4) For activities that propose to alter sand dunes in coastal high hazard areas (Zone V) and coastal A Zones, an engineering analysis that demonstrates that the proposed alteration will not increase the potential for flood damage and documentation of the issuance of a New Jersey Coastal Zone Management permit under N.J.A.C. 7:7.
- (5) For analyses performed using Methods 5 and 6 (as described in N.J.A.C. 7:13) in flood hazard zones without base flood elevations (approximate A zones).

(Ord. No. 5832, § 2, 4-25-2023)

## 17.44.400 - Submission of additional data.

When additional hydrologic, hydraulic or other engineering data, studies, and additional analyses are submitted to support an application, the applicant has the right to seek a letter of map change (LOMC) from FEMA to change the base flood elevations, change floodway boundaries, or change boundaries of flood hazard areas shown on FIRMs, and to submit such data to FEMA for such purposes. The analyses shall be prepared by a licensed professional engineer in a format required by FEMA. Submittal requirements and processing fees shall be the responsibility of the applicant.

(Ord. No. 5832, § 2, 4-25-2023)

## ARTICLE VI. - INSPECTIONS

### 17.44.410 - General.

Development for which a permit is required shall be subject to inspection. Approval as a result of an inspection shall not be construed to be an approval of a violation of the provisions of these regulations or the building code. Inspections presuming to give authority to violate or cancel the provisions of these regulations or the building code or other ordinances shall not be valid.

(Ord. No. 5832, § 2, 4-25-2023)

### 17.44.420 - Inspections of development.

The floodplain administrator shall inspect all development in flood hazard areas authorized by issuance of permits under these regulations. The floodplain administrator shall inspect flood hazard areas from time to time to determine if development is undertaken without issuance of a permit.

(Ord. No. 5832, § 2, 4-25-2023)

### 17.44.430 - Buildings and structures.

The construction official shall make or cause to be made, inspections for buildings and structures in flood hazard areas authorized by permit in accordance with the Uniform Construction Code, N.J.A.C. 5:23.

- (1) Lowest Floor Elevation. Upon placement of the lowest floor, including the basement, and prior to further vertical construction, certification of the elevation required in section 17.44.800 shall be submitted to the construction official on an elevation certificate.
- (2) Lowest Horizontal Structural Member. In V Zones and coastal A Zones, upon placement of the lowest floor, including the basement, and prior to further vertical construction, certification of the elevation required in section 17.44.800 shall be submitted to the construction official on an elevation certificate.

(3) Installation of attendant utilities (electrical, heating, ventilating, air-conditioning, and other service equipment) and sanitary facilities elevated as discussed in section 17.44.800.

(4) Final Inspection. Prior to the final inspection, certification of the elevation required in section 17.44.800 shall be submitted to the construction official on an elevation certificate.

(Ord. No. 5832, § 2, 4-25-2023)

#### 17.44.440 - Manufactured homes.

The floodplain administrator shall inspect manufactured homes that are installed or replaced in flood hazard areas to determine compliance with the requirements of these regulations and the conditions of the issued permit. Upon placement of a manufactured home, certification of the elevation of the lowest floor shall be submitted on an elevation certificate to the floodplain administrator prior to the final inspection.

(Ord. No. 5832, § 2, 4-25-2023)

### ARTICLE VII. - VARIANCES

#### 17.44.450 - General.

The zoning board of adjustment shall hear and decide requests for variances. The zoning board of adjustment shall base its determination on technical justifications submitted by applicants, the considerations for issuance in section 17.44.490, the conditions of issuance set forth in section 17.44.500, and the comments and recommendations of the floodplain administrator and, as applicable, the construction official. The zoning board of adjustment has the right to attach such conditions to variances as it deems necessary to further the purposes and objectives of these regulations.

(Ord. No. 5832, § 2, 4-25-2023)

#### 17.44.460 - Historic structures.

A variance to the substantial improvement requirements of this chapter is authorized provided that the repair or rehabilitation of a historic structure is completed according to N.J.A.C. 5:23-6.33, Section 1612 of the International Building Code and R322 of the International Residential Code, the repair or rehabilitation will not preclude the structure's continued designation as a historic structure, the structure meets the definition of the historic structure as described by this chapter, and the variance is the minimum necessary to preserve the historic character and design of the structure.

(Ord. No. 5832, § 2, 4-25-2023)

#### 17.44.470 - Functionally dependent uses.

A variance is authorized to be issued for the construction or substantial improvement necessary for the conduct of a functionally dependent use provided the variance is the minimum necessary to allow the construction or substantial improvement, and that all due consideration has been given to use of methods and materials that minimize flood damage during the base flood and create no additional threats to public safety.

(Ord. No. 5832, § 2, 4-25-2023)

#### 17.44.480 - Restrictions in floodways.

A variance shall not be issued for any proposed development in a floodway when any increase in flood levels would result during the base flood discharge, as evidenced by the applicable analysis and certification required in subsection 17.44.390(1) of these regulations.

(Ord. No. 5832, § 2, 4-25-2023)

#### 17.44.490 - Considerations.

In reviewing requests for variances, all technical evaluations, all relevant factors, all other portions of these regulations, and the following shall be considered:

- (1) The danger that materials and debris may be swept onto other lands resulting in further injury or damage.
- (2) The danger to life and property due to flooding or erosion damage.
- (3) The susceptibility of the proposed development, including contents, to flood damage and the effect of such damage on current and future owners.
- (4) The importance of the services provided by the proposed development to the community.
- (5) The availability of alternate locations for the proposed development that are not subject to flooding or erosion and the necessity of a waterfront location, where applicable.
- (6) The compatibility of the proposed development with existing and anticipated development.
- (7) The relationship of the proposed development to the comprehensive plan and floodplain management program for that area.
- (8) The safety of access to the property in times of flood for ordinary and emergency vehicles.
- (9) The expected heights, velocity, duration, rate of rise and debris and sediment transport of the floodwater and the effects of wave action, where applicable, expected at the site.
- (10) The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, streets, and bridges.

(Ord. No. 5832, § 2, 4-25-2023)

#### 17.44.500 - Conditions for issuance.

Variations shall only be issued upon:

- (1) Submission by the applicant of a showing of good and sufficient cause that the unique characteristics of the size, configuration or topography of the site limit compliance with any provision of these regulations or renders the elevation standards of the building code inappropriate.
- (2) A determination that failure to grant the variance would result in exceptional hardship due to the physical characteristics of the land that render the lot undevelopable.
- (3) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, nor create nuisances, cause fraud on or victimization of the public or conflict with existing local laws or ordinances.
- (4) A determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- (5) Notification to the applicant in writing over the signature of the floodplain administrator that the issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as twenty-five dollars (\$25.00) for one hundred dollars (\$100.00) of insurance coverage, and that such construction below the base flood level increases risks to life and property.

(Ord. No. 5832, § 2, 4-25-2023)

#### ARTICLE VIII. - VIOLATIONS

##### 17.44.510 - Violations.

Any development in any flood hazard area that is being performed without an issued permit or that is in conflict with an issued permit shall be deemed a violation. A building or structure without the documentation of elevation of the lowest floor, the lowest horizontal structural member if in a V or coastal A Zone, other required design certifications, or other evidence of compliance required by the building code is presumed to be a violation until such time as that documentation is provided.

(Ord. No. 5832, § 2, 4-25-2023)

##### 17.44.520 - Authority.

The floodplain administrator is authorized to serve notices of violation or stop work orders to owners of property involved, to the owner's agent, or to the person or persons doing the work for development that is not within the scope of the Uniform Construction Code, but is regulated by these regulations and that is determined to be a violation.

(Ord. No. 5832, § 2, 4-25-2023)

#### 17.44.530 - Unlawful continuance.

Any person who shall continue any work after having been served with a notice of violation or a stop work order, except such work as that person is directed to perform to remove or remedy a violation or unsafe condition, shall be subject to penalties as prescribed by N.J.S.A. 40:49-5 as appropriate.

(Ord. No. 5832, § 2, 4-25-2023)

#### 17.44.540 - Review period to correct violations.

A thirty (30) day period shall be given to the property owner as an opportunity to cure or abate the condition. The property owner shall also be afforded an opportunity for a hearing before the court for an independent determination concerning the violation. Subsequent to the expiration of the thirty (30) day period, a fine greater than one thousand two hundred fifty dollars (\$1,250.00) may be imposed if a court has not determined otherwise or, upon reinspection of the property, it is determined that the abatement has not been substantially completed.

(Ord. No. 5832, § 2, 4-25-2023)

### ARTICLE IX. - DEFINITIONS

#### 17.44.550 - General.

The following words and terms shall, for the purposes of these regulations, have the meanings shown herein. Other terms are defined in the Uniform Construction Code N.J.A.C. 5:23 and terms are defined where used in the International Residential Code and International Building Code (rather than in the definitions section). Where terms are not defined, such terms shall have ordinarily accepted meanings such as the context implies.

(Ord. No. 5832, § 2, 4-25-2023)

#### 17.44.560 - Definitions.



"30-day period" means the period of time prescribed by N.J.S.A. 40:49-5 in which a property owner is afforded the opportunity to correct zoning and solid waste disposal after a notice of violation pertaining to this chapter has been issued.

"100-year flood elevation" means elevation of flooding having a one (1) percent annual chance of being equaled or exceeded in a given year which is also referred to as the base flood elevation.

"500-year flood elevation" means elevation of flooding having a two-tenths (0.2) percent annual chance of being equaled or exceeded in a given year.

"A Zones" means areas of special flood hazard in which the elevation of the surface water resulting from a flood that has a one (1) percent annual chance of equaling or exceeding the base flood elevation (BFE) in any given year shown on the flood insurance rate map (FIRM) Zones A, AE, AH, A1-A30, AR, AR/A, AR/AE, AR/A1-A30, AR/AH, and AR/AO. When used in reference to the development of a structure in this chapter, A Zones are not inclusive of coastal A Zones because of the higher building code requirements for coastal A Zones.

"AH Zones" means areas subject to inundation by one (1) percent annual chance shallow flooding (usually areas of ponding) where average depths are between one (1) and three (3) feet. Base flood elevations (BFEs) derived from detailed hydraulic analyses are shown in this zone.

"AO Zones" means areas subject to inundation by one (1) percent annual chance shallow flooding (usually sheet flow on sloping terrain) where average depths are between one (1) and three (3) feet.

"Accessory structure" means accessory structures are also referred to as appurtenant structures. An accessory structure is a structure which is on the same parcel of property as a principal structure and the use of which is incidental to the use of the principal structure. For example, a residential structure may have a detached garage or storage shed for garden tools as accessory structures. Other examples of accessory structures include gazebos, picnic pavilions, boathouses, small pole barns, storage sheds, and similar buildings.

"Agricultural structure" means a structure used solely for agricultural purposes in which the use is exclusively in connection with the production, harvesting, storage, drying, or raising of agricultural commodities, including the raising of livestock. Communities must require that new construction or substantial improvements of agricultural structures be elevated or floodproofed to or above the base flood elevation (BFE) as any other nonresidential building. Under some circumstances it may be appropriate to wet-floodproof certain types of agricultural structures when located in wide, expansive floodplains through issuance of a variance. This should only be done for structures used for temporary storage of equipment or crops or temporary shelter for livestock and only in circumstances where it can be demonstrated that agricultural structures can be designed in such a manner that results in minimal damage to the structure and its contents and will create no additional threats to public safety. New construction or substantial

improvement of livestock confinement buildings, poultry houses, dairy operations, similar livestock operations and any structure that represents more than a minimal investment must meet the elevation or dry-floodproofing requirements of 44 CFR 60.3(c)(3).

"Area of shallow flooding" means a designated Zone AO, AH, AR/AO or AR/AH (or VO) on a community's flood insurance rate map (FIRM) with a one (1) percent or greater annual chance of flooding to an average depth of one (1) to three (3) feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

"Area of special flood hazard." See "Special flood hazard area."

"Alteration of a watercourse" means a dam, impoundment, channel relocation, change in channel alignment, channelization, or change in cross-sectional area of the channel or the channel capacity, or any other form of modification which may alter, impede, retard or change the direction and/or velocity of the riverine flow of water during conditions of the base flood.

"ASCE 7" means the standard for the minimum design loads for buildings and other structures, referenced by the building code and developed and published by the American Society of Civil Engineers, Reston, VA. which includes but is not limited to methodology and equations necessary for determining structural and flood-related design requirements and determining the design requirements for structures that may experience a combination of loads including those from natural hazards. Flood related equations include those for determining erosion, scour, lateral, vertical, hydrostatic, hydrodynamic, buoyancy, breaking wave, and debris impact.

"ASCE 24" means the standard for flood resistant design and construction, referenced by the building code and developed and published by the American Society of Civil Engineers, Reston, VA. References to ASCE 24 shall mean ASCE 24-14 or the most recent version of ASCE 24 adopted in the UCC Code [N.J.A.C. 5:23].

"Base flood elevation (BFE)" means the water surface elevation resulting from a flood that has a one (1) percent or greater chance of being equaled or exceeded in any given year, as shown on a published flood insurance study (FIS), or preliminary flood elevation guidance from FEMA. May also be referred to as the "100-year flood elevation".

"Basement" means any area of the building having its floor subgrade (below ground level) on all sides.

"Best available flood hazard data" means the most recent available preliminary flood risk guidance FEMA has provided. The best available flood hazard data may be depicted on but not limited to advisory flood hazard area maps, work maps, or preliminary FIS and FIRM.

"Best available flood hazard data area" means the areal mapped extent associated with the most recent available preliminary flood risk guidance FEMA has provided. The best available flood hazard data may be depicted on but not limited to advisory flood hazard area maps, work maps, or preliminary FIS and FIRM.

"Best available flood hazard data elevation" means the most recent available preliminary flood elevation guidance FEMA has provided. The best available flood hazard data may be depicted on but not limited to advisory flood hazard area maps, work maps, or preliminary FIS and FIRM.

"Breakaway walls" means any type of wall subject to flooding that is not required to provide structural support to a building or other structure and that is designed and constructed such that, below the local design flood elevation, it will collapse under specific lateral loads such that (1) it allows the free passage of floodwaters, and (2) it does not damage the structure or supporting foundation system. Certification in the V Zone certificate of the design, plans, and specifications by a licensed design professional that these walls are in accordance with accepted standards of practice is required as part of the permit application for new and substantially improved V Zone and coastal A Zone structures. A completed certification must be submitted at permit application.

"Building." Per the FHACA, "building" means a structure enclosed with exterior walls or fire walls, erected and framed of component structural parts, designed for the housing, shelter, enclosure, and support of individuals, animals, or property of any kind. A building may have a temporary or permanent foundation. A building that is intended for regular human occupation and/or residence is considered a habitable building.

"Coastal A Zone" means an area of special flood hazard starting from a Velocity (V) Zone and extending up to the landward limit of the moderate wave action delineation. Where no V Zone is mapped the coastal A Zone is the portion between the open coast and the landward limit of the moderate wave action delineation. coastal A Zones may be subject to wave effects, velocity flows, erosion, scour, or a combination of these forces. Construction and development in coastal A Zones is to be regulated similarly to V Zones/Coastal high hazard areas except as allowed by ASCE 24.

"Coastal high hazard area" means an area of special flood hazard inclusive of the V Zone extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources.

"Conditional letter of map revision (CLOMR)" is FEMA's comment on a proposed project that would, upon construction, affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway, the effective base flood elevations (BFEs), or the special flood hazard area (SFHA). The letter does not revise an effective NFIP map, it indicates whether the project, if built as proposed, would be recognized by FEMA. FEMA charges a fee for processing a CLOMR to recover the costs associated with the review that is described in the letter of map change (LOMC) process. Building permits cannot be issued based on a CLOMR, because a CLOMR does not change the NFIP map.

"Conditional letter of map revision-Fill (CLOMR-F)" is FEMA's comment on a proposed project involving the placement of fill outside of the regulatory floodway that would, upon construction, affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway, the effective base flood elevations (BFEs), or the special flood hazard area (SFHA). The letter does not revise an effective NFIP map, it indicates whether the project, if built as proposed, would be recognized by FEMA. FEMA charges a fee for processing a CLOMR to recover the costs associated with the review that is described in the letter of map change (LOMC) process. Building permits cannot be issued based on a CLOMR, because a CLOMR does not change the NFIP map.

"Critical building," per the FHACA, means that:

- a. It is essential to maintaining continuity of vital government operations and/or supporting emergency response, sheltering, and medical care functions before, during, and after a flood, such as a hospital, medical clinic, police station, fire station, emergency response center, or public shelter; or
- b. It serves large numbers of people who may be unable to leave the facility through their own efforts, thereby hindering or preventing safe evacuation of the building during a flood event, such as a school, college, dormitory, jail or detention facility, day care center, assisted living facility, or nursing home.

"Deep foundations," per ASCE 24, refer to those foundations constructed on erodible soils in coastal high hazard and coastal A Zones which are founded on piles, drilled shafts, caissons, or other types of deep foundations and are designed to resist erosion and scour and support lateral and vertical loads as described in ASCE 7. Foundations shall extend to ten (10) feet below mean water level (MWL) unless the design demonstrates that pile penetration will provide sufficient depth and stability as determined by ASCE 24, ASCE 7, and additional geotechnical investigations if any unexpected conditions are encountered during construction.

"Development" means any manmade change to improved or unimproved real estate, including but not limited to, buildings or other structures, tanks, temporary structures, temporary or permanent storage of materials, mining, dredging, filling, grading, paving, excavations, drilling operations and other land-disturbing activities.

"Dry floodproofing" means a combination of measures that results in a non-residential structure, including the attendant utilities and equipment as described in the latest version of ASCE 24, being watertight with all elements substantially impermeable and with structural components having the capacity to resist flood loads.

"Elevated building" means a building that has no basement and that has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns. Solid perimeter foundations walls are not an acceptable means of elevating buildings in V and VE Zones.

"Elevation certificate" means an administrative tool of the National Flood Insurance Program (NFIP) that can be used to provide elevation information, to determine the proper insurance premium rate, and to support an application for a letter of map amendment (LOMA) or letter of map revision based on fill (LOMR-F).

"Encroachment" means the placement of fill, excavation, buildings, permanent structures or other development into a flood hazard area which may impede or alter the flow capacity of riverine flood hazard areas.

"FEMA Publications" means any publication authored or referenced by FEMA related to building science, building safety, or floodplain management related to the National Flood Insurance Program. Publications shall include but are not limited to technical bulletins, desk references, and American Society of Civil Engineers Standards documents including ASCE 24.

"Flood" or "flooding."

- a. A general and temporary condition of partial or complete inundation of normally dry land areas from:
  1. The overflow of inland or tidal waters.
  2. The unusual and rapid accumulation or runoff of surface waters from any source.
  3. Mudslides (i.e. mudflows) which are proximately caused by flooding as defined in subsection a.2. of this definition and are akin to a river or liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.
- b. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in subsection a.1. of this definition.

"Flood hazard area design flood elevation," per the FHACA, means the peak water surface elevation that will occur in a water during the flood hazard area design flood. This elevation is determined via available flood mapping adopted by the state, flood mapping published by FEMA (including effective flood mapping dated on or after January 31, 1980, or any more recent advisory, preliminary, or pending flood mapping; whichever results in higher flood elevations, wider floodway limits, greater flow rates, or indicates a change from an A Zone to a V Zone or coastal A Zone), approximation, or calculation pursuant to the Flood Hazard Area Control Act Rules at N.J.A.C. 7:13-3.1—3.6 and is typically higher than FEMA's base flood elevation. A water that has a drainage area measuring less than fifty (50) acres does not possess, and is not assigned, a flood hazard area design flood elevation.

"Flood insurance rate map (FIRM)" means the official map on which the Federal Emergency Management Agency has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

"Flood insurance study (FIS)" means the official report in which the federal Emergency Management Agency has provided flood profiles, as well as the flood insurance rate map(s) and the water surface elevation of the base flood.

"Floodplain" or "flood prone area" means any land area susceptible to being inundated by water from any source. See "Flood or flooding."

"Floodplain management regulations" means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a floodplain ordinance, grading ordinance, and erosion control ordinance) and other applications of police power. The term describes such state or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

"Floodproofing" means any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures, and their contents.

"Floodproofing certificate" means certification by a licensed design professional that the design and methods of construction for floodproofing a non-residential structure are in accordance with accepted standards of practice to a proposed height above the structure's lowest adjacent grade that meets or exceeds the local design flood elevation. A completed floodproofing certificate is required at permit application.

"Floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than two-tenths (0.2) foot.

"Freeboard" means a factor of safety usually expressed in feet above a flood level for purposes of floodplain management. "Freeboard" tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, bridge openings, and the hydrological effect of urbanization of the watershed.

"Functionally dependent use" means a use that cannot perform its intended purpose unless it is located or carried out in close proximity to water, including only docking facilities, port facilities necessary for the loading or unloading of cargo or passengers, and shipbuilding and ship repair facilities. The term does not include long-term storage or related manufacturing facilities.

"Habitable building," pursuant to the FHACA Rules (N.J.A.C. 7:13), means a building that is intended for regular human occupation and/or residence. Examples of a habitable building include a single-family home, duplex, multi-residence building, or critical building; a commercial building such as a retail store, restaurant, office building, or gymnasium; an accessory structure that is regularly occupied, such as a garage, barn, or workshop; mobile and manufactured homes, and trailers intended for human residence, which are set on a foundation and/or connected to utilities, such as in a mobile home park (not including campers and recreational vehicles); and any other building that is regularly occupied, such as a house of worship, community center, or meeting hall, or animal shelter that includes regular human access and occupation. Examples of a non-habitable building include a bus stop shelter, utility building, storage shed, self-storage unit, construction trailer, or an individual shelter for animals such as a doghouse or outdoor kennel.

"Hardship," as related to article VII of this chapter, means the exceptional hardship that would result from a failure to grant the requested variance. The city council requires that the variance be exceptional, unusual, and peculiar to the property involved. Mere economic or financial hardship alone is not exceptional. Inconvenience, aesthetic considerations, physical handicaps, personal preferences, or the disapproval of one's neighbors likewise cannot, as a rule, qualify as an exceptional hardship. All of these problems can be resolved through other means without granting a variance, even if the alternative is more expensive, or requires the property owner to build elsewhere or put the parcel to a different use than originally intended.

"Highest adjacent grade" means the highest natural elevation of the ground surface prior to construction next to the proposed or existing walls of a structure.

"Historic structure" means any structure that is:

- a. Listed individually in the National Register of Historic Places (a listing maintained by the department of interior) or preliminarily determined by the secretary of the interior as meeting the requirements for individual listing on the National Register;
- b. Certified or preliminarily determined by the secretary of the interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the secretary to qualify as a registered historic district;
- c. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the secretary of the interior; or
- d. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
  1. By an approved state program as determined by the secretary of the interior; or
  2. Directly by the secretary of the interior in states without approved programs.

"Lawfully existing," per the FHACA, means an existing fill, structure and/or use, which meets all federal, state, and local laws, and which is not in violation of the FHACA because it was established:

- a. Prior to January 31, 1980, or
- b. On or after January 31, 1980, in accordance with the requirements of the FHACA as it existed at the time the fill, structure and/or use was established.

Note: Substantially damaged properties and substantially improved properties that have not been elevated are not considered "lawfully existing" for the purposes of the NFIP. This definition is included in this chapter to clarify the applicability of any more stringent statewide floodplain management standards required under the FHACA.

"Letter of map amendment" means a letter of map amendment (LOMA) is an official amendment, by letter, to an effective National Flood Insurance Program (NFIP) map that is requested through the letter of map change (LOMC) process. A LOMA establishes a property's location in relation to the special flood hazard area (SFHA). LOMAs are usually issued because a property has been inadvertently mapped as being in the floodplain but is actually on natural high ground above the base flood elevation. Because a LOMA officially amends the effective NFIP map, it is a public record that the community must maintain. Any LOMA should be noted on the community's master flood map and filed by panel number in an accessible location.

"Letter of map change." The letter of map change (LOMC) process is a service provided by FEMA for a fee that allows the public to request a change in flood zone designation in an area of special flood hazard on a flood insurance rate map (FIRM). Conditional letters of map revision, conditional letters of map revision-fill, letters of map revision, letters of map revision-fill, and letters of map amendment are requested through the letter of map change (LOMC) process.

"Letter of map revision (LOMR)" is FEMA's modification to an effective flood insurance rate map (FIRM). Letter of map revisions are generally based on the implementation of physical measures that affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway, the effective base flood elevations (BFEs), or the special flood hazard area (SFHA). The LOMR officially revises the flood insurance rate map (FIRM) and sometimes the flood insurance study (FIS) report, and when appropriate, includes a description of the modifications. The LOMR is generally accompanied by an annotated copy of the affected portions of the FIRM or FIS report. Because a LOMR officially revises the effective NFIP map, it is a public record that the community must maintain. Any LOMR should be noted on the community's master flood map and filed by panel number in an accessible location.

"Letter of map revision-Fill (LOMR-F)" is FEMA's modification of the special flood hazard area (SFHA) shown on the flood insurance rate map (FIRM) based on the placement of fill outside the existing regulatory floodway may be initiated through the letter of map change (LOMC) process. Because a LOMR-F officially revises the effective flood insurance rate map (FIRM) map, it is a public record that the community must maintain. Any LOMR-F should be noted on the community's master flood map and filed by panel number in an accessible location.



"Licensed design professional" shall refer to either a New Jersey Licensed Professional Engineer, licensed by the New Jersey State Board of Professional Engineers and Land Surveyors or a New Jersey Licensed Architect, licensed by the New Jersey State Board of Architects.

"Licensed professional engineer" means a licensed professional engineer shall refer to individuals licensed by the New Jersey State Board of Professional Engineers and Land Surveyors.

"Limit of moderate wave action (LiMWA)" means inland limit of the area affected by waves greater than one and one-half (1.5) feet during the base flood. Base flood conditions between the VE Zone and the LiMWA will be similar to, but less severe than those in the VE Zone.

"Local design flood elevation (LDFE)" means the elevation reflective of the most recent available preliminary flood elevation guidance FEMA has provided as depicted on but not limited to advisory flood hazard area maps, work maps, or preliminary FIS and FIRM which is also inclusive of freeboard specified by the New Jersey Flood Hazard Area Control Act and Uniform Construction Codes and any additional freeboard specified in a community's ordinance. In no circumstances shall a project's LDFE be lower than a permit-specified flood hazard area design flood elevation or a valid NJDEP flood hazard area verification letter plus the freeboard as required in ASCE 24 and the effective FEMA base flood elevation.

"Lowest adjacent grade" means the lowest point of ground, patio, or sidewalk slab immediately next a structure, except in AO Zones where it is the natural grade elevation.

"Lowest floor," in A Zones, is the top surface of the lowest floor of the lowest enclosed area (including basement). In V Zones and coastal A Zones, the bottom of the lowest horizontal structural member of a building is the lowest floor. An unfinished or flood resistant enclosure, usable solely for the parking of vehicles, building access or storage in an area other than a basement is not considered a building's lowest floor provided that such enclosure is not built so as to render the structure in violation of other applicable non-elevation design requirements of these regulations.

"Lowest horizontal structural member" means, in an elevated building in a Coastal A or Coastal High Hazard Zone, the lowest beam, joist, or other horizontal member that supports the building is the lowest horizontal structural member. Grade beams installed to support vertical foundation members where they enter the ground are not considered lowest horizontal members.

"Manufactured home" means a structure that is transportable in one or more sections, eight (8) feet or more in width and greater than four hundred (400) square feet, built on a permanent chassis, designed for use with or without a permanent foundation when attached to the required utilities, and constructed to the Federal Manufactured Home Construction and Safety Standards and rules and regulations promulgated by the U.S. Department of Housing and Urban Development. The term also includes mobile homes, park trailers, travel trailers and similar transportable structures that are placed on a site for one hundred eighty (180) consecutive days or longer.

"Manufactured home park or subdivision" means a parcel (or contiguous parcels) of land divided into two (2) or more manufactured home lots for rent or sale.

"Market value" means the price at which a property will change hands between a willing buyer and a willing seller, neither party being under compulsion to buy or sell and both having reasonable knowledge of relevant facts. As used in these regulations, the term refers to the market value of buildings and structures, excluding the land and other improvements on the parcel. Market value shall be determined by one of the following methods:

- (1) Actual cash value (replacement cost depreciated for age and quality of construction);
- (2) Tax assessment value adjusted to approximate market value by a factor provided by the property appraiser; or
- (3) Established by a qualified independent appraiser.

"New construction" means structures for which the start of construction commenced on or after the effective date of the first floodplain regulation adopted by a community; includes any subsequent improvements to such structures. New construction includes work determined to be a substantial improvement.

"Non-residential," pursuant to ASCE 24, means any building or structure or portion thereof that is not classified as residential.

"Ordinary maintenance and minor work" refers to types of work excluded from construction permitting under N.J.A.C. 5:23 in the March 5, 2018 New Jersey Register. Some of these types of work must be considered in determinations of substantial improvement and substantial damage in regulated floodplains under 44 CFR 59.1. These types of work include but are not limited to replacements of roofing, siding, interior finishes, kitchen cabinets, plumbing fixtures and piping, HVAC and air conditioning equipment, exhaust fans, built in appliances, electrical wiring, etc. Improvements necessary to correct existing violations of state or local health, sanitation, or code enforcement officials which are the minimum necessary to assure safe living conditions and improvements of historic structures as discussed in 44 CFR 59.1 shall not be included in the determination of ordinary maintenance and minor work.

"Recreational vehicle" means a vehicle that is built on a single chassis, four hundred (400) square feet or less when measured at the largest horizontal projection, designed to be self-propelled or permanently towable by a light-duty truck, and designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices and has no permanently attached additions.

"Repetitive loss" means any flood-related damage sustained by a structure on two (2) separate occasions during a ten (10) year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds twenty-five (25) percent of the market value of the structure before the damage

occurred.

"Residential." Pursuant to the ASCE 24:

- a. Buildings and structures and portions thereof where people live or that are used for sleeping purposes on a transient or non-transient basis;
- b. Structures including but not limited to one- and two-family dwellings, townhouses, condominiums, multi-family dwellings, apartments, congregate residences, boarding houses, lodging houses, rooming houses, hotels, motels, apartment buildings, convents, monasteries, dormitories, fraternity houses, sorority houses, vacation time-share properties; and
- c. Institutional facilities where people are cared for or live on a twenty-four (24) hour basis in a supervised environment, including but not limited to board and care facilities, assisted living facilities, halfway houses, group homes, congregate care facilities, social rehabilitation facilities, alcohol and drug centers, convalescent facilities, hospitals, nursing homes, mental hospitals, detoxification facilities, prisons, jails, reformatories, detention centers, correctional centers, and prerelease centers.

"Solid waste disposal" shall mean the storage, treatment, utilization, processing or final disposition of solid waste as described in N.J.A.C. 7:26-1.6 or the storage of unsecured materials as described in N.J.A.C. 7:13-2.3 for a period of greater than six (6) months as specified in N.J.A.C. 7:26 which have been discharged, deposited, injected, dumped, spilled, leaked, or placed into any land or water such that such solid waste may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

"Special flood hazard area." The greater of the following:

- (1) land in the floodplain within a community subject to a one (1) percent or greater chance of flooding in any given year, shown on the FIRM as Zone V, VE, V1-3, A, AO, A1-30, AE, A99, or AH;
- (2) Land and the space above that land, which lies below the peak water surface elevation of the flood hazard area design flood for a particular water, as determined using the methods set forth in the New Jersey Flood Hazard Area Control Act in N.J.A.C. 7:13;
- (3) Riparian buffers as determined in the New Jersey Flood Hazard Area Control Act in N.J.A.C. 7:13.

Also referred to as the "Area of special flood hazard."

"Start of construction" is as follows:

- a. For other than new construction or substantial improvements, under the Coastal Barrier Resources Act (CBRA), this is the date the building permit was issued, provided that the actual start of construction, repair, rehabilitation, addition, placement or other improvement was

within one hundred eighty (180) days of the permit date. The actual start means either the first placement of permanent construction of a building on site, such as the pouring of a slab or footing, the installation of piles, the construction of columns or any work beyond the stage of excavation; or the placement of a manufactured (mobile) home on a foundation. For a substantial improvement, actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

- b. For the purposes of determining whether proposed construction must meet new requirements when National Flood Insurance Program (NFIP) maps are issued or revised and base flood elevation's (BFEs) increase or zones change, the start of construction includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within one hundred eighty (180) days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation.

Permanent construction does not include land preparation, such as clearing, grading, and filling, nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. Such development must also be permitted and must meet new requirements when National Flood Insurance Program (NFIP) maps are issued or revised and base flood elevation's (BFEs) increase or zones change.

For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

For determining if new construction and substantial improvements within the coastal barrier resources system (CBRS) can obtain flood insurance, a different definition applies.

"Structure" means a walled and roofed building, a manufactured home, or a gas or liquid storage tank that is principally above ground.

"Substantial damage" means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed fifty (50) percent of the market value of the structure before the damage occurred.

"Substantial improvement" any reconstruction, rehabilitation, addition, or other improvement of a structure taking place over a ten (10) year period, the cumulative cost of which equals or exceeds fifty (50) percent of the market value of the structure before the "start of construction" of the improvement. The period of accumulation includes the first improvement or repair of each structure that is permanent subsequent to the construction date. This term includes structures which have incurred "substantial damage", regardless of the actual repair work performed. This term also includes structures which have incurred "repetitive loss" or "substantial damage", regardless of the actual repair work performed. The term does not, however, include either:

- a. Any project for improvement of a structure to correct existing violations of state or local health, sanitary or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or
- b. Any alteration of a "historic structure", provided that the alteration will not preclude the structure's continued designation as a "historic structure."

"Utility and miscellaneous Group U buildings and structures" means buildings and structures of an accessory character and miscellaneous structures not classified in any special occupancy, as described in ASCE 24.

"V Zone certificate" means a certificate that contains a certification signed by a licensed design professional certifying that the designs, plans, and specifications and the methods of construction in V Zones and coastal A Zones are in accordance with accepted standards of practice. This certificate also includes an optional breakaway wall design certification for enclosures in these zones below the best available flood hazard data elevation. A completed certification is required at permit application.

"V Zones" means areas of special flood hazard in which the elevation of the surface water resulting from a flood that has a one (1) percent annual chance of equaling or exceeding the base flood elevation in any given year shown on the flood insurance rate map (FIRM) Zones V1-V30 and VE and is referred to as the coastal high hazard area.

"Variance" means a grant of relief from the requirements of this section which permits construction in a manner otherwise prohibited by this section where specific enforcement would result in unnecessary hardship.

"Violation" means a development that is not fully compliant with these regulations or the flood provisions of the building code. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in this chapter is presumed to be in violation until such time as that documentation is provided.

"Water surface elevation" means the height, in relation to the North American Vertical Datum (NAVD) of 1988, (or other datum, where specified) of floods of various magnitudes and frequencies in the flood plains of coastal or riverine areas.

"Watercourse" means a river, creek, stream, channel, or other topographic feature in, on, through, or over which water flows at least periodically.

"Wet floodproofing" means floodproofing method that relies on the use of flood damage resistant materials and construction techniques in areas of a structure that are below the local design flood elevation by intentionally allowing them to flood. The application of wet floodproofing as a flood protection technique under the National Flood Insurance Program (NFIP) is limited to enclosures below elevated residential and non-residential structures and to accessory and agricultural structures that have been issued variances by the community.

(Ord. No. 5832, § 2, 4-25-2023)

## ARTICLE X. - SUBDIVISIONS AND OTHER DEVELOPMENTS

### 17.44.570 - General.

Any subdivision proposal, including proposals for manufactured home parks and subdivisions, or other proposed new development in a flood hazard area shall be reviewed to assure that:

- (1) All such proposals are consistent with the need to minimize flood damage.
- (2) All public utilities and facilities, such as sewer, gas, electric and water systems are located and constructed to minimize or eliminate flood damage.
- (3) Adequate drainage is provided to reduce exposure to flood hazards; in Zones AH and AO, adequate drainage paths shall be provided to guide floodwater around and away from structures.

(Ord. No. 5832, § 2, 4-25-2023)

### 17.44.580 - Subdivision requirements.

Where any portion of proposed subdivisions, including manufactured home parks and subdivisions, lies within a flood hazard area, the following shall be required:

- (1) The flood hazard area, including floodways, coastal high hazard areas, and coastal A Zones, and base flood elevations, as appropriate, shall be delineated on tentative subdivision plats.
- (2) Residential building lots shall be provided with adequate buildable area outside the floodway.
- (3) The design criteria for utilities and facilities set forth in these regulations and appropriate codes shall be met.

(Ord. No. 5832, § 2, 4-25-2023)

## ARTICLE XI. - SITE IMPROVEMENT

#### 17.44.590 - Encroachment in floodways.

Development, land disturbing activity, and encroachments in floodways shall not be authorized unless it has been demonstrated through hydrologic and hydraulic analyses required in accordance with subsection 17.44.390(1) of these regulations, that the proposed encroachment will not result in any increase in the base flood level during occurrence of the base flood discharge. If subsection 17.44.390(1) is satisfied, proposed elevation, addition, or reconstruction of a lawfully existing structure within a floodway shall also be in accordance with section 17.44.800 of this chapter and the floodway requirements of N.J.A.C. 7:13.

(Ord. No. 5832, § 2, 4-25-2023)

#### 17.44.600 - Prohibited in floodways.

The following are prohibited activities:

- (1) The storage of unsecured materials is prohibited within a floodway pursuant to N.J.A.C. 7:13.
- (2) Fill and new structures are prohibited in floodways per N.J.A.C. 7:13.

(Ord. No. 5832, § 2, 4-25-2023)

#### 17.44.610 - Coastal high hazard areas (V Zones) and coastal A Zones.

In coastal high hazard areas and coastal A Zones:

- (1) New buildings shall only be authorized landward of the reach of mean high tide.
- (2) The placement of manufactured homes shall be prohibited except in an existing manufactured home park or subdivision.
- (3) Basements or enclosures that are below grade on all sides are prohibited.
- (4) The use of fill for structural support of buildings is prohibited.

(Ord. No. 5832, § 2, 4-25-2023)

#### 17.44.620 - Sewer facilities.

All new and replaced sanitary sewer facilities, private sewage treatment plants (including all pumping stations and collector systems) and on-site waste disposal systems shall be designed in accordance with the New Jersey septic system regulations contained in N.J.A.C. 14A and N.J.A.C. 7:9A, the UCC Plumbing Subcode (N.J.A.C. 5:23) and Chapter 7, ASCE 24, to minimize or eliminate infiltration of floodwater into the facilities and discharge from the facilities into flood waters, or impairment of the facilities and systems.

(Ord. No. 5832, § 2, 4-25-2023)

#### 17.44.630 - Water facilities.

All new and replacement water facilities shall be designed in accordance with the New Jersey Safe Drinking Water Act (N.J.A.C. 7:10) and the provisions of Chapter 7 ASCE 24, to minimize or eliminate infiltration of floodwater into the systems.

(Ord. No. 5832, § 2, 4-25-2023)

#### 17.44.640 - Storm drainage.

Storm drainage shall be designed to convey the flow of surface waters to minimize or eliminate damage to persons or property.

(Ord. No. 5832, § 2, 4-25-2023)

#### 17.44.650 - Streets and sidewalks.

Streets and sidewalks shall be designed to minimize potential for increasing or aggravating flood levels.

(Ord. No. 5832, § 2, 4-25-2023)

#### 17.44.660 - Limitations on placement of fill.

Subject to the limitations of these regulations, fill shall be designed to be stable under conditions of flooding including rapid rise and rapid drawdown of floodwater, prolonged inundation, and protection against flood-related erosion and scour. In addition to these requirements, when intended to support buildings and structures (Zone A only), fill shall comply with the requirements of the UCC (N.J.A.C. 5:23). Proposed fill and encroachments in flood hazard areas shall comply with the flood storage displacement limitations of N.J.A.C. 7:13.

(Ord. No. 5832, § 2, 4-25-2023)

#### 17.44.670 - Limitations on sites in coastal high hazard areas (V Zones) and coastal A Zones.

In coastal high hazard areas and coastal A Zones, alteration of sand dunes shall be permitted only when the engineering analysis required by subsection 17.44.390(4) of these regulations demonstrates that the proposed alteration will not increase the potential for flood damage. Construction or restoration of dunes under or around elevated buildings and structures shall comply with subsection 17.44.870(3) of these regulations and as permitted under the NJ Coastal Zone Management Rules (N.J.A.C. 7:7).

(Ord. No. 5832, § 2, 4-25-2023)



## 17.44.680 - Hazardous materials.

The placement or storage of any containers holding hazardous substances in a flood hazard area is prohibited unless the provisions of N.J.A.C. 7:13 which cover the placement of hazardous substances and solid waste is met.

(Ord. No. 5832, § 2, 4-25-2023)

## ARTICLE XII. - MANUFACTURED HOMES

## 17.44.690 - General.

All manufactured homes installed in flood hazard areas shall be installed pursuant to the Nationally Preemptive Manufactured Home Construction and Safety Standards Program (24 CFR 3280).

(Ord. No. 5832, § 2, 4-25-2023)

## 17.44.700 - Elevation.

All new, relocated, and replacement manufactured homes to be placed or substantially improved in a flood hazard area shall be elevated such that the bottom of the frame is elevated to or above the elevation specified in section 17.44.800.

(Ord. No. 5832, § 2, 4-25-2023)

## 17.44.710 - Foundations.

All new, relocated, and replacement manufactured homes, including substantial improvement of existing manufactured homes, shall be placed on foundations as specified by the manufacturer only if the manufacturer's installation instructions specify that the home has been designed for flood-resistant considerations and provides the conditions of applicability for velocities, depths, or wave action as required by 24 CFR Part 3285-302. The floodplain administrator is authorized to determine whether the design meets or exceeds the performance necessary based upon the proposed site location conditions as a precondition of issuing a flood damage prevention permit. If the floodplain administrator determines that the home's performance standards will not withstand the flood loads in the proposed location, the applicant must propose a design certified by a New Jersey licensed design professional and in accordance with 24 CFR 3285.301(c) and (d) which conforms with ASCE 24, the accepted standard of engineering practice for flood resistant design and construction.

(Ord. No. 5832, § 2, 4-25-2023)

## 17.44.720 - Anchoring.

All new, relocated, and replacement manufactured homes to be placed or substantially improved in a flood hazard area shall be installed using methods and practices which minimize flood damage and shall be securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.

(Ord. No. 5832, § 2, 4-25-2023)

## 17.44.730 - Enclosures.

Fully enclosed areas below elevated manufactured homes shall comply with the requirements of section 17.44.800.

(Ord. No. 5832, § 2, 4-25-2023)

## 17.44.740 - Protection of mechanical equipment and outside appliances.

Mechanical equipment and outside appliances shall be elevated to or above the elevation of the bottom of the frame required in section 17.44.800 of these regulations.

Exception. Where such equipment and appliances are designed and installed to prevent water from entering or accumulating within their components and the systems are constructed to resist hydrostatic and hydrodynamic loads and stresses, including the effects of buoyancy, during the occurrence of flooding up to the elevation required by section 17.44.800, the systems and equipment shall be permitted to be located below that elevation. Electrical wiring systems shall be permitted below the design flood elevation provided they conform to the provisions of NFPA 70 (National Electric Code).

(Ord. No. 5832, § 2, 4-25-2023)

## ARTICLE XIII. - RECREATIONAL VEHICLES

## 17.44.750 - Placement prohibited.

The placement of recreational vehicles shall not be authorized in coastal high hazard areas and in floodways.

(Ord. No. 5832, § 2, 4-25-2023)

## 17.44.760 - Temporary placement.

Recreational vehicles in flood hazard areas shall be fully licensed and ready for highway use and shall be placed on a site for less than one hundred eighty (180) consecutive days.

(Ord. No. 5832, § 2, 4-25-2023)

#### 17.44.770 - Permanent placement.

Recreational vehicles that are not fully licensed and ready for highway use, or that are to be placed on a site for more than one hundred eighty (180) consecutive days, shall meet the requirements of section 17.44.800 for habitable buildings and section 17.44.710.

(Ord. No. 5832, § 2, 4-25-2023)

### ARTICLE XIV. - TANKS

#### 17.44.780 - Tanks.

Underground and above-ground tanks shall be designed, constructed, installed, and anchored in accordance with ASCE 24 and N.J.A.C. 7:13.

(Ord. No. 5832, § 2, 4-25-2023)

### ARTICLE XV. - OTHER DEVELOPMENT AND BUILDING WORK

#### 17.44.790 - General requirements for other development and building work.

All development and building work, including man-made changes to improved or unimproved real estate for which specific provisions are not specified in these regulations or the Uniform Construction Code (N.J.A.C. 5:23), shall:

- (1) Be located and constructed to minimize flood damage;
- (2) Meet the limitations of subsection 17.44.390(1) of this chapter when located in a regulated floodway;
- (3) Be anchored to prevent flotation, collapse or lateral movement resulting from hydrostatic and hydrodynamic loads, including the effects of buoyancy, during the conditions of flooding up to the local design flood elevation determined according to section 17.44.130;
- (4) Be constructed of flood damage-resistant materials as described in ASCE 24 Chapter 5;
- (5)

Have mechanical, plumbing, and electrical systems above the local design flood elevation determined according to section 17.44.130 or meet the requirements of ASCE 24 Chapter 7 which requires that attendant utilities are located above the local design flood elevation unless the attendant utilities and equipment are:

- i. Specifically allowed below the local design flood elevation, and
  - ii. Designed, constructed, and installed to prevent floodwaters, including any backflow through the system from entering or accumulating within the components.
- (6) Not exceed the flood storage displacement limitations in fluvial flood hazard areas in accordance with N.J.A.C. 7:13; and
- (7) Not exceed the impacts to frequency or depth of offsite flooding as required by N.J.A.C. 7:13 in floodways.

(Ord. No. 5832, § 2, 4-25-2023)

#### 17.44.800 - Requirements for habitable buildings and structures.

- (1) Construction and Elevation in A Zones Not Including Coastal A Zones.
  - a. No portion of a building is located within a V Zone.
  - b. No portion of a building is located within a coastal A Zone, unless a licensed design professional certifies that the building's foundation is designed in accordance with ASCE 24, Chapter 4.
  - c. All new construction and substantial improvement of any habitable building (as defined in article IX) located in flood hazard areas shall have the lowest floor, including basement, together with the attendant utilities (including all electrical, heating, ventilating, air-conditioning and other service equipment) and sanitary facilities, elevated to or above the local design flood elevation as determined in section 17.44.130, be in conformance with ASCE Chapter 7, and be confirmed by an elevation certificate.
  - d. All new construction and substantial improvements of non-residential structures shall:
    - i. Have the lowest floor, including basement, together with the attendant utilities (including all electrical, heating, ventilating, air-conditioning and other service equipment) and sanitary facilities, elevated to or above the local design flood elevation as determined in section 17.44.130, be in conformance with ASCE Chapter 7, and be confirmed by an elevation certificate; or
    - ii. Together with the attendant utility and sanitary facilities, be designed so that below the local design flood elevation, the structure:
      1. Meets the requirements of ASCE 24 Chapters 2 and 7; and
      - 2.

Is constructed according to the design plans and specifications provided at permit application and signed by a licensed design professional, is certified by that individual in a floodproofing certificate, and is confirmed by an elevation certificate.

- e. All new construction and substantial improvements with fully enclosed areas below the lowest floor shall be used solely for parking of vehicles, building access, or storage in an area other than a basement and which are subject to flooding. Enclosures shall:
  - i. For habitable structures, be situated at or above the adjoining exterior grade along at least one entire exterior wall, in order to provide positive drainage of the enclosed area in accordance with N.J.A.C. 7:13; enclosures (including crawlspaces and basements) which are below grade on all sides are prohibited;
  - ii. Be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters unless the structure is non-residential and the requirements of subsection 17.44.800(1)(d)(ii) are met;
  - iii. Be constructed to meet the requirements of ASCE 24 Chapter 2;
  - iv. Have openings documented on an elevation certificate; and
  - v. Have documentation that a deed restriction has been obtained for the lot if the enclosure is greater than six (6) feet in height. This deed restriction shall be recorded in the office of the county clerk or the registrar of deeds and mortgages in which the building is located, shall conform to the requirements in N.J.A.C.7:13, and shall be recorded within ninety (90) days of receiving a Flood Hazard Area Control Act permit or prior to the start of any site disturbance (including pre-construction earth movement, removal of vegetation and structures, or construction of the project), whichever is sooner. Deed restrictions must explain and disclose that:
    1. The enclosure is likely to be inundated by floodwaters which may result in damage and/or inconvenience.
    2. The depth of flooding that the enclosure would experience to the flood hazard area design flood elevation;
    3. The deed restriction prohibits habitation of the enclosure and explains that converting the enclosure into a habitable area may subject the property owner to enforcement;

(2) Construction and Elevation in V Zones and Coastal A Zones.

- a. All new construction and substantial improvements shall be constructed according to structural designs, plans and specifications conforming with ASCE 24 Chapter 4 which are signed by a licensed design professional and certified by that individual in a V Zone Certificate.
- b. All new construction and substantial improvement of any habitable building (as defined in article IX) located in coastal high hazard areas shall have the lowest horizontal structural member, together with the attendant utilities (including all electrical, heating, ventilating, air-

conditioning and other service equipment) and sanitary facilities, elevated to the local design flood elevation as determined in section 17.44.130, be in conformance with ASCE Chapter 7, and be confirmed by an elevation certificate.

- c. All new construction and substantial improvements of non-residential structures shall:
  - i. Have the lowest horizontal structural member, including basement, together with the attendant utilities (including all electrical, heating, ventilating, air-conditioning and other service equipment) and sanitary facilities, elevated to or above the local design flood elevation as determined in section 17.44.130, be in conformance with ASCE 24 Chapter 7, and be confirmed by an elevation certificate; or
  - ii. Together with the attendant utility and sanitary facilities, be designed so that below the local design flood elevation, the structure:
    1. Meets the requirements of ASCE 24 Chapters 4 and 7; and
    2. Is constructed according to the design plans and specifications provided at permit application and signed by a licensed design professional, is certified by that individual in a floodproofing certificate, and is confirmed by an elevation certificate.
- d. All new construction and substantial improvements shall have the space below the lowest floor either free of obstruction or constructed with non-supporting breakaway walls, open wood lattice-work, or insect screening intended to collapse under wind and water loads without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting foundation system. All breakaway walls shall be constructed according to structural designs, plans and specifications conforming with ASCE 24 Chapter 4, signed by a licensed design professional, and certified by that individual in a breakaway wall certificate.
- e. All new construction and substantial improvements with fully enclosed areas below the lowest floor shall be used solely for parking of vehicles, building access, or storage in an area other than a basement and which are subject to flooding. Enclosures shall:
  - i. Be situated at or above the adjoining exterior grade along at least one entire exterior wall, in order to provide positive drainage of the enclosed area in accordance with N.J.A.C. 7:13; enclosures (including crawlspaces and basements) which are below grade on all sides are prohibited.
  - ii. Be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters unless the structure is non-residential and the requirements of subsection 17.44.800(2)(c)(ii) are met;
  - iii. Be constructed to meet the requirements of ASCE 24 Chapter 4;
  - iv.

Have openings documented on an elevation certificate and have breakaway wall construction documented on a breakaway wall certificate unless the requirements of subsection 17.44.800(2)(c)(ii) are met for a non-residential structure; and

- v. Have documentation that a deed restriction has been obtained for the lot if the enclosure is greater than six (6) feet in height. This deed restriction shall be recorded in the office of the county clerk or the registrar of deeds and mortgages in which the building is located, shall conform to the requirements in N.J.A.C.7:13, and shall be recorded within ninety (90) days of receiving a Flood Hazard Area Control Act permit or prior to the start of any site disturbance (including pre-construction earth movement, removal of vegetation and structures, or construction of the project), whichever is sooner. Deed restrictions must explain and disclose that:
  1. The enclosure is likely to be inundated by floodwaters which may result in damage and/or inconvenience.
  2. The depth of flooding that the enclosure would experience to the flood hazard area design flood elevation;
  3. The deed restriction prohibits habitation of the enclosure and explains that converting the enclosure into a habitable area may subject the property owner to enforcement;

(Ord. No. 5832, § 2, 4-25-2023)

#### 17.44.810 - Garages and accessory storage structures.

Garages and accessory storage structures shall be designed and constructed in accordance with the Uniform Construction Code.

(Ord. No. 5832, § 2, 4-25-2023)

#### 17.44.820 - Fences.

Fences in floodways that have the potential to block the passage of floodwater, such as stockade fences and wire mesh fences, shall meet the requirements of subsection 17.44.390(1) of these regulations. Pursuant to N.J.A.C. 7:13, any fence located in a floodway shall have sufficiently large openings so as not to catch debris during a flood and thereby obstruct floodwaters, such as barbed-wire, split-rail, or strand fence. A fence with little or no open area, such as a chain link, lattice, or picket fence, does not meet this requirement. Foundations for fences greater than six (6) feet in height must conform with the Uniform Construction Code. Fences for pool enclosures having openings not in conformance with this section but in conformance with the Uniform Construction Code to limit climbing require a variance as described in article VII of this chapter.

(Ord. No. 5832, § 2, 4-25-2023)

17.44.830 - Retaining walls, sidewalks, and driveways.

Retaining walls, sidewalks and driveways that involve placement of fill in floodways shall meet the requirements of subsection 17.44.390(1) of these regulations and N.J.A.C. 7:13.

(Ord. No. 5832, § 2, 4-25-2023)

17.44.840 - Swimming pools.

Swimming pools shall be designed and constructed in accordance with the Uniform Construction Code. Above-ground swimming pools and below-ground swimming pools that involve placement of fill in floodways shall also meet the requirements of subsection 17.44.390(1) of these regulations. Above-ground swimming pools are prohibited in floodways by N.J.A.C. 7:13.

(Ord. No. 5832, § 2, 4-25-2023)

17.44.850 - Roads and watercourse crossings.

- (1) For any railroad, roadway, or parking area proposed in a flood hazard area, the travel surface shall be constructed at least one (1) foot above the flood hazard area design elevation in accordance with N.J.A.C. 7:13.
- (2) Roads and watercourse crossings that encroach into regulated floodways or riverine waterways with base flood elevations where floodways have not been designated, including roads, bridges, culverts, low-water crossings and similar means for vehicles or pedestrians to travel from one side of a watercourse to the other side, shall meet the requirements of subsection 17.44.390(1) of these regulations.

(Ord. No. 5832, § 2, 4-25-2023)

17.44.860 - Other development in coastal high hazard areas (Zone V) and coastal A Zones.

In coastal high hazard areas (V Zones) and coastal A Zones, development activities other than buildings and structures shall be permitted only when also authorized by the appropriate federal, state or local authority; when located outside the footprint of, and not structurally attached to, buildings and structures; and when analyses prepared by a licensed professional engineer demonstrates no harmful diversion of floodwater or wave runup and wave reflection that would increase damage to adjacent buildings and structures. Such other development activities include but are not limited to:

- (1) Bulkheads, seawalls, retaining walls, revetments, and similar erosion control structures;
- (2)



Solid fences and privacy walls, and fences prone to trapping debris, unless designed and constructed to fail under flood conditions less than the base flood or otherwise function to avoid obstruction of floodwater; and

- (3) On-site filled or mound sewage systems.

(Ord. No. 5832, § 2, 4-25-2023)

#### 17.44.870 - Nonstructural fill in coastal high hazard areas (Zone V) and coastal A Zones.

In coastal high hazard areas and coastal A Zones:

- (1) Minor grading and the placement of minor quantities of nonstructural fill shall be permitted for landscaping and for drainage purposes under and around buildings.
- (2) Nonstructural fill with finished slopes that are steeper than one (1) unit vertical to five (5) units horizontal shall be permitted only when an analysis prepared by a licensed professional engineer demonstrates no harmful diversion of floodwater or wave runup and wave reflection that would increase damage to adjacent buildings and structures.
- (3) Sand dune construction and restoration of sand dunes under or around elevated buildings are permitted without additional engineering analysis or certification of the diversion of floodwater or wave runup and wave reflection where the scale and location of the dune work is consistent with local beach-dune morphology and the vertical clearance is maintained between the top of the sand dune and the lowest horizontal structural member of the building.

(Ord. No. 5832, § 2, 4-25-2023)

#### ARTICLE XVI. - TEMPORARY STRUCTURES AND TEMPORARY STORAGE

#### 17.44.880 - Temporary structures.

Temporary structures shall be erected for a period of less than one hundred eighty (180) days. Temporary structures shall be anchored to prevent flotation, collapse or lateral movement resulting from hydrostatic loads, including the effects of buoyancy, during conditions of the base flood. Fully enclosed temporary structures shall have flood openings that are in accordance with ASCE 24 to allow for the automatic entry and exit of flood waters.

(Ord. No. 5832, § 2, 4-25-2023)

#### 17.44.890 - Temporary storage.

Temporary storage includes storage of goods and materials for a period of less than one hundred eighty (180) days. Stored materials shall not include hazardous materials.

(Ord. No. 5832, § 2, 4-25-2023)

#### 17.44.900 - Floodway encroachment.

Temporary structures and temporary storage in floodways shall meet the requirements of subsection 17.44.390(1) of these regulations.

(Ord. No. 5832, § 2, 4-25-2023)

### ARTICLE XVII. - UTILITY AND MISCELLANEOUS GROUP U

#### 17.44.910 - Utility and Miscellaneous Group U.

In accordance with Section 312 of the International Building Code, Utility and Miscellaneous Group U includes buildings and structures that are accessory in character and miscellaneous structures not classified in any specific occupancy in the building code, including, but not limited to, agricultural buildings, aircraft hangars (accessory to a one- or two-family residence), barns, carports, communication equipment structures (gross floor area less than one thousand five hundred (1,500) square feet), fences more than six (6) feet (1829 mm) high, grain silos (accessory to a residential occupancy), livestock shelters, private garages, retaining walls, sheds, stables, tanks and towers.

(Ord. No. 5832, § 2, 4-25-2023)

#### 17.44.920 - Flood loads.

Utility and miscellaneous Group U buildings and structures, including substantial improvement of such buildings and structures, shall be anchored to prevent flotation, collapse or lateral movement resulting from flood loads, including the effects of buoyancy, during conditions up to the local design flood elevation as determined in section 17.44.130.

(Ord. No. 5832, § 2, 4-25-2023)

#### 17.44.930 - Elevation.

Utility and miscellaneous Group U buildings and structures, including substantial improvement of such buildings and structures, shall be elevated such that the lowest floor, including basement, is elevated to or above the local design flood elevation as determined in section 17.44.130 and in accordance with ASCE 24.

Utility lines shall be designed and elevated in accordance with N.J.A.C. 7:13.

(Ord. No. 5832, § 2, 4-25-2023)

17.44.940 - Enclosures below base flood elevation.

Fully enclosed areas below the design flood elevation shall be constructed in accordance with section 17.44.800 and with ASCE 24 for new construction and substantial improvements. Existing enclosures such as a basement or crawlspace having a floor that is below grade along all adjoining exterior walls shall be abandoned, filled-in, and/or otherwise modified to conform with the requirements of N.J.A.C. 7:13 when the project has been determined to be a substantial improvement by the floodplain administrator.

(Ord. No. 5832, § 2, 4-25-2023)

17.44.950 - Flood-damage resistant materials.

Flood-damage-resistant materials shall be used below the local design flood elevation determined in section 17.44.130.

(Ord. No. 5832, § 2, 4-25-2023)

17.44.960 - Protection of mechanical, plumbing, and electrical systems.

Mechanical, plumbing, and electrical systems, equipment and components, heating, ventilation, air conditioning, plumbing fixtures, duct systems, and other service equipment, shall be elevated to or above the local design flood elevation determined in section 17.44.130.

Exception: Electrical systems, equipment and components, and heating, ventilating, air conditioning, and plumbing appliances, plumbing fixtures, duct systems, and other service equipment shall be permitted to be located below the local design flood elevation provided that they are designed and installed to prevent water from entering or accumulating within the components and to resist hydrostatic and hydrodynamic loads and stresses, including the effects of buoyancy, during the occurrence of flooding to the local design flood elevation in compliance with the flood-resistant construction requirements of ASCE 24. Electrical wiring systems shall be permitted to be located below the local design flood elevation provided they conform to the provisions of NFPA 70 (National Electric Code).

(Ord. No. 5832, § 2, 4-25-2023)

Chapter 17.48 - SIGNS

**Sections:**

## 17.48.010 - Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

"Awning" means any structure made of cloth, plastic, metal or other substance, with a frame attached to a building or other structure and projecting over a public or quasi-public right-of-way, when the same is so erected as to permit it to be raised to a position against the building or structure when not in use.

"Business sign" means a sign which directs attention to a person, organization, institution, activity, event, place, object, product, commodity, business, entertainment, service or profession which is located, sold, produced, provided, conducted or offered upon the premises where such sign is located or to which it is affixed.

"Canopy" means any structure, other than an awning or marquee, made of cloth, plastic, metal or other substance and providing a roof-like shelter over a public or quasi-public right-of-way.

"Flashing sign" means a sign, the illumination of which is not kept constant in intensity at all times when in use.

"Illuminated sign" means a sign having characters, letters, figures, designs or outlines illuminated by electric light or luminous tubes as a part of the sign.

"Indirectly illuminated sign" means an illuminated, nonflashing sign whose illumination is derived from an external artificial source and is so arranged that no direct rays of light are projected from the artificial source into an area where anyone resides or into any public street or public way.

"Marquee" means a permanent, roof-like structure extending from part or all of a building or other structure over a public or quasi-public right-of-way and constructed of some durable material such as metal, glass or plastic.

"Nameplate sign" means a sign which states the name or address, or both, of the occupant of the premises where the sign is located.

"Obstructing railroad overpass" means a railroad overpass which does not provide a minimum clearance from the highest point in the curvature of the road surface to the lowest point on the structure of the overpass of thirteen and one-half (13½) feet or to such other maximum vehicular height as may be authorized from time to time by N.J.S.A. 39:3-84 or similar provision of law.

"Portable sign" means a sign, signboard, lightpost, awning, canopy, marquee, framework, flagpole or other similar object which is not securely affixed to the ground or otherwise affixed in a permanent manner to a building or other structure.

"Professional sign" means a sign listing only the name or profession, or both, of a person practicing a profession on the premises where the sign is located.

"Sign" means any name, identification, description, display or illumination which is affixed to or painted on or represented directly or indirectly upon a building, structure, or parcel of land, and which directs attention to a person, organization, institution, activity, event, place, object, product, commodity, business, entertainment, service or profession or which conveys any message, notice or greeting.

"Sign area" means the entire area within a contiguous perimeter enclosing the limits of a sign and including the frame of the sign, but not including structural elements outside the limits of such sign and not forming an integral part thereof. For double-faced signs, only one display face shall be measured in computing the total sign area where the sign faces are parallel or where the interior angles formed by the faces are ninety (90) degrees or less.

"Structure of the sign" means all frames, glass or other coverings, gooseneck arms, lightbulbs, lights, shields, shades, reflectors, supports, brackets, braces, screws, bolts, fastenings or other items or devices which constitute a part of the support system for any sign, awning, canopy or marquee.

(Prior code § 40-166)

#### 17.48.020 - Exemptions.

The provisions of this chapter shall not apply to:

- A. The display of public notices of any governmental unit.
- B. A temporary sign in connection with a political campaign or a charitable, educational or religious drive or event, provided that such sign shall not be maintained for more than 45 days, shall not exceed 75 square feet, and shall be removed from the premises ten days after the election or event date.
- C. Temporary real estate signs, other than portable signs or illuminated signs, stating real estate for sale or lease, provided that the same do not exceed four square feet in sign area, and provided further that they are removed within ten days after the premises has been sold or leased.
- D. Traditional decorations in connection with any holiday, or event of any religious or ethnic group. Traditional decoration in connection with any national, state, county or municipal observation, holiday, anniversary or event. Decorations must be removed 20 days after occasion, holiday or event.

(Ord. No. 4078, § 1, 10-27-2009; prior code § 40-167)

#### 17.48.030 - Permit application, fee, issuance and fines.

- A. The city construction office shall supply to any sign/awning applicant the proper application and sign/awning design guidelines. The applicant shall submit:
  1. City official sign/awning application (original), plus six photocopies.

2. Any other information as the construction code official shall require to show full compliance with the intent and purpose of this chapter and any structural requirements which may be necessary.
3. Every applicant before being issued a permit shall pay to the city construction department a fee of \$20.00 to construct a sign or awning within the city.
4. The applicant for any sign or awning must supply one set of photographs of; the current store front, two store fronts on the left side and two store fronts on the right side of the proposed sign/awning location.
5. Any person erecting a non conforming/illegal sign/awning has 20 days to remove said sign/awning after notification. If the non conforming sign/awning is not removed after 20 days fines shall be issued by the city of \$100.00 per day, assessed to the owner of the property and the occupant of the business. The city also reserves the right to remove/lien the sign/awning and invoice the property owner for the cost of removal. The city shall not be liable for any damages to the facade as the result of removal being the property owner did not comply with the request of removal.
6. Rendering of the proposed sign and how it will be featured on the building.

(Ord. No. 4078, § 1, 10-27-2009; prior code § 40-168)

**Editor's note**— Ord. No. 4078, § 1, adopted October 27, 2009, changed the title of section 17.48.030 from "Permit application, fee and issuance" to "Permit application, fee, issuance and fines." The historical notation has been preserved for reference purposes.

#### 17.48.040 - Structural regulations.

- A. If the building inspector shall determine that any sign, awning, canopy or marquee, or the structure of any sign, now or hereafter erected or maintained, is unsafe or insecure or is a menace to the public, or has been constructed or erected or is being maintained in such a manner as to pose a hazard to persons or property, or has been constructed or erected or is being maintained in violation of the provisions of this chapter or any other law or ordinance, he or she shall give written notice to the permittee, and, if there is no permittee, to the owner of the premises, of the violation. If the permittee or owner fails to remove or alter the sign, awning, canopy, marquee or structure of the sign within thirty (30) days after such notice, such sign, awning, canopy, marquee or structure of the sign may be removed or altered by the building inspector at the expense of the permittee or owner of the premises upon which it is located. The building inspector shall thereafter refuse to issue a permit for erection of any sign, awning, canopy or marquee in the city to any permittee or property owner who refuses to pay the costs

so assessed. The building inspector may cause any sign, awning, canopy, marquee or structure of a sign which is an immediate peril to persons or property to be removed summarily and without notice.

- B. All signs, awnings, canopies, marquees and structures of the sign attached to the ground or to a building or other structure shall be thoroughly and rigidly secured and shall be repaired and maintained as necessary to keep them secure, safe and free from causing any danger or damage to persons or property.
- C. All illuminated signs shall comply with the electrical code of the city, in particular, the requirements of Chapter 15.04 of this code.
- D. No sign, awning, canopy, marquee or structure of the sign shall be erected or maintained so as to obstruct access to any fire escape, window, door, exit or standpipe, or obstruct passage by either vehicular or pedestrian traffic on any public or quasi-public right-of-way.
- E. Signs, awnings, canopies, marquees and structures of the sign shall be constructed and erected in such a manner as to allow for the effects of high winds and other natural forces, and the building inspector shall require copies of the stress sheets and calculations showing that the sign, awning, canopy or marquee is adequately designed for dead-load and wind pressure in any direction, in any situation where such information may be helpful in determining whether such sign, awning, canopy or marquee can be safely constructed, erected or maintained.

(Prior code § 40-169)

#### 17.48.050 - Maintenance and appearance—Aesthetic considerations.

- A. All signs, awnings, canopies, marquees and structures of the sign shall be maintained in a clean and neat-appearing condition, and such maintenance, where applicable, shall include regular cleaning; regular painting and removal of any peeled, chipped or blistered paint; the renewal or replacement, in whole or in part, of any sign, awning, canopy or marquee or structure of the sign which has been caused to crack, break, peel or otherwise disintegrate or fall apart.
- B. Any sign, now or hereafter erected or maintained, which no longer advertises a bona fide business conducted or product sold, or notice of a current or future event, shall be taken down and removed by the permittee or by the owner of the premises, if there is no permittee, within thirty (30) days after such business ceases, such product ceases to be sold or such event occurs. Upon failure to comply, the building inspector is authorized to cause the removal of such sign and any expense incident thereto shall be paid by the permittee or owner of the premises upon which such sign is located. The building inspector shall thereafter refuse to issue a permit for the erection of any sign, awning, canopy or marquee in the city to any permittee or property owner who refuses to pay the costs of such removal.
- C. No flashing signs shall be permitted in the city except signs displaying the time and/or temperature.

- D. No sign, awning, canopy or marquee shall contain any name, word, identification, description, display or illustration of an indecent or immoral nature; nor contain any libelous, defamatory or sacrilegious language; nor urge, advocate or glorify any unlawful activity or conduct.
- E. No advertising sign or business sign shall be permitted in any residential district, nor be placed facing any residential district, except for business signs located in a nonresidential district.

(Prior code § 40-170)

#### 17.48.060 - Permitted uses in zoning districts.

- A. Residential Districts. Only signs meeting the following conditions shall be permitted in any residential district within the city:
  - 1. Professional office or home occupation sign; being that the use within the structure meets all city codes. The sign shall not exceed six square feet in sign area. Such signs shall only bear the name and/or address of the person residing on the premises, and the profession or home occupation being conducted on the premises. These signs shall not be illuminated.
  - 2. Non illuminated, temporary signs on new construction sites, not exceeding ten square feet in sign area, and provided that such signs shall be removed within ten days after completion of construction.
  - 3. In R-3 and R-4 districts only, a sign shall be permitted for the purpose of identifying a multifamily dwelling project (over nine units) and shall be no greater than 20 square feet in area, whether it be on the lawn or attached to the building.
  - 4. Only one sign shall be permitted for any use in a residential zone, except corner lots where two signs shall be permitted. Corner lots shall have only one sign permitted per each street frontage.
  - 5. No more than one sign shall be permitted for each use or activity permitted in the residential zone.
- B. Commercial Districts.
  - 1. Only signs meeting the following criteria shall be permitted within all of the city's business districts:
    - a. One business sign for each facade, corner business's are permitted signs on two sides (facades), but only sign per street frontage.

Sign cannot protrude 12 inches from the facade, unless placed on an awning.

Sign Dimensions—Maximum height 14 feet from ground level measured at building frontage to top of sign, maximum sign width 80 percent of store width, maximum sign box height 24 inches. The dimensions listed above apply to letter size also when said sign consists of fixed letters to the building facade.

Only the business name, logo, street number are permitted on the sign.



No marquee signs are permitted, unless for use by a motion picture theater, provided that same may not interfere with pedestrian and vehicular traffic and provide a clearance of not less than 15 feet.

Second floor businesses are limited to one window sign. Sign height for second floor is permitted to be higher than 14 feet but cannot exceed 22 feet.

- b. Display windows may have the name of the store, store description, and/or logo of the store inscribed on the glass by any of the following means, and may not exceed 25 percent of the total window area:
    - i. Gilt lettering.
    - ii. Painted lettering.
    - iii. Professionally created decal.
    - iv. Stained or sandblasted glass.
  - c. The only signage that is permitted on the glass of the entry door is the name of the store, store description, and/or logo of the store inscribed on the glass by any of the means described above for display window signs, and a listing of business hours.
  - d. Special signs serving the public convenience, such as "notary public," "public telephone," "rest rooms" or words of direction or other signs of similar import, provided that each such sign does not exceed one square foot in sign area, and provided further that only one sign of each type shall be displayed.
  - e. Signs required by law to be exhibited by the owner or occupant of the premises.
  - f. Nonilluminated, temporary signs advertising the premises for sale or lease, provided that the same do not exceed eight square feet in sign area, and provided further they shall be removed within ten (10) days after the premises are sold or leased.
  - g. One awning may be placed upon the front facade of the building.
  - h. One canopy may be placed over the principal entrance to the building, provided that no awning is placed upon the front facade of the building.
  - i. Stressed fabric canopies may be placed on the facade of a building where limited to a vertical dimension of four feet and a horizontal projection of three feet with signage limited to a vertical height of sixteen (16) inches and containing only the name of the business and/or the street address.
2. Reserved.
- C. Manufacturing Districts. No signs, awnings, canopies or marquees shall be permitted in any manufacturing district except:
1. Those signs, awnings, canopies and marquees permitted in the C-3 and C-4 districts.
  - 2.

Business signs, provided that the aggregate area of all such signs on the lot shall not exceed the sum of six square feet for each linear foot of lot frontage, and provided further that such signs attached to the building shall not exceed in the aggregate twenty-five (25) percent of the area of the front facade of the building.

(Ord. No. 4078, § 1, 10-27-2009; prior code § 40-171)

#### 17.48.061 - Sign specifications.

- A. Only signs meeting the following criteria shall be permitted within all of the city's business districts:
  1. Forms of Signage. The following forms of signage are permitted:
    - a. Channel-letter (standard, reverse/halo, or open neon).
    - b. Carved.
    - c. Neon.
    - d. Two-dimensional board.
    - e. Three-dimensionality is preferred over two-dimensional design.
    - f. All other sign types not listed above are prohibited.
  2. Permitted Sign Materials.
    - a. Painted or carved wood.
    - b. Carved wooden letters.
    - c. Epoxy letters.
    - d. Galvanized sheet metal.
    - e. Slate, marble or sandstone.
    - f. Gold leaf.
    - g. Clear and colored acrylic.
    - h. Neon, but restricted to ten percent of area inside window.
    - i. Stained glass.
  3. Sign Graphics. Signs may not be hand-lettered, unless created by a professional sign artist.
- B. Awning Signs. Signs on awnings are permitted only when they meet the following provisions:
  1. Lettering no larger than 16 inches in size.
  2. Sign/lettering width shall be no greater than 60 percent of store width.
  3. The business name and logo, street number are permitted on the valance section of the awning, and may not cover more than 50 percent of the length of the valance.
  4. Only the business name and logo are permitted on the upper section of the awning.
  5. Texture shall be of cloth fabric only.

6. Colors are to be coordinated with existing colors of other awnings on the same city block.
7. Maximum height to the top of awning shall be 15 feet measured from the grade in front of the building.
8. Maximum height of the actual fixed awning shall be three and one-half feet.
9. Maximum projection from building facade for a fixed awning shall be three feet.
10. Retractable awnings shall have a maximum projection of six feet.
11. Awning shall be of a sloping style (angular) beginning flush at the top and sloping outwards as it proceeds downward.
12. A clearance height of eight feet must be maintained.
13. The framing of a canopy must not provide any opportunity for birds to perch beneath the canopy.

(Ord. No. 4078, § 1, 10-27-2009)

#### 17.48.070 - Gas stations and shopping centers with off-street parking.

Notwithstanding the provisions of Section 17.48.060, any gasoline service station or shopping center providing contiguous off-street parking between the curb of any street on which such shopping center fronts or sides and the facade of the structure or structures located thereon shall be allowed to erect and maintain customary identification and product signs, including emblems and brands, provided that the same do not exceed sixty (60) square feet in sign area, and provided further that the display portion thereof is raised at least fifteen (15) feet above grade level. No such sign shall exceed forty (40) feet in height. Only one such sign shall be permitted per gasoline service station site, and only one such sign per two hundred (200) feet of frontage on any street or side street shall be permitted for any such shopping center. Gasoline service stations shall be permitted to post signs on gasoline pumps stating the price per gallon and other information required by law, and, in addition thereto, gasoline service stations shall be permitted to erect price signs, except portable signs, within the property lines, provided that the same do not exceed eight square feet in sign area, and provided further that only one such sign shall be permitted per station, except for those gasoline service stations located on two or more streets which shall be permitted to erect one such sign for each street on which the station is located.

(Prior code § 40-172)

#### 17.48.080 - General provisions.

- A. No ground or wall sign shall have its highest section higher than the height requirement established for buildings in the particular zone and district, or forty (40) feet, whichever is lesser. No wall sign shall project above the wall to which it is attached.
- B.

No roof sign shall project beyond the walls of the building with the exception of its gooseneck arms which hold shades or reflectors; nor shall any roof sign be permitted to extend higher than thirty-five (35) feet above the roof at the point of mounting.

- C. In the case of two or more business uses occupying the same structure, the front wall area to be used in determining permitted sign area shall only include that portion of the front wall area occupied by the use in question.
- D. Where a business structure or professional structure is located at the intersection of two (2) public streets, an additional sign may be erected or inscribed upon the side wall on the street side, provided it does not exceed the permitted sign area.
- E. Where the side or rear of a business or professional structure adjoins a public parking area or a private parking area intended for the use of the structure in question, signs may be placed or inscribed on said side or rear wall to identify the business use or uses in the structure and access thereto. Such signs shall not exceed ten (10) square feet or two percent of the wall, whichever is the lesser.
- F. Awnings and canopies shall be so constructed and erected as to provide a minimum clearance of eight (8) feet, and marquees shall be so constructed and erected as to provide a minimum clearance of fifteen (15) feet.
- G. All illuminated signs and indirectly illuminated signs shall be shielded so as to prevent any glare and no sign shall be illuminated by lighting of intermittent or varying intensity.
- H. Any sign awning, canopy or marquee, which in the opinion of the building inspector shall pose a threat of personal injury or property damage because of its size, weight, shape, construction, or erection or because of its location in, on, over or adjacent to any public or quasi-public right-of-way, shall not be erected unless and until the applicant for the erection permit shall file with the city adequate evidence of financial responsibility to pay for any personal injury or property damage which may reasonably be caused thereby. Because of the differing potentials for such loss or damage, the amount of public liability coverage necessary to satisfy this requirement may be fixed from time to time by the building inspector after consultation with the business administrator and the director of law.

(Ord. No. 4373, § 8, 5-14-2013; prior code § 40-173)

#### 17.48.090 - Prohibited signs.

The following types of signs shall not be permitted in any zone or district:

- A. Flashing, fluttering or animated signs, except for time and/or temperature signs which may be erected in any commercial or manufacturing district, and flashing, fluttering or animated signs for hotels with two hundred (200) rooms or more. All signs erected pursuant to the provisions

of this chapter must comply with all other county, state and federal laws, rules and regulations;

- B. Signs with any lighting or control mechanism which may cause radio or television interference;
- C. Any sign so constructed, erected or maintained as to obstruct or be attached to any fire escape, window, door or opening used as a means of egress or ingress, or for fire-fighting purposes, or placed so as to interfere with any opening required for ventilation;
- D. Any sign which is of such a form, shape or character as to confuse or dangerously distract the attention of an operator of a motor vehicle;
- E. Any sign or marking on an obstructing railroad overpass, except for authorized traffic signs, markings or devices;
- F. Any sign which uses a series of two or more signs or units, placed in a line or in parallel, or in similar fashion, all carrying a single message, part of which is contained on each sign;
- G. Signs which in any way simulate authorized traffic directional or warning signs erected or maintained by any governmental unit or by any railroad, public utility or similar agency concerned with the protection of the public health or safety;
- H. Portable signs; and
- I. Revolving, rotating, gyrating, undulating or otherwise vibrating signs.
- J. Temporary Signs on Glass. Temporary signs may not be affixed to the glass of the display window or of the door.

(Ord. No. 4078, § 1, 10-27-2009; prior code § 40-174)

#### 17.48.100 - Nonconforming signs, awnings, canopies and marquees.

- A. No nonconforming sign, awning, canopy or marquee shall be structurally changed or altered except to bring such sign, awning, canopy or marquee into compliance with this chapter. This provision shall not be deemed to relieve any person owning or controlling any existing sign, awning, canopy or marquee from maintaining the same in accordance with the safety and aesthetic standards set forth herein.
- B. All portable signs shall be removed from the city within fifteen (15) days of the effective date of the ordinance codified in this chapter.
- C. All signs on obstructing railroad overpasses, except for authorized traffic warning signs, markings or devices, shall be removed within thirty (30) days of the effective date of the ordinance codified in this chapter.
- D. The building inspector shall review his or her sign inventory and shall, within ninety (90) days of the effective date of the ordinance codified in this chapter, classify all signs located in the city as follows:

1. Signs which are unsafe or insecure or menace the public and cannot reasonably be altered to make them safe, secure and hazard free. As to these signs, the building inspector shall direct their removal within thirty (30) days unless they constitute an immediate peril to persons and property, in which case they shall be removed summarily.
  2. Signs which are unsafe or insecure or menace the public but can be altered to make them safe, secure and hazard free. As to these signs, the building inspector shall direct their immediate alteration to make them safe, secure and hazard free.
  3. Signs which require cleaning or painting; removal of peeled, chipped or blistered paint; renewal or replacement, in whole or in part, of the sign or structure of the sign because of any cracking, peeling or breaking, or because the sign or structure of the sign has otherwise been caused to disintegrate. As to these signs, the building inspector shall direct their immediate renewal.
  4. All Other Signs.
- E. The building inspector shall have continuing authority to direct the removal, repair, cleaning, painting, and renewal, in whole or in part, of any nonconforming sign, awning, canopy, marquee or structure of the sign.

(Prior code § 40-175)

#### 17.48.110 - Violations and penalties.

- A. No person, corporation or other business entity which refuses to obey the proper direction of the building inspector to remove, alter, repair or renew any sign, awning, canopy, marquee or structure of the sign or which erects or maintains any prohibited sign shall thereafter be issued a permit for the erection of any sign, awning, canopy or marquee in the city.
- B. The provisions of Section 1.12.010 shall be applicable to this chapter.

(Prior code § 40-176)

#### 17.48.120 - Portable signs prohibited.

No portable sign shall be placed, installed, erected, transported or maintained within the city. All existing portable signs shall be removed from the city within fifteen (15) days after the effective date of the ordinance codified in this chapter.

(Prior code § 120-2)

#### 17.48.130 - Exceptions.

This chapter shall not apply to:

- A.

Any portable sign which is being transported by the manufacturer, installer, owner or agent of the same to a location within or without the city where it is to be permanently erected, providing that such sign shall be safely and securely loaded on or attached to the vehicle transporting the same.

- B. Any portable sign used by the state of New Jersey, county of Union or city of Elizabeth or by any utility company, telephone company or railroad company, provided such portable sign is intended for the safety and protection of the public.
- C. Any portable sign placed or located within the interior of any building or structure.

(Prior code § 120-3)

#### 17.48.150 - Portable signs—Manufacturing, constructing and storing.

This chapter shall not limit the business of manufacturing, fabricating, assembling, forging, shaping or otherwise constructing, processing or storing portable signs within the city, providing the same is done on premises owned or controlled by the operators or managers of such business and reasonable precautions are taken to protect the public from personal injury or property damage caused by such portable signs while the portable signs are on those premises.

(Prior code § 120-4)

#### 17.48.160 - Monument signs.

Monument signs shall be only permitted for non residential uses in all zones within the city as long as the signs and the site meets the following requirements:

- A. The site must contain a minimum of six parking spaces.
- B. The height to the top of the sign must not exceed five feet measured from the surrounding ground.
- C. The area of the sign cannot exceed 40 square feet.
- D. The sign must be externally lit.
- E. One monument sign is permitted for every two driveways at the site.

(Ord. No. 4078, § 1, 10-27-2009)

#### 17.48.170 - Pole mounted signs.

Pole mounted signs shall be permitted for non residential uses granted that the signs and its site meet the following requirements:

- A. The height of the sign shall not be greater than 20 feet to the top of the sign.
- B. The square footage of the sign lettering area shall not exceed 50 square feet in area.
- C. Only one pole mounted sign is permitted per project or property.

D. Pole mounted signs shall only be permitted along the following roadway corridors, Route 1 and 9, NJ Turnpike, North Avenue between 1 and 9 and McLester Street.

(Ord. No. 4078, § 1, 10-27-2009)

Chapter 17.52 - FEES

Sections:

17.52.010 - Public hearings.

Fees for hearings before the planning and zoning boards shall be as follows:

- A. Where a public notice is required, eight hundred forty dollars (\$840.00) to accompany the application;
- B. Where a public notice is not required, six hundred dollars (\$600.00) to accompany the application;
- C. Where a hearing is adjourned to a subsequent session, eight hundred forty dollars (\$840.00) to be paid prior to commencement of the adjourned hearing.

(Ord. No. 4149, § 59, 8-24-2010; Ord. 3764 § 1 (part), 2005: prior code § 40-186)

17.52.020 - Municipal fees for applications for development.

Municipal fees for application for development shall be paid upon filing of an application for development. Such fees shall be as follows:

- A. Direction to issue a building permit pursuant to Section 17.08.100 of this title, four hundred eighty dollars (\$480.00);
- B. Revisions, amendments, resubmissions or other alterations of required documents or exhibits, maps or technical reports, six hundred dollars (\$600.00), other documents, two hundred forty dollars (\$240.00);
- C. All other applications as per the table below:

Item	Municipal Application Fees
<b>Minor Subdivisions</b>	
<b>Residential</b>	



Two-lot minor subdivision, lot line adjustment	\$600.00	
<b>Nonresidential, commercial/industrial</b>		
Subdivisions include minors	Same as major subdivisions	
<b>Major Subdivisions</b>	<b>Preliminary</b>	<b>Final</b>
Major subdivision, three lots and greater		
<b>Residential</b>	\$900.00 base, plus \$65.00 per each additional lot	\$720.00
<b>Nonresidential, commercial/industrial</b>		
Subdivisions include minors	\$960.00 base, plus \$120.00 per each additional lot	\$720.00
<b>Site Plan Applications</b>		
<b>Residential</b>		
1 to 6 dwelling units	\$960.00	\$720.00
<u>6</u> to 20 dwelling units	\$1,080.00	\$840.00
20 to 50 dwelling units	\$1,440.00	\$960.00
over 50 dwelling units	\$2,400.00	\$1,080.00
<b>Nonresidential, commercial/retail/industrial</b>		
Lot area shall be calculated by the total lot area of property		

0 to 20,000 square feet	\$960.00	\$720.00
20,000 to 50,000 square feet	\$1,200.00	\$840.00
50,000 to 100,000 square feet	\$1,440.00	\$960.00
over 100,000 square feet	\$2,400.00	\$1,080.00
<b>Concept Plan</b>		
Residential minor and major subdivision	\$600.00 (no hearing fee required)	
Commercial and all nonresidential site plans	\$1,200.00 (no hearing fee required)	
<b>General Development Plans</b>	\$960.00	
<b>Variances</b>		
1. All use "D" variances, bulk "C" variances and conditional use applications under N.J.S.A. 40:55D-70 not requiring a site plan or subdivision approval shall be nine hundred sixty dollars (\$960.00).		
2. Use "D" variance, "C" variance and conditional use applications when requested along with a site plan or subdivision, an additional six hundred dollars (\$600.00).		
3. Site plans or subdivisions submitted which require a design waiver, an additional three hundred sixty dollars (\$360.00).		

(Ord. No. 4149, § 60, 8-24-2010; Ord. 3764 § 1 (part), 2005: prior code § 40-187)

17.52.030 - Subdivision certificates.

Fees for certificates of subdivision shall not be in excess of those provided under N.J.S.A. 54:5-14 and 54:5-15.

(Prior code § 40-188)

17.52.040 - List of adjoining property owners.

The fee for a list of property owners to be notified of a public hearing shall be a sum not to exceed twenty-five cents (\$0.25) per name, or ten dollars (\$10.00), whichever is greater.

(Ord. No. 4392, § 1, 7-23-2013; Ord. No. 4149, § 61, 8-24-2010; Ord. 3764 § 1 (part), 2005: prior code § 40-189)

17.52.050 - Duplicate recordings of hearings.

The fee for a duplicate recording of a hearing shall be twelve dollars (\$12.00) per session.

(Ord. No. 4149, § 62, 8-24-2010; prior code § 40-190)

17.52.060 - Fee schedule certificates of occupancy for existing uses.

A. The fee for a certificate of continued occupancy for existing uses shall be:

For residential or commercial uses the fee shall be	\$60.00
Each additional unit shall be	\$20.00 per unit
Industrial shall be	\$0.0012 per sq. ft. of floor area, including all floor and basements, the minimum fee shall be fifty dollars (\$50.00), the maximum fee shall be eight hundred fifty dollars (\$850.00)

(Ord. No. 4149, § 63, 8-24-2010; prior code § 40-191)

17.52.065 - Fees for zoning permits.

A. Twenty dollar (\$20.00) nonrefundable fee for all single and two (2) family homes.

B. One hundred dollar (\$100.00) nonrefundable fee for all other zoning permits.

(Ord. No. 4764, § 2, 10-25-2016)

17.52.070 - Documents.

Fees for all documents shall be established as part of the rules and regulations of the appropriate agency.

(Prior code § 40-192)

#### 17.52.080 - Special meeting.

When a hearing is conducted at a special meeting session, a fee of one thousand two hundred fifty dollars (\$1,250.00) shall be paid prior to commencement of the special meeting. When two (2) or more hearings are conducted at a special session, the fee shall be prorated among the applicants based on hearing duration.

(Ord. No. 4149, § 64, 8-24-2010; prior code § 40-193)

#### 17.52.090 - Exemptions.

- A. The required escrow deposit will be reduced by fifty (50) percent for applications that will serve the public good. Qualifying organizations, holding a tax-exempt status under the Federal Internal Revenue Code of 1954 (26 U.S.C. Section 501(c) or (d)), are as follows: public organizations and/or agencies, charitable and/or philanthropic organizations, fraternal and/or religious nonprofit organizations.
- B. Development or improvement of a single-family dwelling or one two-family dwelling which does not need a waiver, exemption or variance shall be exempt from escrow deposit.
- C. Residential fencing, decks, sheds, pools and minor residential building additions of less than five hundred (500) square feet of gross floor area shall be exempt from escrow deposit requirements.
- D. The following uniform standards are to apply to the exemption granted hereunder:
  1. All applicants for exemption must provide written evidence of tax exemption, as required in this section at the time of making application.
  2. All applicants must provide written evidence of the organizational structure thereof signed by appropriate individuals and officers of the applicant. In the case of a corporation, the corporate officer authorized to do so on behalf of the corporation shall file the application attested to by the corporate secretary.
  3. All supporting documentation referred to in subsections (D)(1) and (2) of this section shall be approved as to terms and conditions by the zoning administrator and as to for by the city attorney.

(Ord. 3764 § 1 (part), 2005; prior code § 40-194)

#### 17.52.100 - Fees for professional services—Deposits with municipality—Escrow—Interest.

- A. Fees for Professional Services. Prospective developers shall bear the cost of professional services in connection with land development matters under consideration by the planning board, zoning board or the city council.

1. The land development matters shall include, but not be limited to, appeals, interpretations, application approvals, amendments to the land development control ordinance, conceptual plan reviews and amendments to the land use element of the master plan.
  2. The professional services shall be those services which are provided on a contractual basis rather than by city employees and shall include, but not be limited to, inspections, investigations, reviews and attendance at meetings by planners, engineers, architects, landscape architects, attorneys and other personnel and experts deemed necessary with respect to action on such land development matters.
  3. Payment of the costs shall be based on a schedule adopted by resolution and shall be in addition to other fees established pursuant to the land development control ordinance.
- B. Deposits. Prospective developers shall supply initial escrow funds to cover the cost of professional services per the table listed in this subsection. These are initial deposits, certain applications because of their complexity may require additional funding. No application shall be deemed complete unless the following fees are submitted:
1. Initial Escrow Fees.

Item	Initial Escrow to be Posted
<b>Minor Subdivisions</b>	
Without a site plan review	
<b>Residential</b>	
Two-lot minor subdivision, lot line adjustment	\$1,500.00
<b>Nonresidential, Commercial/Industrial</b>	
Subdivisions include minors	Same as major subdivisions
<b>Major Subdivisions</b>	
Major subdivision, three lots and greater	
<b>Residential</b>	\$2,500.00 base, plus \$450.00 per each additional lot

<b>Nonresidential, Commercial/Industrial</b>	
Subdivisions include minors	\$2,500.00 base, plus \$900.00 per each additional lot
<b>Site Plan Applications</b>	
<b>Residential</b>	
1 to 3 dwelling units	\$3,500.00
3 to 20 dwelling units	\$5,500.00
20 to 50 dwelling units	\$7,000.00
Over 50 dwelling units	\$12,000.00
<b>Nonresidential, Commercial/Retail/Industrial</b>	
Lot area shall be calculated by the total lot area of property	
0 to 20,000 square feet	\$5,000.00
20,000 to 50,000 square feet	\$8,000.00
50,000 to 100,000 square feet	\$12,000.00
Over 100,000 square feet	\$20,000.00
<b>Concept Plan</b>	
Residential minor and major subdivision	\$1,000.00
Commercial and all nonresidential site plans	\$2,000.00

<b>General Development Plans</b>	\$2,000.00
<b>Variances</b>	
All variances under N.J.S.A. 40:55D-70 and conditional use applications not requiring a site plan or subdivision approval shall be one thousand dollars (\$2,500.00)	

- C. Escrow. All moneys deposited shall be placed in an escrow account and administered in accordance with procedures established by the municipal chief financial officer. Escrow deposits must be submitted to the administrative officer prior to the application being reviewed for completeness. An application will not be considered to be complete or placed on the agenda for public hearing until the required escrow deposit has been satisfied.
- D. Appeals. Appeals shall be made to the governing body in accordance with state law and shall be remedied by the commissioner of planning and zoning.
- E. Nonpayment. Action on land development matters shall be deferred where a prospective developer has not complied with the requirements of this section. Municipal action on the related development matter shall not be delayed as a result of any appeal. Where deposits have not been made or where fees have not been paid in accordance with this section:
  - 1. Approving authorities shall not process applications, conduct hearings or take action on an application;
  - 2. Signatures of municipal officials shall not be affixed to any subdivision plat or deed, site plan, zoning permits, building permits or certificates of occupancy.

(Ord. No. 4779, § 1, 11-22-2016; Ord. 3764 § 1 (part), 2005: prior code § 40-195)

Chapter 17.56 - WIRELESS TELECOMMUNICATIONS TOWERS AND ANTENNAS

**Sections:**

17.56.010 - Purpose.

This chapter establishes general regulations and design standards for the location of wireless telecommunications towers and antennas. The goals of this chapter are:

- A. As a first priority, to locate antennas on existing towers, structures, buildings and additional towers on real property owned by the city of Elizabeth;
- B. As a second priority, to locate antennas on any freestanding billboard on mounted poles in any zone district;

- C. As a third priority, to locate antennas and additional towers in the RC regional commercial zone district;
- D. To prohibit antennas and towers in the R-1 single-family residential zone, the R-2 two-family residential zone, the R-2C two-family residential zone and the OS open space zone;
- E. To avoid potential adverse effects to adjacent properties from tower failure through proper engineering and careful siting of towers;
- F. To encourage the co-location of antennas where technically feasible on any tower constructed under this chapter.

(Ord. 3678 § 1 (part), 2005: prior code § 40-201)

#### 17.56.020 - Definitions.

Whenever this chapter refers to any applicable law, rule, regulation or standard, the most current law, rule, regulation or standard shall govern.

"ANSI" means American National Standards Institute.

"Antenna" means any exterior transmitting or receiving device mounted on a tower, building or structure and used in communications that radiates or captures electromagnetic waves, digital signals, analog signals, radio frequencies, radar signals, telecommunications signals or other communications signals.

"Diameter at point of measurement" means the diameter of a tree measured four and one-half feet above the ground level of trees to be surveyed in the field. On sloped terrain, such measurement shall be made on the downhill side. Diameter at point of measurement may appear in this chapter as the abbreviation "D.P.M."

"EIA" means Electronics Industries Association.

"Environmental impact statement (EIS)" means, for the purposes of this chapter, a report which shall evaluate the existing conditions of the location where the antenna, tower or equipment compound is proposed, the full impact of construction on the existing conditions, terrestrial ecology, environmental setting and cultural resources through the actions of grading, soil disturbance, facility construction, site drainage and other above or below ground disturbances.

Equipment Compound. See "Wireless telecommunications equipment compound."

"Facility" means the construction, reconstruction, structural alteration or installation proposed by the applicant including, but not limited to, the antennas or equipment mounted thereon.

"Personal wireless services (PWS)" mean any FCC licensed operation which provides commercial wireless communications either for hire as a common carrier on a private basis to subscribers and which include, without limitations, personal communication services (PCS), enhanced specialized mobile radio (ESMR) and paging.



"Stealth tower structure" means simulated trees, clock towers, bell steeples, light poles and similar alternative design-mounting structures such as stealth antennas or flush-mounted antennas that camouflage, conceal or minimize the presence of antennas or towers.

"TIA" means Telecommunications Industries Association.

"Tower" means any structure that is designed and constructed primarily for the purpose of supporting one or more antennas for telephone, radio and similar wireless telecommunications purposes, including self-supporting lattice towers or monopole towers. The term includes the structure and its foundation, radio and television transmission towers, microwave towers, cellular telephone towers, common-carrier towers, alternative tower structures and the like.

"View shed" means a map (1:100,000 scale) depicting areas from which the tower, or portions thereof, may be seen within city limits and any municipality a distance of one mile from the proposed structure in all directions.

"Visual environmental assessment form (Visual EAF)" means a comprehensive report which shall assess the impacts of the proposed personal wireless services facility on the existing landscape and skyline.

"Wireless telecommunications equipment compound" means a fenced-in area which houses any combination of wireless telecommunications structures, buildings, antennas, equipment and/or towers.

(Ord. 3678 § 1 (part), 2005: prior code § 40-202)

#### 17.56.030 - Locational and land use priority for towers and antennas.

- A. The first priority location shall be on an existing tower, building, structure or an additional tower on real, undeveloped property owned by the city of Elizabeth provided that the new installation does not increase the height by more than ten (10) feet or ten (10) percent of the building or structure, whichever is less.
- B. The second priority location shall be on any freestanding billboard mounted on poles in zoning district.
- C. The third priority location shall be on existing structures or buildings or additional towers in the RC regional commercial zoning district.

(Ord. 3678 § 1 (part), 2005: prior code § 40-203)

#### 17.56.040 - Limitations on antennas and towers in certain zoning districts.

- A. New towers and rooftop antennas on buildings or structures four stories or greater are permitted uses in the MRC manufacturing, research and commercial zone, M-2 medium industrial zone and the M-3 heavy industrial zone.
- B.

Rooftop antennas on buildings or structures five stories or greater but no new towers are permitted uses in the R-4 elevator apartment zone, the R-3 multifamily residential zone, the R-3A four-family residential zone, C-1 neighborhood commercial zone, C-3 central commercial zone, C-3A central arterial commercial zone, C-4 special commercial zone, C-5 special commercial zone II and the PO professional office zone.

C. Antennas and towers are prohibited in the OS open space zone, R-1 single-family residential zone, R-2 two-family residential zone and R-2C two-family residential zone.

D. Antennas and towers are conditional uses in all other zoning districts.

(Ord. 3678 § 1 (part), 2005: prior code § 40-204)

#### 17.56.050 - Accessory uses and structures.

A. Notwithstanding anything to the contrary, antennas are permitted as accessory uses and structures in all zoning districts only if installed on an existing tower, structure or building owned by the city of Elizabeth subject to the following requirements:

1. A license or lease authorizing the tower or antenna has been approved by the city council in its sole discretion.
2. As a condition of any lease or license under this section in lieu of site plan approval from the approving authority, the provider and city shall seek review under N.J.S.A. 40:55D-31.
3. The bulk regulations contained in this chapter or elsewhere within the city's land development control ordinance shall not apply to antennas constructed under this section.
4. Such lease or license is subject to public bidding under N.J.S.A. 40A:11-1 et seq.

B. Prior to the utilization of the structure or building, a site plan pursuant to Section 17.56.080 of this chapter shall be submitted to the city engineer for review and approval.

C. Accessory uses and structures as permitted in this section shall be subject to compliance with visual compatibility requirements in Section 17.56.060 of this chapter.

(Ord. 3678 § 1 (part), 2005: prior code § 40-205)

#### 17.56.060 - Visual compatibility requirements for the installation of antennas and wireless telecommunications equipment compounds.

A. A wireless telecommunications equipment compound may be constructed in support of such antennas or a new tower only consisting with the following requirements:

1. A wireless telecommunications equipment compound consisting of no more than nine hundred (900) square feet in area for each PWS carrier shall be enclosed within a solid wooden or mesh fence at least seven feet high and no more than eight feet high as approved by the city engineer which shall include a locking security gate. At the city's discretion, a chain

link fence may be installed immediately inside the solid wooden fence for security purposes. Barbed wire is prohibited. The height of the equipment building shall not exceed fifteen (15) feet.

- 2. A wireless telecommunications equipment compound shall be situated behind existing structures, buildings or terrain features or constructed on the rooftop of such structure or building in a manner which will shield the equipment compound from public view.
- 3. When a location out of public view is not possible, a landscape buffer of twenty (20) feet in width shall be provided outside the fence around the equipment compound to shield the facility from public view. Landscaping shall include native evergreen and deciduous trees of a minimum of three and one-half inches D.P.M. at least eight feet high at the time of planting. The number of trees shall be based on the equivalent of staggered double rows at least fifteen (15) feet on center.

B. Antennas.

- 1. Antenna arrays shall not extend by more than ten (10) feet or ten (10) percent of the overall height of any such building, structure or tower, whichever is less.
- 2. The installation of rooftop antennas on the side of a building or structure, between floors or on the facade of a building or structure in any zoning district is strictly prohibited.
- 3. Antennas installed according to these provisions shall be suitably finished and/or painted so as to minimize their visual impact on the landscape. Depending on the placement of this equipment, a color shall be selected to be consistent with the color scheme of the building or structure on which they are mounted in order to blend with their surroundings. When this is not possible, color selection shall be designed to minimize the visual impact of the antenna arrays. Applicant shall install flush-mounted antennas, whenever possible.

(Ord. 3678 § 1 (part), 2005; prior code § 40-206)

17.56.070 - Supplementary regulations for the location of towers.

A. Height and Setbacks. The construction of any new tower shall be only in accordance with all zoning regulations of the zone district in which the proposed tower is to be located and the following additional requirements:

Minimum setback of tower from any property line	100 feet
Distance from:	
Any existing residence	500 feet

Another tower	1,500 feet
Minimum setback for equipment compound	As required by applicable zoning regulations for accessory uses and structures
Maximum tower height	150 feet
Fencing	10 feet high security mesh fence (no barbed wire)

B. Visual Compatibility. The applicant shall comply with the visual compatibility requirements in Section 17.56.060 of this chapter and in addition, stealth designs shall be employed for proposed antenna support structures to conceal their appearance such as bell towers, artificial trees and similar treatments as approved by the city.

C. Other Requirements for Towers.

1. Where new towers or replacements are proposed, the following shall be submitted:

a. A report by a licensed professional engineer which, in the case of a tower, shall include:

- i. A detailed description of the proposed facility, tower, antennas, equipment compound, structures and associated equipment including height, design, features, access road and power lines, if any,
- ii. Information which demonstrates compliance with the applicable structural standards of EIA/TIA RS 222,
- iii. A description of the tower's capacity, including the number and types of antennas it can accommodate. The report shall indicate the power and frequency of all transmissions to be broadcasted from the facility. In the case of an antenna mounted on an existing structure, the report shall indicate: the existing structure's suitability to accept the antenna, and the proposed method of affixing the antenna to the structure; complete details and scaled drawings of all fixtures and couplings, and the precise point of attachment shall be indicated. Where a roof mount extends above the roof, the applicant shall demonstrate every effort has been made to conceal the mount within or behind existing architectural features to limit visibility from public streets and adjoining properties. Side mounts shall blend with the existing architecture and if over five square feet shall be painted or shielded with material consistent with the design features and materials of the building,

iv.

A map (1:100,000 scale) showing the extent of planned coverage for the PWS within the city and the location and service of applicant-operated facilities,

- v. Plan and elevation drawings showing the proposed tower, antennas and their associated equipment. The plan shall have a scale no smaller than one inch equals forty (40) feet,
  - vi. A topographic profile showing the proposed tower, antennas, the equipment compound and all associated equipment. The topography shall be drawn with a minimum of two-foot contour intervals;
- b. The applicant shall submit an environmental impact statement (EIS) which shall address a description of the environmental characteristics of the facility site, archaeological sites and any historically designated areas of the site, any impacts to these and a mitigation plan;
- c. The applicant shall submit a visual environmental assessment form (Visual EAF) which shall include:
- i. A sight line representation shall be shown from any public street within one hundred (100) feet and the closest facade of each building (viewpoint) within one hundred (100) feet to the highest point (visible point) of the regulated facility. Each sight line shall be depicted in profile, drawn at one inch equals forty (40) feet. The profiles shall show existing intervening trees and buildings,
  - ii. A plan map of a circle of one mile radius from the facility site on which any visibility of the proposed tower from a public way shall be indicated,
  - iii. An architectural rendering of the view of the tower from adjoining properties and streets,
  - iv. The applicant shall submit photographs of:
    - (A) Existing condition photographs in which each sight line shall be illustrated by an eight-inch by ten (10) inch color photograph of what can currently be seen from any public street within one hundred (100) feet, and at a minimum of eight cardinal radials to the extent that access as needed is granted by property owners,
    - (B) Proposed after-condition photographs in which each existing condition photograph shows the proposed facility superimposed on it to scale,
  - v. Applicant shall provide a view shed analysis also showing these photograph locations;
- d. A landscape plan addressing the site plan details required by Section 17.56.080(C) of this chapter;
- e. A Site Selection Report.
- i.

A site selection report shall inventory existing facilities, towers and antenna sites within a reasonable distance (at least one mile in all directions of all wireless telecommunications carriers within and outside the city of Elizabeth) from the proposed site outlining opportunities for shared use as an alternative to the proposed use. The applicant must demonstrate that the proposed tower, facility or antenna cannot be accommodated on an existing tower, building or structure as enumerated in Sections 17.56.030 and 17.56.040(A) and (B) of this chapter due to one or more of the following reasons:

- (A) Written confirmation of the unwillingness of the owner to entertain a facility modification or PWS proposal,
  - (B) The applicant's proposed equipment would exceed the structural capacity of existing and approved tower and facilities considering existing and planned uses for the facilities,
  - (C) The proposed equipment would cause radio frequency interference, which cannot be reasonably prevented, with other existing or planned equipment of the facility,
  - (D) Existing or approved towers or facilities do not have space on which applicant's proposed equipment can be placed so it can function effectively and reasonably,
  - (E) Other reasons which make it impracticable to place the equipment proposed by the applicant on an existing approved tower or facilities.
- ii. A statement containing a description of the siting criteria and the process by which other possible sites were considered and eliminated, including but not limited to: real estate search areas, distances and bearings to other system sites, acceptable radio frequency signal strength levels and/or microwave interconnection path requirements. The applicant shall support this statement with the submission of a study comparing all potential host sites within an approximate two-mile radius of the subject site (areas where personal wireless service facilities are prohibited need not be considered). This study should include a description of the surrounding sites, and a discussion of the ability or inability to host a facility. Reasons for excluding a site from consideration may include, without limitation:
- (A) The written confirmation of the unwillingness of the owner to entertain a facility,
  - (B) Topographic limitations of the site,
  - (C) Adjacent impediments that would obstruct adequate wireless transmissions,
  - (D) Physical site constraints that would preclude the construction of a facility, and
  - (E) Technical limitations of the proposed wireless system;
- f.

A report on compliance with the latest version of the ANSI standards and analyzed according to the requirements of the FCC Bulletin O.E.T. 65 describing the impact on human health, if any, prepared by a radio frequency engineer. The report shall indicate compliance with all applicable FCC regulations and guidelines;

- g. A written irrevocable commitment to rent or lease available space for co-location on the tower at fair market prices and terms, without discrimination to other carriers;
  - h. The reviewing agency may require a balloon test which shall be held by the applicant at least fourteen (14) days prior to the public hearing with a notice to the public in a local newspaper of general circulation of the location, time and date. Notice to the public shall be by the applicant at least seven to fourteen (14) days in advance of the first test date and shall list an alternative date and time in case of poor visibility on the initial date. At the test, a three-foot diameter brightly-colored balloon shall be raised to the height of the proposed tower and shall remain in place as long as practical but not less than four consecutive hours sometime between 9:00 a.m. and 5:00 p.m. of the dates chosen.
2. Existing Towers and Facilities. Where a new PWS or antenna is proposed to be constructed or located on an existing tower structure or building as described in Section 17.56.030 as first priority and Section 17.56.060 of this chapter, the following shall be submitted and considered in addition to the requirements of Section 17.56.050 of this chapter and any city-applicable site plan requirements:
- a. A description of the proposed antennas and associated equipment;
  - b. A map (1:100,000 scale) showing the extent of planned coverage for the PWS within the borough and the location and service of applicant-operated facilities;
  - c. Plan and elevation drawings at a scale of one inch equals forty (40) feet showing the proposed antennas and their associated equipment;
  - d. A report on compliance with the latest version of the ANSI standard and analyzed according to the requirements of the FCC Bulletin O.E.T. 65 describing the impact on human health, if any, prepared by a radio frequency engineer. The report shall indicate compliance with all applicable FCC regulations and guidelines;
  - e. A structural analysis of the existing tower with the antennas and associated equipment prepared and signed by a licensed engineer demonstrating compliance with EIS/TIA EIA RS 222;
  - f. If the construction or placement constitutes an expansion of a legally nonconforming facility or tower, identification of other facilities or towers where the equipment or antenna could be located and the reason this location is superior to other locations is required.

(Ord. 3678 § 1 (part), 2005: prior code § 40-207)

## 17.56.080 - Site plan application requirements for the installation of towers and antennas.

- A. All site plan details required by the city's site plan ordinance shall be provided and in addition shall include the site boundaries; proposed tower location; existing structures, including accessory structures; existing and proposed ground-mounted equipment; vehicular parking and access; uses, structures, and land use designations on the site and abutting parcels; and the setback distance between the proposed tower and the nearest residential unit, adjacent properties and other towers.
- B. In the case of an antenna mounted on an existing tower, structure or building listed in Section 17.56.040 or Section 17.56.060 of this chapter, the proposed method of affixing the antenna to the structure or building, complete details and scaffold drawings of all fixtures and couplings and the precise point of all attachments shall be indicated.
- C. A landscape plan drawn scale generally showing proposed landscaping, including species type, size, spacing, other landscape features and existing vegetation to be retained, removed or replaced. In the case of a tower year-round evergreen screening to effectively screen the tower base and equipment buildings and compound; screening to minimize impact of the tower from nearby residential properties; and screening to minimize impact on scenic views identified in the visual EAF.
- D. An environmental impact statement shall be supplied.
- E. A report from a licensed professional engineer containing the following items shall be supplied:
  - 1. A description of the tower design and height with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness;
  - 2. Documentation to establish that the tower has sufficient structural integrity for the proposed uses at the proposed location with additional co-locators, as may be provided by this chapter and meets the minimum requirements of EIA/TIA RS 222; and
  - 3. The general capacity of the tower in terms of the number and type of antennas it is designed to accommodate.
- F. A letter of commitment by the applicant to lease excess space on the tower to other potential users at prevailing market rates and conditions shall be supplied. The letter of commitment shall be recorded prior to issuance of a building permit. The letter shall commit the tower owner and successors in interest.
- G. Elevations of the proposed tower and compound accurately depicting all proposed antennas, platforms, finished materials and all other accessory equipment shall be supplied.
- H. A copy of lease or deed for the property shall be supplied.

(Ord. 3678 § 1 (part), 2005: prior code § 40-208)



#### 17.56.090 - Antenna modifications, tower certification and abandonment.

- A. The owner or operator of a tower shall provide to the city planner a report every two years from a licensed professional engineer certifying the structural integrity of the tower or structure, together with all antennas mounted thereon and whether they remain in use, and that they meet applicable minimum safety requirements. Such report shall also be provided whenever the antenna(s) is modified, and shall include a detailed listing of all antennas and equipment so certified. Vendors shall also be required to notify the city planner when the use of such antennas and equipment is discontinued.
- B. Towers and antennas which are not in use for wireless telecommunications purposes for a continuous period of six months are deemed to be abandoned and shall be removed by the facility owner at its cost. This removal shall occur within ninety (90) days of the end of such six-month period. Upon removal, the site shall be cleaned, restored and revegetated to blend with the existing surrounding vegetation at the time of approval. The facility owner shall post a bond to cover the cost of tower removal and site restoration prior to its removal. The amount of the bond shall be calculated to account for cost escalations.

(Ord. 3678 § 1 (part), 2005: prior code § 40-209)

#### 17.56.100 - Application fees.

The applicant shall pay the site plan application fees set forth in the city's land development control ordinance.

(Ord. 3678 § 1 (part), 2005: prior code § 40-210)

### Chapter 17.60 - SMALL WIND ENERGY SYSTEMS

#### **Sections:**

#### 17.60.010 - Title.

This chapter shall be referred to as the "Small Wind Energy System Ordinance."

(Ord. No. 4150, § 1, 9-14-2010)

#### 17.60.020 - Purpose.

The purpose of this chapter is to: (1) facilitate the permitting of small wind energy systems; and (2) preserve and protect public health and safety without significantly increasing the cost or decreasing the efficiency of a small wind energy system.

(Ord. No. 4150, § 2, 9-14-2010)

#### 17.60.030 - Definitions.

For the purposes of this chapter, the following terms, phrases, words and their derivations shall have the meaning given herein. When consistent with the context, words used in the present tense include the future, words in the plural include the singular and words in the singular include the plural. The word "shall" is always mandatory and not merely directory.

"Administrator" shall mean the land use administrator, construction official, zoning officer or planning board or zoning board of adjustment, as applicable.

"Board" means the planning board or zoning board of adjustment, as applicable.

"Meteorological tower" or "met tower" means a structure designed to support the gathering of wind energy resource data, and includes the tower, base plate, anchors, guy cables and hardware, anemometers (wind speed indicators), wind direction vanes, booms to hold equipment anemometers and vanes, data logger, instrument wiring, and any telemetry devices that are used to monitor or transmit wind speed and wind flow characteristics over a period of time for either instantaneous wind information or to characterize the wind resource at a given location.

"Owner" shall mean the individual or entity that intends to own and operate the small wind energy system in accordance with this chapter.

"Rotor diameter" means the cross sectional dimension of the circle swept by the rotating blades of a wind-powered energy generator.

"Small wind energy system" means a wind energy system, as defined in this section, that:

- A. Is used to generate electricity;
- B. Has a nameplate capacity of one hundred (100) kilowatts or less; and
- C. Is as high as necessary to capture the wind energy resource for residential, industrial, commercial or agricultural use.

"Total height" means, in relation to a wind energy system, the vertical distance from the ground to the tip of a wind generator blade when the tip is at its highest point.

"Tower" means a monopole, freestanding, or guyed structure that supports a wind generator.

"Wind energy system" means a wind generator and all associated equipment, including any base, blade, foundation, nacelle, rotor, tower, transformer, vane, wire, inverter, batteries or other component necessary to fully utilize the wind generator.

"Wind generator" means equipment that converts energy from the wind into electricity. This term includes the rotor, blades and associated mechanical and electrical conversion components necessary to generate, store and/or transfer energy.

(Ord. No. 4150, § 3, 9-14-2010)

#### 17.60.040 - Standards.

A small wind energy system shall be a permitted use in all zones subject to the following requirements:

- A. Setbacks. A wind tower for a small wind energy system shall be set back a distance equal to the city's building set back requirements. No portion of the wind generator shall extend beyond the setback line, nor into the following:
  - 1. Any public road right-of-way, unless written permission is granted by the government entity with jurisdiction over the road right-of-way;
  - 2. Any overhead utility lines, unless written permission is granted by the utility that owns and/or controls the lines.
- B. Access.
  - 1. All ground-mounted electrical and control equipment shall be labeled and secured to prevent unauthorized access.
  - 2. The tower shall be designed and installed so as not to provide step bolts, a ladder, or other publicly accessible means of climbing the tower, for a minimum height of eight (8) feet above the ground.
- C. Lighting. A small wind energy system shall not be artificially lighted unless such lighting is required by the Federal Aviation Administration.
- D. Appearance, Color, and Finish. The wind generator and the tower shall remain painted or finished in the color or finish that was originally applied by the manufacturer, unless a different color of finish is approved in the zoning approval.
- E. Signs. There shall be no signs that are visible from any public road posted on a small wind generator system or any associated building, except for the manufacturer's or installer's identification, appropriate warning signs, or owner identification.
- F. Utility Notification and Interconnection. Small wind energy systems that connect to the electric utility shall comply with the New Jersey's Net Metering and Interconnection Standards for Class I Renewable Energy Systems at N.J.A.C. 14:4-9
- G. Met Towers. A met tower shall be permitted under the same standards, permit requirements, restoration requirements and permit procedures as a small wind energy system.

(Ord. No. 4150, § 4, 9-14-2010)

## 17.60.050 - Permit requirements.

- A. Permit. A zoning permit shall be required for the installation of a small wind energy system.
- B. Documents. The zoning permit application shall be accompanied by a plot plan which includes the following:
  - 1. Property lines and physical dimensions of the property;
  - 2. Location, dimensions, and types of existing major structures on the property;
  - 3. Location of the proposed small wind energy system tower;
  - 4. The right-of-way of any public road that is contiguous with the property;
  - 5. Any overhead utility lines;
  - 6. Small wind energy system specifications, including manufacturer and model, rotor diameter, tower height, tower type (freestanding or guyed).
- C. Fees. The application for a zoning permit for a small wind energy system must be accompanied by the fee required, which shall be twenty-five dollars (\$25.00) and shall be non-refundable.
- D. Expiration. A permit issued pursuant to this chapter shall expire if:
  - 1. The small wind energy system is not installed and functioning within twenty-four (24) months from the date the permit is issued, or
  - 2. The small wind energy system is out of service or otherwise unused for a continuous 18-month period.

(Ord. No. 4150, § 5, 9-14-2010)

## 17.60.060 - Abandonment.

- A. A small wind energy system that is out-of-service for a continuous 12-month period will be deemed to have been abandoned.
- B. The administrator may issue a notice of abandonment to the owner of a small wind energy system that is deemed to have been abandoned. The notice shall be sent return receipt requested.
- C. The owner shall have the right to respond to the notice of abandonment within thirty (30) days from notice receipt date.
- D. If the owner provides information that demonstrates the small wind energy system has not been abandoned, the administrator shall withdraw the notice of abandonment and notify the owner that the notice has been withdrawn.
- E. If the administrator determines that the small wind energy system has been abandoned, the owner of the small wind energy system shall remove the wind generator from the tower at the owner's sole expense within six (6) months after the owner receives the notice of abandonment.

- F. If the owner fails to remove the wind generator from the tower in the time allowed under Subsection E. above, the administrator may pursue legal action to have the wind generator removed at the owner's expense.

Nothing in this section shall supersede the city's emergency powers to remove, demolish or abate, as set forth in this City Code.

(Ord. No. 4150, § 6, 9-14-2010)

#### 17.60.070 - Zoning permit procedure.

- A. An owner shall submit an application to the administrator for a zoning permit for a small wind energy system.
- B. The administrator shall issue a permit or deny the application within one month as consistent with Municipal Land Use Law of the date on which the application is received.
- C. If the application is approved, the administrator will return one signed copy of the application with the zoning permit and retain the other copy with the application.
- D. If the application is rejected, the administrator will notify the applicant in writing and provide a written statement of the reason why the application was rejected. The applicant may appeal the administrator's decision pursuant to the appropriate appeals authority. The applicant may reapply if the deficiencies specified by the administrator are resolved.

(Ord. No. 4150, § 7, 9-14-2010)

#### 17.60.080 - Violations.

- A. It is unlawful for any person to construct, install, or operate a small wind energy system that is not in compliance with this chapter.
- B. Small wind energy systems installed prior to the adoption of this chapter are exempt from the requirements of this chapter, except for the provisions at Section 17.60.070 hereinabove regarding abandonment.

(Ord. No. 4150, § 8, 9-14-2010)

#### 17.60.090 - Administration and enforcement.

- A. This chapter shall be administered and enforced by the land use administrator, construction official, zoning officer or planning board or zoning board of adjustment, as applicable.
- B. The administrator may enter any property for which a permit has been issued under this chapter to conduct an inspection to determine whether the conditions stated in the permit have been met.
- C. The administrator may issue orders to abate any violation of this chapter.

D. The administrator may issue a citation for any violation of this chapter.

(Ord. No. 4150, § 9, 9-14-2010)

17.60.100 - Penalties.

A. Any person who fails to comply with any provision of this chapter shall be subject to enforcement and penalties as stipulated in chapter and section of the appropriate zoning code.

B. Nothing in this section shall be construed to prevent the city from using any other lawful means to enforce this chapter.

(Ord. No. 4150, § 10, 9-14-2010)