

TITLE THREE - ZONING ADMINISTRATION<sup>[8]</sup>

Footnotes:

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**Editor's note**— Unless otherwise indicated at the end of a section, Ordinance 91-01, passed February 5, 1991, composed Title Three and Five of this Part Eleven - Planning and Zoning Code.

CHAPTER 1121 - GENERAL PROVISIONS<sup>[9]</sup>

Sections:

Footnotes:

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**Cross reference**— Appeals, Ch. 1127

**State Law reference**— Zoning of annexed areas, O.R.C. § 303.25, 519.18; Appeals, O.R.C. § 713.11; Ch. 2506;

1121.01 - TITLE.

Title Three and Five of this Part Eleven-Planning and Zoning Code shall be known and may be cited to as the "Zoning Ordinance of the Municipality of Powell," except as referred to herein, where it shall be known as "this Ordinance."

1121.02 - PURPOSE & INTENT.

This Zoning Ordinance is enacted for the general purpose of promoting the public health, safety, comfort, and welfare of the residents of Powell; to assure the orderly development of the Municipality; to conserve and protect the natural and scenic resources of the community; to protect and promote those environmental qualities that contribute to the enhancement of community life; to protect the property rights of all individuals by assuring the compatibility of uses and practices within districts; to facilitate the provision of public utilities, public services, recreational and scenic areas, and integrated pedestrian and equestrian path systems; to lessen congestion on public streets, roads, and highways; to provide for the administration and enforcement of the Zoning Ordinance, including the provision of penalties for its violation; and for any other purpose provided in the Zoning Ordinance, the Ohio Revised Code, or under common law rulings. The intent of the Zoning Ordinance is to be utilized as one of many ways to achieve the vision of the City's Comprehensive Plan.

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1121.03 - ZONING CODE.

The Municipality of Powell shall prepare bound copies of the Zoning Ordinance, which shall be known as "The Powell Zoning Code," and shall make such copies available for purchase by the public at cost.

A digital version of the code will be made available on the city's website.

1121.04 - ZONING MAP.

A map of the zoning districts of Powell, noted thereon as to adoption and certification by the Council as an integral part of this Ordinance, is hereby incorporated by reference as a part of the Zoning Ordinance. This map shall be known as "The Official Zoning Map of Powell, Ohio."

1121.05 - INCLUSION OF ZONING MAP IN ZONING CODE.

The Powell Zoning Code shall contain a copy of the Zoning Map in each book or online.

1121.06 - INCLUSION OF AMENDMENTS IN ZONING CODE.

The Powell Zoning Code shall contain, as an appendix, all of the amendments made to the text of the Zoning Ordinance, as well as those made to the Zoning Map, following initial adoption of the Zoning Ordinance.

1121.07 - PERIODIC RECODIFICATION OF AMENDMENTS.

At least once every five years, a recodified version of the Zoning Code shall be produced that integrates amendments to text and map that have been made to that date into the Zoning Code.

1121.08 - OPEN MEETING COMPLIANCE.

It is found and determined that all formal actions concerning and relating to the adoption of the Zoning Ordinance were adopted in open meetings, and that all deliberations that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

1121.09 - INTERPRETATION.

In their interpretation and application, the provisions of the Zoning Ordinance shall be held to be minimum requirements, adopted for the promotion of the public health, safety, and the general welfare. Whenever the requirements of the Zoning Ordinance conflict with the requirements of any other lawfully adopted rules, regulations, or ordinances, the most restrictive, or that imposing the higher standards, shall govern.

1121.10 - SEVERABILITY.

Should any section or provision of the Zoning Ordinance be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the Ordinance as a whole, or any part thereof other than the part so declared to be unconstitutional or invalid.

1121.11 - REPEAL.

This Zoning Ordinance may be repealed only by complying with the requirements of Section 713 of the Ohio Revised Code and the Municipal Charter.

1121.12 - REPEAL OF CONFLICTING ORDINANCES.

Ordinances No. 84-85, 87-11, and 88-27, as well as all other Ordinances relative to the Zoning of Powell, and all other Ordinances in conflict with this Zoning Ordinance, are hereby repealed to the extent necessary to give the Zoning Ordinance full force and effect. However, all suits at law or in equity and/or all prosecutions resulting from violation of any Zoning Ordinance or part thereof heretofore in effect, which are now pending in any of the courts of the State of Ohio or of the United States, shall not be abated or abandoned by reason of the adoption of any amendment to the Zoning Ordinance, but shall be prosecuted to their finality the same as if amendments to the Zoning Ordinance had not been adopted; and any and all violations of existing Ordinances, prosecutions for which have not yet been instituted, may be hereafter

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filed and prosecuted; and nothing in the Zoning Ordinance shall be construed as to abandon, abate or dismiss any litigation or prosecution now pending and/or which may have heretofore been instituted or prosecuted.

1121.13 - EFFECTIVE DATE.

This Zoning Ordinance shall become effective 30 days after the date of its approval and adoption or as otherwise provided for by law.

CHAPTER 1123 - DEFINITIONS<sup>10</sup>

Sections:

Footnotes:

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**Cross reference**— General Code definitions, § 101.02; Subdivision definitions, Ch. 1103

1123.01 - DEFINITIONS.

- (1) *Interpretation of Terms or Words*: For the purpose of the Zoning Ordinance certain terms or words used herein shall be interpreted as follows:
  - A. The word "person" includes a firm, association, organization, partnership, trust, company, or corporation as well as an individual.
  - B. The present tense includes the future tense, the singular number includes the plural, and the plural number includes the singular.
  - C. The word "shall" is a mandatory requirement, the word "may" is a permissive requirement, and the word "should" is a preferred requirement.
  - D. The words "used" or "occupied" include the words "intended, designed, or arranged to be used or occupied."
  - E. The word "lot" includes the words "plot" or "parcel."
- (2) *Accessory use (or structure)*: Accessory use means a use, object, or structure constructed or installed on, above, or below the surface of a parcel, which is located on the same lot as a principal use, object, or structure, and which is subordinate to or serves the principal use, object, or structure, is subordinate in area to the principal use, object, or structure, and is customarily incidental to the principal use, object, or structure. Among other things, "Accessory Use" includes anything of a subordinate nature attached to or detached from a principal structure or use, such as fences, walls, sheds, garages, parking places, decks, and pools. Except as otherwise required in the Zoning Ordinance an accessory use shall be a permitted use.
- (3) *Agriculture*: The use of land for farming, dairying, pasturage, agriculture, horticulture, floriculture, viticulture, orchards, plant nurseries, natural environment reserves, nature trails and walks, equestrian stables and trails, and animal and poultry husbandry and the necessary accessory uses for packing, treating, or storing the produce, provided, however that:
  - A. The operation of any such accessory uses shall be secondary to that of normal agricultural activities; and

- B. The above uses shall not include the feeding or sheltering of animals or poultry in penned enclosures within 100 feet of any residential zoning district. Agriculture does not include the feeding of garbage to animals or the operation or maintenance of a commercial stockyard or feedyard.
- (4) *Airport*: Any runway, land area or other facility designed or used either publicly or privately by any person for the landing and taking-off of aircraft, including all necessary taxiways, aircraft storage and tie-down areas, hangers and other necessary buildings, and open spaces.
  - (5) *Alley*: See "Thoroughfare."
  - (6) *Alterations, structural*: Any change in the supporting members of a building such as bearing walls, columns, beams, or girders.
  - (7) *Automotive repair*: The repair, rebuilding or reconditioning of motor vehicles or parts thereof, including collision service, painting, and steam cleaning of vehicles.
  - (8) *Automotive, mobile home, travel trailer, and farm implement sales*: The sale or rental of new and used motor vehicles, mobile homes, travel trailers, or farm implements, but not including repair work except incidental warranty repair of same, to be displayed and sold on the premises.
  - (9) *Automotive wrecking*: The dismantling or wrecking of used motor vehicles, mobile homes, trailers, or the storage, sale or dumping of dismantled, obsolete or wrecked vehicles or their parts.
  - (10) *Basement*: A story all or partly underground but having at least one-half of its height below the average level of the adjoining ground. See "Story."
  - (11) *Building*: Any structure designed or intended for the support, enclosure, shelter, or protection of persons, animals, chattels, or property.
  - (12) *Building, accessory*: A subordinate building detached from, but located on the same lot as the principal building, the use of which is incidental and accessory to that of the main building or use.
  - (13) *Building, height*: The vertical distance measured from the average elevation of the proposed finished grade at the front of the building to the highest point of the roof for flat roofs, to the deck line of mansard roofs, and the mean height between eaves and ridge for gable, hip, and gambled roofs.
  - (14) *Building line*: See "Setback Line."
  - (15) *Building, principal*: A building in which is conducted the main or principal use of the lot on which said building is situated.
  - (16) *Business, convenience*: Commercial establishments which cater to and can be located in close proximity to or within residential districts without creating undue vehicular congestion, excessive noise, or other objectionable influences. To prevent congestion, convenience uses include, but need not be limited to, drugstores, beauty salons, barber shops, carry-outs, dry cleaning and laundry pickup facilities, and grocery stores, if less than 10,000 square feet in floor area. Uses in this classification tend to serve a day-to-day need in the neighborhood.
  - (17) *Business, general*: Commercial uses which generally require locations on or near major thoroughfares and/or their intersections, and which tend, in addition to serving day-to-day needs of the community, to also supply the more durable and permanent needs of the whole community. General business uses include, but need not be limited to, such activities as supermarkets; stores that sell hardware, apparel, footwear, appliances, and furniture; department stores; and discount stores.
  - (18) *Business, highway*: Commercial uses which generally require locations on or near major thoroughfares and/or their intersections, and which tend to serve the motoring public. Highway business uses include, but need not be limited to, such activities as filling stations; truck and auto sales and service; restaurants and motels; and commercial recreation.

(18-19) Business, mobile;— A mobile business is a business that utilizes a vehicle such as a truck or trailer, to prepare and/or show merchandise for sale. Typically, a mobile business locates at one location for

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[a very temporary time, such as only for a few hours, and is available to leave and re-locate to another location in a short period of time.](#)

- (19) *Business, office type*: Quasi-commercial uses which may often be transitional between retail business and/or manufacturing, and residential uses. Office business generally accommodates professional, accounting, writing, clerical, stenographic, and drafting. Institutional offices of a charitable, philanthropic, or religious or educational nature are also included in this classification.
- (20) *Business, services*: Any profit making activity which renders services primarily to other commercial or industrial enterprises, or which services and repairs appliances and machines used in homes or businesses.
- (21) *Business, wholesale*: Business establishments that generally sell commodities in large quantities or by the piece to retailers, jobbers, other wholesale establishments, or manufacturing establishments. These commodities are basically for further resale, for use in the fabrication of a product, or for use by a business service.
- (22) *Cemetery*: Land used or intended to be used for the burial of the human or animal dead and dedicated for cemetery purposes, including crematories, mausoleums, and mortuaries if operated in connection with and within the boundaries of such cemetery.
- (23) *Channel*: A natural or artificial watercourse of perceptible extent, with bed and banks to confine and conduct continuously or periodically flowing water.
- (24) *Child day-care*: Administering to the needs of infants, toddlers, pre-school children, and school children outside of school hours by persons other than their parents or guardians, custodians, or relatives by blood, marriage, or adoption for any part of the 24 hour day in a place or residence other than the child's own home. The following are child day-care facilities:
  - A. *Child day-care center*: Any place in which child day-care is provided, with or without compensation, for 13 or more children at any one time, or any place that is not the permanent residence of the licensee or administrator in which child day-care is provided, with or without compensation, for seven to 12 children at any one time. In counting children for the purposes of this definition, any children under six years of age who are related to a licensee, administrator, or employee and who are on the premises shall be counted.
  - B. *Type A family day-care home*: A permanent residence of the administrator in which child day-care is provided for four to 12 children at any one time, if four or more children are under two years of age. In counting children for the purposes of this definition, any children under six years of age who are related to a licensee, administrator, or employee and who are on the premises of the Type A home shall be counted. The term "Type A family day-care home" does not include a residence in which the needs of children are administered to, if all such children are siblings of the same immediate family and the residence is their home.
  - C. *Type B family day-care home*: A permanent residence of the provider in which child day-care or child day-care services are provided for one to six children at one time and in which no more than three children may be under two years of age at any one time. In counting children for the purposes of this definition, any children under six years of age who are related to the provider and are on the premises of the Type B home shall be counted. The term "Type B family day-care home" does not include a residence in which the needs of children are administered to, if all such children are siblings of the same immediate family and the residence is their home.
- (25) *Clinic*: See "Medical Clinic."
- (26) *Cluster housing*: Two or more single family detached housing units that are located close to one another and are arranged on a condominium lot in such a manner as to share a single access drive.
- (27) *Club*: A building or portion thereof or premises owned or operated by a person or persons for a social, literary, political, educational, or recreational purpose primarily for the exclusive use of members and their guests.

- (28) *Commercial entertainment facilities*: Any profit making activity which is generally related to the entertainment field, such as motion picture theaters, carnivals, nightclubs, cocktail lounges, and similar entertainment activities.
- (29) *Common wall housing*: See "Dwelling, Single family, Attached."
- (30) *Comprehensive plan*: See "Municipal Comprehensive Plan."
- (31) *Conditional use*: A use permitted within a district other than a principally permitted use, requiring a conditional use permit and approval of the Board of Zoning Appeals.
- (32) *Conditional use permit*: A permit issued by the Zoning Administrator upon approval by the Board of Zoning Appeals to allow a use other than a principally permitted use to be established within the district.
- (33) *Condominium*: A building or group of buildings in which units are individually owned but the structure, common areas and facilities are owned on a proportional, undivided basis by all to the owners.
- (34) *Condominium lot*: A lot with joint ownership of common areas.
- (35) *Congregate/assistive living housing*: A residential facility for four or more elderly persons within which are provided living and sleeping facilities, meal preparation, laundry services, and room cleaning. Such facilities may also provide other services such as transportation for routine social and medical appointments, medical services, and counseling. "Congregate Housing" includes convalescent homes and nursing homes for the aged, and homes for the aged.
- (36) *Convalescent home*: A nursing care facility for the housing and care of the mentally well, but physically infirm.
- (37) *Corner lot*: See "Lot Types."
- (38) *Cul-de-sac*: See "Thoroughfare."
- (39) *Dead-end street*: See "Thoroughfare."
- (40) *Density*: A unit of measurement expressing the number of dwelling units per acre of land.
- A. "Gross Density" means the number of dwelling units per acre of the total land to be developed.
- B. "Net Density" means the number of dwelling units per acre of land when the acreage involved includes only the land devoted to residential uses.
- (41) *Density Bonus*: An increase in the number of allowable dwelling units per acre granted for some specific reason, such as the provision of lower-income housing, as provided for in the zoning regulations.
- (42) *Diligently*: Marked by a persevering, uninterrupted, continuous, painstaking effort.
- (43) *District*: A part, zone, or geographic area within the municipality (township, county) within which certain zoning or development regulations apply.
- (44) *Dwelling*: Any building or structure, except a house trailer or mobile home as defined by O.R.C. § 4501.01 which is wholly or partly used or intended to be used for living or sleeping by one or more human occupants.
- (45) *Dwelling unit*: Space, within a dwelling, comprising living, dining, sleeping room or rooms, storage closets, as well as space and equipment for cooking, bathing, and toilet facilities, all used by only one family and its household employees.
- (46) *Dwelling, single-family, attached*: A building containing two or more dwelling units, each of which has primarily ground floor access to the outside and which are attached to each other by party walls without openings.
- (47) *Dwelling, single-family, detached*: A dwelling consisting of a single dwelling unit only, separated from other dwelling units by open space.

- (48) *Dwelling, two family*: A dwelling consisting of two dwelling units which are attached side by side, each unit having a separate entrance.
- (49) *Dwelling, multi-family*: A dwelling consisting of three or more dwelling units including condominiums with varying arrangements of entrances and party walls. Multi-family housing may include public housing and industrialized units.
- (50) *Dwelling, industrialized unit*: An assembly of materials or products comprising all or part of a total structure which, when constructed, is self-sufficient or substantially self-sufficient and when installed, constitutes a dwelling unit, except for necessary preparations for its placement, and including a modular or sectional unit but not a mobile home.
- (51) *Dwelling, rooming house (boarding house, lodging house, dormitory)*: A dwelling or part thereof, other than a hotel, motel or restaurant where meals and/or lodging are provided for compensation, for three or more unrelated persons where no cooking or dining facilities are provided in the individual rooms.
- (52) *Easement*: Authorization by a property owner for the use by another, and for a specified purpose, of any designated part of his property.
- (53) *Elderly household*: Not more than three persons, related or unrelated, who occupy a single dwelling unit, of whom at least one such person is an "elderly person" as defined below.
- (54) *Elderly housing unit*: A dwelling unit containing its own sleeping room(s), cooking, bathing and toilet facilities, wherein occupancy is restricted to elderly households.
- (55) *Elderly housing facility*: A building or buildings containing 12 or more elderly housing units, each with its own sleeping room(s), cooking, bathing, and toilet facilities, where occupancy is restricted to elderly persons or households. Such facilities may include emergency first aid care, day care, therapy, personal care, nursing facilities, recreational facilities, and provide for independent or semi-independent living. For the purposes of this definition, "elderly housing facility" shall not include convalescent homes, nursing homes, or homes for the aged.
- (56) *Elderly or senior person*: Any person who is 55 years of age or older, or any person under 55 years of age who is handicapped such that his physical impairments are of a long-term duration and impede his ability to live independently without a suitable housing environment.
- (57) *Essential services*: The erection, construction, alteration, or maintenance, by public utilities or municipal or other governmental agencies, of underground gas, electrical, steam or water transmission, or distribution systems, collection, communication, supply or disposal systems or sites, including poles, wires, mains, drains, sewers, pipes, traffic signals, hydrants, or other similar equipment and accessories in connection therewith which are 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.
- (58) *Factory-built housing*: Factory-built housing means an off-site manufactured or prefabricated or factory-built structure designed for long-term residential use, the components of which are essentially constructed or assembled prior to its delivery to and installation upon a site. For the purposes of this Zoning Ordinance, "factory-built housing" shall include "Manufactured Homes," "Modular Homes," "Mobile Homes," "Prefabricated Homes," and "Sectional Homes."
- (59) *Family*: A person living alone, or two or more persons living together as a single housekeeping unit in a dwelling unit, as distinguished from a group occupying a rooming house, motel or hotel, dormitory, fraternity or sorority house, provided, however, that "family" shall not include more than four persons unrelated to each other by blood, marriage or legal adoption, except for Class I Type B group residential facilities.
- (60) *Farm*: See "Agriculture."
- (61) *Farm sign*: A sign denoting the name and address of the farm premises; a sign denoting agricultural produce or products available for sale on the premises; or a sign denoting membership in agricultural organizations.

- (62) *Farm vacation enterprises (profit or non-profit)*: Farms adapted for use as vacation farms, picnicking and sport areas, fishing waters, camping, scenery, and nature recreation areas; hunting areas; hunting preserves and watershed projects.
- (63) *Feedlot*: A relatively small, confined land area for fattening or temporarily holding cattle for shipment.
- (64) *Flood plain*: That land, including the flood fringe and the floodway, subject to inundation by the regional flood.
- (65) *Flood, regional*: Large floods which have previously occurred or which may be expected to occur on a particular stream because of like characteristics. The regional flood generally has an average frequency of the 100-year recurrence interval flood.
- (66) *Floodway*: That portion of the flood plain, including the channel, which is reasonably required to convey the regional flood waters. Floods of less frequent recurrence are usually contained completely within the floodway.
- (67) *Floodway fringe*: That portion of the flood plain, excluding the floodway, where development may be allowed under certain restrictions.
- (68) *Floor area of a residential building*: The sum of the gross horizontal area of the several floors of a residential building, excluding basement floor areas not devoted to residential use, garages, and open porches, but including the area of roofed porches and roofed terraces. All dimensions shall be measured between interior faces of walls.
- (69) *Floor area of a non-residential building (to be used in calculating parking requirements)*: The floor area of the specified use excluding stairs, washrooms, elevator shafts, maintenance shafts and rooms, storage spaces, display windows, and fitting rooms, and similar areas.
- (70) *Floor area, usable*: Measurement of usable floor area shall be the sum of the horizontal areas of the several floors of the building, measured from the interior faces of the exterior walls.

(70-71) *Food Truck*: [See Business, mobile.](#)

- (71) *Food processing*: The preparation, storage, or processing of food products. Examples of these activities include bakeries, dairies, canneries, and other similar businesses.
- (72) *Garages, private*: A detached accessory building or portion of a principal building for the parking or temporary storage of automobiles, travel trailers and/or boats of the occupants of the premises wherein:
- A. Not more than one space is rented for parking to persons not resident on the premises;
  - B. No more than one commercial vehicle per dwelling unit is parked or stored;
  - C. The commercial vehicle permitted does not exceed two tons capacity.
- (73) *Garage, public*: A principal or accessory building other than a private garage, used for parking or temporary storage of passenger automobiles, and in which no service shall be provided for compensation.
- (74) *Garage, service station*: Buildings and premises where gasoline, oil, grease, batteries, tires, and motor vehicle accessories may be supplied and dispensed at retail, and where in addition, the following services may be rendered and sales made:
- A. Sales and service of spark plugs, batteries, and distributors parts;
  - B. Tire servicing and repair, but not recapping or regrooving;
  - C. Replacement of mufflers and tail pipes, water hose, fan belts, brake fluid, light bulbs, fuses, floor mats, seat covers, windshield wipers and blades, grease containers, wheel bearings, mirrors, and the like;
  - D. Radiator cleaning and flushing;

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- E. Radiator welding and repair;
- F. Greasing and lubrication;
- G. Providing and repairing fuel pumps, oil pumps, and lines;
- H. Minor servicing and repair of carburetors;
- I. Adjusting and repairing brakes;
- J. Minor motor adjustment not involving removal of the head or crankcase or racing the motor;
- K. Sales of cold drinks, packaged food, tobacco, and similar convenience goods for service station customers, as accessory and incidental to principle operations;
- L. Provision of road maps and other informational material to customers, provision of restroom facilities;
- M. Warranty maintenance and safety inspections.

Uses permissible at a filling station do not include major mechanical and body work, straightening of body parts, painting, welding, storage of automobiles not in operation condition, or other work involving noise, glare, fumes, smoke, or other characteristics to an extent greater than normally found in filling stations. A filling station is not a repair garage nor a body shop.

(75) *Group residential facility*: A group residential facility is a community residential facility, licensed and/or approved and regulated by the State of Ohio, which provides rehabilitative or habilitative services. There are two classes of group residential facilities:

- A. *Class I*: Any state, federal, or locally approved dwelling or place used as a foster home for children or adults (not including nursing homes) or as a home for the care or rehabilitation of dependent or predelinquent children, for the physically handicapped or disabled, or for those with mental illness or developmental disabilities. A Class I Type A group residential facility contains six or more residents, exclusive of staff. A Class I Type B group residential facility contains five or less residents, exclusive of staff.
- B. *Class II*: Any state, federal, or locally approved dwelling or place used as a home for juvenile offenders; a halfway house providing residential care or rehabilitation for adult offenders in lieu of institutional sentencing; a halfway house providing residence for persons leaving correctional institutions; and residential rehabilitation centers for alcohol and drug abusers, provided that detoxification is expressly prohibited on such premises. A Class II Type A group residential facility contains at least six or more residents, exclusive of staff. A Class II Type B group residential facility contains five or less residents, exclusive of staff.

(76) *Historic district*: A district or zone designated by a local authority, state or federal government within which the buildings, structures, appurtenances and places are of basic and vital importance because of their association with history, or because of their unique architectural style and scale, including materials, proportion, form and architectural detail, or because of their being a part of or related to a square, park, or area the design or general arrangement of which should be preserved and/or developed according to a fixed plan based on cultural, historical or architectural motives or purposes.

(77) *Home occupation*: Home occupation means an accessory use which is an activity, profession, occupation, service, craft, or revenue-enhancing hobby which is clearly incidental and subordinate to the use of the premises as a dwelling, and is conducted entirely within the dwelling unit, or elsewhere on the premises by conditional use permit, without any significant adverse effect upon the surrounding neighborhood. Activities such as teaching, tutoring, babysitting, tax consulting and the like shall involve not more than three receivers of such services at any one time.

(78) *Hotel or motel and apartment hotel*: A building in which lodging or boarding and lodging are provided and offered to the public for compensation. As such it is open to the public in contradistinction to a boarding house, rooming house, lodging house, or dormitory which is herein separately defined.

- (79) *Institution*: Building and/or land designed to aid individuals in need of mental, therapeutic, rehabilitative counseling, or other correctional services.
- (80) *Junk*: Any scrap, waste, reclaimable material, or debris; whether or not stored, for sale, or in the process of being dismantled, destroyed, processed, salvaged, stored, stored for re-use, baled, disposed, or for other use or disposition.
- (81) *Junk buildings, junk shops, junk yards*: Any land, property, structure, building, or combination of the same, on which junk, as defined in the Revised Code, is stored or processed.
- (82)  *kennel*: Any lot or premises on which four or more domesticated animals more than four months of age are housed, groomed, bred, boarded, trained, or sold, and which offers provisions for minor medical treatment.
- (83) *Landscaping*: The treatment of exterior spaces with carefully planned arrangements of ground surface cover, natural greenery, plant materials, organic materials, natural stones, or paving, and elements such as shrubs, trees, fences, and gazebos to enhance the environment.
- (84) *Life-care facility*: A facility for the transitional residency of elderly and/or disabled persons, progressing from independent living in single family units to congregate apartment living where residents share meals, and culminating in a full health and continuing care nursing home facility.
- (85) *Living area, residential*: See "Floor Area of a Residential Building."
- (86) *Loading space, off-street*: Space logically and conveniently located for bulk pickups and deliveries, scaled to delivery vehicles expected to be used, and accessible to such vehicles when required off-street parking spaces are filled. Required off-street loading space is not to be included as off-street parking space in computation of required off-street parking space. All off-street loading spaces shall be located totally outside of any street or alley right-of-way.
- (87) *Location map*: See "Vicinity Map."
- (88) *Lot*: For the purpose of the Zoning Ordinance, a lot is a parcel of land of sufficient size to meet minimum zoning requirements for use, coverage, and area, and to provide such yards and other open spaces as are herein required. Such lot shall have frontage on an improved public street, or on an approved private street, and may consist of:
- A. A single lot of record;
  - B. A portion of a lot of record;
  - C. A combination of complete lots of record, of complete lots of record and portions of lots of record, or of portions of lots of record.
- (89) *Lot coverage*: The ratio of enclosed ground floor area of all buildings on a lot to the horizontally projected area of the lot, expressed as a percentage.
- (90) *Lot frontage*: The front of a lot shall be construed to be the portion nearest the street. For the purpose of determining yard requirements on corner lots and through lots, all sides of a lot adjacent to streets shall be considered frontage, and yards shall be provided as indicated under "Yards" in this section.
- (91) *Lot, minimum area of*: The area of a lot is computed exclusive of any portion of the right-of-way of any public or private street.
- (92) *Lot measurements*: A lot shall be measured as follows:
- A. *Depth*: The distance between the mid-points of straight lines connecting the foremost points of the side lot lines in front and the rearmost points of the side lot lines in the rear.
  - B. *Width*: The distance between straight lines connecting front and rear lot lines at each side of the lot, measured at the building setback line.
- (93) *Lot of record*: A lot which is part of a subdivision recorded in the office of the County Recorder, or a lot or parcel described by metes and bounds, the description of which has been so recorded.

- (94) *Lot types*: Terminology used in this Zoning Ordinance with reference to corner lots, interior lots and through lots is as follows:
- A. *Corner Lot*: A lot located at the intersection of two or more streets. A lot abutting on a curved street or streets shall be considered a corner lot if straight lines drawn from the foremost point of the lot meet at an interior angle of less than 135 degrees.
  - B. *Interior lot*: A lot with only one frontage on a street.
  - C. *Through lot*: A lot other than a corner lot with frontage on more than one street. Through lots abutting two streets may be referred to as double frontage lots.
  - D. *Reversed frontage lot*: A lot on which frontage is at right angles to the general pattern in the area. A reversed frontage lot may also be a corner lot.
- (95) *Major thoroughfare plan*: The portion of a comprehensive plan [or other transportation related plan associated with the Comprehensive Plan](#) adopted by the Municipality indicating the general location and characteristics recommended for arterial, collector, and local streets or thoroughfares.
- (96) *Maintenance and storage facilities*: Land, buildings, and structures devoted primarily to the maintenance and storage of construction equipment and material.
- (97) *Manufactured home park*: Any lot upon which two or more manufactured homes are located for residential use, either free of charge or for revenue purposes, including any roadway, building, structure, vehicle, or enclosure used or intended to be used as a part of the facilities of such park.
- (98) *Manufacturing, heavy*: Manufacturing, processing, assembling, storing, testing, and similar industrial uses which are generally major operations and extensive in character; require large sites, open storage and service areas, extensive services and facilities, ready access to regional transportation; and normally generate some nuisances such as smoke, noise, vibration, dust, glare, air pollution, and water pollution, but not beyond the district boundary.
- (99) *Manufacturing, light*: Manufacturing or other industrial uses which are usually controlled operations; relatively clean, quiet, and free of objectionable or hazardous elements such as smoke, noise, odor, or dust; operating and storing within enclosed structures; and generating little industrial traffic and no nuisances.
- (100) *Manufacturing, extractive*: Any mining, quarrying, excavating, processing, storing, separating, cleaning, or marketing of any mineral natural resource.
- (101) *Medical clinic*: A place used for the care, diagnosis and treatment of sick, ailing, infirm, or injured persons, and those who are in need of medical and surgical attention, but who are provided with board or room or kept overnight on the premises.
- (102) *Mobile home*: Any non-self-propelled vehicle so designed, constructed, reconstructed, or added to by means of accessories in such manner as will permit the use and occupancy thereof for human habitation, when connected to utilities, whether resting on wheels, jacks, blocks, or other temporary foundation and used or so construed as to permit its being used as a conveyance upon the public streets and highways and exceeding a gross weight of 4,500 pounds and an overall length of 30 feet, and not in compliance with the Federal Manufactured Housing Construction and Safety Standards Act of 1974.
- (103) *Mobile home park*: Any site, or tract of land under single ownership, upon which three or more mobile homes used for habitation are parked, either free of charge or for revenue purposes; including any roadway, building, structure, vehicle, or enclosure used or intended for use as a part of the facilities of such park.
- (104) *Municipal comprehensive plan*: A plan with subplans, or any portion thereof, adopted by the Municipality showing the general location and extent of present and proposed physical facilities and land uses; which may include, but shall not be limited to, housing, industrial and commercial uses, transportation networks, major thoroughfares, parks, schools, and other community facilities. This plan

establishes the goals, objectives, and policies of the community. It is also known as the "Policies Plan for the Development of the City of Powell, Ohio" and any subplans designated therein.

- (105) *Nonconformities*: Lots, uses of land, structures, and uses of structures and land in combination lawfully existing at the time of enactment of this Zoning Ordinance or its amendments which do not conform to the regulations of the district or zone in which they are situated, and are therefore incompatible.
- (106) *Nursing home*: See "Convalescent Home."
- (107) *Nursery, plant materials*: Land, building, structure, or combination thereof for the storage, cultivation, transplanting of live trees, shrubs, or plants offered for retail sale on the premises including products used for gardening or landscaping.
- (108) *Open spaces*: An area substantially open to the sky which may be on the same lot with a building. The area may include, along with the natural environmental features, water areas, swimming pools, and tennis courts, any other recreational facilities that the Planning and Zoning Commission deems permissible. Streets, parking areas, structures for habitation, and the like shall not be included.
- (109) *Overlay district*: A district described by the zoning map and/or Zoning Ordinance within which, through superimposition of a special designation, furthermore regulations and requirements apply in addition to those of the underlying districts to which such designation is added.
- (110) *Parking space, off-street*: For the purpose of this Zoning Ordinance, an off-street parking space shall consist of an area adequate for parking an automobile with room for opening doors on both sides, together with properly related access to a public street or alley and maneuvering room, but shall be located totally outside of any street or alley right-of-way.
- (111) *Patio home*: A building designed for or occupied exclusively for residence purposes by one family or housekeeping unit that provides for family outdoor functions commonly associated with rear yard areas in a private interior courtyard, no less than 900 square feet in area, that is open to the sky and defined by a solid opaque wall where it abuts the exterior of the structure that is no less than six feet high. A patio home may be a detached unit, or it may have a zero-lot-line relationship at one or more sides.
- (112) *Performance bond or surety bond*: An agreement by a subdivider or developer with the Municipality for the amount of the estimated construction cost guaranteeing the completion of physical improvements according to plans and specifications within the time prescribed by the subdivider's agreement.
- (113) *Personal services*: Any enterprise conducted for gain which primarily offers services to the general public such as shoe repair, watch repair, barber shops, beauty parlors, and similar activities.
- (114) *Pet or household pet*: An animal kept solely for personal enjoyment as a companion, such as a dog, cat, bird, or small reptile, commonly kept in the home with the occupant.
- (115) *Policies plan*: See "Municipal Comprehensive Plan."
- (116) *Professional activities*: The use of offices and related spaces for such professional services as are provided by medical practitioners, lawyers, architects, and engineers, and similar professions.
- (117) *Public service facility*: The erection, construction, alteration, operation, or maintenance of buildings, power plants, or substations, sewage disposal or pumping plants and other similar public service structures by a public utility, by a railroad, whether publicly or privately owned, or by a municipal or other governmental agency, including the furnishing of electrical, gas, rail transport, communication, public water and sewage services.
- (118) *Public uses*: Public parks, schools, administrative and cultural buildings and structures, not including public land or buildings devoted solely to the storage and maintenance of equipment and materials and public service facilities.
- (119) *Public way*: An alley, avenue, boulevard, bridge, channel, ditch, easement, expressway, freeway, highway, land, parkway, right-of-way, road, sidewalk, street, subway, tunnel, viaduct, walk, bicycle

path; or other ways in which the general public or a public entity have a right, or which are dedicated, whether improved or not.

- (120) *Quasipublic use*: Churches, Sunday schools, parochial schools, colleges, hospitals, and other facilities of an educational, religious, charitable, philanthropic, or non-profit nature.
- (121) *Recreation camp*: An area of land on which two or more travel trailers, campers, tents or other similar temporary recreational structures are regularly accommodated with or without charge, including any building, structure or fixture of equipment that is used or intended to be used in connection with providing such accommodations.
- (122) *Recreation facilities*: Public or private facilities that may be classified as either "extensive" or "intensive" depending upon the scope of services offered and the extent of use. Extensive facilities generally require and utilize considerable areas of land and include, but need not be limited to hunting, fishing, and riding clubs and parks. Intensive facilities generally require less land (used more intensively) and include, but need not be limited to, miniature golf courses, amusement parks, stadiums, and bowling alleys.
- (123) *Research activities*: Research, development, and testing related to such fields as chemical, pharmaceutical, medical, electrical, transportation, and engineering. All research, testing, and development shall be carried on within entirely enclosed buildings, and no noise, smoke, glare, vibration, or odor shall be detected outside of said building.
- (124) *Roadside stand*: A temporary structure designed or used for the display or sale of agricultural and related products.
- (125) *Right-of-way*: A strip of land taken or dedicated for use as a public way. In addition to the roadway, it normally incorporates the curbs, lawn strips, sidewalks, lighting, and drainage facilities, and may include special features (required by the topography or treatment) such as grade separation, landscaped areas, viaducts, and bridges.
- (126) *Satellite signal receiver*: "Dish-type satellite signal-receiving antennas," "earth stations" or "ground stations," whether functioning as part of a basic service system, direct broadcast satellite system, or multipoint distribution service system, shall mean one, or a combination of two or more of the following:
- A. A signal-receiving device such as a dish antenna whose purpose is to receive communications or signals from earth-orbiting satellites or similar sources.
  - B. A low-noise amplifier (LNA) whose purpose is to boost, magnify, store, transfer or transmit signals.
  - C. A coaxial cable whose purpose is to convey or transmit signals to a receiver.
- (127) *Seat*: For purposes of determining the number of off-street parking spaces for certain uses, the number of seats is the number of seating units installed or indicated, or each 24 lineal inches of benches, pews, or space for loose chairs.
- (128) *Senior person*: See "Elderly Person."
- (129) *Setback line*: A line established by the zoning ordinance, generally parallel with and measured from the lot line, defining the limits of a yard in which no building, other than accessory building, or structure may be located above ground, except as may be provided in said code. See "Yard."
- (130) *Sewers, central or group*: An approved sewage disposal system which provides a collection network and disposal system and central sewage treatment facility for a single development, community, or region.
- (131) *Sewers, on-site*: A sewage treatment installation on an individual lot for the elimination of sewage which provides for the proper and safe disposal of the effluent, subject to the approval of health and sanitation officials having jurisdiction.
- (132) *Sidewalk*: That portion of the road right-of-way outside the roadway, which is improved for the use of pedestrian traffic.

- (133) *Sign*: Any visual communication display, object, device, graphic, structure, or part, situated indoors or outdoors, or attached to, painted on, or displayed from a building or structure, in order to direct or attract attention to, or to announce or promote, an object, person, service, product, event, location, organization or the like, by means of letters, words, designs, colors, symbols, fixtures, images or illuminations.
- A. *Sign, on-premises*: Any sign related to a business or profession conducted, or a commodity or service sold or offered upon the premises where such sign is located.
  - B. *Sign, off-premises*: Any sign unrelated to a business or profession conducted, or to a commodity or service sold or offered upon the premises where such sign is located.
  - C. *Sign, illuminated*: Any sign illuminated by electricity, gas, or other artificial light including reflecting or phosphorescent light.
  - D. *Sign, lighting device*: Any light; string of lights, or group of lights located or arranged so as to cast illumination on a sign.
  - E. *Sign, projecting*: Any sign which projects from the exterior of a building.
  - F. *Sign, permanent*: A sign erected with the intent on using it for permanent identification of a building, site or use.
  - G. *Sign, portable*: A sign that is not permanent, including banners, A-frame, stick-type, billboards or air activated attraction devices.
- (134) *Special district*: A zoning district created to meet the needs of an area experiencing unusual problems, or one that is designed to meet special needs.
- (135) *Story*: That part of a building between the surface of a floor and the ceiling immediately above. See "Basement."
- (136) *Structure*: Anything constructed or erected, the use of which requires location on the ground, or attachment to something having a fixed location on the ground. Among other things, structures include buildings, mobile homes, walls, fences, and billboards.
- (137) *Subdivision*: The division of a lot, tract, or parcel into two or more lots, tracts, or parcels or other divisions of land for sale, development, or lease.
- (138) *Substantial change*: A modification or change from the recommendation of the Planning and Zoning Commission shall consist of any change in use, change in density of ten percent, or change in points of ingress and egress.
- (139) *Supply yards*: A commercial establishment storing and offering for sale building supplies, steel supplies, coal, heavy equipment, feed and grain, and similar goods.
- (140) *Swimming pool*: A pool, pond, lake, or open tank containing at least one and one-half feet of water at any point and maintained by the owner or manager.
- A. *Private*: Exclusively used without paying an additional charge for admission by the residents and guests of a single household, a multifamily development, or a community, the members and guests of a club, or the patrons of a motel or hotel; an accessory use.
  - B. *Community*: Operated with a charge for admission; a primary use.
- (141) *Temporary construction access*: An access drive and/or road which provides for access to a property under construction only during the term of its construction, then is removed when a permanent access drive is created.
- (142) *Thoroughfare, street, or road*: The full width between property lines bounding every public way of whatever nature, with a part thereof to be used for vehicular traffic and designated as follow:
- A. *Alley*: A minor street used primarily for vehicular service access to the back or side of properties abutting on another street.

- B. *Arterial street*: A general term denoting a highway primarily for through traffic, carrying heavy loads and large volumes of traffic, usually on a continuous route.
  - C. *Collector street*: A thoroughfare, whether within a residential, industrial, commercial, or other type of development, which primarily carries traffic from local streets to arterial streets, including the principal entrance and circulation routes within residential subdivisions.
  - D. *Cul-de-sac*: A local street of relatively short length with one end open to traffic and the other end terminating in a vehicular turnaround.
  - E. *Dead-end street*: A street temporarily having only one outlet for vehicular traffic and intended to be extended or continued in the future.
  - F. *Local street*: A street primarily for providing access to residential or other abutting property.
  - G. *Loop street*: A type of local street, each end of which terminates at an intersection with the same arterial or collector street, and whose principal radius points of the 180 degree system of turns are not more than 1000 feet from said arterial or collector street, nor normally more than 600 feet from each other.
  - H. *Marginal access street*: A local or collector street, parallel and adjacent to an arterial or collector street, providing access to abutting properties and protection from arterial or collector streets. (Also called Frontage Street)
- (143) *Through lot*: See "Lot Types."
  - (144) *Transportation, director of*: The Director of the Ohio Department of Transportation.
  - (145) *Use*: The specific purposes for which land or a building is designated, arranged, intended, or for which it is or may be occupied or maintained.
  - (146) *Variance*: A variance is a modification of the strict terms of the relevant regulations where such modification will not be contrary to the public interest and where owing to conditions peculiar to the property and not the result of the action of the applicant, a literal enforcement of the regulations would result in unnecessary and undue hardship.
  - (147) *Veterinary animal hospital or clinic*: A place used for the care, grooming, diagnosis, and treatment of sick, ailing, infirm, or injured animals, and those who are in need of medical or surgical attention, and may include overnight accommodations on the premises for treatment, observation and/or recuperation. It may also include boarding that is incidental to the primary activity.
  - (148) *Vicinity map*: A drawing located on the plat which sets forth by dimensions or other means, the relationship of the proposed subdivision or use to other nearby developments or landmarks and community facilities and services within the general area in order to better locate and orient the area in question.
  - (149) *Walkway*: A public way, five feet or more in width, for pedestrian use only, whether along the side of a road or not.
  - (150) *Yard*: A required open space other than a court unoccupied and unobstructed by any structure or portion of a structure from three feet above the general ground level of the graded lot upward; provided, accessories, ornaments, and furniture may be permitted in any yard, subject to height limitations and requirements limiting obstruction of visibility.
    - A. *Yard, front*: A yard extending between side lot lines across the front of a lot and from the front lot line to the front of the principal building.
    - B. *Yard, rear*: A yard extending between side lot lines across the rear of a lot and from the rear lot line to the rear of the principal building.
    - C. *Yard, side*: A yard extending from the principal building to the side lot line on both sides of the principal building between the lines establishing the front and rear yards.

- (151) *Zero lot line development*: An arrangement of housing on adjoining lots in which the required side yard is reduced on one side and increased on the other so that the sum of the offsets on any lot is no less than the sum of the required offsets. No building or structure shall be closer to a lot line than five feet unless it abuts the lot line and is provided with an access easement of five feet on the adjoining lot or abuts a building or structure on the adjoining lot.
- (152) *Zoning administrator*: The Zoning Administrator is the person designated by the Mayor to administer and enforce this Zoning and related regulations.
- (153) *Zoning certificate*: A document issued by the Zoning Administrator verifying that the planned uses of lots, structures, uses of land and structures, and the characteristics of such uses, comply with the Zoning Ordinance.
- (154) *Zoning, certificate of compliance (or certificate of zoning compliance)*: A document issued by the Zoning Administrator verifying that work executed complies with the requirements of the Zoning Ordinance.
- (155) *Municipal separate storm sewer system (MS4)*: "Municipal Storm Sewer System" or "MS4" means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains):
- A. Owned or operated by the City;
  - B. Designed or used for collecting or conveying storm water;
  - C. Which is not a combined sewer; and
  - D. Which is not part of a Publicly Owned Treatment Works (POTW) as defined by Title 40 Code of Federal Regulations Part 122.2 (40 CFR 122.2).

(Amendment by Ordinance 91-40; Ord. No. 91-01, 2-5-1991; Ord. No. 98-25, 8-4-1998; Ord. No. 2004-33, 5-18-2004)



## CHAPTER 1125 - NONCONFORMITIES<sup>(11)</sup>

Sections:

Footnotes:

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**State Law reference**— Nonconforming uses; retroactive measures, O.R.C. § 713.15

### 1125.01 - PURPOSE.

Within the districts established by this Zoning Ordinance, or by amendments thereto, lots, uses of land, structures, and uses of structures and land in combination exist which were lawful before this Zoning Ordinance was passed or amended, but which would be prohibited, regulated, or restricted under the terms of this Zoning Ordinance. The legitimate interest of those who lawfully established these nonconformities are herein recognized by providing for their continuance, subject to regulations limiting their completion, restoration, reconstruction, extension, and substitution. Nevertheless, while it is the intent of this Zoning Ordinance that legal nonconformities be allowed to continue until removed, they should not be encouraged to survive. Therefore, no nonconformity may be moved, extended, altered, expanded, or used as grounds for any other use(s) or structure(s) prohibited elsewhere in the district except as otherwise specifically provided for in this Zoning Ordinance.

### 1125.02 - USES UNDER CONDITIONAL USE PROVISIONS NOT NONCONFORMING USES.

Any use which is permitted as a conditional use and has been approved in a district under the terms of this Zoning Ordinance shall not be deemed a nonconforming use in such district, but shall without further action be considered a conforming use.

### 1125.03 - INCOMPATIBILITY OF NONCONFORMITIES.

Nonconformities are declared by this Zoning Ordinance to be incompatible with permitted uses in the districts in which such uses are located. A nonconforming use of a structure, a nonconforming use of land, or a nonconforming use of a structure and land in combination shall not be extended, nor shall same be extended or enlarged in ground covering, floor area, or volume after passage of this Zoning Ordinance by attachment on a building or premises of additional signs intended to be seen from off the premises announcing such non-conforming use(s), nor by the addition of other uses of a nature which would be generally prohibited in the district in which such use is located.

### 1125.04 - AVOIDANCE OF UNDUE HARDSHIP.

To avoid undue hardship, nothing in this Zoning Ordinance shall be deemed to require a change in the plans, construction, size or designated use of any building on which actual construction was lawfully begun prior to the effective date of adoption or amendment of this Zoning Ordinance and upon which actual building construction has been carried out diligently. "Actual construction" is hereby defined to include the placing of construction materials in permanent position and fastened in a permanent manner. Where demolition or removal of an existing building has been substantially begun preparatory to rebuilding, such demolition or removal shall be deemed to be "actual construction," provided that the work has been carried out diligently. Where this is the case, the Zoning Administrator may require proof in the form of an affidavit or similar document that the original intended use of the building has not been changed. The ground story framework, including structural parts of a second floor, if planned for, shall have been completed within one year and the entire building completed within two years after the effective date of this Zoning Ordinance or

new zoning and building certificates will be required verifying compliance with the conditions of this Zoning Ordinance or amendments thereto. Where work has been commenced prior to the effective date of this Zoning Ordinance for which no building certificate was issued, although required at the time, or which is in violation of a previously issued certificate, such violations shall stand and shall be prosecuted. Work for which no building certificate has been issued shall be required to comply with this Zoning Ordinance and its amendments.

#### 1125.05 - CERTIFICATES FOR NONCONFORMING USES.

The Zoning Administrator may upon his own initiative, or shall upon the request of any owner, issue a certificate for any lot, structure, use of land, use of structure, or use of land and structure in combination, that certifies that the lot, structure, or use is a valid nonconforming use. The certificate shall specify the reason why the use is a nonconforming use, including a description of the extent and kind of use made of the property in question, the portion of the structure or land used for the nonconforming use, and the extent that dimensional requirements are nonconforming. The purpose of this Section is to protect the owners of lands or structures that are or become nonconforming. One copy of the certificate shall be returned to the owner and one copy shall be retained by the Zoning Administrator, who shall maintain as a public record a file of all such certificates.

#### 1125.06 - SINGLE NONCONFORMING LOTS OF RECORD.

In any district in which single-family dwellings are permitted, a single-family dwelling and customary accessory buildings may be erected on any single lot of record at the effective date of adoption or amendment of this Zoning Ordinance, notwithstanding limitations imposed by other provisions of this Zoning Ordinance. Such lot must be an isolated lot, and not of contiguous frontage with other lots that have not been built upon and that are in the same ownership. This provision shall apply even though such lot fails to meet the requirements for area or width, or both, that are generally applicable in the district, provided that yard dimensions and requirements other than those applying to area or width, or both, of the lot shall conform to the regulations for the district in which such lot is located. Where the Zoning Administrator certifies to the Planning and Zoning Commission that these conditions have been met, he may proceed to issue the requisite certificates without referring the matter to the Board of Zoning Appeals.

#### 1125.07 - NONCONFORMING LOTS OF RECORD IN COMBINATION.

If two or more lots or a combination of lots and portions of lots with contiguous frontage in single ownership are of record at the time of passage or amendment of this Zoning Ordinance, and if all or part of the lots with no buildings do not meet the requirements established for lot width and/or area, the lands involved shall be considered to be an undivided parcel for the purposes of this Zoning Ordinance, and no portion of said parcel shall be used or sold in a manner which diminishes compliance with lot width and/or area requirements established by this Zoning Ordinance, nor shall any division of any parcel be made which creates a lot with a width or area below the requirements stated in this Zoning Ordinance.

#### 1125.08 - YARD REDUCTIONS PERMITTED BY DIRECT ACTION OF THE ZONING ADMINISTRATOR FOR NONCONFORMING LOTS OF RECORD.

The following yard reductions shall be permitted by direct action of the Zoning Administrator, upon a finding of fact complying with the conditions specified below, and certification of these conditions to the Board of Zoning Appeals, without recourse to variance by action of the Board of Zoning Appeals:

- (a) Where there are single nonconforming substandard lots of record at the time of the effectiveness of this Zoning Ordinance or any amendment thereto that were not self-created conditions and that are located in districts permitting residences, the depth of the required rear yard and/or the minimum side yard width may be reduced by up to four inches for each foot by which the lot of record at the effective date of this Zoning Ordinance or amendment thereto was less than 100 feet deep and/or less than 50 feet wide, where this is necessary to provide the minimum site for one single car garage on the site, no more than 12 feet in width by 22 feet in length;

- (b) Where construction or enlargement of, or addition to, a one-family detached dwelling is to be undertaken on a lot that is substandard by virtue of lot area and/or lot width of a single nonconforming substandard lot of record at the time of effectiveness of this Zoning Ordinance or amendment thereto located in a district permitting such residences, and application of the yard requirements of the district within which it is located result in a space available for construction that is less than one-half the minimum required floor area (precluding construction of a two-story residence of minimum total floor area), and/or the space available for construction of the residence is less than 22 feet in width, then:
- (1) The depth of the required rear yard and/or the minimum width of each side yard may be reduced by up to four inches for each foot by which the lot is less than 100 feet deep and/or less than 50 feet in width; and
  - (2) Any combination of such reductions of side and rear yards may be provided to the point where a minimum available ground area of one-half the minimum required floor area and a minimum construction width of 22 feet has been attained but not exceeded.
- (c) Side yards, when reduced under subsection (b) hereof, shall be reduced uniformly at both sides. Side yards shall only be reduced, under both subsection (a) and (b) above, when rear yard reduction, within the specified limits, cannot result in the required minimum residential ground floor area, or the minimum garage area, and/or where essential to provide the minimum 22 foot residential construction width. Under no condition shall a side yard provided for under the terms of this Section, for either a residence or a garage, be less than five feet in width, or less than ten feet in the case of a side yard along a side street lot line, and provided that no rear yard shall be less than ten feet;
- (d) Where the full application of the reliefs provided above still do not provide the minimum site specified for a single car garage, the permit for construction of the garage shall be denied; and
- (e) Where the full application of the reliefs provided above still do not provide a minimum ground floor area of one-half the minimum required floor area and/or a minimum 22 foot construction width, on a lot of record meeting the conditions specified above located in a district in which there is no other possible legal use of the ground without variance, the Zoning Administrator shall so certify to the Board of Zoning Appeals, which will accept such certification as proof of a clear and certain hardship on the land warranting relief.

#### 1125.09 - NONCONFORMING USES OF LAND.

Where, at the time of adoption of this Zoning Ordinance, lawful uses of land exist which would not be permitted by the regulations imposed by this Zoning Ordinance, the uses may be continued so long as they remain otherwise lawful, provided:

- (a) No such nonconforming uses shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this Zoning Ordinance;
- (b) No such nonconforming uses shall be moved in whole or in part to any portion of the lot or parcel other than that occupied by such uses at the effective date of adoption or amendment of this Zoning Ordinance;
- (c) If any such nonconforming uses of land are discontinued or abandoned for six months or more, except when government action impedes access to the premises, any subsequent use of such land shall conform to the regulations specified by this Zoning Ordinance for the district in which such land is located;
- (d) No additional structure not conforming to the requirements of this Zoning Ordinance shall be erected in connection with such nonconforming use of land.

#### 1125.10 - NONCONFORMING STRUCTURES.

Where a lawful structure exists at the effective date of adoption or amendment of this Zoning Ordinance that could not be built under the terms of this Zoning Ordinance by reason of restrictions on area, lot coverage, height, yards, location on the lot, bulk, or other requirements concerning the structure, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

- (a) No such nonconforming structure may be enlarged or altered in a way which increases its nonconformity, but any structure or portion thereof may be altered to decrease its nonconformity. Changes to nonconforming structures shall be oriented toward making the nonconformity more in character with its surroundings;
- (b) Should such nonconforming structure or nonconforming portion of a structure be destroyed by any means, it shall not be reconstructed except in conformity with the provisions of this Zoning Ordinance;
- (c) Any maintenance, repair, replacement, or restoration activities shall not increase the number or extent of nonconformities; and
- (d) Should such structure be moved for any reason for any distance whatsoever, it shall thereafter conform to the regulations for the district in which it is located after it is moved.

#### 1125.11 - NONCONFORMING USES OF STRUCTURES OR OF STRUCTURES AND LAND IN COMBINATION.

If a lawful use involving individual structures, or of a structure and land in combination, exists at the effective date of adoption or amendment of this Zoning Ordinance that would not be allowed in the district under the terms of this Zoning Ordinance, the lawful use may be continued so long as it remains otherwise lawful, subject to the following provisions:

- (a) No existing structure devoted to a use not permitted by this Zoning Ordinance in the district in which it is located shall be enlarged, extended, constructed, reconstructed, moved, or structurally altered except in changing the use of the structure to a use permitted in the district in which it is located;
- (b) Any nonconforming use may be extended by no more than 50 percent in area but only in parts of a building which were manifestly arranged or designed for such use at the time of adoption of this Zoning Ordinance. No such use shall be extended to occupy any land outside such building;
- (c) Any structure, or structure and land in combination, in or on which a nonconforming use is superseded by a permitted use, shall thereafter conform to the regulations of the district in which it is located, and the nonconforming use may not thereafter be resumed;
- (d) When a nonconforming use of a structure, or structure and land in combination, is discontinued or abandoned for six months or more except when government action impedes access to the premises, the structure, or structure and land in combination, shall not thereafter be used except in conformity with the regulations of the district in which it is located; and
- (e) Where nonconforming use status applies to a structure and land in combination, removal or destruction of the structure shall eliminate the nonconforming status of the land.

#### 1125.12 - TERMINATION OF NONCONFORMING USES.

- (a) *Termination of Use Through Discontinuance.* When any nonconforming use is discontinued or abandoned for six months or more, any new use shall not thereafter be used except in conformity with the regulations of the district in which it is located, and the nonconforming use may not thereafter be resumed. The intent to continue a nonconforming use shall not be evidence of its continuance.
- (b) *Termination of Use by Damage or Destruction.* In the event that any nonconforming building or structure is destroyed by any means to the extent of more than 50 percent of the replacement cost of the structure, exclusive of foundation, it shall not be rebuilt, restored, or reoccupied for any use unless it conforms to all regulations of this Zoning Ordinance. When such a nonconforming structure is damaged or destroyed to the extent of 50 percent or less of the replacement cost,

exclusive of foundation, no repairs or rebuilding shall be permitted except in conformity with all applicable regulations of this Zoning Ordinance or its amendments and the following conditions:

- (1) A Zoning Certificate pertaining to such restoration shall be applied for and issued within 90 days of such destruction, and rebuilding shall be diligently pursued to completion.
- (2) Such restoration shall not cause a new nonconformity, nor shall it increase the degree of nonconformance or noncompliance existing prior to such damage or destruction.
- (3) For the purposes of this section, "replacement cost" shall be defined as the reproduction cost of the structure, exclusive of foundations, prior to the calamity depreciated in accordance with applicable Internal Revenue Guidelines for the structure.

#### 1125.13 - REPAIRS AND MAINTENANCE.

On any nonconforming structure or portion of a structure containing a nonconforming use, work may be done on ordinary repairs, or on repair or replacement of non-bearing walls, fixtures, wiring, or plumbing, provided that the cubic content existing when it became nonconforming shall not be increased. Nothing in this section shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official. Where appropriate, a building permit for such activities shall be required.

#### CHAPTER 1127 - APPEALS AND VARIANCES<sup>12</sup>

Sections:

Footnotes:

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**Charter reference**— Board of Zoning Appeals, Sec. 11.02

**State Law reference**— Appeals from zoning decisions, O.R.C. § 713.11, Ch. 2506; Council may amend zoning, O.R.C. § 713.10

#### 1127.01 - GENERAL.

Appeals and variances shall conform to the procedures and requirements of Sections 1127.01—1127.14, inclusive, of this Zoning Ordinance. As specified in Section 147.01, the Board of Zoning Appeals, has appellate jurisdiction relative to appeals and variances.

(Amendment by Ordinance 91-40)

#### 1127.02 - INTENT.

It is the intent of this Zoning Ordinance that all questions of interpretation and enforcement shall be first presented to the Zoning Administrator and that such questions shall be presented to the Board of Zoning Appeals only on appeal from a decision of the Zoning Administrator, and that recourse from the decisions of the Board of Zoning Appeals shall be to the courts as provided by law. It is further the intent of this Zoning Ordinance that the duties of the Council relating to this Zoning Ordinance shall not include

hearing and deciding questions of interpretation and enforcement that might arise. The Council shall have only the duties of considering and adopting or rejecting proposed amendments, rezonings, and/or the repeal of this Zoning Ordinance as provided by law, and of establishing a schedule of fees and charges.

#### 1127.03 - APPEALS.

- (a) Appeals to the Board of Zoning Appeals concerning interpretation or administration of this Zoning Ordinance may be taken by any person aggrieved or by any officer or bureau of the legislative authority affected by any decision of the Zoning Administrator. Such appeal shall be taken within 20 days after the decision by filing, with the Zoning Administrator, a notice of appeal specifying the grounds upon which the appeal is being taken.
- (b) The Zoning Administrator shall transmit to the Board of Zoning Appeals all the papers constituting the record upon which the action appealed from was taken.

#### 1127.04 - STAY OF PROCEEDINGS.

An appeal stays all proceedings in furtherance of the action appealed from, unless the Zoning Administrator from whom the appeal is taken certifies to the Board of Zoning Appeals, after the notice of appeal is filed with him, that by reason of facts stated in the application a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed other than by a restraining order which may be granted by the Board of Zoning Appeals, or by a Court of Record on application, on notice to the Zoning Administrator from whom the appeal is taken on due cause shown.

#### 1127.05 - VARIANCES.

- (a) The Board of Zoning Appeals may authorize upon appeal in specific cases such variance from the terms of this Zoning Ordinance as will not be contrary to the public interest where, owing to special conditions of the land and/or buildings that are unique to the property in question, and not self-created, a literal enforcement of the provisions of this Zoning Ordinance would result in deprivation of all beneficial use of the land.
- (b) No nonconforming use of neighboring lands, structures, or buildings in the same district and no permitted or nonconforming use of lands, structures, or buildings in other districts shall be considered grounds for issuance of a variance. Variances shall not be granted on the grounds of convenience or reduced or greater profit, and evidence of variances granted under similar conditions elsewhere is irrelevant.

#### 1127.06 - APPLICATION AND STANDARDS FOR VARIANCES.

All applications for a zoning variance shall be submitted on such forms as designated by the Zoning Administrator. Except as otherwise permitted in this Zoning Ordinance, no variance from the strict application of the provisions of this Zoning Ordinance shall be granted unless the Board finds that the written application for the requested variance contains all of the following:

- (a) Name, address, and phone number of applicant(s)
- (b) Legal description of the property, including seven copies of the plot plan drawn to the appropriate scale and showing the following:
  - (1) The boundaries and dimensions of the lot;
  - (2) Location of the property with regard to nearby streets and surrounding land uses and buildings on adjacent properties;
  - (3) The size, shape and location of existing and proposed structures on the site;
  - (4) The proposed use of all parts of the lot and structures, including accessways, walks, off-street parking, loading spaces, and landscaping; and
  - (5) The relationship of the requested variance to the requirements of this Zoning Ordinance.

- (c) Description or nature of the variance requested, including the specific provisions of the Zoning Ordinance upon which the variance is requested.
- (d) A fee as established by ordinance.
- (e) Narrative statements and supporting documentation establishing and substantiating that the variance conforms to each of the following standards:
  - (1) Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property;
  - (2) Whether the variance is substantial;
  - (3) Whether the character of the neighborhood would be adversely affected or whether adjoining properties would suffer an adverse impact as a result of the variance;
  - (4) Whether the variance would adversely affect the delivery of governmental services (e.g., water, sewer, garbage);
  - (5) Whether the property owner purchased the property with knowledge of the zoning restriction;
  - (6) Whether the property owner's predicament feasibly can be obviated through some method other than a variance; and
  - (7) Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance.
- (f) No single factor shall be considered a determinative factor, and the factors shall be weighed and balanced in determining whether a variance is warranted. The applicant shall bear the burden of proof that the criteria for a variance is warranted. The applicant shall bear the burden of proof that the criteria for a variance have been met and that the application of the zoning requirement to the applicant's property would be inequitable.

(g) Such other information regarding the application as may be pertinent to the request and required by the Zoning Administrator or the Board of Zoning Appeals.

Applications lacking any part of this information shall be deemed to be incomplete and shall not be acted upon until completed.

**Deleted:** (g) - A list containing the names and mailing addresses of all owners of property contiguous to, directly across the street from, and within 250 feet of the parcel at issue. ¶  
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(Ord. No. 2010-38, 9-21-2010)

1127.07 - ADDITIONAL CONDITIONS AND SAFEGUARDS.

The Board of Zoning Appeals may further prescribe any conditions and safeguards that it deems necessary to insure that the objectives of the regulations and provisions to which the variance applies will be met. Any violation of such conditions and safeguards, when they have been made a part of the terms under which the variance has been granted, shall be deemed a punishable violation under this Zoning Ordinance.

1127.08 - PUBLIC HEARING BY THE BOARD OF ZONING APPEALS.

The Board of Zoning Appeals shall hold a public hearing within 30 days after receipt of a complete application for an appeal or variance from the Zoning Administrator or from an applicant.

1127.09 - NOTICE OF PUBLIC HEARING IN NEWSPAPER.

Before conducting the public hearing required in Section 1127.08, notice of such hearing shall be given in one or more newspapers of general circulation in the Municipality at least 10 days before the date of said hearings. The notice shall set forth the time and place of the public hearing, and the nature of the proposed appeal or variance.

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(Ord. No. 2005-11, 3-15-2005)

1127.10 - NOTICE TO PARTIES IN INTEREST.

Before conducting the public hearing required in Section 1127.08, written notice of such hearing shall be mailed by the Clerk of the Board of Zoning Appeals by first class mail, at least 10 days prior to the hearing to all property owners contiguous to, directly across the street from and within 250 feet of the parcel at issue. This notice shall contain the same information as required of notices published in newspapers as specified in Section 1127.09.

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(Ord. No. 2005-11, 3-15-2005)

1127.11 - PROCEDURES FOR HEARING BY THE BOARD OF ZONING APPEALS.

Whenever the Board of Zoning Appeals holds a hearing, a Court Reporter's official record of the hearing shall be made, the session shall be recorded electronically, all witnesses shall be sworn in, and opportunities for cross-examination and rebuttal of witnesses shall be granted. Materials presented in evidence shall be duly recorded, item numbered as exhibits, and shall have "Exhibit No. \_\_\_\_\_ " indelibly recorded on each item.

1127.12 - RECORDS OF HEARINGS BY BOARD OF ZONING APPEALS.

- (a) If an appellant requests a record of a hearing, the Court Reporter's records of each hearing held by the Board of Zoning Appeals shall be transcribed into typed pages in three copies: one copy shall be provided to the appellant; one copy shall be provided to the Zoning Administrator, and one copy shall remain on file with the Board of Zoning Appeals.
- (b) The cost of the Court Reporter's services in preparing the record, transcribing and typing the record, and preparing the requisite copies shall be invoiced to and paid by the appellant through a billing transmitted with the copy of the official record of the hearing.

1127.13 - ACTION BY THE BOARD OF ZONING APPEALS.

Within 30 days after the public hearing required in Section 1127.08, the Board of Zoning Appeals shall either approve, approve with supplementary conditions, or disapprove the request for appeal or variance. The Chairperson of the Board of Zoning Appeals shall further make a written finding, approved as to form by the Director of Law, and processed and filed by the Clerk to the Board of Zoning Appeals, stating the reasons for disapproval, or if approved, that reasons set forth in the application justify the granting of the variance, that each of the standards set for the granting of the variance in this Ordinance have been met, and that the variance granted is the minimum variance that will make possible a reasonable use of the land, building, or structure.

1127.14 - FEE TO ACCOMPANY APPLICATION FOR A VARIANCE AND FOR APPEALS.

The Council shall establish the fee to be deposited with each application for a Variance and for Appeals. Such fees shall be required generally for each application to defray the costs of advertising, mailing, and other expenses. The costs associated with the Records of Hearings as stated in Section 1127.12 shall be in addition to these fees.

(Amendment by Ordinance 91-40)

CHAPTER 1129 - CONDITIONAL USE PERMITS; SIMILAR AND ACCESSORY USES<sup>13</sup>

Sections:



Footnotes:

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**Cross reference**— Amendment, Ch. 1131; Fees, Ch. 1133

1129.01 - REGULATION OF CONDITIONAL USES.

The provisions of this chapter apply to the location and maintenance of any and all conditional uses.

1129.02 - CONTENTS OF CONDITIONAL USE PERMIT APPLICATION.

Any owner, or agent thereof, of property for which a conditional use is proposed shall make an application for a Conditional Use Permit by filing it with the Zoning Administrator, who shall within seven days transmit complete applications to the Board of Zoning Appeals. All applications for a conditional use permit shall be submitted on such forms as designated by the Zoning Administrator. No application shall be considered as complete unless it contains, at a minimum, the following information:

- (a) Name, address, and phone number of applicant(s);
- (b) Legal description of the property;
- (c) Zoning district in which the site is located;
- (d) Description of existing use;
- (e) Description of proposed conditional use;
- (f) Seven copies of the plot plan, drawn at an appropriate scale illustrating and denoting the boundaries and dimensions of the lot, the relationship to nearby streets, a plan of the proposed site development for the conditional use showing the location of all buildings, loading areas, streets and traffic accesses, open spaces, refuse and service areas, utilities, signs, yards, landscaping features, walks, off-street parking, the use of land and the location of buildings on adjacent property, and other such information as the Board may require;
- (g) A narrative statement discussing the compatibility of the proposed use with the existing uses of adjacent properties and with the comprehensive plan, to include an evaluation of the effects on adjoining properties of such elements as traffic circulation, noise, glare, odor, fumes, and vibration;
- ~~(h)~~ A fee as established by Ordinance; and
- ~~(i)~~ A narrative addressing each of the criteria contained in Section 1129.03.

(Amendment by Ordinance 91-40)

1129.03 - GENERAL STANDARDS FOR ALL CONDITIONAL USES.

The Board of Zoning Appeals, shall review the particular facts and circumstances of each proposed conditional use and shall approve the application for a Conditional Use Permit only when it has determined that there has been adequate evidence presented to show that such use at the proposed location:

- (a) Is in fact a conditional use as listed in the Schedule of District Regulations in this Zoning Ordinance for the zoning district in which the site is located;

**Deleted:** (h) . A list containing the names and mailing addresses of all owners of property contiguous to, directly across the street from and within 250 feet of the property in question; ¶

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- (b) Will be in accord with the general objectives, or with any specific objective, of the comprehensive plan and the Zoning Ordinance;
- (c) Will be designed, constructed, operated, and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity, and that such use will not change the essential character of the same area;
- (d) Will not be hazardous or disturbing to existing or future neighboring uses;
- (e) Will be served adequately by essential public facilities and services, such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewer, and schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately for such services;
- (f) Will not create excessive additional requirements at public cost for public facilities and services, and will not be detrimental to the economic welfare of the community;
- (g) Will not involve uses, activities, processes, materials, equipment and/or conditions of operation that will be detrimental to any persons, property, or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare, or odors;
- (h) Will have vehicular approaches to the property which shall be so designed as not to create an interference with traffic on surrounding public thoroughfares; and
- (i) Will not result in the destruction, loss, or damage of a natural, scenic, or historic feature of major importance.

1129.04 - SPECIAL CONDITIONAL USE REQUIREMENTS.

- (a) Child day-care and/or Kindergarten facilities must be architecturally compatible with the neighborhood and provisions must be made for vehicular access, parking, and fences to control accessibility of children to adjoining hazardous conditions, such as roads, streets, lakes, ponds, or adjacent yards. Buildings housing such child day-care and/or kindergarten facilities must be no less than 50 feet from adjoining property lines.
- (b) Playgrounds, playfields, and picnic areas shall be provided with adequate off-street parking areas, water supply, sanitation facilities, fencing to control accessibility of users to hazardous conditions, and any other improvement necessary to protect the users from harm or danger.
- (c) Cemeteries shall occupy a tract of not less than 100 acres. No building shall be placed closer to the right-of-way line of any road than the setback prescribed in this Zoning Ordinance. No interment shall be made nearer than 50 feet to the right-of-way of the approved public road adjacent thereto. No burial shall be permitted nearer than 25 feet to any other property line unless a mature natural screen has been established along said property line at least six feet in height, in which case burials may be permitted not closer than ten feet to said property line. No mausoleum, crematory, office facility, maintenance building or storage area shall be constructed, except as approved by the Board of Appeals. Parking areas, public accesses, screening and other improvements shall be furnished as required. Existing cemeteries may expand and use existing cemetery land that they own as part of the 100 acre requirement, even if said land does not directly adjoin the existing site.
- (d) Kennels shall be situated that no building, or outdoor run dedicated to such use shall be located closer than 200 feet to any residence, or lot line in a residential district or residential area of a planned district.

1129.05 - PUBLIC HEARING BY THE BOARD OF ZONING APPEALS ON A REQUEST FOR A CONDITIONAL USE PERMIT.

The Board of Zoning Appeals shall hold a public hearing within 30 days after receipt of a complete application for a Conditional Use Permit from the Zoning Administrator.

1129.06 - NOTICE OF PUBLIC HEARING IN NEWSPAPER.

Before conducting the public hearing required in Section 1129.05, notice of such hearing shall be given in one or more newspapers of general circulation in the municipality at least, 10 days before the date of said hearings. The notice shall set forth the time and place of the public hearing, and shall provide a summary explanation of the conditional use proposed and a description of the site of the proposed use.

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(Ord. No. 2005-11, 3-15-2005)

#### 1129.07 - NOTICE TO PARTIES OF INTEREST.

Prior to conducting the public hearing required in Section 1129.05, written notice of such hearings shall be mailed by the Clerk of the Board of Zoning Appeals by first class mail, at least 10 days prior to the hearing to all parties in interest, to include all property owners listed in the application. The notice shall contain the same information as required in Section 1129.06 for notices published in newspapers.

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(Ord. No. 2005-11, 3-15-2005)

#### 1129.08 - ACTION BY THE BOARD OF ZONING APPEALS ON A REQUEST FOR A CONDITIONAL USE PERMIT.

Within 30 days after the date of the public hearing required in Section 1129.05, the Board shall take one of the following actions:

- (a) Approve issuance of the Conditional Use Permit by making an affirmative finding in writing that the proposed conditional use is to be located in a district wherein such use may be conditionally permitted, that all conditions for approval of such use in such district have been met, and that the use will neither result in significant negative impacts upon nor conflict with surrounding uses. Such written findings may also prescribe supplementary conditions and safeguards as specified in Section 1129.09 Upon making an affirmative finding, the Board shall direct the Zoning Administrator to issue a Conditional Use Permit for such use which shall list all conditions and safeguards specified by the Board for approval.
- (b) Make a written finding that the application is deficient in information, or is in need of modification, and is being returned to the applicant. Such findings shall specify the information and/or modifications which are deemed necessary.
- (c) Make a written finding that the application is denied, such finding specifying the reason(s) for disapproval.

Findings shall be drafted by the Chairman of the Board of Zoning Appeals, approved as to form by the Director of Law and processed and filed by the Clerk to the Board of Zoning Appeals. If an application is disapproved by the Board, the applicant may seek relief through the Court of Record.

#### 1129.09 - PROCEDURES FOR HEARING AND RECORDS OF HEARING RELATIVE TO A REQUEST FOR A CONDITIONAL USE PERMIT.

The procedures to be followed by the Board of Zoning Appeals in hearing a request for a Conditional Use Permit, the records to be made, and accommodation of the court reporter's costs shall be identical to those required in Sections 1127.11 and 1127.12 for hearings with regard to variances and appeals.

#### 1129.10 - SUPPLEMENTARY CONDITIONS AND SAFEGUARDS.

In granting approval for any conditional use, the Board of Zoning Appeals may prescribe appropriate conditions and safeguards in conformance with this Zoning Ordinance. Any violation of such conditions or safeguards, when made a part of the terms under which the Conditional Use Permit is granted, shall be deemed a punishable violation of this Zoning Ordinance.

1129.11 - EXPIRATION OF CONDITIONAL USE PERMIT.

A Conditional Use Permit shall automatically expire if such conditionally permitted use has not been instituted or utilized within one (1) year of the date on which the permit is issued, or if for any reason whatsoever such use shall cease for six (6) months or more.

1129.12 - REVOCATION OF CONDITIONAL USE PERMIT.

The Board of Zoning Appeals may revoke a Conditional Use Permit for failure to comply with the conditions of the permit. Upon a finding of failure to comply by the Zoning Administrator, and communication of this failure to the Board of Zoning Appeals, the Board shall notify the holder of the permit either by certified mail or by direct service by the Zoning Administrator of its intent to revoke the permit and the holder's right to a hearing before the Board within 30 days of receipt of notice if that party requests such a hearing in a certified letter received by the Board within 15 days of the holder's receipt of the Board's notice. If the holder requests a hearing, the Board shall set a time and place for the hearing and notify the holder. At the hearing, the holder may appear in person, be represented by an attorney or other representative, or he may present his position in writing. The procedures and records of such a hearing shall meet all of the requirements specified for such hearings for variance or appeal, as specified in Sections 1127.11 and 1127.12. If no hearing is requested, the Board may revoke the permit without a hearing. The authority to revoke a permit is in addition to any other means of zoning enforcement provided in this Zoning Ordinance.

1129.13 - FEE TO ACCOMPANY APPLICATION FOR A CONDITIONAL USE PERMIT.

The Council shall establish the fee to be deposited with each application for a Conditional Use Permit. Such fees shall be required generally for each application to defray the costs of advertising, mailing, salaries and other administrative expenses.

1129.14 - PROCEDURE AND REQUIREMENTS TO DETERMINE THAT A USE IS SUBSTANTIALLY SIMILAR.

- (a) Where a specific use is proposed that is not listed or provided for in this Zoning Ordinance, the Board of Zoning Appeals may make a determination, upon appeal from the determination of the Zoning Administrator, that the proposed use is substantially similar to a specific use that is listed or provided for in this Zoning Ordinance. If the Board finds that a use is substantially similar to a specific use listed in this Zoning Ordinance, the substantially similar use is deemed to be a substantially similar permitted use in those districts where the specific use is a permitted use, and a substantially similar conditional use in those districts where the specific use is a conditionally permitted use.
- (b) In formulating a determination that a proposed use is a substantially similar use, the Board shall follow the procedures relating to appeals and variances as specified in Chapter 1127.

(Amendment by Ordinance 91-40)

1129.15 - REMEDY BY APPLICATION FOR AMENDMENT.

If the Board determines that a proposed use is not substantially similar, remedy may be sought by the appellant through the submission of an application for amendment as prescribed in Chapter 1131.

1129.16 - STANDARDS FOR CONSIDERATION OF SUBSTANTIALLY SIMILAR USE.

The following standards shall be considered by the Board of Zoning Appeals when making a determination that a use is substantially similar to a permitted or a conditional use within a specific district:

- (a) The compatibility of the proposed use with the general use classification system as specified in this Zoning Ordinance;

- (b) The nature, predominant characteristics, and intensity of the proposed use in relation to those uses specified by this Zoning Ordinance as being permitted, or in the case of conditional use, conditionally permitted, in that district; and
- (c) The size, dimensional requirements, parking requirements, traffic generation potential, and other regulatory considerations normally associated with uses as specified in this Zoning Ordinance.

1129.17 - EFFECT OF DETERMINATION THAT A USE IS SUBSTANTIALLY SIMILAR.

Should a use be determined to be substantially similar to a specific permitted or conditionally permitted use provided for in this Zoning Ordinance, it shall then be permitted in the same manner and under the same conditions and procedures as the use is permitted to which it has been found to be substantially similar.

1129.18 - RECORD OF SUBSTANTIALLY SIMILAR USES.

The Zoning Administrator shall maintain as a public record a listing of all uses which have been determined to be substantially similar. For each such use the record shall include the use as listed in the Ordinance, the use unlisted in the Ordinance about which the determination of substantial similarity was made, and the dates of any actions thereupon by the Board of Zoning Appeals or the Council. This record shall also contain the same information for all uses which have been determined not to be substantially similar. The Zoning Administrator shall consult this record in the process of issuing future permits.

1129.19 - REGULATION OF ACCESSORY USES.

The provisions of this section shall apply to the location and maintenance of accessory uses as herein defined.

- (a) *Purpose.* It is the purpose of this Section to regulate accessory uses in order to promote the public health, safety, and welfare. It is the intent of this section to permit such uses to be established and maintained in a manner which makes them compatible with principal uses and harmonious with uses upon adjacent properties.
- (b) *Definition.* "Accessory Use" means a use, object, or structure constructed or installed on, above, or below the surface of a parcel, which is located on the same lot as a principal use, object, or structure, and which is subordinate to or serves the principal use, object, or structure, is subordinate in area to the principal use, object, or structure, and is customarily associated with and incidental to the principal use, object, or structure. Among other things, "Accessory Use" includes anything of a subordinate nature attached to or detached from a principal structure or use, such as fences, walls, sheds, garages, parking places, decks, and pools. Except as otherwise regulated or prohibited in this Zoning Ordinance, an accessory use shall be a permitted use.
- (c) *General Requirements.* Except as otherwise regulated or prohibited in this Zoning Ordinance, an accessory use or structure shall be permitted in association with a principal use or structure provided that:
  - (1) It shall be 35 percent or less of the gross floor area of the principal use or structure, except where additional space is needed to comply with off-street parking requirements.
  - (2) It shall not contain or be used as a dwelling unit.
  - (3) It shall not exceed 18 feet in height.
  - (4) It shall meet all yard requirements of the principal use, except fences.
- (d) *Dwellings as Accessory Uses.* Dwellings may be accessory uses in residential districts if located inside the principal home or if detached as a garage apartment, only if used as a residence by relatives or household servants and no rent is charged. Mobile home trailers shall not be permitted as accessory uses in any district.

- (e) *Accessory Elderly Dwelling Unit.* In all districts in which residences are permitted uses, an owner-occupied, single-family dwelling unit may be converted to allow the incorporation of one additional dwelling unit for the exclusive occupancy of an elderly household, a member of which shall be an elderly person related to the owner of the single-family dwelling unit. Such accessory elderly dwelling unit shall be wholly contained within the existing principal building or shall be attached to it by a common wall, floor, or ceiling. The structure shall have at least 2,000 square feet, exclusive of porches, basements or garages, and each of the two dwelling units shall have no less than 1,000 square feet. The application for zoning certificate for such conversion shall be accompanied by an affidavit attesting to the owner's present occupancy of the dwelling unit and to the age and relationship of the elderly person.

(Amendment by Ordinance 91-40)

#### 1129.20 - RETAIL SALES AND SERVICES AS ACCESSORY USES.

Retail sales and services are permitted as accessory uses when clearly incidental to the principal use. With the exception of restaurants in conjunction with a motel, such uses shall be conducted wholly within the principal building, and without exterior advertising or display. These activities shall be conducted solely for the convenience of the employees, patients, patrons, students, or visitors and not for the general retail public. In hospitals and clinics these accessory uses may include drug stores, florists, gift and book shops, and cafeterias. In institutional settings, office buildings, hotels, country club houses, and airports, such activities may include gift and book shops, restaurants, cafeterias and coffee shops, lounges, pro shops, and beauty and barber shops.

#### CHAPTER 1131 - AMENDMENT<sup>[14]</sup>

Sections:

Footnotes:

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**State Law reference**— Council may amend districting or zoning, O.R.C. § 713.10; Zoning regulations notice and hearing, O.R.C. § 713.12

#### 1131.01 - PROCEDURE FOR AMENDMENT OR DISTRICT CHANGES.

The Zoning Ordinance may be amended utilizing the procedures specified in this chapter.

#### 1131.02 - GENERAL.

Whenever the public necessity, convenience, general welfare, or good zoning practices require, the Council may, by ordinance, after receipt of recommendation thereon from the Planning and Zoning Commission and subject to procedures and constraints provided by law and in this Ordinance, amend, supplement, change or repeal the regulations, restrictions, and boundaries or classification of property.

#### 1131.03 - INITIATION OF ZONING AMENDMENTS.

Amendments to this Zoning Ordinance may be initiated in one of the following ways:

- (a) By the adoption of a motion by the Planning and Zoning Commission;

- (b) By the adoption of a resolution by the Council;
- (c) By the filing of an application by at least one owner or lessee of property within the area proposed to be changed or affected by said amendment.

1131.04 - CONTENTS OF APPLICATION FOR ZONING MAP AMENDMENT.

An application for amendment to the Official Zoning Map adopted as a part of this Zoning Ordinance by Chapter 1141, undertaken under the terms of Section 1131.03(c), must be complete for consideration. All applications for zoning amendments shall be submitted on such forms as designated by the Zoning Administrator. Applications lacking any part of the information listed below shall be deemed to be incomplete and shall not be acted on until completed. Applications must contain at least the following information:

- (a) The name, address, and phone number of the applicant and, in the case of a lessee, of the property owner;
- (b) Legal description of all of the property affected by the proposed amendment;
- (c) The proposed amending ordinance, approved as to form by the Director of Law;
- (d) A statement of the reason(s) for the proposed amendment in terms of serving the public health, safety, convenience, and/or welfare, and in terms of any changed or changing conditions within the area;
- (e) The present use;
- (f) The present zoning district;
- (g) The proposed use;
- (h) The proposed zoning district;
- (i) Five copies of a vicinity map drawn to scale illustrating and denoting:
  - (1) Property lines, ownerships, and property dimensions;
  - (2) Streets, street names, alleys and thoroughfares;
  - (3) Existing zoning district boundaries and designations;
  - (4) Proposed changes to zoning district boundaries and designations;
  - (5) Any other information the Zoning Administrator may require, which may include, but is not limited to:
    - A. Streets and traffic accesses;
    - B. Location and extent of all existing and proposed building and structures;
    - C. Yard dimensions;
    - D. Utilities;
    - E. Landscape features and plans, including the location and trunk diameter of existing trees;
    - F. Site drainage patterns and facilities;
    - G. Drawings and dimensions of signs;
    - H. Refuse and service areas and facilities;
    - I. Open spaces;
    - J. Loading areas;
    - K. Walks and pathways;

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- L. Off-street parking spaces, aisles and accesses;
- M. Uses of land;
- N. Location and extent of structures and land uses on surrounding property; and
- O. Written evidence of compliance with EPA and/or Health Department sanitary sewer requirements.

~~(j)~~ A statement on the ways in which the proposed amendment relates to and is consistent with the Comprehensive Plan; and

~~(k)~~ A fee as established by the Council.

~~(l)~~ Any application for zoning map amendment to a Planned District shall be accompanied by a Development Plan as otherwise described by this Zoning Code.

**Deleted:** (j) - A list of names and addresses of all property owners within the proposed rezoned area, all owners of property located contiguous to, directly across the street from and within 250 feet of the proposed rezoned area. ¶

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(Amendment by Ordinance 91-40; Ord. No. 98-42, 10-6-1998)

1131.05 - CONTENTS OF APPLICATION FOR ZONING TEXT AMENDMENT.

(a) All applications for zoning amendments shall be submitted on such forms as designated by the Zoning Administrator. Applications for amendments proposing to change, supplement, amend, or repeal any text portion of this Zoning Ordinance must contain at least the following information:

- (1) The name, address, and phone number of the applicant and, of the land owner;
- (2) The proposed amending ordinance, approved as to form by the Director of Law;
- (3) The wording of the current ordinance to be amended;
- (4) A statement of the reason(s) for the proposed amendment in terms of serving the public health, safety, convenience, and/or welfare, and any changed or changing conditions within the area;
- (5) A statement explaining the ways in which the proposed amendment relates to and is consistent with the Municipal Comprehensive Plan; and
- (6) A fee as established by the Council.

(b) Applications lacking any part of this information shall be deemed to be incomplete and shall not be acted upon until completed.

**Commented [DB6]:** Please change all respective section numbers

**Deleted:** 1131.07 - SUBMISSION TO THE DIRECTOR OF TRANSPORTATION.

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 Before any zoning amendment is approved affecting any land within 300 feet of the centerline of a proposed new State highway or a State highway for which changes are proposed as described in the certification to local officials by the Director of Transportation or within a radius of 500 feet from the point of intersection of said centerline with any public road or highway, the Zoning Administrator shall give notice, by registered or certified mail, to the Director of Transportation. The Planning and Zoning Commission may proceed as required by law; however, the Council shall not approve the amendment for 30 days from the date the notice is received by the Director of Transportation. If the Director of Transportation gives notice that he shall proceed to acquire the land needed, then the Council shall refuse to approve the rezoning. If the Director of Transportation notifies the Municipality that acquisition at this time is not in the public interest, or upon expiration of the 30 day period or any extension thereof agreed upon by the Director of Transportation and the property owner, the Council shall proceed as required by law. ¶

1131.06 - TRANSMITTAL TO THE PLANNING AND ZONING COMMISSION.

Immediately after the adoption of a resolution by the Council or the filing of a completed application for amendment of the Zoning Ordinance by at least one owner or lessee of property, said resolution or application shall be transmitted to the Planning and Zoning Commission.

**1131.08** - PUBLIC HEARING BY PLANNING AND ZONING COMMISSION.

Upon adoption of a motion by the Planning and Zoning Commission to recommend amendment of the Zoning Ordinance to Council, or upon receipt of notice of a resolution adopted by Council recommending amendment of the Zoning Ordinance, or upon transmittal of a completed application for amendment by the Zoning Administrator, the Planning and Zoning Commission shall schedule a public hearing thereon. Said hearing shall be no more than 30 days from the date of such motion, notice of a resolution, or transmittal of such application.

(Amendment by Ordinance 91-40)

1131.09 - PUBLIC NOTICE OF PROPOSED AMENDMENT BY PLANNING AND ZONING COMMISSION.



(a) *Notice of Public Hearing in Newspaper.* Notice of the public hearing required in Section 1131.08, above, shall be in one or more newspapers of general circulation in the Municipality. Said notice shall be published at least 10 days before the date of the required hearing. The published notice shall set forth the time and place of the public hearing, a summary of the proposed amendments and a statement that after the conclusion of such hearing the matter will be referred to the Council for further determination.

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(b) *Notice to Property Owners.* If the proposed amendment intends to rezone or redistrict 10 or less parcels of land, as listed on the tax duplicate, written notice of the hearing shall be mailed by the Clerk, by first class mail, at least 10 days before the day of the public hearing to all owners of property within and contiguous to, directly across the street from and within 250 feet of the area to be rezoned or redistricted. Failure to deliver the notifications as provided in the Section shall not invalidate any such amendment. The notice shall contain the same information as required of notices published in newspapers.

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(Ord. No. 2005-11, 3-15-2005)

1131.10 - RECOMMENDATION BY THE PLANNING AND ZONING COMMISSION.

Within 60 days from receipt of the notice of a resolution by Council, transmittal of an application for a zoning amendment, or adoption of an amending action by the Planning and Zoning Commission, and after a public hearing on the issue, the Planning and Zoning Commission shall transmit its recommendation to the Council. The Planning and Zoning Commission may recommend that the amendment be granted as requested, or it may recommend a modification of the amendment as requested, or it may recommend that the amendment be denied. The written decision of the Planning and Zoning Commission shall indicate the specific reason(s) upon which the recommendation is based, and shall include the basis for their determination that the proposed amendment is or is not consistent with the Comprehensive Plan. To be approved by the Planning and Zoning Commission, an amendment must be consistent with the Comprehensive Plan.

1131.11 - PUBLIC HEARING BY COUNCIL.

Upon receipt of the recommendation from the Planning and Zoning Commission, Council shall schedule a public hearing therein. Said hearing shall be no more than 40 days from the receipt of the recommendation from the Planning and Zoning Commission.

(a) *Notice of Public Hearing in Newspaper.* Notice of the public hearing required in Section 1131.11 shall be given by at least one publication in one or more newspapers of general circulation in the Municipality. Said notice shall be published at least ten days before the date of the required hearing. The published notice shall set forth the time and place of the public hearing and a summary of the proposed amendment.

(b) *Notice to Property Owners.* If the proposed amendment intends to rezone or redistrict 10 or less parcels of land, as listed on the tax duplicate, written notice of the hearing shall be mailed by the Clerk, by first class mail, at least 10 days before the day of the public hearing to all owners of property contiguous to, directly across the street from and within 250 feet of the area to be rezoned or redistricted. Failure to deliver the notifications as provided in this section shall not invalidate any such amendment. The notice shall contain the same information as required of notices published in newspapers.

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(Ord. No. 2005-11, 3-15-2005)

1131.12 - ACTION BY COUNCIL.

Within 30 days after the public hearing required in Section 1131.11 or such longer period as is determined to be appropriate by Council, Council shall either adopt or deny the recommendation of the Planning and Zoning Commission or adopt some modification thereof. In the event Council makes a substantial change to the recommendation of the Planning and Zoning Commission, it must do so by a vote of not less than three-fourths (six) of all Members of Council or by approval of a majority of all members of Council (four) and subsequent approval by the Planning and Zoning Commission. If approved by a majority of Council with a substantial change but by less than three-fourths, such ordinance with proposed substantial change stated separately shall be submitted to the Planning and Zoning Commission at the next regularly scheduled meeting. If approved by the Commission, then such ordinance with the substantial change shall take effect. If not approved by the Commission, then at the next scheduled Council meeting, Council shall adopt or deny the recommendation of the Planning and Zoning Commission without the substantial changes or adopt the Commission's recommendations with substantial changes with not less than three-fourths (six) of all members of Council. No such Ordinance shall be passed unless it has been fully and distinctly read on two different days and no Ordinance in accordance with the recommendation of the Planning and Zoning Commission shall be deemed to pass or take effect without the concurrence of at least a majority of the full membership of Council. The Council shall be deemed to have rejected the recommendation of the Planning and Zoning Commission when less than a majority of its members (four) vote for its adoption.

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(Ord. No. 98-42, 10-6-1998)

1131.13 - EFFECTIVE DATE AND REFERENDUM.

- (a) Such amendment adopted by Council shall become effective 30 days after the date of such adoption unless within 30 days after the passage of the ordinance there is presented to the Clerk of Council a petition, signed by a number of qualified voters residing in the Municipality equal to no less than 10 percent of the total vote cast in such area at the last preceding general municipal election, requesting the Council to submit the zoning amendment to the electors for approval or rejection at the next general election.
- (b) No amendment for which such referendum vote has been requested shall be put into effect unless a majority of the vote cast on the issue is in favor of the amendment. Upon certification by the Board of Elections that the amendment has been approved by the voters, it shall take immediate effect.

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1131.14 - FEE TO ACCOMPANY APPLICATION FOR A ZONING AMENDMENT.

The Council shall establish the fee to be deposited by an owner or lessee of property filing an application to amend the Zoning Ordinance. Such fees shall be required generally for each application to defray the total costs of advertising, personnel, mailing, and administrative expenses.

CHAPTER 1133 - ADMINISTRATION; FEES<sup>(15)</sup>

Sections:

Footnotes:

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**Charter reference**— Planning and Zoning Commission, Sec. 11.01

**Cross reference**— Enforcement and penalty, Ch. 1135

**State Law reference**— Violation of zoning ordinances, O.R.C. § 713.13

1133.01 - PURPOSE.

This chapter sets forth the powers and duties of the Planning and Zoning Commission, the Board of Zoning Appeals, the Council, and the Zoning Administrator with respect to the administration of the provisions of this Zoning Ordinance.

1133.02 - GENERAL PROVISIONS.

The formulation, administration and enforcement of this Zoning Ordinance is hereby vested in the following offices and bodies within the Municipality of Powell:

- (a) Zoning Administrator.
- (b) Planning and Zoning Commission.
- (c) Board of Zoning Appeals.
- (d) Council.
- (e) Director of Law.

1133.03 - ZONING ADMINISTRATOR.

A Zoning Administrator appointed by the Mayor shall administer and enforce this Zoning Ordinance.

1133.04 - ZONING ADMINISTRATOR: BONDING.

The Zoning Administrator, before entering upon the duties of the office, shall give bond signed by a bonding or surety company authorized to do business in this State, or, at his option, signed by two or more free holders having real estate in the value of double the amount of the bond, in the amount specified by the Council. Such surety company or real estate bond shall be approved by the municipality Council, and the bond shall be conditioned upon the faithful performance of the Zoning Administrator's official duties.

1133.05 - RESPONSIBILITIES OF ZONING ADMINISTRATOR.

For the purpose of this Zoning Ordinance, the Zoning Administrator shall have the following duties:

- (a) Enforce the provisions of this Zoning Ordinance, and interpret the meaning and application of its provisions.
- (b) Respond to questions concerning applications for amendments to the Zoning Ordinance text and the Official Zoning District Map.
- (c) Issue zoning certificates and certificates of zoning compliance as provided by this Zoning Ordinance, and keep a record of same with a notation of any special conditions involved.
- (d) Act on all applications upon which he is authorized to act by the provisions of this Zoning Ordinance within the specified time or notify the applicant in writing of his refusal or disapproval of such application and the reasons therefore. Failure to notify the applicant in case of such refusal or disapproval within the specified time shall entitle the applicant to submit his request to the Board of Zoning Appeals.
- (e) Conduct inspections of buildings and uses of land to determine compliance with this Zoning Ordinance, and, in the case of any violation, to notify in writing the person(s) responsible, specifying the nature of the violation and ordering corrective action.
- (f) Maintain in current status the Official Zoning District Map, a copy of which shall be kept on permanent display in the Municipality offices or on the city's website.

- (g) Maintain permanent and current records required by this Zoning Ordinance, including but not limited to zoning certificates, certificates of zoning compliance, inspection documents, approved planned district development plans, and records of all variances, amendments, and special uses.
- (h) Make such records available for the use of the Council, the Planning and Zoning Commission, the Board of Zoning Appeals, and the public.
- (i) Review and approve site plans pursuant to this Zoning Ordinance.
- (j) Determine the existence of any violations of this Zoning Ordinance, and cause such notifications, revocation notices, stop orders, or tickets to be issued, or initiate such other administrative or legal action as needed, to address such violations.
- (k) Prepare and submit an annual report to the Planning and Zoning Commission on the administration of this Ordinance, setting forth such information as may be of interest and value in advancing and furthering the purpose of this Zoning Ordinance. Such report shall include recommendations concerning the schedule of fees.

1133.06 - PLANNING AND ZONING COMMISSION.

The Planning and Zoning Commission shall be created in accordance with the City of Powell Charter Section 11.01.

(Ord. No. 2005-12, 3-15-2005)

1133.07 - MEETINGS AND PROCEEDINGS OF THE PLANNING AND ZONING COMMISSION.

The Commission shall meet at least once a month unless there is no submitted applications for that month. All meetings shall be held at the municipality offices or other public building within the municipality. All meetings shall be open to the public. The Commission shall keep minutes of its proceedings showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations, the facts of each case, other official actions and other minutes of the meeting, all of which shall be a public record and shall be immediately filed with the Clerk of the Commission, a copy of which shall be sent to the Clerk of the Council. The presence of four members shall constitute a quorum. The concurring vote of four members of said Commission shall be necessary for the approval of a Commission action or to reverse a previous decision or determination of the Planning and Zoning Commission.

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1133.08 - DUTIES OF THE PLANNING AND ZONING COMMISSION.

For the purpose of this Zoning Ordinance the Commission shall have the following duties:

- (a) To prepare, adopt, and periodically update a comprehensive plan for community development (a policies plan for the development of the municipality), and to recommend that plan to Council for confirming adoption by Ordinance.
- (b) Recommend the proposed Zoning Ordinance, including text and Official Zoning District Map to the Council for formal adoption.
- (c) Initiate advisable Official Zoning District Map changes, or changes in the text of the Zoning Ordinance where same are consistent with the comprehensive plan adopted by the Commission and will promote the best interests of the public through recommendation to the Council.
- (d) Review all proposed amendments to the text of this Zoning Ordinance and the Official Zoning District Map and make recommendations to the Council as specified in Chapter 1131.
- (e) Review all Planned District development proposals and applications and make recommendations to the Council as provided in this Zoning Ordinance.

(f) Review all other development proposals as necessary and applications and make recommendations to the Council as provided in this Zoning Ordinance.

(g) Review all special uses as identified in the respective zoning districts according to provisions and criteria stated in this Zoning Ordinance.

(h) Carry on a continuous review of the effectiveness and appropriateness of this Zoning Ordinance and recommend such changes or amendments as it feels would be appropriate.

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1133.09 - CLERK TO THE **PLANNING** AND ZONING COMMISSION.

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To assist in the administration of this Zoning Ordinance, a Clerk shall be appointed by the Board upon the approval by the Council to maintain records, confirm information in applications, process all notices, and perform such other duties relating to this Zoning Ordinance as the Board may from time to time direct. Salary and/or other compensation shall be established by the Council.

1133.10 - BOARD OF ZONING APPEALS.

The Board of Zoning Appeals shall be created in accordance with the City of Powell Charter Section 11.02.

(Ord. No. 2005-12, 3-15-2005)

1133.11 - PROCEEDINGS OF THE BOARD OF ZONING APPEALS.

The Board shall adopt rules necessary to the conduct of its affairs in keeping with the provisions of this Zoning Ordinance. Meetings shall be held at the call of the chairman and at such times as the Board may determine. The chairman, or in his absence the vice chairman, may administer oaths and compel the attendance of witnesses. All meetings shall be open to the public. The Board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be a public record and be immediately filed with the Clerk of the Board, a copy of which will be sent to the Clerk of the Council. Two members of the Board shall constitute a quorum. The Board shall act by resolution, and the concurring vote of two members of the Board shall be necessary to reverse an order or determination of the Zoning Administrator, to decide in favor of an applicant in any matter over which the Board has original jurisdiction under this Zoning Ordinance, or to grant any variance from the requirements stipulated in this Zoning Ordinance.

1133.12 - DUTIES OF THE BOARD OF ZONING APPEALS.

For the purpose of this Zoning Ordinance the Board has the following specific responsibilities:

- (a) Hear and decide appeals where it is alleged there is an error in any order, requirement, decision, interpretation or determination made by the Zoning Administrator.
- (b) Authorize such variances from the terms of this Zoning Ordinance as will not be contrary to the public interest, where, owing to the special conditions, a literal enforcement of this Zoning Ordinance will result in unnecessary hardship, and so that the spirit of this Zoning Ordinance shall be observed and substantial justice done. Such variances shall only be awarded in strict compliance with the conditions of Chapter 1127.
- (c) Grant conditional use zoning permits as specified in this Zoning Ordinance.

1133.13 - CLERK TO THE BOARD OF ZONING APPEALS.

To assist in the administration of this Zoning Ordinance, a Clerk shall be appointed by the Board upon the approval by the Council to maintain Board of Zoning Appeals records, confirm information in applications, process all notices required under this Zoning Ordinance, record the minutes of the board,

and perform such other duties relating to this Zoning Ordinance as the Board may from time to time direct. Salary and/or other compensation shall be established by the Council.

#### 1133.14 - APPEALS.

- (a) It is the intent of this Zoning Ordinance that all questions of interpretation and enforcement shall be first presented to the Zoning Administrator, and that such questions shall be presented to the Board only on appeal from the decision of the Zoning Administrator, and that recourse from the decisions of the Board shall be to the courts as provided by law. It is further the intent of this Zoning Ordinance that the duties of the Council in connection with this Zoning Ordinance shall not include hearing and deciding questions of interpretation and enforcement that may arise.
- (b) The procedure for deciding such questions shall be as stated in this section and this Zoning Ordinance. Under this Zoning Ordinance the Council shall only have the duties of considering and adopting or rejecting proposed amendments or the repeal of this Zoning Ordinance as provided by law, and of establishing a schedule of fees and charges as stated in Section 1133.16 of this Zoning Ordinance. Nothing in this Zoning Ordinance shall be interpreted to prevent any official of the Municipality from appealing a decision of the Board to the courts as provided in Chapters 2505 and 2506 of the [Ohio Revised Code](#). Any such appeal shall be made within 10 days of the Board's written decision.

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#### 1133.15 - COUNCIL.

The powers and duties of the Council pertaining to the Planning and Zoning Ordinance are as follows:

- (a) Appoint Council's members on the Planning and Zoning Commission.
- (b) Appoint Council's members of the Board of Zoning Appeals.
- (c) Initiate or act upon suggested amendments to the Zoning Ordinance text or Official Zoning District Map. Final action upon a suggested zoning amendment shall be undertaken at a public hearing.
- (d) Approve a written recommendation of the Planning and Zoning Commission.
- (e) Override a written recommendation of the Planning and Zoning Commission on a text or map amendment provided that such legislative action is passed by a vote of not less than three-quarters of all members of the Council.
- (f) Provide for the compensation of clerks for the Planning and Zoning Commission and for the Board of Zoning Appeals.
- (g) Set and approve the bond required of the Zoning Administrator.
- (h) Establish by ordinance a schedule of Zoning related fees.

#### 1133.16 - SCHEDULE OF FEES.

The Council shall by ordinance establish a schedule of fees for zoning certificates, amendments, appeals, variances, conditional use permits, plan approvals, and other procedures and services pertaining to the administration and enforcement of this Zoning Ordinance, after considering the administrative costs, both direct and indirect. The schedule of fees shall be posted in the office of the Zoning Administrator, and may be altered or amended only by the Council. Until all such appropriate fees, charges, and expenses have been paid in full, no final action shall be taken on any application, appeal, or administrative procedure.

#### CHAPTER 1135 - ENFORCEMENT AND PENALTY<sup>(16)</sup>

Sections:

Footnotes:

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**State Law reference**— Appeals from zoning decisions, O.R.C. § 713.11, Ch. 2506; Violation of zoning ordinances, O.R.C. § 713.13

#### 1135.01 - GENERAL.

This chapter stipulates the procedures to be followed in obtaining zoning certificates and other legal or administrative approvals under this Zoning Ordinance.

#### 1135.02 - ZONING CERTIFICATES REQUIRED.

- (a) No building, sign or other structure shall hereafter be located, erected, constructed, reconstructed, moved, enlarged, added to, demolished, structurally altered, nor shall any work be started on same, nor shall any building, structure, or land be established or changed in use without a certificate therefor, issued by the Zoning Administrator. Zoning certificates shall be issued only in conformity with the provisions of this Zoning Ordinance unless the Zoning Administrator receives a written order from the Board of Zoning Appeals deciding an appeal, conditional use, or variance, or from Council approving a Planned District Development, as provided by this Zoning Ordinance. The use of the building, structure or land shall be determined with each change in occupancy and reviewed for overall compliance with this Zoning Ordinance.
- (b) In areas where a residence is occupied, only one zoning certificate may be issued and active at any time for improvements related to said property.
- (c) No zoning certificate shall be required for any agricultural building to be erected on land presently used for agricultural purposes or for any building incidental to the agricultural use of the land which said buildings are proposed to be located, nor shall a certificate be required for the use of land or building or construction of any building used for public utility or railroad purposes for the operation of its business. The term "for the operation of its business" shall not be deemed to include general offices or other such uses not related to provision of utility or railroad purposes. For the purposes of this Zoning Ordinance, no tract of land of less than five acres shall be considered agricultural in nature, nor shall same be subject to exemption.

(Ord. No. 99-50, 10-19-1999)

#### 1135.03 - CONTENTS OF APPLICATION FOR ZONING CERTIFICATE.

- (a) Application for a zoning certificate shall be made in writing and be signed by the owner or applicant attesting to the truth and exactness of all information supplied on the application. Each application shall clearly state that the certificate shall expire and may be revoked if work has not begun within six months or substantially completed within one year. At a minimum, the application shall contain the following information and be accompanied by all required fees:
  - (1) Name, address, and phone number of applicant;
  - (2) Legal description of property;
  - (3) Existing use;
  - (4) Proposed use;
  - (5) Zoning district;
  - (6) Plans in triplicate drawn to scale, showing the actual dimensions and the shape of the lot to be built upon; the exact size and location of existing buildings on the lot, if any; the location and dimensions of the proposed building(s) or alteration; front, side, and rear yard setbacks;

- (7) Building heights;
- (8) Location and design of access drives;
- (9) Number of dwelling units;
- (10) If applicable, application for a sign permit or a conditional, special, or temporary use permit, unless previously submitted;
- (11) A separate off-street parking and loading plan indicating the number of off-street parking spaces or loading spaces, and their layout, as specified in this Zoning Ordinance, and other such information;
- (12) Such other documentation as may be necessary to determine compliance with all the applicable provisions of, and to provide for the enforcement of, this Zoning Ordinance;
- (13) In every case where the lot is not served and is not proposed to be served with public water supply and/or the disposal of sanitary wastes by means of public sewers, the application shall be accompanied by a certificate of approval by the Delaware County Health Department for the proposed method of water supply and/or disposal of sanitary wastes.
- (14) Documentation that the proposal has been submitted in writing to the homeowners association involved with the property in question, if architectural review is required by deed restriction and covenant, and that such submittal was received by the association.

(Ord. No. 2005-29, 6-7-2005)

#### 1135.04 - APPROVAL OF ZONING CERTIFICATE.

Within 30 days after the receipt of an application, the Zoning Administrator shall either approve or disapprove the application in conformance with the provisions of the Zoning Ordinance. If the application has involvement with a homeowner's association architectural review, as identified in Section 1135.03(a)(14), then the Zoning Administrator shall approve the zoning certificate if one of the following occur and all other zoning requirements are met:

- (a) That the application has been approved by the association.
- (b) That more than 30 days have elapsed since such submittal and such submittal has not been denied by the homeowners association or the homeowners association has failed to take action in writing denying such application.
- (c) That the homeowner association has acted in denying such application and listed the reasons behind such denial, but the Zoning Administrator finds the homeowner has made a good faith effort to accommodate the concerns of the homeowners association.

One copy of the plans shall be returned to the applicant by the Zoning Administrator, after the Zoning Administrator shall have marked such copy either as approved or disapproved and attested to same by his signature on such copy. One copy of plans, similarly marked, shall be retained by the Zoning Administrator. The Zoning Administrator shall issue a placard, to be posted in a conspicuous place on the property in question, attesting to the fact that the activity is in conformance with the provisions of this Zoning Ordinance.

(Ord. No. 2005-29, 6-7-2005)

#### 1135.05 - PERIOD OF EFFECTIVENESS OF A ZONING CERTIFICATE.

Any new proposed construction for which a Zoning Certificate is issued shall be commenced within six months of issuance of the certificate and the ground story framework, including structural parts of a second floor or roof shall have been completed within one year after the issuance of the Zoning Certificate;



provided, however, that any project or building originally contemplated to be constructed in phases or for a period longer than one year may be completed in phases or during such extended time if in accordance with a timetable placed on file with the Zoning Administrator with the original request for the certificate.

**1135.07 - EXPIRATION OF ZONING CERTIFICATE.**

If the work described in any zoning certificate has not begun within six months from the date of issuance thereof, said certificate shall expire; it shall be revoked by the Zoning Administrator; and written notice thereof shall be given to the persons affected. If the work described in any zoning certificate has not been substantially completed within one year of the date of issuance thereof, as described in Section 1135.05, said certificate shall expire and be revoked by the Zoning Administrator, and written notice thereof shall be given to the persons affected, together with notice that further work as described in the canceled certificate shall not proceed unless and until a new zoning certificate has been obtained or an extension granted.

**1135.08 - CERTIFICATE OF ZONING COMPLIANCE.**

It shall be unlawful to use or occupy or permit the use or occupancy of any building or premises, or both, or part thereof hereafter created, erected, changed, converted, or wholly or partly altered or enlarged in its use or structure, until a Certificate of Zoning Compliance shall have been issued therefor by the Zoning Administrator stating that the use and structure of the building and the land use conforms to all of the requirements of this Zoning Ordinance, including those certifications required in the Historic District and by architectural review, and a state building permit will be required in commercial situations where such permits are necessary. The issuance of such a certificate in no way relieves the recipient from compliance with all the requirements of this Zoning Ordinance and other regulations.

**1135.09 - TEMPORARY CERTIFICATE OF ZONING COMPLIANCE.**

A temporary Certificate of Zoning Compliance may be issued by the Zoning Administrator for a period not exceeding six months during alterations or partial occupancy of a building pending its completion.

**1135.10 - RECORD OF ZONING CERTIFICATES AND CERTIFICATES OF ZONING COMPLIANCE.**

The Zoning Administrator shall maintain a record of all zoning certificates and certificates of zoning compliance, and copies shall be furnished, upon request and upon payment of the established fee, to any person having a proprietary or tenancy interest in the building or land affected.

**1135.11 - FAILURE TO OBTAIN A ZONING CERTIFICATE OR CERTIFICATE OF ZONING COMPLIANCE.**

Failure to obtain a zoning certificate or certificate of zoning compliance shall be a punishable violation of this Zoning Ordinance.

**1135.12 - CONSTRUCTION AND USE TO BE AS PROVIDED IN APPLICATIONS, PLANS, PERMITS, AND CERTIFICATES.**

Zoning certificates or certificates of zoning compliance issued on the basis of plans and applications approved by the Zoning Administrator authorize only the use, and arrangement, set forth in such approved plans and applications or amendments thereto, and no other use, arrangement, or construction. Use, arrangement, or construction contrary to that authorized shall be deemed a punishable violation of this Zoning Ordinance.

**1135.13 - NONCONFORMING USES.**

Nothing in this chapter shall prevent the lawful continuance of a nonconforming use as hereinbefore authorized unless a discontinuance is necessary for the safety of life or property.

**1135.14 - COMPLAINTS REGARDING VIOLATIONS.**

**Deleted:** 1135.06 - SUBMISSION TO THE DIRECTOR OF TRANSPORTATION. ¶

Before any Zoning Certificate is issued affecting any land within 300 feet of the centerline of a proposed new highway or a highway for which changes are proposed as described in the certification to local officials by the Director of Transportation. or any land within a radius of 500 feet from the point of intersection of said centerline with any public road or highway, the Zoning Administrator shall give notice, by registered mail, to the Director of Transportation that he shall not issue a zoning permit for 30 days from the date the notice is received by the Director of Transportation. If the Director of Transportation notifies the Zoning Administrator that he shall proceed to acquire the land needed, then the Zoning Administrator shall refuse to issue the zoning permit. If the Director of Transportation notifies the Zoning Administrator that acquisition at this time is not in the public interest, or upon the expiration of the 30 day period or of any extension thereof agreed upon by the Director of Transportation and the property owner, the Zoning Administrator shall, if the application is in conformance with all provisions of this Zoning Ordinance, issue the zoning permit. ¶

Whenever a violation of this Zoning Ordinance occurs, or is alleged to have occurred, any person may file a written complaint. Such complaint stating fully the causes and basis thereof shall be filed with the Zoning Administrator. The Zoning Administrator shall record properly such complaint, immediately investigate it, report the complaint and his findings to the Planning and Zoning Commission, and take action thereon as provided by this Zoning Ordinance.

1135.15 - ENTRY AND INSPECTION OF PROPERTY.

The Zoning Administrator is authorized to make inspections of properties and structures in order to examine and survey the same, at any reasonable hour, for the purpose of enforcing the provisions of this Zoning Ordinance. Prior to seeking entry to any property or structure for such examination or survey, the Zoning Administrator shall attempt to obtain the permission of the owner or occupant to inspect. If such permission is denied or cannot be obtained, the Zoning Administrator shall request the assistance of the Director of Law in securing a valid search warrant prior to entry.

1135.16 - STOP WORK ORDER.

Subsequent to his determination that work is being done contrary to this Zoning Ordinance, the Zoning Administrator shall write a stop work order and post it on the premises involved. Removal of a stop work order, except by the order of the Zoning Administrator, shall constitute a punishable violation of this Zoning Ordinance.

1135.17 - ZONING CERTIFICATE REVOCATION.

The Zoning Administrator may issue a revocation notice to revoke a zoning certificate or administrative approval which was issued contrary to this Zoning Ordinance or based upon false information or misrepresentation in the application.

1135.18 - NOTICE OF VIOLATION.

Whenever the Zoning Administrator or his agent determines that there is a violation of any provision of this Zoning Ordinance, a warning tag shall be issued and shall serve as a notice of violation. Such order shall:

- (a) Be in writing;
- (b) Identify the violation;
- (c) Include a statement of the reason or reasons why it is being issued and refer to the sections of this Zoning Ordinance being violated; and
- (d) State the time by which the violation shall be corrected.
- (e) Service of notice of violation shall be as follows:
  - (1) By personal delivery to the person or persons responsible, or by leaving the notice at the usual place of residence of the owner with a person of suitable age and discretion; or
  - (2) By ordinary mail, and the mailing shall be evidenced by a certificate of mailing which shall be filed by the Zoning Administrator. Service shall be deemed complete when the fact of mailing is entered of record, provided that the ordinary mail envelope is not returned by the postal authorities with an endorsement showing failure of delivery; or
  - (3) By certified mail deposited in the United States Post Office addressed to the person or persons responsible at a last known address.
  - (4) By posting a copy of the notice in a conspicuous place on the premises found in violation.

(Ord. No. 98-25, 8-4-1998)

1135.19 - TICKETING PROCEDURE.

- (a) If, upon re-inspection following the issuance of a notice of violation, the condition has not been corrected, the person or persons responsible shall be issued a ticket. Such ticket shall:
  - (1) Be served personally;
  - (2) Be in writing;
  - (3) Identify the violation;
  - (4) State the time, date and place for appearance in court; and
  - (5) State the amount of the fine payable in lieu of a court appearance.
- (b) If the ticket cannot be served personally, the Zoning Administrator shall request that a summons be issued by the Court.

1135.20 - PENALTIES AND FINES.

It shall be unlawful to use, maintain, erect, establish, locate, construct, reconstruct, enlarge, change, convert, move, repair, maintain, demolish, or structurally alter any building, structure or land in violation of any provision of this Zoning Ordinance or any amendment or supplement thereto, or of Section 713, of the Revised Code. Any person, firm or corporation who violates this Zoning Ordinance or fails to comply with any of its requirements shall upon conviction thereof be fined not more than \$150.00 per offense and in addition shall pay all costs and expenses involved in the case. Each day such violation continues after receipt of a violation notice shall be considered a separate offense irrespective of whether or not a separate notice of violation or affidavit charging a violation has been served upon the violator for each day the offense continues. The owner or tenant of any building, structure, premises, or part thereof, and any architect, builder, contractor, agent, or other person who commits, participates in, assists in, or maintains such violation may each be found guilty of a separate offense and suffer the penalties herein provided.

1135.21 - ADDITIONAL REMEDIES.

Nothing in this Zoning Ordinance shall be deemed to abolish, impair or prevent other additional remedies as provided by law. In the event of a violation of any provision or requirement of this Zoning Ordinance, or in the case of an imminent threat of such a violation, the Planning and Zoning Commission, the Zoning Administrator, the Director of Law, or the owner of any neighboring property who would be especially damaged by such violation, may, in addition to other recourses provided by law, institute mandamus, injunction, abatement, or other appropriate actions or proceedings to prevent, remove, abate, enjoin, or terminate such violation. The Council may employ special counsel to represent it in any proceeding or to prosecute any actions brought under this section.