

CHAPTER 40

ZONING CODE

ARTICLE I – GENERAL PROVISIONS AND SAVING CLAUSES

**40-1-1**        **PURPOSE.** In accordance with State law, this Code regulates structures and land uses in order to preserve, protect, and promote the public health, safety and welfare. More specifically, this Code is intended to assist in achieving the following objectives:

- (A)            To encourage the development of buildings and uses on appropriate sites in order to maximize community-wide social and economic benefits while accommodating the particular needs of all residents;
- (B)            To discourage development of buildings and uses on sites not suited for development;
- (C)            To protect the character and stability of sound existing residential, commercial and industrial areas;
- (D)            To conserve and increase the value of taxable property throughout this Municipality;
- (E)            To ensure the provision of adequate light, air and privacy to the occupants of all buildings;
- (F)            To provide adequate parking and access for all buildings and lots;
- (G)            To reduce congestion on the public streets and highways and to regulate and control population density;
- (H)            To protect property from damage caused by fire, or by flooding and poorly controlled storm water runoff;
- (I)            To guide the provision of water, sewer, storm water, and other utilities and municipal services;
- (J)            To reduce the initial costs and future maintenance expenses of public and private improvements and services through thoughtful planning;
- (K)            To gradually eliminate existing structures and uses that impede achievement of the above objectives; and
- (J)            To regulate the building height, size, shape and setbacks.

**40-1-2**        **SCOPE.** In order to achieve the objectives enumerated above, this Code:

- (A)            Divides this entire Municipality into districts, and permits in each district only those structures and uses that are compatible with the character of such district;
- (B)            Regulates lots size, and the bulk, setbacks, lot coverage, and manner of use of structures;
- (C)            Imposes supplementary regulations to control certain potentially troublesome structures and uses;
- (D)            Sets forth standards for off-street parking areas;
- (E)            Restricts non-conforming lots, structures, and uses that adversely affect the type of development appropriate in each district; and
- (F)            Establishes zoning administrative and enforcement procedures.

**40-1-3**        **JURISDICTION.** This Code shall be applicable within the corporate limits of Red Bud, Illinois.

**40-1-4**        **INTERPRETATION.** Every provision of this Code shall be construed liberally in favor of this Municipality, and every requirement imposed in this Code shall be deemed minimal. Whenever the requirements of this Code differ from the requirements of any other lawfully adopted ordinance, regulation, deed restriction, or covenant, the more stringent requirement shall prevail.

**40-1-5**        **SEPARABILITY.** If any provision of this Code is declared unconstitutional or invalid by a court of competent jurisdiction, that decision shall not affect the validity of the remainder of this Code.

**40-1-6**        **WHEN EFFECTIVE.** This Code shall take effect **February 1, 1999** following its passage, approval and publication as required by law. The City Clerk shall publish this Code in pamphlet form.

**ARTICLE II - DEFINITIONS**

**40-2-1 CONSTRUCTION OF TERMS.** In construing the intended meaning of terminology used in this Code, the following rules shall be observed:

(A) Words and phrases shall have the meanings respectively ascribed to them in **Section 40-2-2** of this Code unless the context clearly indicates otherwise; terms not defined in **Section 40-2-2** of this Code shall have the meanings respectively ascribed to them in the Red Bud Subdivision Code or in **Section 1-1-15** of the Red Bud City Code; terms not defined in **Section 40-2-2** of the Red Bud Zoning Code, **Section 1-1-15** of the City Code or **Section 34-1-8** of the Red Bud Subdivision Code shall have their standard English meanings.

(B) Words denoting the masculine gender shall be deemed to include the feminine and neuter genders.

(C) Words used in the present tense shall include the future tense.

(D) Words used in the singular number shall include the plural number, and the plural the singular.

(E) The term "shall" is mandatory.

(F) The term "may" is discretionary.

(G) The term "this Municipality" shall mean the City of Red Bud, Illinois.

(H) The words "lots," "parcel," "tract," and "site" shall be synonymous.

(I) The phrases "used for," "arranged for," "designed for," "intended for," "maintained for," and "occupied for" shall be synonymous.

(J) All distances shall be measured to the nearest integral foot; **six (6) inches** or more shall be deemed **one (1) foot**.

(K) References to sections shall be deemed to include all subsections within that section; but a reference to a particular subsection designates only that subsection.

(L) A general term that follows or is followed by enumerations of specific terms shall not be limited to the enumerated class unless expressly limited.

**40-2-2 SELECTED DEFINITIONS.** The following definitions shall apply to this Code:

**Abutting:** As applied to lots, "abutting" means having a common lot line or district line, or so located in relation to each other that there would be a common lot line or district line but for the existence of a street, alley, or other public right-of-way.

**Access Way:** A curb cut, ramp, or other means for providing vehicular access to an off-street parking or loading area from a street.

**Accessory Structure:** A detached subordinate building, either attached as a permanent structure or unattached and movable, located on the same building site with the main building, the use of which is incidental to that of the main building. This term does not include playground equipment but does include playground structures. A playground structure is anything constructed or erected on the ground that is intended for the shelter, housing, or enclosure of playground equipment that can be put into and removed from such structure.

**Accessory Use:** Any structure or use that is:

- (A) Subordinate in size or purpose to the principal use or structure which it serves;
- (B) Necessary or contributing to the comfort and convenience of the occupants of the principal use or structure served; and
- (C) Located on the same lot as the principal use or structure served.

**Adjacent:** Lying near, in the vicinity of, next to, adjoining.

**Agriculture:** Any one or any combination of the following: the growing of farm or truck garden crops, dairying, pasturage, horticulture, floriculture, or animal/poultry husbandry. The term "agriculture" encompasses the farmhouse, and accessory uses and structures customarily incidental to agricultural activities.

**Alley:** A public right-of-way which affords a secondary means of vehicular access to abutting premises that front on a nearby street.

**Alter:** To change the size, shape, or use of a structure.

**Alteration:** Any structural change in the supporting or load-bearing members of a building, such as bearing walls, columns, beams or girders.

**Amendment:** A change in the provision(s) of this Code (including those portions incorporated by reference), properly effected in accordance with State law and the procedures set forth herein.

**Antenna - Accessory Use:** Except for circumstances governed by the definitions in **Section 40-10-2**, these definitions shall apply to this Section:

(A) **Antenna:** An arrangement of wires, metal rods, or other materials used for the transmission and/or reception of electromagnetic waves. The derivations of or words directly associated with antenna shall maintain the following definitions:

(B) **Antenna support structure:** Any mast, pole, tripod, tower or similar structure used to support an antenna.

(C) **Antenna system:** The combination of an antenna and antenna support structure.

(D) **Antenna system height:** The overall vertical length of the antenna system above grade. If such system is located on a building, the overall height shall include the height of the building.

(E) **Antenna tower:** Any structure designed for the purpose of mounting an antenna.

(F) **Communication tower:** Any structure that is designed and constructed primarily for the purpose of supporting one or more antennas, including self-supporting lattice towers, guyed towers, or monopole towers. The term includes radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers, and the like.

(G) **Mast:** Any structure or part of an antenna that has vertical dimensions greater than **five (5) times** its horizontal dimension that supports or lends support to any part of an antenna.

(H) **Radio Transmitting and Receiving Antenna:** An array or system of wires, tubing and supporting members mounted on a mast, tower or building, used for transmitting and/or receiving radio signals that include, but are not limited to, citizen band and other special frequencies.

(I) **Satellite Parabolic or Dish Receiving Antenna:** A conical, circular or similar shape element of any material, and all of its supporting structures and devices, used for the reception of signals of any frequency from an earth satellite.

(J) **Standard Residential Receiving Antenna:** An array made up of small metal tubing and supporting members that are commonly installed on or near residential buildings for the purpose of receiving television or radio signals.

**Apartment:** A room or suite of rooms in a multiple-family structure, arranged, designed, used or intended to be used as a single housekeeping unit, and containing complete kitchen, bath and toilet facilities, permanently installed.

**Attached:** As applied to buildings, "attached" means having a common wall and/or a common roof.

**Auditorium:** A room, hall or building made a part of a church, theater, school, recreation building or other building assigned to the gathering of people as an audience, to hear lectures, plays and other presentations, as well as participate in dances, dinners, expositions, bingos, etc.

**Automotive Parts and Supply Store:** An establishment or place of business primarily engaged in the sale of merchandise that is associated with the use, repair or upkeep of automobiles.

**Automotive Rental Agency:** An establishment or place of business primarily engaged in the rental of automobiles, vans and/or trucks less than **two (2) tons**, including incidental parking and servicing of vehicles available for rent.

**Automotive Repair Shop:** An establishment or place of business primarily engaged in the repair of automobiles or other motorized vehicles, or the installation or repair of equipment or parts on motorized vehicles such as mufflers, brakes, tires, transmissions, glass, and engines or engine parts, but excluding dismantling or salvage.

**Automotive Sales and Lease:** An establishment or place of business primarily engaged in the sale and leasing of automobiles, vans and/or trucks less than **two (2) tons**, including incidental parking and servicing of vehicles available for sale, lease or rent.

**Automotive Service Station:** An establishment or place of business primarily engaged in the gasoline or diesel fuel sales at retail for automobiles, recreation vehicles and motorcycles, and where in addition at least one of the following services is rendered: sale, replacement, or servicing of spark plugs, oil, water hoses, brake fluids, batteries, distributors, tires, carburetors, brakes, fuel pumps, or other automotive parts or accessories. Such use shall include establishments that provide express oil changes, and sell at retail and install new automobile audio and/or video equipment. See "Automotive Repair Shop" where major mechanical activities are allowed.

**Automotive Tire Store:** An establishment or place of business primarily engaged in the sale of tires and services relating to the repair or purchase of tires for automobiles.

**Bar and/or Tavern:** Any premises wherein alcoholic beverages are sold at retail for consumption on the premises. It shall not mean premises wherein such beverages are sold in conjunction with the sale of food for consumption on the premises and the sale of said beverages comprises less than **twenty-five percent (25%)** of the gross receipts.

**Basement:** A story having **one-half (1/2)** or more of its height below the average level of the adjoining ground.

**Bed and Breakfast:** Bed and Breakfast shall mean an operator-occupied residence providing accommodations for a charge to the public with no more than **five (5) guest rooms** for rent, in operation for more than **ten (10) nights** in a **twelve (12) month** period. Breakfast and light snacks/refreshments may be provided to the guests only. Bed and breakfast establishments shall not include motels, hotels, boarding houses or food service establishments.

**Block:** An area of land entirely bounded by streets, highways, barriers, or ways (except alleys, pedestrian ways, or exterior boundaries of a subdivision unless exterior boundary is a street, highway, or way) or bounded by a combination of streets, public parks, cemeteries, railroad rights-of-way, waterways, or corporate boundary lines.

**Boarding House:** A building or portion thereof--other than a hotel, motel, or apartment hotel--containing lodging rooms for **three (3)** or more persons who are not members of the keeper's family, and where lodging and/or meals are provided by prearrangement and for definite periods.

**Building:** Any covered structure intended for the shelter, housing, or enclosure of persons, animals, chattels or personal property; the term "building" shall be construed to include the term "structure".

**Building, Enclosed:** A building covered by a permanent roof and separated on all sides from adjacent open space or other buildings by fixed exterior walls or by common walls, with openings only for windows and doors.

**Building Height:** The vertical distance measured from the average elevation of the proposed finish grade at the front wall of the building to the highest point of the roof.

**Building Setback Line – Building Line:** The line nearest the front or side of and across a lot establishing the minimum yard to be provided between the principal building or structure and the lot line.

**Building, Principal:** A non-accessory building in which the principal use of the premises is conducted.

**Bulk:** Any one or any combination of the following:

- (A) Size or height of structure;
- (B) Location of exterior walls at all levels in relation to lot lines, streets, or other structures;
- (C) Yards or setbacks;
- (D) Lot coverage.

**Buffer:** An area within a property or site, generally adjacent to and parallel with the property line, either consisting of natural vegetation or created by the use of trees, shrubs, fences, and/or berms, designed to limit continuously the view of and/or sound from the site to adjacent sites or properties.

**Business or Vocational School:** A specialized instructional establishment that provides on-site training of business, commercial, and/or trade skills such as accounting, data processing, and repair. This classification excludes establishments providing training in an activity that is not otherwise permitted in the zoning district. Incidental instructional services in conjunction with other primary use shall not be considered a business or vocational school.

**Camping Trailer/Recreational Vehicle:** A mobile structure designed for temporary occupancy.

**Camping Trailer Park:** A lot developed with facilities for accommodating temporarily occupied camping trailers.

**Car Wash:** A building or portion thereof containing facilities for washing, waxing, drying, polishing or vacuuming private automobiles, light trucks and vans, but not commercial fleets. For purposes of this Section, coin operated devices operated on a self-serve basis shall be construed to be the same.

**Catering Service:** An establishment engaged in the preparation of food and beverages for consumption at another location. Catering shall not include the manufacturing of food as defined in "Food/Bakery Product Manufacturing."

**Cemetery, Accessory Use:** A place for the burial of deceased human beings or animals.

**Church, Temple or Synagogue:** A building or group of buildings that are used to conduct organized religious services.

**Clinic:** An establishment where licensed medical practitioners or dentists practice medicine or dentistry, but where overnight lodging for sick or injured persons is not provided.

**Club/Lodge:** A nonprofit association or persons who are bona fide members organized for some purpose(s) and paying regular dues and whose facilities are restricted to members and their guests; not including a group organized solely or primarily to render a service customarily carried on as a commercial enterprise.

**Code Official:** The official appointed by the Mayor with the advice and consent of the City Council to administer this Code, or his representative.

**Commercial Use/Establishment:** Any use or establishment wherein goods and/or services are purchased or sold, whether to the consuming public (retail) or to other businesses (wholesale).

**Community Residence:** A group home or specialized residential care home serving unrelated persons with handicaps which is licensed, certified or accredited by appropriate local, state or national bodies. **Community residence does not include a residence which serves persons as an alternative to incarceration for a criminal offense, or persons whose primary reason for placement is substance or alcohol abuse or for treatment of communicable disease.**

**Community Residence - Large:** A community residence serving **nine (9) to fifteen (15) persons** with handicaps. Permitted by special use only.

**Community Residence - Small:** A community residence serving **eight (8) or fewer** persons with handicaps in a family-like atmosphere. Permitted by special use only.

**Conforming:** In compliance with the applicable provisions of this Code.

**Construction Contractor:** A person or business engaged in the construction of buildings, engaged in heavy construction (such as streets, bridges or utilities), or specialized in such construction trades as plumbing, heating and air-conditioning, electrical wiring, masonry, roofing or gutters, well drilling, or house painting.

**Convalescent, Nursing or Retirement Home:** An intermediate care facility primarily engaged in providing inpatient nursing and rehabilitative services to residents who require watchful care and medical attention or treatment, but not on a continuous basis, although staff is on duty **twenty-four (24) hours** per day.

**Convenience Shop:** Any small retail commercial or service establishment offering goods/services.

**Dance Hall:** A business or establishment that offers for its patrons dancing accommodations exceeding **twenty percent (20%)** of the total floor area of the establishment. Uses shall include nightclubs, private clubs or other uses offering dancing accommodations for patrons of any age.

**Day Care:** See "Nursery School."

**Deck:** An open porch which has no roof, is generally open on the sides, is above ground level, and its intended use is for leisure enjoyment.

**Detached:** As applied to buildings, "detached" means surrounded by yards on the same lot as the building.

**Develop:** To erect any structure or to install any improvement(s) on a tract of land, or to undertake any activity (such as grading) in preparation therefor.

**District Zoning:** A portion of the territory of this Municipality wherein certain uniform requirements or various combinations thereof apply to structures, lots and uses under the terms of this Code.

**Driveway:** A gravel or hard surfaced minor way commonly providing vehicular access to a single garage or off-street parking area.

**Drive Through (Accessory Use):** An accessory use that through design, physical facilities, service or packaging procedures, encourages customers to receive services, obtain goods, or be entertained by an

approved principal use while remaining in their motor vehicles. This definition shall include all drive-through establishments, drive-in restaurants and drive-in cafes.

**Dry Cleaning/Laundry Pick-Up:** An establishment or business maintained for the pick-up and delivery of dry cleaning and/or laundry without the maintenance or operation of any laundry or dry-cleaning equipment or machinery on the premises.

**Dwelling:** A building or portion thereof designed or used primarily as living quarters for **one (1)** or more families, but not including hotels, motels, and other accommodations for the transient public.

**Dwelling, Loft:** A dwelling located above the first floor of a non-residential use such as a store or office.

**Dwelling, Multiple-Family:** A building or portion thereof containing **three (3)** or more dwelling units. (See also "Apartment")

**Dwelling, Single-Family:** A detached dwelling containing **one (1) dwelling unit** and intended for the occupancy of **one (1) family**.

**Dwelling, Two-Family:** A dwelling containing **two (2) dwelling units**—may be referred to as a "duplex".

**Dwelling Unit:** **One (1)** or more rooms designed or used as living quarters by **one (1) family**. A "dwelling unit" always includes a bathroom and a kitchen.

**Dwelling Unit Area:** The sum of dwelling areas of several floors of a building, excluding basements, measured from the exterior faces of the exterior walls or from the center of the common walls of attached buildings.

**Easement:** A grant by the property owner of the use of a strip of land by the public or a person for a specified purpose.

**Employee Parking:** Parking spaces reserved especially for the business' employee(s).

**Enlarge:** To increase the size (floor area, height, etc.) of an existing principal structure or accessory use, or to devote more land to an existing use.

**Erect:** To build or to construct.

**Establishment:** Either of the following:

(A) an institutional, business, commercial, or industrial activity that is the sole occupant of one or more buildings; or

(B) an institutional, business, commercial, or industrial activity that occupies a portion of a building such that:

- (1) the activity is a logical and separate entity from the other activities within the building and not a department of the whole; and
- (2) the activity has either a separate entrance from the exterior of the building, or a separate entrance from a common and clearly defined entryway that has direct access to the exterior of the building.

**Existing:** Existing, constructed or in operation, on the effective date of this Code.

**Extend:** To increase the amount of floor area or land devoted to an existing use.

**Filling Station/Fuel Sales & Storage:** A building and premises or portion thereof designed and primarily used for the retail sale of gasoline or other automotive fuel, oil, and automotive parts, supplies, and



accessories. A filling station may include secondary facilities for washing vehicles and for making minor automotive repairs that do not require an overnight stay of the vehicle.

**Financial Services:** An office establishment or business that primarily performs central banking functions such as issuing currency, managing national money supply and international reserves and accepts deposits and lends funds from these deposits. Financial Services does not include pawn shops, businesses primarily engaged in check cashing or issuing money orders or title loan establishments or other businesses offering short-term consumer loans secured by personal property, certificates of title to such property estimated tax refunds or other such collateral. (See also "Payday Loan Establishments")

**Freight Terminal:** A building to which freight is brought by truck, air or railroad freight cars for later distribution.

**Frontage:** The lineal extent of the front (street-side) of a lot.

**Funeral Home:** An establishment engaged in preparing the human deceased for burial or cremation and arranging and managing funerals.

**Furniture, Appliance, or Equipment Sales:** An establishment selling or leasing furniture, appliance, television, stereo and/or DVD equipment, and other household items to consumers.

**Garage:** A structure designed and intended for the storage of motor vehicles, whether free of charge or for compensation.

**Garden Center, Greenhouse, Plant Nursery:** An establishment where flowers, trees, and other products that are commonly used as landscaping in and around buildings are grown and sold.

**Gasoline Service Station:** (See "Filling Station").

**Golf Course:** A facility providing private or public golf recreation services and support facilities. This definition shall exclude miniature golf courses and golf driving ranges except those that are clearly accessory uses.

**Government:** The act or process of administering public policy in a political unit; a political jurisdiction, the office or function thereof.

**Guest House:** An accessory use to a dwelling designed and intended for the temporary housing of visitors to a property at the invitation of the property residents for no fee or other consideration, and meeting or exceeding the standards for Single-Family Dwellings.

**Health Club or Fitness Center:** A business that provides facilities for aerobic exercises, such as running and jogging tracks, exercise equipment, game courts, gymnasium, or swimming facilities.

**Hospital:** An institution that: (1) offers service more intensive than those required for room, board, personal services and general nursing care; (2) offers facilities and beds for use beyond **twenty-four (24) hours** by individuals requiring diagnosis, treatment, or care for illness, injury, deformity, infirmity, abnormality, disease, or pregnancy; and (3) regularly makes available at least clinical laboratory services, diagnostic X-ray services, and treatment facilities for surgery or obstetrical care, or other definitive medical treatment of similar extent. Hospitals may include offices for medical and dental personnel, central service facilities such as pharmacies, medical laboratories and other related uses.

**Home Occupation:** An accessory use of a dwelling unit for a business, profession, or occupation conducted for revenue purposes. A home occupation is incidental to the primary use of the building as a residence.

**Hotel:** An establishment containing lodging accommodations designed for use by travelers or temporary guests. Facilities provided may include a general kitchen, maid service, desk service, meeting rooms, restaurants, cocktail lounges, and similar ancillary uses, but not cooking facilities in guest rooms.

**Independent Living Facility:** A facility designed to provide living accommodations for persons who do not require full-time nursing care. Such facilities typically consist of **one (1)** or more apartment buildings connected to a common area wherein meals, recreation, medical care and other personal services are available to those persons leasing the apartments. Occupants, who typically are retired persons, may provide for their own services outside the facility, or may take advantage of those services offered on-site.

**Intersection:** The point at which **two (2)** or more public rights-of-way (generally streets) meet.

**Industrial, Heavy:** A use engaged in the basic processing and manufacturing of materials or products predominantly from extracted or raw materials, or a use engaged in storage of, or manufacturing processes using flammable or explosive materials, or storage or manufacturing processes that potentially involve hazardous or commonly recognized offensive conditions. Such uses include asphalt plants; oil and gas production; manufacture of cement, chemicals, fabricated metal products, rubber and plastics products and transportation equipment.

**Industrial, Light:** A use engaged in the manufacture, predominantly from previously prepared materials, of finished products or parts, including processing, fabrication, assembly, treatment, packaging, incidental indoor storage, sales and distribution, of such products, but excluding basic industrial processing at a scale and intensity that is compatible with the surrounding uses and the intent of the City's "I-1" District Regulations.

**Infill Development:** Construction on an existing vacant lot on an existing street in an existing neighborhood or developed area. Infill development shall also include lots where more than **fifty percent (50%)** of the primary structure is altered.

**Junk Yard:** An open area of land that is used for buying, selling, exchanging, storing, baling, packing, disassembling, or handling waste or scrap materials. Such scrap materials include vehicles, machinery, and equipment not in operable condition or parts thereof, and metals, glass, paper, plastic, rags, and rubber tires. A lot on which **three (3)** or more inoperable vehicles are stored shall be deemed a junk yard. A "junk yard" includes an automobile wrecking yard.

**Kennel:** Any structure or premises or portion thereof on which more than **three (3) dogs**, cats, or other household domestic animals, over **four (4) months** of age, are kept or on which more than **two (2)** such animals are maintained, boarded, bred, or cared for in return for remuneration or are kept for the purpose of sale.

**Liquor Store:** An establishment or place of business primarily engaged in retail sale for consumption off the premises of alcoholic beverages. Uses include liquor stores, bottle shops, or any licensed sales of liquor, beer or wine for off-site consumption.

**Loading Space:** An off-street space used for the temporary parking of a commercial vehicle while loading or unloading merchandise or materials.

**Lot:** A tract of land intended as a unit for the purpose (whether immediate or future) of development or transfer of ownership. A "lot" may not coincide with a "lot of record".

**Lot, Corner:** A lot having at least **two (2)** adjacent sides that abut for their full length upon streets. Both such side lines shall be deemed front lot lines.

**Lot, Through:** A lot having a pair of approximately parallel lot lines that abut **two (2)** approximately parallel streets. Both such lot lines shall be deemed front lot lines.

**Lot Area:** The area of a horizontal plane bounded by the front, side, and rear lines of a lot.

**Lot Coverage:** The portion of a lot that is occupied by buildings or structures, including accessory building(s) or structure(s).

**Lot Coverage, Maximum:** The maximum percentage of a lot that can be occupied by buildings or structures, including accessory buildings or structures.

**Lot Depth:** The average horizontal distance between the front lot line and the rear lot line of a lot.

**Lot Line, Front:** Any lot boundary abutting the street.

**Lot Line, Rear:** On non-corner lots an interior lot line which is most distant from and most nearly parallel to the front lot line. The rear lot line on corner lots shall be defined as the line most distant and most nearly parallel to either of the front lot lines as defined elsewhere in these definitions.

**Lot Line, Side:** Any boundary of a lot which is not a front lot line or a rear lot line.

**Lot of Record:** Any area of land designated as a lot on a plat of subdivision recorded or registered with the Recorder of Deeds of the County in which the lot is located in accordance with State law.

**Lot Size Requirement:** Refers to the lot area, width, and depth requirements of the applicable district.

**Lot Size/Bulk Variance:** A relaxation of the strict application of the lot size and/or bulk requirements applicable to a particular lot or structure. A Lot Size/Bulk Variance is associated with the property.

**Lot Width:** The mean horizontal distance between the side lot lines of a lot measured at right angles to the depth; or the same distance measured at a point midway between the front lot line and the rear lot line; or at the rear line of the required front yard (building lines), especially on irregularly shaped lots, as determined by the Code Official.

**Maintenance:** The routine upkeep of a structure, premises, or equipment, including the replacement or modification of structural components to the extent necessary to keep a structure in sound condition.

**Manufactured Home Sales:** An establishment primarily engaged in the display and sale of manufactured housing units.

**Massage Establishment:** An establishment licensed by the State of Illinois that offers therapeutic massage. The definition does not include establishments that offer illicit sexual services under the guise of therapeutic massage.

**Medical or Dental Offices:** An establishment providing therapeutic, preventive, or corrective personal treatment services on an outpatient basis by physicians, dentists, and other practitioners of the medical or healing arts, and the provision of medical testing and analysis services. Typical uses include clinics and offices for doctors of medicine, dentists, chiropractors, osteopaths, optometrists, blood banks and medical laboratories.

**Mini-Warehouses:** A building, or part of one, for the storage of goods, merchandise, etc. for rent to individuals for a monthly fee.

**Mobile Home:** A movable or portable unit which is **eight (8) body feet** or more in width and **thirty-two (32) body feet** or more in length, constructed to be towed on its own chassis (comprised of frame and wheels) from the place of construction to the location or subsequent locations and designed to be used without a permanent foundation but connected to utilities for year-round occupancy. All mobile homes must be built to the **"National Manufactured Home Construction and Safety Standards"**.

**Mobile Home Park:** A parcel not less than **two (2) acres** in area in a single ownership/control, developed with facilities for accommodating occupied mobile homes in accordance with the requirements of this Code.

**Mobile Home Stand:** The part of a mobile home space beneath the mobile home that includes the concrete slab or runners on which the home is placed.

**Modular Home:** A building assembly or system of building sub-assemblies, designed for habitation as a dwelling for **one (1)** or more persons, including the necessary electrical, plumbing, heating, ventilating and other service systems, which is of closed or open construction and which is made or assembled by a manufacturer on or off the building site, for installation, or assembly and installation on the building site with a permanent foundation. No building assembly or system of building assemblies shall be considered a modular home or part thereof if it or they is or are transported on its or their own chassis and/or is or are erected on its or their own chassis at the building site. The perimeter of the building assembly must rest on and be attached to its own permanent foundation and may not rest on interior piers.

**Motel:** A building containing lodging rooms having adjoining individual bathrooms, and where each lodging room has a doorway opening directly to the outdoors, and where the lodging rooms are for rent to transient tourists for a continuous period of less than **thirty (30) days**.

**Motion Picture Theater:** A building primarily used for the exhibition of movies or other prerecorded productions to the general public in an indoor setting.

**Nonconforming:** As applied to a lot, structure, or use, "nonconforming" means: (1) lawfully existing on the effective date of this Code, but (2) not in compliance with the applicable provisions thereof.

**Nuisance:** Any thing, condition, or conduct that endangers health, or unreasonably offends the senses, or obstructs the free use and comfortable enjoyment of property, or essentially interferes with the comfortable enjoyment of life.

**Nursery:** (See "Garden Center, Greenhouse or Plant Nursery")

**Nursery School/Day Care:** Terms associated with day care facilities shall be defined as follows:

(A) **Nursery School/Day Care (Commercial):** An establishment for the part-time care and/or instruction (at any time of day) of **four (4)** or more unrelated children of predominantly pre-elementary school age.

(B) **Nursery School/Day Care (Home-Accessory Use):** A family home occupied by the day care provider in which family-like care is given to no more than **eight (8) persons** not related to the day care provider, for any part of the **twenty-four (24) hour** day, without overnight stays.

**Nursing Home:** A building used as a medical care facility for persons who need long-term nursing care and medical service, but do not require intensive hospital care.

**Office:** Any building, or portion thereof, in which the business (usually clerical and administrative affairs) of a commercial/service enterprise or professional person is transacted.

**Off-Street Parking Area:** Land that is improved and used primarily for the storage of passenger motor vehicles, free of charge or for compensation. An "off-street parking area," depending on the circumstances of its use, may either be a principal use or an accessory use.

**Off-Street Parking Space:** An area at least **nineteen (19) feet** long and **nine (9) feet** wide within an off-street parking area or garage, used for the storage of one passenger motor vehicle.

**Outdoor Display Area:** A portion of a property outside of any building where merchandise, goods or other items are placed in public view for the purpose of direct sale or lease to customers.

**Outdoor Storage (Non-Residential):** The keeping in an unroofed, open area of any goods, material, merchandise or vehicles in the same place for more than **twenty-four (24) hours**.

**Patio:** An at-grade paved area without any walls usually adjacent to a building, and which is intended to be used as an outdoor lounging, dining, or entertaining area.

**Pawnbroker or Pawnshop:** An establishment or individual or business entity which lends money on the deposit or pledge of physically delivered personal property, other than property the ownership of which is subject to a legal dispute, securities, printed evidence of indebtedness or printed evidence of ownership of the personal property, or who deals in the purchase of such property on the condition of selling the property back again at a stipulated price, shall be held and is hereby declared and defined to be a pawnbroker. The business of a pawnbroker does not include the lending of money on deposit or pledge of title to property.

**Payday Loan Establishment:** An establishment that engages in transactions in which a short-term cash advance is made to a consumer in exchange for a customer's post-dated check in the amount of the advance plus a fee, or in exchange for a consumer's authorization to debit a transaction account in the amount of the advance plus a fee at a designated future date. Uses include check cashing stores. The classification does not include a state or federally chartered bank, savings association, credit union, or industrial land company. Further, this classification does not include establishments selling consumer goods where the cashing of checks or money orders is incidental to the main purpose of the business.

**Performing Arts Theater:** A building primarily used for the presentation of live performances of plays or music.

**Permanent Foundation:** A below grade foundation, consisting of materials such as concrete, mortared concrete block or mortared brick, extending into the ground below the frost line.

**Permanent Habitation:** A period of **two (2)** or more months.

**Permitted Uses:** Any use which is or may be lawfully established in a particular district(s), provided it conforms with all the requirements applicable to said district(s).

**Person:** Any individual, firm, association, organization, corporate body, or legal entity.

**Plan:** The geographical and topographical maps, engineering and architectural drawings and specifications, and other information indicating the location and nature of a development.

**Pole Barn:** A typically metal clad structure most often utilizing wooden poles and trusses for support with unfinished flooring, uninsulated interiors and usually not containing concrete footings. Such structures are normally used for agricultural purposes, for construction trade storage, or for general storage and not intended for human habitation.

**Porch:** A structure attached to a building to shelter an entrance or to serve as a semi-enclosed space, usually covered with a roof, generally open-sided, and usually large enough to allow seating devices.

**Premises:** A lot and all the structures and uses thereon.

**Principal Building/Structure/Use:** The main structure erected on or the main use occupying a lot, as distinguished from an accessory (subordinate) structure or use.

**Printing and Publishing:** The production of books, magazines, newspapers and other printed matter, and record pressing and publishing, engraving and photoengraving, but excluding businesses involved solely in retail photocopying, reproduction, photo developing or blueprinting services.

**Private Street:** Any street providing access to abutting property that is not maintained by, dedicated and accepted by a unit of government.

**Public Service Facilities:** A use owned or operated by a publicly owned or publicly licensed or franchised agency which provides essential public services such as utility, emergency, and safety services, including filtration plants, pump stations, water reservoirs, public water storage facilities, sewage treatment plants, police and fire stations, post offices, government administration buildings or other governmental uses. Wireless communication facilities as defined herein are not included in this definition.

**Reconstruct:** As applied to nonconforming structures, "reconstruct" means to rebuild after partial destruction.

**Recreation Facility or Area:** An establishment or area primarily used for sports, entertainment, or recreation for participants or spectators. It shall include playgrounds, golf driving ranges, miniature golf, baseball and softball batting cages, billiards hall, bowling alley, arcade, skating rinks, swimming pools, camps, gun clubs, skeet or trap shoots, archery ranges or fishing lakes operated as a commercial or for-profit endeavor for recreational use of its patrons.

**Recreation, Rural:** Rural recreation facilities generally include private clubs, lodges, camps, gun clubs, skeet or trap shoots, archery ranges or fishing lakes operated as a non-commercial or non-profit endeavor for recreational use of its patrons and located at least **one thousand (1,000) feet** from any residence other than of the owner or lessee of the site and if not so operated as to withdraw land from its primary agricultural use.

**Recreational Vehicle:** (See "Camping Trailer/Recreational Vehicle".)

**Recreational Vehicle (RV) Park:** (See "Camping Trailer Park".)

**Recreational Vehicle Sales:** The sale, lease or rental of recreational vehicles, including incidental storage, maintenance, and servicing.

**Refuse:** Garbage (food wastes) and trash, but not sewage or industrial wastes.

**Relocate:** To move to another portion of a lot or to a different lot.

**Repair Services:** To restore to sound condition, but not to reconstruct.

**Research Service:** An establishment engaged in conducting basic and applied research, including production of prototype products when limited to the minimum scale necessary for full investigation of the merits of a product, excluding production of products used primarily or customarily for sale or for use in non-prototype production operations.

**Residence:** A stationary detached principal building on a permanent foundation designed for or used as a dwelling.

**Restaurant, Fast Food:** A use primarily engaged in the sale of food and non-alcoholic beverages in a ready-to-consume state and where the design or principal method of operation is that of a fast-food restaurant offering quick food service, where orders are generally not taken at the customer's table, where food is generally served in disposable wrapping or containers.

**Restaurant, General:** A building wherein food is prepared and served in ready to eat form to the public for human consumption. The term restaurant shall include café, cafeteria, grill, pizza or chili parlor, diner, snack shop, hamburger shop and steak house.

**Retail:** Refers to the sale of goods and services directly to the consumer rather than to another business.

**Right-of-Way, Public:** A strip of land which the owner/subdivider has dedicated to the City or to another unit of government for streets, alleys and other public improvements.

**Sanitary Landfill:** A tract of open land used for the permanent disposal of refuse in accordance with the requirements of the Illinois Environmental Protection Agency.

**Setback:** The distance between the front lot line and the building line; or between a side or rear lot line and the side of the structure which faces such lot line; or between the appropriate lot line and the nearest boundary of the area of operation which is approximately parallel to such lot line.

**Shopping Center:** A single piece of real estate containing more than **three (3)** commercial establishments and a total business space of more than **five thousand (5,000) square feet** planned, constructed, and managed as a total entity with customer and employee parking provided on site.

**Skirting:** The cover affixed to the bottom of the exterior walls of a mobile home to conceal the underside thereof.

**Solar Collector:** A professionally manufactured device, structure or a part of a device or structure for which the primary purpose is to transform solar radiant energy into thermal, mechanical, or electrical energy. **(Ord. No. 1298; 03-04-13)**

**Special Use:** A use that has unusual operational, physical, or other characteristics which distinguish it from the permitted uses of a district, but which can be made compatible with the intended overall development within a district. Special uses commonly must meet special standards not necessarily applicable to permitted uses in the district, and are allowed only by permit.

**Storage Building:** A structure designed to keep or store goods and equipment. Said building is not designed for occupancy by families or individuals.

**Stoop:** A small porch which is usually not covered with a roof and which is primarily used to provide access to the adjoining building.

**Street:** A public or private way for motor vehicle travel. The term "street" includes a highway, thoroughfare, parkway, through way, road, pike, avenue, boulevard, lane, place, drive, court, and similar designations, but excludes an alley or a way for pedestrian use only.

**Street Line:** The street right-of-way line abutting a lot line.

**Structure:** Anything constructed or erected on the ground, or attached to something having fixed location on the ground. All buildings are structures, but not all structures are buildings.

**Structure, Temporary:** Any structure that is not attached to a permanent foundation.

**Swimming Pool:** Any structure that contains water **two (2) feet** or greater in depth. This includes in-ground, above-ground and on-ground swimming pools, hot tubs and spas.

**Tanning Salon:** Any business licensed by the State of Illinois to use artificial lighting systems to produce a tan on an individual's body.

**Tattoo Establishment:** A place wherein tattooing, branding or body piercing on the body of another person is performed. For purposes of this definition:

(A) **Tattoo** shall mean one or more of the following:

(1) An indelible mark made on the body of another person by the insertion of a pigment under the skin; or

- (2) An indelible design made on the body of another person by production of scars other than by branding;
- (B) purpose; and
- (C) or other instrument.

**Body piercing:** The perforation of human tissue other than an ear for nonmedical

**Branding:** Making a permanent mark on human tissue by burning with a hot iron

**Trailer:** (See "Camping Trailer".)

**Use:** The purpose or activity for which land or a structure thereon is designed, arranged, intended, occupied, or maintained.

**Utility Substation:** A secondary utility facility such as an electrical substation, gas regulator station, telephone exchange facility, sewage treatment plant, etc.

**Variance:** (See "Lot Size/Bulk Variance".)

**Veterinarian:** An establishment or place of business primarily engaged in the medical care and treatment of animals.

**Warehousing and Distribution:** An establishment or place of business primarily engaged in wholesaling, storage, distribution and handling of materials and equipment other than live animals and plants, at a scale and intensity that is compatible with the surrounding uses and the intent of the City's "I-1" District. Such uses include freight terminals; trucking and courier services, moving and storage facilities, cold storage and wholesale & distribution establishments.

**Wholesale:** Refers to the sale of goods or services by one business to another business.

**Yard:** A space on the same lot with a building, which is open, unoccupied, or unobstructed by structures, except as provided in the Zoning Code.

**Yard, Front:** A yard which is bounded by the front lot line and the building line.

**Yard, Rear:** A yard which is bounded by side lot lines, rear lot lines, and the rear yard line.

**Yard, Side:** A yard which is bounded by the rear yard line, front yard line, side yard line, and side lot line.

**Yard Line:** A line in a lot that is parallel to the lot line along which the applicable yard extends and which is not nearer to such lot line at any point than the required depth or width of said yard.

**Zoning Map:** The map(s) and any amendments thereto designating zoning districts. The zoning map is incorporated into this Code.

**(Ord. No. 1260; 08-01-11)**



**ARTICLE III – GENERAL ZONING REGULATIONS**

**40-3-1 ESTABLISHMENT OF DISTRICTS.** In order to implement this Code, and to achieve the objectives in **Article I**, the entire municipality is hereby divided into the zoning districts shown below. No zoning district established by any new Zoning Code shall be changed or new district established after this Code is in effect, unless the area being considered for change is of the following minimum size or contiguous with and adjacent to a district zoned the same classification as requested for the changed area:

| <u>DISTRICT</u>                      | <u>DESIGNATION</u> | <u>DISTRICT SIZE</u> |
|--------------------------------------|--------------------|----------------------|
| <b><u>Agricultural District</u></b>  |                    |                      |
| Agricultural District                | A-1                | No Minimum           |
| <b><u>Residential Districts</u></b>  |                    |                      |
| One-Family Dwelling District         | R-1                | 15 acres             |
| One-Family Dwelling District         | R-2                | 5 acres              |
| Multiple-Family Dwelling District    | R-4                | 1 acre               |
| Mobile Home District                 | R-5                | 5 acres              |
| <b><u>Business Districts</u></b>     |                    |                      |
| Central Business District            | B-1                | 5 acres              |
| Business District                    | B-2                | 5 acres              |
| <b><u>Industrial District</u></b>    |                    |                      |
| Industrial                           | I-1                | 10 acres             |
| <b><u>Special District</u></b>       |                    |                      |
| Flood Plain and Drainageway District | S-1                | No Minimum           |
| <b><u>Mixed Use District</u></b>     |                    |                      |
| Mixed Use District                   | MXD                | No Minimum           |

**40-3-2 ZONING MAP AND DISTRICT BOUNDARIES.** The boundaries of the listed zoning districts are hereby established as shown on the zoning map of this Municipality. The zoning map, including all notations and other information thereon, is hereby made a part of this Code by reference. Official copies of the zoning map shall be kept on file in the Office of the Code Official or other appropriate official. In the event there is a conflict between the zoning district given for a legal description of any parcel, and the description on the map, the zoning district given to the legal description shall apply.

**(A) Annual Publication.** In accordance with State law, the Code Official shall publish the City’s Zoning Map not later than March 31<sup>st</sup> of each year. However, no map shall be published for any calendar year during which there have been no changes in zoning districts or regulations.

**(B) Annexation Requirements.** All territory annexed into the City of Red Bud will be classified as the most restrict use (R-2). When new territory is being annexed into the City and such territory needs its zoning district changed, the City must follow procedures described in **Section 40-8-3**

unless the City and developer utilize an annexation agreement. In such situations, the annexed area will be zoned as stated in the ordinance adopting and authorizing the annexation agreement pursuant to **65 ILCS Sec. 5/11-15.1-1** and following as amended from time to time.

**40-3-3**        **DETERMINING TERRITORY OF DISTRICTS WITH PRECISION.** In determining with precision what territory is actually included within any zoning district, the Code Official shall apply the following rules:

(A)            Where a district boundary as indicated on the zoning map approximately follows the features listed below on the left, the corresponding feature on the right shall be deemed the district boundary:

- |     |  |                  |
|-----|--|------------------|
| (1) | Center line of any street,<br>alley or highway | Such centerline. |
| (2) | Lot line                                       | Such lot line.   |

(B)            Whenever any street, alley or other public way is legally vacated, the zoning districts adjoining each side of such vacated public way shall automatically extend to the center of such way, and all territory included in the vacated way shall thereafter be subject to all regulations of the extended districts.

**40-3-4**        **GENERAL PROHIBITION.** No structure or part thereof shall be erected, used, occupied, enlarged, altered, relocated or reconstructed except in conformity with the provisions of this Code. Similarly, no lot or part thereof shall be used, occupied, or developed except in conformity with the provisions of this Code.

**40-3-5**        **AGRICULTURAL EXEMPTION.** The provisions of this Code shall not be interpreted or administered so as to restrict the erection, maintenance, alteration, or extension of buildings (including farmhouses) or structures used or intended to be used for agricultural purposes on agricultural land except that such buildings or structures shall be required to conform to applicable setback regulations. Whenever a portion of a tract of land ceases to be used primarily for agricultural purposes, all pertinent provisions of this Code shall apply to that portion.

**40-3-6**        **PUBLIC UTILITY EXEMPTION.** Nothing contained in these regulations shall impose restrictions for the provisions of essential services by a public and quasi-public utility. An essential service shall include the erection, construction, alteration, or maintenance, by public or quasi-public agencies of underground or overhead gas, electrical, stream or water transmission or distribution systems, including substations, collection, communication, supply or disposal systems, elevated and underground water storage tanks, including poles, wires, mains, drains, pipes, conduits, cables, fire alarm boxes, and other similar equipment and accessories in connection therewith, and all items reasonable 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.

**40-3-7**        **UNLISTED USES PROHIBITED.** Whenever any use is not specifically listed as permitted or special within a particular zoning district, such use shall be deemed prohibited in that district unless permitted following hearing. Any use which is not listed within **Schedule 40-3-17(B)** shall be subject to the review process described in **Section 40-3-17.**

**40-3-8**        **TEMPORARY AND PORTABLE STRUCTURES/USES.** No person shall park, store, or occupy a temporary structure for living purposes except:

(A) For a period not in excess of **one (1) year**, on property for which a building permit for the construction of a permanent dwelling has been issued, which construction is actively carried forward to completion within the aforesaid **one (1) year**.

(B) A portable structure may be used as a temporary office or shelter incidental to construction or development of the premises on which the structure is located only during the time construction or development is actively underway.

**40-3-9**            **ONE BUILDING AND ALL YARDS ON ONE LOT.** Except as specifically provided otherwise:

(A) Only one (1) principal building or structure shall be permitted on any residential lot of record; and

(B) No portion of any minimum area, minimum dimensions, or minimum yards required for any lot, structure, or use shall be counted to satisfy the minimum area, dimensions, or yards requirements for any other lot, structure or use.

**40-3-10**           **ACCESS REQUIRED.** No building shall be erected on any lot unless such lot abuts, or has permanent easement of access to, a public street.

**40-3-11**           **FRONT SETBACKS - CORNER/THROUGH LOTS.** Every lot with multiple frontages (such as corner or through lots) shall meet the front setback requirements of the district in which it is located on every side having frontage.

**40-3-12**           **FRONT SETBACKS IN CERTAIN BUILT-UP AREAS.** Except as specifically provided otherwise, in the Residential Zoning Districts and in the Business Zoning Districts, where existing development has already established a setback line, then new developments in that block may meet that established setback line or the setback line established by this Code or plat.

**40-3-13**           **INTRUSIONS INTO YARDS.** Except where principal buildings are commonly attached (for example in the downtown commercial area), no part of a principal building on **one (1) lot** shall be closer than **ten (10) feet** from any part of a principal building located on an abutting lot. However, so long as this overriding constraint is observed, certain intrusions into required yards are permitted as indicated below.

| <b><u>FEATURES</u></b>  | <b><u>MAXIMUM INTRUSIONS</u></b> |
|---|----------------------------------|
| (A)    Cornices, chimneys, planters or similar architectural features | Two (2) feet.                    |
| (B)    Fire escapes   | Four (4) feet.                   |
| (C)    Balconies, enclosed porches                                    | Four (4) feet.                   |
| (D)    Canopies, roof overhangs                                       | Four (4) feet.                   |

**40-3-14**           **EXCEPTIONS TO HEIGHT LIMITS.** The following are exceptions to height limits:

(A)            **Necessary Appurtenances.** Chimneys, parapet walls, cooling towers, elevator bulkheads, fire towers, antennas, or other necessary appurtenances commonly constructed above the roof line shall be permitted to exceed the maximum height limitations by **twenty percent (20%)** for the district in which they are located if they comply with all other pertinent ordinances of this Municipality.

(B) **Intersections.** On corner lots, in the triangular portion of land bounded by the street lines that are **thirty (30) feet** from the point of intersection, no obstruction, whether natural or man-made, shall intrude into the air space that is between **three (3)** and **ten (10) feet** above the level of the adjacent street.

**40-3-15** **ACCESSORY USES.** An "accessory use" means any structure or use which is:

(A) Subordinate in size or purpose to the principal structure or use which it serves, except as provided in subsection (C);

(B) Located on the same lot as the principal structure or use served, except as provided in subsection (C).

(C) In regard to accessory structures and uses located in an R-4 District on a lot without a principal structure, the following regulations apply:

- (1) the lot in question must be located so that it would be contiguous to another lot owned by the applicant if it were not for a right of way dividing the two lots, except that the right of way cannot be a state highway or a collector street; and
- (2) only two of the following accessory structures/uses will be allowed without duplication on the lot: patio, gazebo, garage, shed, private residential greenhouse (garage sized); and
- (3) fences and walls are allowed, subject to their specific regulations, in addition to the two accessory structures; and
- (4) the accessory structures/uses may be located anywhere on the lot, subject to applicable setbacks and right of ways; and
- (5) an application for a Special Use Permit must be submitted and approved before any building permit(s) are issued.

If an accessory use is attached to the principal structure, it shall be considered part of that principal structure. Roof overhangs on accessory structures not attached to the principal structure shall not encroach more than **two (2) feet** into the required setback distance. Accessory structures shall be located in back yards only except as provided in subsection (C).

**(Ord. No. 1319; 01-06-14)**

**40-3-16** **SPECIFICALLY PROHIBITED ACCESSORY USES.** The following accessory uses are strictly prohibited unless expressly permitted in particular zoning district(s):

(A) **Schedule: Area and Bulk Regulations.** To facilitate public understanding of this Code and for the better administration and convenience of use thereof, the regulations limiting the dwelling unit density, the heights, bulk and arrangement of buildings, and requiring minimum off-street parking for each of the districts established by **Section 40-3-1** hereof (or specified use), are set forth in **Schedule 40-3-17(A)** hereof. Such **Schedule A** is hereby adopted and declared to be an integral part of this Code and it may be amended in the same manner as any part of this Code.

(B) **Schedule: Permitted Uses and Accessory Uses; Special Uses; Prohibited Uses (See Schedule located at the end of this Zoning Code).** To facilitate public understanding of this Code and for the better administration and convenience of use thereof, the regulations designating permitted uses, permitted accessory uses, special uses and specifically prohibited uses for each of the districts established by **Section 40-3-1** hereof, are set forth in **Schedule 40-3-17(B)** as a part of **Section 40-3-1** hereof. Such **Schedule B** is intended and declared to be an integral part of this Code and it may be amended in the same manner as any part of this Code.

(C) If a proposed use is not clearly defined in **Schedule 40-3-17(B)**, the matter shall be referred to the Code Official. The Code Official may confer with the City Attorney. The Code Official shall consider the nature of the proposed use and determine if it is substantially similar to a use listed in **Schedule 40-3-17(B)**. The factors to be considered include, but are not limited to: size of structure, traffic likely to be generated, the presence of manufacturing, assembly or preparation at the proposed site, and the degree of similarity with clearly permitted uses. If the Code Official determines that the proposed use is substantially similar to a permitted use, the proposed use shall be considered as permitted and shall

be subject to the limitations which would apply to such clearly permitted use. All such designations of substantially similar use shall be reported to the City Council and the Planning Commission as information only. Any proposed use which is not so characterized as substantially similar to a clearly permitted use shall be considered as a prohibited unlisted use. An amendment or special use permit, as applicable, may be sought.

(D) Each column refers to a specific district which lists the permitted uses, permitted accessory uses, special uses and specifically prohibited uses, and are read vertically under a district column.

(E) Limitations and requirements in **Schedule 40-3-17(B)** as used in a column shall mean and include the specific limitations and requirements as set forth in the same column for the district referred to. Where reference is made in **Schedule 40-3-17(B)** to another section or provision of this Code, such section or provision referred to shall thereby be incorporated as an integral part of the requirements including such reference. All provisions of this Code shall apply as integral parts of this Section although not specifically cited as a column.

**40-3-17 SCHEDULES.**

(A) **Area and Bulk Regulations.** (See Conclusion of Chapter)

(B) **Permitted Uses and Accessory Uses, Prohibited Uses, and Special Uses.**

(See Conclusion of Chapter)

(Ord. No. 1261; 08-01-11)

**40-3-18 CONSERVATION SUBDIVISION OVERLAY (CSO).** The following shall be allowed in the City's Residential Districts:

(A) **Purpose.** The purpose of the Conservation Subdivision Overlay (CSO) is to preserve natural areas and it offers relief from the City's "R" Residential zoning districts density and bulk requirements.

(B) **Permitted Uses.** All uses permitted by right or by special use in the underlying zoning district approved in conjunction with the CSO may be allowed in the CSO. Nothing in this regulation prohibits the submission of an underlying zoning district change petition in conjunction with a CSO district petition.

(C) **Density.** The density of any CSO shall not exceed the density permitted in the approved underlying zoning district. The developer shall prepare a plan showing the maximum number of lots permitted under the requirements of the underlying district. This plan shall be called a "yield plan" and shall be used to determine the maximum number of lots allowed in the CSO. A preliminary plan shall also be submitted showing the areas to be preserved and layout of the proposed lots, roads and any other alterations to the site.

(D) **Minimum Lot Requirements.** The CSO allows reductions in the underlying district(s) minimum lot area dimensions, yard requirements and building bulk limitations provided they do not fall below the following minimum requirements or exceed the maximum height limit:

|   |                              |
|---|------------------------------|
| Minimum lot area (single family detached):  | 6,000 square feet            |
| Minimum lot area (single family attached):  | 4,000 square feet (per unit) |
| Minimum lot width (single family detached): | 50 feet                      |
| Minimum lot width (single family attached): | 40 feet (per unit)           |
| Minimum lot depth:                          | 100 feet                     |
| Building height:                            | 35 feet                      |

(E) **Yard Setbacks.** Yard setbacks shall be no less than the following:

|        |   |
|--------|---|
| Front: | 25 feet   |
| Side:  | 10 feet, except 0 feet for common-wall construction, when permitted |
| Rear:  | 25 feet   |

(F) **Parking.** Parking shall be as required in the underlying zoning district.

(G) **Neighborhood Connections.** The CSO should provide, dedicate and incorporate public access, both vehicular and pedestrian, whenever possible to adjacent neighborhoods, schools, parks, commercial centers and other adjacent destinations.

(H) **Minimum CSO Requirements.** The following shall be minimally required in a CSO:

- (1) Sidewalks are required along both sides of streets unless alternative pedestrian paths are provided and approved as a part of the approved subdivision or site development plan.
- (2) A minimum of **twenty-five percent (25%)** of the total area of the site shall be set aside for undisturbed habitat preservation and land conservation. No more than **one-half (50%)** of such set-aside space shall consist of the following:
  - (a) Any area restricted from development under the codes or laws of the City of Red Bud, or other jurisdictions, and
  - (b) Protected flood plains and storm water retention and water quality mitigation facilities.
- (3) All open space and common areas not preserved in their natural state shall be landscaped and recorded for ownership and maintenance by a lawfully organized association of property owners.
- (4) The preservation, maintenance and ownership in perpetuity of open space, common ground and set aside lands in their natural state shall be accomplished by deed restriction on the instruments recording the development authorized and established via the CSO governing ordinance.

(I) **Procedures to Establish a CSO.** The establishment of a Conservation Subdivision Overlay (CSO) is a legal act of rezoning and shall comply with the City's zoning amendment procedures in **Section 40-8-3** and the requirements of this Section. Each petition for a CSO shall include a residential zoning district regardless if the proposed district is the same as the current zoning district and comply with the following procedures:

- (1) The Planning Commission shall review the petition for consistency with the Comprehensive Plan, compliance with the requirements of this Section, compliance with the Subdivision Code, and consider the comments and testimony from the petitioner, the speakers at the public hearing, and the City Code Official. The Planning Commission shall submit their recommendation to the City Council.
- (2) If the overlay district and the underlying zoning district standards appear to be in conflict, the more restrictive standard shall be applied. Where such determination is not clear, the City Council shall apply the standard that best meets the goals and recommendations of the Comprehensive Plan.
- (3) The CSO shall be approved by an ordinance. The governing ordinance shall include the new zoning district classification, permitted uses, building bulk, setback and density limits and other restrictions or limitations to the uses and requirements of the underlying zoning districts, and set the general development parameters and conditions upon which permits for grading and construction are contingent. The approved site development plan shall be included in the ordinance.
- (4) Minor changes and adjustments to the approved site development plan may be made without subsequent Planning Commission or City Council approval as long as such changes are within the scope of the provisions of the approving ordinance. The Code Official shall be responsible for determining if the proposed changes are within said scope or constitute a substantial deviation from the ordinance.
- (5) In the case that it is determined that the changes constitute a deviation from the ordinance, the changes shall be considered an amendment to the approved site development plan and subject to the procedures established herein for considering such amendments.

- (6) Upon final approval of a fully engineered final site development plan by the City and all agencies with jurisdiction over the site, the petitioner shall provide mylar copies for recording and **four (4) paper copies** and a digital copy on DVD or CD of the final site plan for the City's records.
- (7) No building permit shall be issued for any structure in a CSO that does not conform to the final site development plan and governing ordinance as approved by the City Council.
- (8) The governing ordinance shall specify site development regulations. Where the governing ordinance is silent on such matters, the underlying zoning district and development regulations shall control.

**(Ord. No. 1259; 08-01-11)**

**40-3-19 MIXED USE DISTRICTS (MXD).** The following shall be allowed in the City:

(A) **Purpose.** The mixed use district allows greater flexibility in development standards and density and permits a mixture of uses and development options that are responsive to market demands and facilitates adaptation of development to the unique conditions of a particular site.

(B) **Applicability.** An area may be considered for rezoning to the MXD District if:

- (1) More than one land use is proposed for development on a single parcel in which each use is taken from two different zoning districts, where only a single use is permitted under other zoning classifications; or
- (2) Different land uses that would not otherwise be permitted to locate within the same zoning district are proposed for development on one or more adjacent parcels under single or separate ownership; and
- (3) An exception or variation from the size, setback, frontage, density, uses or other standards that are required in other zoning districts permitting the same uses are being proposed as part of a development plan; and
- (4) The proposed MXD site shall be designated as "Mixed Use" on the Comprehensive Plan Future Land Use map. If the designation is not "Mixed Use" and the Planning Commission supports rezoning the site to MXD, the Comprehensive Plan Future Land Use Map must be changed prior to rezoning the site to MXD.

(C) **Permitted Uses.** The uses permitted in the MXD District shall be limited to the uses permitted by right or by special use on **Schedule 40-3-17(B)**. Uses not listed, may be permitted on a case by case basis as approved by the City Council. In approving any MXD development, the City Council may attach any condition necessary to protect the public welfare, health and safety. All developments within the MXD District shall be subject to site plan review. All MXD District Development Plans shall be consistent with the Comprehensive Plan's mixed use recommendations and guidelines contained in **Chapter 6** of the Comprehensive Plan.

(D) **Structure Height.** No structure shall exceed **three (3) stories** or **thirty-five (35) feet** whichever is less, unless approved by the City Council.

(E) **Maximum Site Coverage.** There is no maximum site coverage limitation. However, each site shall contribute street plantings, street lighting and other pedestrian amenities as approved by the City Council.

(F) **Maximum Square Footage.** The gross floor area of the entire building(s) shall be reviewed by the Planning Commission and approved by the City Council.

(G) **Setback Requirements.** The following shall be the setback requirements:

- (1) **Front.** The required front setback is a maximum of **ten (10) feet**. The intent of the front setback maximum is to pull structures close to the street while creating public space in the form of sidewalks, plaza areas and landscaping between the street and the building. The maximum front yard setback may be modified or waived by the Planning Commission upon approval of the site development plan depicting the proposed setback modifications.

- (2) **Rear.** The minimum rear setback shall be **three (3) feet**; however, no building shall be closer than **twenty (20) feet** to another building.
- (3) **Side.** No building shall be closer than **twenty (20) feet** to another building.

(H) **Accessory Uses.** The City Council may allow the developer an exemption the usual restrictions on accessory uses on a case by case basis.

(I) **Off-Street Parking.** The following shall be required:

- (1) Off-street parking spaces should be located to the rear of the principal building or screened, landscaped and/or buffered to minimize visibility from major rights-of-way, residential units and adjoining properties.
- (2) Perimeter landscape buffers and curbed planting islands shall be required in all parking lots of **twenty (20)** or more spaces.
- (3) Unless part of a rain garden or similar runoff collection system, all landscaped areas shall be delineated by a vertical concrete curb.
- (4) The use of low impact development techniques is encouraged. Low Impact Development (LID) includes, but is not limited to, the use of permeable pavers, indigenous landscaping, rain gardens, etc.

(J) **Signs.** All mixed use development proposals shall include a sign package illustrating the design, placement and size of all signage approved by the Planning Commission. All signage shall be in scale and harmonious with the development and shall be located and designed in a manner that does not introduce visual clutter of the street or obstruct any public right of way, including pedestrian pathways.

(K) **MXD Procedures.** Every applicant for MXD approval shall comply with the procedural requirements of **Section 40-8-3**, the City's Subdivision Code and the following procedures:

- (1) Filing of development plans with the Code Official along with a petition for rezoning under **Section 40-8-3** of the Code.
- (2) Provision by the developer of adequate assurance for the completion of required improvements as per the development plan as specified in subparagraph (7) below.
- (3) The Planning Commission shall review the petition following the procedures of **Section 40-8-3**.
- (4) The Planning Commission shall submit to the City Council a written advisory report concerning acceptance or rejection of the development plan. In deciding what their advice should be, the Planning Commission shall consider the following criteria, in addition to the criteria of **Section 40-8-3**:
  - (a) The extent to which the proposed development is consistent with the City's Comprehensive Land Use Plan and with the purposes of this Code and of all other applicable codes and ordinances; and
  - (b) The extent to which the proposed development deviates from the regulations that are generally applicable to the property (including, but not limited to, use, lot and building regulations of the district), and the apparent merits (if any) of said deviations; and
  - (c) Whether the proposed design of the MXD makes adequate provisions for vehicular and pedestrian circulation, off-street parking and loading, separation of residential and commercial uses, open space, recreational facilities, and the preservation of natural features; and
  - (d) The compatibility of the proposed MXD with adjacent properties and surrounding area.
- (5) The City Council shall not approve any MXD development plan unless:
  - (a) The developer has posted a letter of credit or deposited funds in escrow in the amount the City Engineer deems sufficient to guarantee the satisfactory completion of all required



improvements as required by the City's Subdivision Code to insure satisfactory completion of the MXD; and

- (b) The City Attorney has stated that all legal instruments (particularly the restrictive covenants) are satisfactory; and
- (c) The proposed MXD, as evidenced by the development plan, complies with all applicable codes and ordinances; and
- (d) The Development Plan if approved by the City Council, shall be filed by the City Clerk at the expense of developer with the County Recorder of Deeds in the County in which the MXD is located.

(L) **Changes in Plans.** No changes shall be made to any approved MXD development plan except as follows:

- (1) Minor changes, as determined by the City Superintendent and Code Official, if required by engineering or other circumstances not foreseen at the time the final development plan was approved.
- (2) All other changes shall require a public hearing before the Planning Commission and approval by the City Council.
- (3) No approved change shall have any effect until it is recorded with the County Recorder of Deeds in the County in which the MXD is located, as an amendment to the recorded copy of the development plan.

**(Ord. No. 1259; 08-01-11)**

***[This page was left blank intentionally.]***

**ARTICLE IV - SUPPLEMENTARY ZONING REGULATIONS**

**DIVISION I - GENERALLY**

**40-4-1**        **APPLICABILITY OF ARTICLE.** This Article establishes lot and structure requirements, design standards, and use limitations for specific, potentially troublesome, structures, and uses. These regulations apply in every zoning district where the specific structure or use is permitted or allowed by special use permit. But if more stringent regulations are applicable in any particular district, such regulations shall prevail.

**40-4-2**        **CAMPING TRAILERS.** The regulations of this Section do not apply to camping trailers or other similar recreational vehicles parked in a permitted camping trailer park. The requirements of paragraphs (A), (B), and (C) do not apply to camping trailers or other recreational vehicles parked on a permitted recreational vehicle sales lot.

(A)            No camping trailer or other similar recreational vehicle shall be used as living quarters (other than in a camping trailer park).

(B)            No camping trailer or other similar recreational vehicle shall be used as an office or for any other commercial purposes unless a special use permit is granted from the City.

(C)            No camping trailer, boat, boat trailer, RV or other similar recreational vehicle shall be parked on any front yard (except on a driveway) or on a side yard abutting a street.

**40-4-3**        **FENCES, WALLS.** The following regulations shall apply to fences and yards:

(A)            No sharp-pointed fence or barbed wire fence shall be erected or maintained anywhere in the Residential Districts. In the Business or Industrial Districts a sharp-pointed fence and barbed wire are allowed if the sharp-points and/or barbed wire are above **eight (8) feet**. No electrically charged fence shall be erected or maintained anywhere in this Municipality.

(B)            No fence, wall, or other obstruction shall be erected within any public right-of-way or easement without the written approval of the Code Official and City Superintendent (See paragraph (E) below).

(C)            No fence, wall or other obstruction shall be erected in violation of the **Illinois Drainage Code.**

(D)            Every fence, wall or other obstruction shall conform to the special height restrictions applicable in areas near intersections. **(See Section 40-3-13(B).)** No fence, wall or other obstructions in any front yard area shall exceed **four (4) feet** in height or in any rear or in any side yard exceed **eight (8) feet** in height unless a Business or Industrial lot abuts the rear or side yard of a Residential lot, then privacy screening requirements must be followed. **(See Section 40-4-15)**

(E)            Fences, walls and obstructions may be located within **three (3) feet** of the property line as determined by the Code Administrator unless the Code Administrator gives written permission for other placement. If the fence, wall, or obstruction is placed on an easement dedicated to the public, then the City may remove any obstruction, fence, or wall at the owner's expense. Replacement of the same will also be at the expense of the property owner. The building permit shall be issued subject to these conditions. **(Ord. No. 1408; 10-01-18)**

**40-4-4**        **FILLING STATIONS.** The following regulations apply to Filling Stations:

(A)            All gasoline pumps, service facilities or restrictive materials shall be located at least **twenty-five (25) feet** from any street right-of-way line, side lot line, or rear lot line.

(B)            All trash receptacles, except minor receptacles adjacent to the gasoline pumps, shall be screened from view.

**40-4-5 HOME OCCUPATIONS.** A home occupation means any business, profession, or occupation (excluding retail sales) for gain or support entirely within a residential building or on residential premises. Within this Municipality every home occupation shall be considered a special use. No home occupation shall be established except in conformity with the following regulations:

(A) **Unrelated Employees.** A home occupation shall employ no more than **one (1)** individual who does not reside on the premises.

(B) **Floor Space.** The total area used for a home occupation shall not exceed **twenty-five percent (25%)** of the gross floor area of the dwelling, or **three hundred (300) square feet**, whichever is less.

(C) **Day Care Homes.** Must be licensed by the Illinois Department of Children and Family Services. Must be located in family homes which may receive **three (3)** up to **six (6) children** for less than **twenty-four (24) hours** per day. The number counted does include the family’s natural or adopted children and all other persons under the age of **twelve (12)** residing in the home. The term does not include family homes which receive children from a single household. Any room that the children are allowed to enter must have at least **two (2) exits** available in case of an emergency. All other requirements stated in **Section 40-4-5** must be followed.

(D) **Dwelling Alterations.** In any residential district a principal residential building shall not be altered—to accommodate a home occupation—in such a way as to materially change the residential character of the building.

(E) **Outside Storage.** Outdoor (unenclosed) storage or display of equipment or materials used in connection with a home occupation is prohibited.

(F) **Nuisances.** A home occupation shall not generate any offensive noise, vibration, smoke, dust, odors, heat, glare or electrical interference noticeable at or beyond the lot lines.

(G) **Signs.** A sign may be displayed by the home occupation. The sign shall not exceed **four (4) square feet** in size and shall not be illuminated or detract from the general character of the neighborhood.

(H) **Violation—Revocation.** If any of the regulations listed above are violated, the City Council has the authority to revoke the home occupation permit.

**40-4-6 NURSING HOMES—LOT SIZE.** The lot on which any nursing home is situated shall have a minimum width and depth of **two hundred (200) feet**, and a minimum area of **one and one-half (1.5) acres**.

**40-4-7 JUNK YARDS.** After the effective date of this Code no part of any junk yard—which includes any lot on which any **three (3)** or more inoperable or unlicensed vehicles are stored—shall be operated within this City.

**40-4-8 SCHOOLS.** The following regulations shall apply to schools:

(A) The lot on which any school is situated shall have a minimum area indicated below:

| <u>Type of School</u>                        | <u>Minimum Lot Area</u>  |
|--|--|
| Nursery, Day Care Center                     | <b>One hundred (100) square feet.</b>  |
| Other (elementary, junior high, senior high) | As required by State law and if none, as deemed appropriate by the school’s engineer and/or architect. |

(B) The principal building of any school shall be located at least **twenty-five (25) feet** from all lot lines.

**40-4-9**        **SWIMMING POOLS.** Every swimming pool **two (2) feet** or greater in depth, whether public or private, shall be enclosed by a wall or fence at least **four (4) feet** in height above the finished grade and must have a gate that shall be locked when the pool is not in use. An above-the-ground pool, **four (4) feet** or higher, need not have a fence with a gate, so long as the ladder is removed when not in use or is folded and locked.

**40-4-10**       **PUBLIC BUILDINGS.** In any district where municipally owned or other publicly owned buildings are permitted, the following additional requirements shall be met:

(A)            In any Residential District all municipal or other publicly-owned buildings shall be located at least **twenty-five (25) feet** from all property lines.

(B)            In any Residential or Business District, there shall be no permanent storage of heavy construction or maintenance equipment (such as excavating, road building, or hauling equipment), unless in an enclosed building or enclosed within a solid wall or fence at least **six (6) feet** in height. Such storage areas, maintenance yards, or storage warehouses shall be located at least **twenty-five (25) feet** from any front or side property line.

**40-4-11**       **KENNELS.** The following regulations shall apply to kennels:

(A)            The lot on which any kennel is situated shall have a minimum area of **three (3) acres.**

(B)            Every kennel shall be located at least **two hundred (200) feet** from the nearest dwelling, and at least **one hundred (100) feet** from any lot line.

**40-4-12**       **LIGHTING CONTROLS.** Any light used for the illumination of signs, swimming pools, or for any other purpose shall be arranged so as to confine the direct light rays away from neighboring residential properties and away from the vision of passing motorists.

**40-4-13**       **PRIVACY SCREENING.** Where any Business or Industrial District abuts any Residential District a privacy screen of City approved material whether natural or man-made must be provided by the property owner. The following regulations must apply:

(A)            The screen must be at least **eight (8) feet** in height, provide **ninety percent (90%)** density year round and be maintained to original specifications by the property owner as long as the screen is a requirement.

(B)            Natural materials may be **six (6) feet** when planted but must be at least **eight (8) feet** and provide **ninety percent (90%)** density within **three (3) years** of occupancy.

(C)            All materials must be approved by the Code Official prior to installation or the granting of any occupancy permit.

(D)            Approval and conditions stated in **Section 40-4-3(E)** must be followed and agreed to and noted on the permit.

**40-4-14**       **EXCEPTIONS TO PRIVACY SCREENING.**

(A)            The residential property is lawfully being used for commercial or industrial purposes.

(B)            The residential property is owned by the commercial or industrial owner and provides a **fifty (50) foot** buffer between the commercial or industrial property and other residential properties.

(C)            The commercial or industrial use was established before the adjoining property was annexed or was designated as residential.

**40-4-15 DUMPSTER/TRASH DISPOSAL.** All existing and newly constructed structures that contain more than **three (3) units** shall be required to provide on-site trash disposal dumpster. Said dumpster shall contain a minimum of **one-half (1/2) cubic yard** capacity for each apartment unit, and shall be screened from view, at least **one (1) foot** above the height of the dumpster.

**40-4-16 INFILL STANDARDS.** All dwellings constructed in an established neighborhood (infill) shall comply with the following residential design guidelines:

(A) New single family residential infill shall be consistent with the Comprehensive Plan and with the purposes of this Code and of all other applicable codes and ordinances.

(B) Each residential building shall contain street-facing architectural features which provide human scale to the façade, enhance the “curb appeal”, and reinforce local building traditions. Architectural features may include, but are not limited to, bay windows, covered porches, balconies, dormers and cupolas.

(C) All single-family homes, townhouses, and duplexes shall have a street-oriented entrance and a street-facing principal window. In the case of dwelling units facing courtyards or gardens, entries and principal windows shall face those features. A roadway presence should also be retained through the use of front porches and architectural treatments and landscaping that help define the primary (front) entrance to any dwelling.

(D) Garage door openings facing a street should not exceed **fifty percent (50%)** of the width of the house façade.

(E) All new construction shall include durable, high quality exterior building materials. The use of bright colors and highly reflective surfaces shall be limited to accent features only.

**(Ord. No. 1259; 08-01-11)**

**40-4-17 TRANSITION TO SMALLER LOTS.** When developing adjacent to an established neighborhood, lot sizes, yard setbacks and building heights and bulk shall reflect the existing neighborhood patterns at the perimeter of the proposed development, but may transition to smaller lot sizes, yard setbacks and greater building heights for lots that are interior to the district, when permitted. **(Ord. No. 1259; 08-01-11)**

**40-4-18 COMMERCIAL DESIGN GUIDELINES.** The following should be followed:

(A) **Architectural Continuity.** New buildings and additions to existing buildings shall relate to adjacent buildings in regards to the material and color of the wall and roof; the type and slope of the roof and the proportion of the fenestration (windows and doors).

(B) **Articulation.** Buildings should be articulated to reduce the apparent scale of buildings. Architectural details used to articulate the structure may include changes in the building plane (off-sets), columns, balconies and other three dimensional details that create shadow lines and break up the flat surfaces of the façade.

(C) **Roof and Eaves.** Roofline offsets should be provided to lend architectural interest and variety to the massing of a building and to relieve the effect of a single, long roof. The use of eaves, alternating dormers, stepped roofs, gables or other roof elements should be used to add visual relief and physical articulation to the overall façade. Flat-roofed designs should include architectural details such as cornices and decorative eaves to provide interest to the roofline.

(D) **Window and Entryway Treatments.** Decorative lintels, sills, glazing, door design, moldings or framing details should be used on windows and entryways located on facades facing or adjacent to public streets to create architectural interest and enhance the pedestrian realm.

(1) Primary building entries should be parallel to the front property line and include a stylized entryway such as a recessed entrance, an extruded entrance, truncated corner entryway or other design that creates an enhanced sense of entry.

- (2) Building frontages and sides of buildings oriented to the street should incorporate a combination of awnings, building-mounted lighting, pedestrian level display windows, storefronts and entrances.
- (3) Upper story windows should be vertically aligned with the location of windows and doors on the ground level, including storefront or display windows.

(E) **Building Materials.** The use of external insulating finishing system ("EIFS"), corrugated metal, aluminum siding, and vinyl siding should be limited to accent features only. EIFS and vinyl siding should not be used on the bottom **four (4) feet** of the building façade or other areas where it could be easily damaged by yard equipment or constant contact by vegetation or pedestrians. The use of highly reflective or glossy materials or coatings should be limited to building accents only.

(F) **Awnings and Canopies.** All buildings in the Downtown B-1 District should have an awning or canopy over the primary building entrance to emphasize the building's entrance and provide shade and weather protection for users.

(G) **Height.** Taller buildings shall step-down to provide a height transition to existing single story buildings. This recommendation applies to new and vertically expanded buildings.

**(Ord. No. 1259; 08-01-11)**

**40-4-19**      **INDUSTRIAL DESIGN GUIDELINES.** The following should be followed:

(A) Buildings may include brick, concrete, masonry or tilt-up buildings. Pole buildings are prohibited.

(B) All uses that include the storage of inoperable automobiles, boats, RVs or other such inoperable equipment shall contain sight proof screening, approved by the City Council.

(C) Buildings shall include architectural features such as textured/masonry/ stucco surfaces, accents and fenestration such as windows, doors and other offsets or other breaks in the primary walls and roof planes to avoid monotonous, uninterrupted walls or roof planes on any building face visible from adjacent non-industrial uses or public right of ways.

**(Ord. No. 1259; 08-01-11)**

**40-4-20**      **SOLAR COLLECTORS.** The following shall regulate solar collectors permitted in any zoning district.

(A) **Zoning Administrator Notice.** No solar collector shall be installed on a principal structure roof without prior Notice being given to the Zoning Administrator. The Zoning Administrator shall inspect the plans for the solar collector to ensure it meets all zoning requirements.

(B) **Installation.** Solar collectors may be installed onto or built-in to the roof of any principal structure only within the City, provided they comply with all height restrictions. Solar collectors shall be installed according to their manufacturers' specifications to ensure safe use. No solar collector may be installed on any part of a principal structure visible from the front of the structure.

(C) **Surface Area.** Solar collectors shall not cover more than **eighty percent (80%)** of any roof surface area upon which the collectors are mounted, and shall be set back from the roof edge by a minimum of **one (1) foot** on each side. Requests for a solar collector to cover more than **eighty percent (80%)** of any roof surface area but still maintains the **one (1) foot** setback on each side may be allowed provided the applicant secures a special use permit under the Zoning Code.

(D) **Utilities.** No solar collector shall be attached to the principal structure's electrical system until Notice has been given to the City Utility Department and the Utility Department has inspected the system to ensure no damage will occur to the City's Electric system. The City of Red Bud will not issue credits or pay owners of solar collector systems for any electricity that is exported into the City utility system by the solar collector system.

**(Ord. No. 1298; 03-04-13)**

**40-4-21 - 40-4-25**      **RESERVED.**

**DIVISION II – MOBILE (MANUFACTURED) HOMES**

**40-4-26**      **MOBILE HOMES.** The following regulations are supplementary to other regulations of the City and are further supplementary to the statutes, rules and regulations adopted by the State of Illinois, including but not limited to, the Mobile Home Park Act (**210 ILCS 115/1 and following**), the Illinois Mobile Home Tiedown Act (**210 ILCS 120/1 and following**), and the Abandoned Mobile Home Act (**210 ILCS 117/1 and following**) and the Rules and Regulations adopted pursuant to those Acts.

(A)              All mobile homes shall be located in a "R-5" zoning district, except as otherwise provided herein.

(B)              **Registration of Replacement Mobile Home.** All existing mobile homes that are to be replaced shall register with the City **prior** to removing the existing mobile home, by completing the registration form found at the end of this Chapter (Appendix C - Replacement Mobile home Registration Form). A registration fee of **One Hundred Dollars (\$100.00)** shall be paid to the City. If the existing mobile home site is being abandoned, the City Clerk shall be notified in writing. Said notification shall be kept on file at City Hall and at no time in the future shall a mobile home be allowed at that location unless permitted by this Code. The mobile home site shall be inspected by the City Superintendent or his designee for compliance as described in **Section 40-4-10(C)** prior to the replacement mobile home being delivered and again before occupancy.

**40-4-27**      **MOBILE HOMES NOT LOCATED WITHIN AN "R-5" MOBILE HOME ZONING DISTRICT.** Existing mobile homes located outside the "R-5" Mobile Home Zoning District may be replaced with another mobile home only if it meets **all** of the following requirements:

(A)              the replacement mobile home shall be in place within **thirty (30) days** of removing the original mobile home;

(B)              either the replacement mobile home shall meet all setback and side yard requirements of the zoning district in which it is located or the replacement mobile home shall be the same size or smaller than the original mobile home;

(C)              the replacement mobile home shall be placed on a mobile home stand as defined in

**Section 40-2-2;**

(D)              the replacement mobile home shall have the tongue/hitch and all associated appurtenances removed;

(E)              the wheels shall be removed;

(F)              the replacement mobile home shall have a shingled roof;

(G)              all existing and/or proposed off-street parking shall be paved with either **six (6) inches** of unreinforced concrete pavement or **two (2) inches** of asphalt on **four (4) inches** of aggregate base, gradation CA-6;

(H)              the replacement mobile home shall be placed on a block foundation. The foundation shall be equipped with an inspection door a minimum of **thirty (30) inches** wide, easily accessible from the outside.

**40-4-28**      **MOBILE HOME PARKS.**

(A)              No mobile home park shall be operated within the City without maintaining a permit to operate from the Illinois Department of Public Health. Said permit shall be submitted to the City Clerk and kept on file.

(B)              Mobile home parks shall be located only within an "R-5" Mobile Home Zoning District.

(C)              Replacement mobile homes located within a mobile home park shall meet all the requirements of **Section 40-4-10(C)(2), (3), (4), (5) and (6)** and must file the registration form found at the end of this Chapter (Appendix C - Replacement Mobile Home Registration Form). There shall be no charge for filing of this registration form.

(D)              Mobile home parks shall meet the following requirements:

(1)              shall be located on a tract of land not less than **five (5) acres**.



- (2) shall contain a minimum of **three (3) mobile homes**.
- (3) Minimum Lot Size and Setback Requirements shall be as found on **Schedule 40-3-17(A)**; Area and Bulk Regulations which is located at the end of this Chapter;
- (4) shall be skirted with a fire-resistant material. The skirting shall be equipped with an inspection door a minimum of **thirty (30) inches** wide, easily accessible from the outside.
- (5) **Two (2)** side by side off-street parking spaces shall be provided for each mobile home. This off-street parking area shall be a minimum of **twenty feet by twenty feet (20' x 20')**.
- (6) all off-street parking shall be paved with either **six (6) inches** of unreinforced concrete pavement or **two (2) inches** of asphalt on **four (4) inches** of aggregate base, gradation CA-6. This requirement shall not apply to those persons owning mobile home parks on **March 1, 2010**, nor to the heirs of the body of such persons, but only with regard to mobile home parks owned by such persons on **March 1, 2010**.
- (7) All mobile home parks, upon build out, shall have **two (2)** public entrances and exits.
- (8) No roadway may dead-end except as a cul-de-sac with appropriate turn-around space for emergency vehicles as required by the Red Bud Subdivision Code.
- (9) easements shall be granted to the City as required by the Red Bud Subdivision Code.
- (10) the City of Red Bud shall not issue a mobile home park license for a new mobile home park until all roads and utilities are constructed, completed and paid for by the mobile home park owner.
- (11) all streets, curbs and gutters, and storm sewer improvements shall be constructed as required by the Red Bud Subdivision Code.
- (12) all utilities shall be constructed as required by the Red Bud Subdivision Code.
- (13) As-built drawings shall be submitted to the City as required by the Red Bud Subdivision Code.
- (14) A Construction Inspection shall be required during the entirety of the project. The construction inspector shall be the City Superintendent or his designee. The cost of the inspection shall be **Sixty-Five Dollars (\$65.00)** per hour and shall be paid by the mobile home park developer.

**40-4-29**

**ADMINISTRATIVE REVIEW PROCEDURES.**

(A) **Four (4) copies** of the Mobile Home Park Plan shall be submitted to the Code Administrator. Along with the Plan, the developer shall pay an application fee of **Twenty-Five Dollars (\$25.00)** per mobile home space shown on the Mobile Home Park Plan, with a minimum fee of **One Hundred Fifty Dollars (\$150.00)**. The Code Administrator shall review the Plan and respond to the proposed mobile home park developer in writing within **forty-five (45) days** from the submittal date. The Mobile Home Park Plan shall conform to the following requirements:

- (1) Site boundaries, size and general description and location of proposed park
- (2) layout of the park with all lots dimension and total areas of individual lots indicated
- (3) general site topography, U.S.G.S. datum (7.5' Quadrangle Map acceptable)
- (4) existing land use of all adjacent property
- (5) location and size of existing utilities (gas, electric, water and sewer)
- (6) name and address of licensed professional engineer and surveyor that will be used in preparing plans
- (7) storm sewer system indicated
- (8) all other items as required by the Illinois Department of Public Health

(B) Upon approval of the Mobile Home Park Plan by the Code Administrator, the Plan shall be submitted for review by the City of Red Bud Planning Commission. The Planning Commission shall then make a recommendation to the City Council, either recommending acceptance of the plan or recommending changes to the plan. The Mobile Home Park Owner has the option of making the Planning Commissions changes and resubmitting the revised plan to the Planning Commission or the plan may be sent to the City Council for their review. The City Council shall then either approve or reject the Plan.

- (1) If the City Council accepts the Mobile Home Park Plan, it shall authorize the appropriate City officials to sign and date the plans and the required permit documents. The developer shall then submit the City-approved Mobile Home Park Plan to the Illinois Department of Public Health. Upon approval by the Illinois Department of Public Health, the developer shall provide the City a copy of the mobile home park license issued by Illinois Department of Public Health, along with **one (1) original** and **five (5) copies** of the Mobile Home Park Plan with all required signatures. The developer shall also provide the City **one (1) set** 11" x 17" improvement plans and provide the City with the improvement plans on disc in the City's current ACAD format. Construction may begin upon submittal of the documents referred to in this subparagraph.
- (2) if the City Council rejects the Mobile home Park Plan, it shall specify the aspects in which the plans fail to comply. The developer shall then change the plans in order to comply with the City Council requirements and thereafter resubmit them as provided by **Section 40-4-26 et seq.** or abandon the project.

(C) If the City does not accept the improvements within **five (5) years** from the date of issuance of the license received from Illinois Department of Public Health, the Mobile Home Park Plan shall be considered revoked and the Mobile Home Park Plan must be resubmitted as stated in **Section 40-4-26 et seq.**, before beginning construction.

(D) Acceptance of the improvements shall be as required by **Section 34-6-6.**

(E) A maintenance bond shall be posted within the City as required by **Section 34-6-**

**7.**

**(Ord. No. 1227; 03-01-10)**

**40-4-30        RESERVED.**

**DIVISION III - TELECOMMUNICATIONS**

**40-4-31        PURPOSE.** The general purpose of this Article is to regulate the placement, construction and modification of telecommunications towers, support structures, and antennae in order to protect the health, safety and welfare of the public, while at the same time not unreasonably interfering with the development of the competitive wireless telecommunications marketplace in the City. Specifically, this Article is intended to:

- (A) Provide for the appropriate location and development of telecommunications facilities and systems to serve the citizens and businesses of the City;
- (B) Minimize adverse visual impacts of communications antennae and support structure through the careful design, siding, landscape screening and innovative camouflaging techniques;
- (C) Maximize the use of existing and new support structures so as to minimize the need to construct new or additional facilities;
- (D) Maximize the co-location of facilities on any new support structures;
- (E) Ensure that any new telecommunications tower or structure is located in an area compatible with the neighborhood or surrounding community to the extent possible;

(F) Ensuring that regulation of telecommunications towers and structures does not have the effect of prohibiting the provision of personal wireless services, and does not unreasonably discriminate among functionally equivalent providers of such service.

**40-4-32 DEFINITIONS.** As used in this Article, the following terms shall have the meanings and usages indicated:

**Administrator:** The Zoning Code Official of the City or his/her designee.

**Antenna:** Any device that transmits and/or receives radio waves for voice, data or video communications purposes including, but not limited to, television, AM/FM radio, microwave, cellular telephone and similar forms of communications. The term shall exclude satellite earth station antennae less than **two (2) meters** in diameter (mounted within **twelve (12) feet** of the ground or building-mounted) and any receive-only home television antennae. **(See Section 40-2-2)**

**AGL:** Above ground level. Ground level shall be determined by the average elevation of the natural ground level within a radius of **fifty (50) feet** from the center location of measurement.

**Cabinet:** A structure for the protection and security of communications equipment associated with one or more antennae where direct access to equipment is provided from the exterior and that has horizontal dimensions that do not exceed **four (4) feet** by **six (6) feet**, and vertical height that does not exceed **six (6) feet**.

**Communication Tower Multi-Use Interest Area:** An area as designated by the map of the same title indicating general locations in which more than **one (1)** wireless service provider may potentially seek to locate an antenna facility and in which the construction of co-locatable towers will be required. The map may be periodically revised in response to new information received regarding tower sites sought by wireless providers. A Multi-Use Interest Area shall be designated as appropriate for towers within **one (1) mile** of each other, unless the applicant demonstrates to the contrary. The Multi-Use Interest Area Map shall include the area within the City limits and within **one and one-half (1 ½) miles** of its corporate boundaries.

**Disguised Support Structure:** Any free-standing, man-made structure designed for the support of antennae, the presence of which is camouflaged or concealed as an appropriately-placed architectural or natural feature. Depending on the location and type of disguise used, such concealment may require placement underground of the utilities leading to the structure. Such structures may include but are not limited to clock towers, campaniles, observations towers, light standards, flag poles and artificial trees.

**FAA:** The Federal Aviation Administration.

**FCC:** The Federal Communications Commission.

**Height:** The vertical distance measured from the average grade of the base of the structure at ground level to its highest point and including the main structure and all attachments thereto.

**Incidental Use:** Any use authorized herein that exists in addition to the principal use of the property.

**Modification:** Any addition, deletion, or change, including the addition or replacement of antennae, or any change to a structure requiring a building permit or other governmental approval.

**Shelter:** A building for the protection and security of communications equipment associated with one or more antennae and where access to equipment is gained from the interior of the building. Human occupancy for office or other uses or the storage of other materials and equipment not in direct support of the connected antennas is prohibited.

**Support Structure:** A Tower or Disguised Support Structure.

**Tower:** A structure designed for the support of one or more antennae and including guyed towers, self-supporting (lattice) towers or monopoles but not disguised support structure or buildings. The term shall also not include any support structure including attachments of **sixty-five (65) feet** or less in height owned and operated solely for use by an amateur radio operator licensed by the Federal Communication Commission.

**40-4-33 GENERAL REQUIREMENTS.** The requirements set forth in this Section shall be applicable to all towers, antennae and other support structures installed, built or modified after the effective date of this Article to the full extent permitted by law.

(A) **Principal or Incidental Use.** Antennae and support structures may be either a principal use in all zoning districts or an incidental use to institutional or non-residential uses, subject to any applicable district requirement relating to yard or setback.

(B) **Building Codes, Safety Standards, and Zoning Compliance.** To ensure the structural integrity of antenna support structures, the owner shall see that it is constructed and maintained in compliance with all standards contained in applicable state and local building codes and the applicable standards published by the Electronics Industries Association, as amended from time to time. In addition to any other approvals required by this Section, no Antenna, Tower, or support structure shall be erected prior to receipt of a Certificate of Zoning Compliance and the issuance of a Building Permit.

(C) **Regulatory Compliance.** All antennae and support structures shall meet or exceed current standards and regulations of the FAA, FCC and any other state or federal agency with the authority to regulate communications antennae and support structures. Should such standards or regulations be amended, then the owner shall bring such devices and structure into compliance with the revised standards or regulations within the time period mandated by the controlling agency. No approval for any placement, construction or modification of any antenna or structure permitted by this Section shall be granted for any applicant having an uncured violation of this Section or any other governmental regulatory requirement related to such antenna or structures within the City.

(D) **Security.** All antennae and support structures shall be protected from unauthorized access by appropriate security measures. A description of proposed security measures shall be provided as part of any application to install, build or modify antennae or support structures. Additional measures may be required as a condition of the issuance of a Building Permit or Administrative Permit as deemed necessary by the Code Official or by the Planning Commission in the case of a Special Use Permit.

(E) **Lighting.** Antennae and support structures shall not be lighted unless required by the FAA or other state or federal agency with authority to regulate, in which case a description of the required lighting scheme will be made a part of the application to install, build or modify the antennae or support structure. Equipment cabinets and shelters may have lighting only as approved by the Code Official on the approved Site Development Plan.

(F) **Advertising.** Except for a disguised antenna support structure in the form of an otherwise lawfully permitted pylon sign, the placement of advertising on structures regulated by this Section is prohibited.

(G) **Design.**

- (1) Subject to the requirements of the FAA or any applicable state or federal agency, Towers shall be painted a neutral color consistent with the natural or built environment of the site.
- (2) Equipment shelters or cabinets shall have an exterior finish compatible with the natural or built environment of the site and shall also comply with any design guidelines as may be applicable to the particular zoning district in which the facility is located.
- (3) Towers shall not exceed the height limitation of any airport overlay zone as may be adopted by the City.
- (4) Antennae attached to a building or disguised antenna support structure shall be of a color identical to or closely compatible with the surface to which they are mounted.

- (5) All towers shall be surrounded by a minimum **six (6) foot** high decorative wall constructed of brick, stone or comparable masonry materials and a landscape strip of not less than **ten (10) feet** in width and planted with materials, which will provide a visual barrier to a minimum height of **six (6) feet**. The landscape strip shall be exterior to any security wall. In lieu of the required wall and landscape strip, an alternative means of screening may be approved by the Code Official in the case of a use permitted by Administrative Permit, or by the Planning Commission in the case of a Special Use Permit, upon demonstration by the applicant that an equivalent degree of visual screening will be achieved.
- (6) All towers, disguised support structures, and related structures, fences and walls shall be separated from the property line of any adjacent property zoned for a residential use at least a distance equal to the height of the tower, and shall be separated from all other adjacent property lines at least a distance equal to **one-half (1/2)** of the height of the tower or structure.
- (7) Vehicle or outdoor storage on any tower site is prohibited, unless otherwise permitted by the zoning.
- (8) On-site parking for periodic maintenance and service shall be provided at all antenna or tower locations consistent with the underlying zoning district.

(H)

**Shared Use.**

- (1) **Existing Towers.** Prior to the issuance of any permit to alter or modify any tower existing on the effective date of this Article, the owner shall provide to the City a written and notarized agreement committing to make said tower available for use by others subject to reasonable technical limitations and reasonable financial terms. The willful and knowing failure of a tower owner to agree to shared use or to negotiate in good faith with potential users shall be unlawful and shall, among other remedies of the City, be cause for the withholding of future permits to the same owner to install, build, or modify antennae or towers within the City.
- (2) **Tower Inventories.** Prior to the issuance of any permit to install, build or modify any tower, the tower owner shall furnish the Code Official an inventory of all of that owner's towers in or within **one and one-half (1 1/2) miles** of the City limits. The inventory shall include the tower's reference name or number, the street location, latitude and longitude, structure type, height, type and mounting height of existing antennas and an assessment of available ground space for the placement of additional equipment shelters. Upon being modified, any such tower shall be placed on the Multi-Use Interest Area Map for required collocation.
- (3) **Shared Use Required - New Towers.** Any new tower approved at a height of **sixty (60) feet** AGL (Above Ground Level) or higher shall be designed and constructed to accommodate at least one additional user unless a larger number is indicated by the response to the Notification provisions herein. A written agreement committing to shared use as required by subsection one shall be submitted by the tower applicant. The willful and knowing failure of the owner of a tower built for shared use to negotiate in good faith with potential users shall be unlawful and shall be a violation of this Article and, among other remedies of the City, shall be cause for the withholding of future permits to the same owner to install, build or modify antennae or towers within the City.
- (4) **Communications Tower Multi-Use Area Map.** Any new tower approved within a Communication Tower Multi-Use Interest Area as designated by the map of the same title, shall be designed and constructed to accommodate the number of users indicated by the Plan to the extent feasible. The willful and knowing failure of the owner of a tower build for

shared use to negotiate in good faith with potential users shall be a violation of this Article and, among other remedies of the City, shall be cause for the withholding of future permits to the same owner to install, build or modify antennae or towers within the City.

- (5) **Notice of Tower Applications.** Prior to any application for the construction of a new tower or Disguised Support Structure, a copy of the application or a summary containing the height, design, location and type and frequency of antennae shall be delivered by certified mail to all known potential tower users as identified by a schedule maintained by the Building and Zoning Department. Proof of such delivery shall be submitted with the application to the City. The Code Official may establish a form required to be used for such notifications. Upon request, the Code Official shall place on a list the name and address of any user of towers or prospective user to receive notification of applications. The Code Official shall before deciding on the application or forwarding it to the Planning Commission for consideration, allow all persons receiving notice at least **ten (10) business days** to respond to the City and the applicant that the party receiving notice be permitted to share the proposed tower or locate within **one (1) mile** of such area. Where **two (2)** or more parties seek to locate within **one (1) mile** of each other, or such other distance is as demonstrated to the Code Official to be reasonable pursuant to the objectives of this Article, the Code Official shall designate such area as a Multi-Use Interest Area on the map. The failure of the receiving party to use this process or respond to any such notice shall be considered cause for denying requests by such party for new towers or structures.
- (6) **Appeal of Shared Use Violations.** Any party seeking shared use of a tower subject to this provision shall after responding to notice of an application, negotiate with the applicant for such use. The applicant may on a legitimate and reasonable business basis choose between multiple requests for shared use on the same tower or structure, and may reject any request where legitimate technical obstacles cannot be reasonably overcome or where the party requesting shared use will not agree to reasonable financial terms. Any party believing that the applicant has breached its duty to negotiate in good faith for shared use shall immediately notify the applicant and the Code Official in writing. The Code Official may reject the application upon a finding that shared use has been improperly denied. A notice of breach of duty shall explain the precise basis for the claim and shall be accompanied by payment of an administrative review fee of **Five Hundred Dollars (\$500.00)** to the City to offset the cost of review. After the applicant's receipt of the notice, the applicant shall have **ten (10) calendar days** to provide a written submission to the Code Official responding to the alleged violation of the shared use requirement. If deemed necessary by the Code Official, he/she may engage, at the cost of the party alleging the violation, a neutral, qualified technical consultant to provide an opinion on feasibility or costs of the shared use request. If the Code Official receives a notice alleging a violation of the shared use requirement, the time for a decision on an Administrative Permit is automatically extended for up to **thirty (30) days** until the Code Official has determined that the applicant has complied. An application for Special Use Permit shall not be deemed complete for acceptance until a decision on compliance is reached.

**40-4-34** **PERMITTED USES.** The placement of Antenna and Towers are permitted in all zoning districts only as follows:

(A) The attachment of additional or replacement of antennae or shelters to any tower existing on the effective date of this Article or subsequently approved in accordance with these regulations, provided that additional equipment shelters or cabinets are located within the existing tower compound area.

(B) The mounting of antennae on any existing building or structure, such as a water tower, provided that the presence of the antennas is concealed by architectural elements or fully camouflaged by painting a color identical to the surface to which they are attached.

(C) The mounting of antennae on or within any existing high-voltage electric transmission tower, but not exceeding the height of such tower by more than **ten (10) feet**.

(D) The installation of antennae or the construction of a tower or support structure on buildings or land owned by the City following the approval of a lease agreement by the City Council.

**40-4-35 AUTHORIZATION BY ADMINISTRATIVE PERMIT.**

(A) The placement of Antenna and Towers are permitted in all zoning districts by Administrative Permit approved by the Code Official only as follows:

(1) The attachment of additional or replacement antennae or shelters to any tower existing on the effective date of this Article or subsequently approved in accordance with these regulations and requiring the enlargement of the existing tower compound area as long as all other requirements of this Section and the underlying zoning district are met shall be allowed.

(2) The one-time replacement of any tower existing on the effective date of this Article or subsequently approved in accordance with these regulations so long as the purpose of the replacement is to accommodate shared use of the site or to eliminate a safety hazard. The new tower shall be of the same type as the original except that a guyed or self-supporting (lattice) tower may be replaced by a monopole. If the guyed or lattice tower to be replaced is **one hundred eighty (180) feet** or less in height, it shall only be replaced with a monopole. The height of the new tower may exceed that of the original by not more than **twenty (20) feet**. Subsequent replacements shall require the approval of a Special Use Permit.

(3) The construction of a Disguised Support Structure provided that all related equipment shall be placed underground or concealed within the structure when the structure is located in any district other than a district authorizing industrial uses. Equipment may be placed in a cabinet if the Disguised Support Structure is incidental to an industrial, commercial, institutional or other non-residential use.

(4) The placement of dual polar panel antennae on wooden or steel functioning utility poles not to exceed **forty (40) feet** in height in any residentially zoned district and on any such poles (or functional replacement poles of no greater height) existing in any other district on the date of adoption of this Article. All related equipment for antennae permitted by this subsection shall be wholly contained in a cabinet.

(5) Towers erected and maintained for a period not to exceed **forty-five (45) days** for the purpose of replacing an existing tower, testing an existing or proposed network, or special events requiring mobile towers.

(B) **Application Procedures.** Applications for Administrative Permits shall be made on the appropriate forms to the Code Official and accompanied by payment of **Five Hundred Dollars (\$500.00)**, or such other fee as may be established by the City Council.

(1) A detailed site plan, based on a closed boundary survey of the host parcel, shall be submitted indicating all existing and proposed improvements including buildings, drives, walkway, parking areas and other structures, public right-of-way, the zoning categories of the subject and adjoining properties, the location of and distance to off-site residential structures,

required setbacks, required buffer and landscape areas, hydrologic features, and the coordinates and height AGL of the existing or proposed tower.

- (2) The application shall be reviewed by the Code Official to determine compliance with the above standards and transmit the application for review and comment by other departments and public agencies as may be affected by the proposed facility.
- (3) The Code Official shall issue a decision on the permit within **forty-five (45) days** of the date of application or the application shall be deemed approved unless the time period for review and action was extended pursuant to this Section. The Code Official may deny the application or approve the application as submitted or with such modifications as are, in his/her judgment, reasonably necessary to protect the safety or general welfare of the citizens consistent with the purposes of this Section. The Code Official may consider the purposes of this Section and the factors established herein for granting a Special Use Permit as well as any other considerations consistent with this Article. A decision to deny an application shall be made in writing and state the specific reasons for the denial.

(C) **Appeals.** Appeals from the decision of the Code Official shall be made in the same manner as otherwise provided for the appeal of administrative decisions under the requirements of **Section 40-9-1**.

**40-4-36 SPECIAL USE PERMIT REQUIRED.** All proposals to install, build or modify an antenna or support structure not permitted by **Section 40-4-34** or **40-4-35** above, shall require the approval of Special Use Permit following the requirements of **Section 40-8-2** subject to the forthcoming limitations.

(A) **Applications.** Applications of Special Use Permits shall be filed and processed subject to the requirements of and in the manner and time frame as established in **Section 40-8-2**. A decision by the Planning Commission shall be accompanied by substantial evidence supporting the decision, which shall be made a part of the written record of the meeting at which a final decision on the application is rendered. Evidence shall be under oath and may be submitted with the application or thereafter or presented during the public hearing by the applicant or others.

(B) **Additional Minimum Requirements.** No Special Use Permit shall be issued unless the applicant has clearly demonstrated by substantial evidence that placement of an antenna or support structure pursuant to **Section 40-4-34** or **40-4-35** is not technologically or economically feasible. The Planning Commission may consider current or emerging industry standards and practices, among other information, in determining feasibility.

(C) **Findings Required.** In addition to the determinations or limitations specified herein and by **Section 40-8-2** for the consideration of Special Use Permits, the Planning Commission shall also base its decision upon, and shall make findings as to, the existence of the following conditions:

- (1) That the proposed tower is not and cannot be located within a Communications Tower Multi-Use Interest Area as designated by such map, or if so located, meets the co-location requirements of this Section.
- (2) No existing towers, structures or buildings within the necessary geographic area for the applicant's tower meet the applicant's necessary engineering requirements considering (1) height, (2) structural strength, (3) resulting signal interference, (4) feasibility of retrofitting, (5) feasibility of redesigning the applicant's tower network, or (6) other limiting conditions that render towers, structures or buildings within the applicant's required geographic area unsuitable.
- (3) Applications for a new tower structure shall be considered only after a letter, certified by a Radio Frequency Engineer, clearly demonstrates that the planned telecommunication equipment cannot be accommodated on



an existing or approved transmission tower and clearly demonstrates one or more of the following conditions:

- (a) Planned telecommunications equipment would exceed the structural capacity of an existing or approved transmission tower, and the transmission tower cannot be reinforced to accommodate planned telecommunication equipment at a reasonable cost;
  - (b) Planned telecommunications equipment will cause radio frequency interference with other existing or planned telecommunications equipment for that transmission tower and the interference cannot be prevented at a reasonable cost;
  - (c) Existing or approved towers do not have space on which the planned telecommunications equipment can be placed so it can function effectively and at least in parity with other similar telecommunications equipment in place or approved by the City and/or Randolph County;
  - (d) Addition of planned equipment to an existing or approved transmission tower would result in NIER levels in excess of those permitted under subsection (5) of this Section; or
  - (e) Other reasons that make it impractical to place the telecommunications equipment planned by the applicant on an existing and approved transmission tower.
- (4) No Application for a new tower structure shall be considered unless the applicant is unable to lease or otherwise secure space on an existing or planned telecommunication tower.
- (a) Shared use of an existing or approved tower shall be conditioned upon the applicant's agreement to pay reasonable fees and costs associated with adapting existing facilities to the proposed use, including but not limited to reasonable costs for reinforcing or modifying a tower or structure, for preventing radio frequency interferences, and other changes reasonably required to accommodate shared use.
  - (b) The City may consider expert testimony to determine whether the fees and costs are reasonable.
  - (c) Once the City finds that the telecommunications equipment proposed by the applicant cannot be accommodated on an existing or approved tower, each tower so found is presumed unable to accommodate similar equipment that may be proposed in the future, unless evidence is introduced to demonstrate otherwise.
- (5) That the design of the tower or structure, including the antennae, shelter and ground layout maximally reduces visual degradation and otherwise complies with provisions and intent of this Section. New towers shall be of a monopole design, unless it is shown that an alternative design would equally or better satisfy this provision.
- (6) That the proposal minimizes the number and/or size of towers or structures that will be required in the area.
- (7) That the applicant has not previously failed to take advantage of reasonably available shared use opportunities or procedures provided by this Division or otherwise.
- (8) That no land owned by any agency of the federal or state government, or by any political subdivision of the state, is available for locating the structure or tower.
- (9) The City may require, at the expense of the petitioner, any additional studies or the hiring of an external consultant to review exhibits and/or other requirements in accordance with this Section.

- \* If any one, but not more than one, of the first **six (6)** determinations is not satisfied, approval may be granted only on a finding of unique circumstances otherwise necessitating approval to satisfy the purposes of this Section.

(D) **Additional Height Limitations.** No tower shall be approved at a height exceeding **one hundred fifty (150) feet** AGL unless the applicant clearly demonstrates that such height is required for the proper function of the applicant's system or that of a public safety communications system of a governmental entity sharing the tower. Such showing must also be supported by the opinion of a telecommunications consultant hired by the City at the expense of the applicant. The opinion of the consultant shall include a statement that no available alternatives exist to exceeding the height limit or the reason why such alternatives are not viable.

(E) **Nonionizing Electromagnetic Radiation Standards.** All transmission facilities shall conform to the relevant sections of the "American National Safety Levels with respect to Human Exposure to Radio Frequency Electromagnetic Fields, 300 kHz to 100 kHz". This standard as identified by as ANSI-C95.1-1982 and is published by the American National Standards Institute, a copy of which is incorporated herein by reference and is maintained on file in the office of the City Planning Department.

**40-4-37** **OBSELETE NON-COMPLYING TOWER STRUCTURES.** Any upper portion of a tower which is not occupied by active antennae for a period of **twelve (12) months**, and any entire tower which is not so occupied for a period of **six (6) months**, shall be removed at the owner's expense. Removal of upper portions of a tower manufactured as a single unit shall not be required. Failure to comply with this provision shall constitute a nuisance that may be remedied by the City at the tower or property owner's expense. Any applicant for a new tower or disguised structure not built as disguised part of another existing or permitted structure shall place a bond or other security with the City prior to any final approval for the purpose of removing any tower or disguised structure as required herein and to compensate the City for performing proper maintenance of such towers or disguised structures to ensure such structures do not become unsafe or otherwise fail to be maintained in compliance with this Article. The bond or security shall be in the form approved by the Code Official, and in the amount of **Fifteen Thousand Dollars (\$15,000.00)**, or such other amount as is determined by the Code Official to satisfy the requirements hereof with regard to the specific tower or structure to which it would apply.

**40-4-38** **COMMERCIAL OPERATION OF UNLAWFUL TOWER OR ANTENNAE.** Notwithstanding any right that may exist for a governmental entity to operate or construct a tower or structure, it shall be unlawful for any person to erect or operate for any private commercial purpose of any antenna, tower or Disguised Support Structure in violation of any provision of this Article, regardless of whether such antenna or structure is located on land owned by a governmental entity.

**40-4-39 - 40-4-40** **RESERVED.**

**(Ord. No. 1258; 08-01-11)**

#### **DIVISION IV – SMALL WIRELESS FACILITIES**

**40-4-41** **PURPOSE.** The purpose of this Article is to establish regulations, standards and procedures for the siting and collocation of small wireless facilities on rights-of-way within the City's jurisdiction, or outside the rights-of-way on property zoned by the City exclusively for commercial or industrial use, in a manner that is consistent with State and federal law.

**40-4-42 DEFINITIONS.** For the purposes of this Article, the following terms shall have the following meanings:

**Antenna:** Communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of wireless services. **(See Section 40-2-2)**

**Applicable codes:** Uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or local amendments to those codes, including the National Electric Safety Code.

**Applicant:** Any person who submits an application and is a wireless provider.

**Application:** A request submitted by an applicant to the City for a permit to collocate small wireless facilities, and a request that includes the installation of a new utility pole for such collocation, as well as any applicable fee for the review of such application.

**Collocate or collocation:** To install, mount, maintain, modify, operate, or replace wireless facilities on or adjacent to a wireless support structure or utility pole.

**Communications service:** Cable service, as defined in 47 U.S.C. 522(6), as amended; information service, as defined in 47 U.S.C. 153(24), as amended; telecommunications service, as defined in 47 U.S.C. 153(53), as amended; mobile service, as defined in 47 U.S.C. 153(53) as amended; or wireless service other than mobile service.

**Communications service provider:** A cable operator, as defined in 47 U.S.C. 522(5), as amended; a provider of information service, as defined in 47 U.S.C. 153(24), as amended; a telecommunications carrier, as defined in 47 U.S.C. 153(51), as amended; or a wireless provider.

**FCC:** The Federal Communications Commission of the United States.

**Fee:** A one-time charge.

**Historic district or historic landmark:** A building, property, or site, or group of buildings, properties, or sites that are either (i) listed in the National Register of Historic Places or formally determined eligible for listing by the Keeper of the National Register, the individual who has been delegated the authority by the federal agency to list properties and determine their eligibility for the National Register, in accordance with Section VI.D.1.a.i through Section VI.D.1.a.v of the Nationwide Programmatic Agreement codified at 47 CFR Part 1, Appendix C; or (ii) designated as a locally landmarked building, property, site, or historic district by an ordinance adopted by the City pursuant to a preservation program that meets the requirements of the Certified Local Government Program of the Illinois State Historic Preservation Office or where such certification of the preservation program by the Illinois State Historic Preservation Office is pending.

**Law:** A federal or state statute, common law, code, rule, regulation, order, or local ordinance or resolution.

**Micro wireless facility:** A small wireless facility that is not larger in dimension than **twenty-four (24) inches** in length, **fifteen (15) inches** in width, and **twelve (12) inches** in height and that has an exterior antenna, if any, no longer than **eleven (11) inches**.

**Municipal utility pole:** A utility pole owned or operated by the City in public rights-of-way.

**Permit:** A written authorization required by the City to perform an action or initiate, continue, or complete a project.

**Person:** An individual, corporation, limited liability company, partnership, association, trust, or other entity or organization.

**Public safety agency:** The functional division of the federal government, the state, a unit of local government, or a special purpose district located in whole or in part within this State, that provides or has authority to provide firefighting, police, ambulance, medical, or other emergency services to respond to and manage emergency incidents.

**Rate:** A recurring charge.

**Right-of-way:** The area on, below, or above a public roadway, highway, street, public sidewalk, alley, or utility easement dedicated for compatible use. Right-of-way does not include City-owned aerial lines.

**Small wireless facility:** A wireless facility that meets both of the following qualifications: (i) each antenna is located inside an enclosure of no more than **six (6) cubic feet** in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than **six (6) cubic feet**; and (ii) all other wireless equipment attached directly to a utility pole associated with the facility is cumulatively no more than **twenty-five (25) cubic**

**feet** in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meter, concealment elements, telecommunications demarcation box, ground-based enclosures, grounding equipment, power transfer switch, cut-off switch, and vertical cable runs for the connection of power and other services.

**Utility pole:** A pole or similar structure that is used in whole or in part by a communications service provider or for electric distribution, lighting, traffic control, or a similar function.

**Wireless facility:** Equipment at a fixed location that enables wireless communications between user equipment and a communications network, including: (1) equipment associated with wireless communications; and (ii) radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration. Wireless facility includes small wireless facilities. Wireless facility does not include: (i) the structure or improvements on, under, or within which the equipment is collocated; or (ii) wireline backhaul facilities, coaxial or fiber optic cable that is between wireless support structures or utility poles or coaxial, or fiber optic cable that is otherwise not immediately adjacent to or directly associated with an antenna.

**Wireless infrastructure provider:** Any person authorized to provide telecommunications service in the State that builds or installs wireless communication transmission equipment, wireless facilities, wireless support structures, or utility poles and that is not a wireless services provider but is acting as an agent or a contractor for a wireless services provider for the application submitted to the City.

**Wireless provider:** A wireless infrastructure provider or a wireless services provider.

**Wireless services:** Any services provided to the general public, including a particular class of customers, and made available on a nondiscriminatory basis using licensed or unlicensed spectrum, whether at a fixed location or mobile, provided using wireless facilities.

**Wireless services provider:** A person who provides wireless services.

**Wireless support structure:** A freestanding structure, such as a monopole; tower, either guyed or self-supporting; billboard; or other existing or proposed structure designed to support or capable of supporting wireless facilities. Wireless support structure does not include a utility pole.

**(See Section 40-2-2)**

**40-4-43      REGULATION OF SMALL WIRELESS FACILITIES.**

(A)      **Permitted Use.** Small wireless facilities shall be classified as permitted uses and subject to administrative review, except as provided in **Section 40-4-43(C)(9)** regarding Height Exceptions or Variances, but not subject to zoning review or approval if they are collocated (i) in rights-of-way in any zoning district, or (ii) outside rights-of-way in property zoned exclusively for commercial or industrial use.

(B)      **Permit Required.** An applicant shall obtain one or more permits from the City to collocate a small wireless facility. An application shall be received and processed, and permits issued shall be subject to the following conditions and requirements:

(1)      **Application Requirements.** A wireless provider shall provide the following information to the City, together with the City's Small Cell Facilities Permit Application, as a condition of any permit application to collocate small wireless facilities on a utility pole or wireless support structure:

- (a)      Site specific structural integrity and, for a municipal utility pole, make-ready analysis prepared by a structural engineer, as that term is defined in Section 4 of the Structural Engineering Practice Act of 1989;
- (b)      The location where each proposed small wireless facility or utility pole would be installed and photographs of the location and its immediate surroundings depicting the utility poles or structures on which each proposed small wireless facility would be mounted or location where utility poles or structures would be installed. This should include a depiction of the completed facility;

- (c) Specifications and drawings prepared by a structural engineer, as that term is defined in Section 4 of the Structural Engineering Practice Act of 1989, for each proposed small wireless facility covered by the application as it is proposed to be installed;
- (d) The equipment type and model numbers for the antennas and all other wireless equipment associated with the small wireless facility;
- (e) A proposed schedule for the installation and completion of each small wireless facility covered by the application, if approved; and
- (f) Certification that the collocation complies with the Collocation Requirements and Conditions contained herein, to the best of the applicant's knowledge.
- (g) In the event that the proposed small wireless facility is to be attached to an existing pole owned by an entity other than the City, the wireless provider shall provide legally competent evidence of the consent of the owner of such pole to the proposed collocation.

(2) **Application Process.** The City shall process applications as follows:

- (a) The first completed application shall have priority over applications received by different applicants for collocation on the same utility pole or wireless support structure.
- (b) An application to collocate a small wireless facility on an existing utility pole or wireless support structure, or replacement of an existing utility pole or wireless support structure shall be processed on a nondiscriminatory basis and shall be deemed approved if the City fails to approve or deny the application within **ninety (90) days** after the submission of a completed application.

However, if an applicant intends to proceed with the permitted activity on a deemed approved basis, the applicant shall notify the City in writing of its intention to invoke the deemed approved remedy no sooner than **seventy-five (75) days** after the submission of a completed application.

The permit shall be deemed approved on the latter of the **ninetieth (90<sup>th</sup>) day** after submission of the complete application or the **tenth (10<sup>th</sup>) day** after the receipt of the deemed approved notice by the City. The receipt of the deemed approved notice shall not preclude the City's denial of the permit request within the time limits as provided under this Article.

- (c) An application to collocate a small wireless facility that includes the installation of a new utility pole shall be processed on a nondiscriminatory basis and deemed approved if the City fails to approve or deny the application within **one hundred twenty (120) days** after the submission of a completed application.

However, if an applicant intends to proceed with the permitted activity on a deemed approved basis, the applicant shall notify the City in writing of its intention to invoke the deemed approved remedy no sooner than **one hundred five (105) days** after the submission of a completed application.

The permit shall be deemed approved on the latter of the **one hundred twentieth (120<sup>th</sup>) day** after submission of the complete application or the **tenth (10<sup>th</sup>) day** after the receipt of the deemed approved notice by the City. The receipt of the deemed approved notice shall not preclude the City's denial of

the permit request within the time limits as provided under this Article.

- (d) The City shall deny an application which does not meet the requirements of this Article.

If the City determines that applicable codes, ordinances or regulations that concern public safety, or the Collocation Requirements and Conditions contained herein require that the utility pole or wireless support structure be replaced before the requested collocation, approval shall be conditioned on the replacement of the utility pole or wireless support structure at the cost of the provider.

The City shall document the basis for a denial, including the specific code provisions or application conditions on which the denial is based, and send the documentation to the applicant on or before the day the City denies an application.

The applicant may cure the deficiencies identified by the City and resubmit the revised application once within **thirty (30) days** after notice of denial is sent to the applicant without paying an additional application fee. The City shall approve or deny the revised application within **thirty (30) days** after the applicant resubmits the application or it is deemed approved. Failure to resubmit the revised application within **thirty (30) days** of denial shall require the applicant to submit a new application with applicable fees, and recommencement of the City's review period.

The applicant must notify the City in writing of its intention to proceed with the permitted activity on a deemed approved basis, which may be submitted with the revised application.

Any review of a revised application shall be limited to the deficiencies cited in the denial. However, this revised application does not apply if the cure requires the review of a new location, new or different structure to be collocated upon, new antennas, or other wireless equipment associated with the small wireless facility.

- (e) **Pole Attachment Agreement.** Within **thirty (30) days** after an approved permit to collocate a small wireless facility on a municipal utility pole, the City and the applicant shall enter into a Master Pole Attachment Agreement, provided by the City for the initial collocation on a municipal utility pole by the application.

For subsequent approved permits to collocate on a small wireless facility on a municipal utility pole, the City and the applicant shall enter into a License Supplement of the Master Pole Attachment Agreement.

- (3) **Completeness of Application.** Within **thirty (30) days** after receiving an application, the City shall determine whether the application is complete and notify the applicant. If an application is incomplete, the City must specifically identify the missing information. An application shall be deemed complete if the City fails to provide notification to the applicant within **thirty (30) days** after all documents, information and fees specifically enumerated in the City's permit application form are submitted by the applicant to the City.

Processing deadlines are tolled from the time the City sends the notice of incompleteness to the time the applicant provides the missing information.

- (4) **Tolling.** The time period for applications may be further tolled by:
  - (a) An express written agreement by both the applicant and the City; or
  - (b) A local, State or federal disaster declaration or similar emergency that causes the delay.
- (5) **Consolidated Applications.** An applicant seeking to collocate small wireless facilities within the jurisdiction of the City shall be allowed, at the applicant's discretion, to file a consolidated application and receive a single permit for the collocation of up to **twenty-five (25)** small wireless facilities if the collocations each involve substantially the same type of small wireless facility and substantially the same type of structure.  
 If an application includes multiple small wireless facilities, the City may remove small wireless facility collocations from the application and treat separately small wireless facility collocations for which incomplete information has been provided or that do not qualify for consolidated treatment or that are denied. The City may issue separate permits for each collocation that is approved in a consolidated application.
- (6) **Duration of Permits.** The duration of a permit shall be for a period of not less than **five (5) years**, and the permit shall be renewed for equivalent durations unless the City makes a finding that the small wireless facilities or the new or modified utility pole do not comply with the applicable City codes or any provision, condition or requirement contained in this Article.  
 If Public Act 100-0585 is repealed as provided in Section 90 therein, renewals of permits shall be subject to the applicable City code provisions or regulations in effect at the time of renewal.
- (7) **Means of Submitting Applications.** Applicants shall submit applications, supporting information and notices to the City by personal delivery at the City's designated place of business, by regular mail postmarked on the date due or by any other commonly used means, including electronic mail, as stated on the application.

(C) **Collocation Requirements and Conditions.**

- (1) **Public Safety Space Reservation.** The City may reserve space on municipal utility poles for future public safety uses, for the City's utility uses, or both, but a reservation of space may not preclude the collocation of a small wireless facility unless the City reasonably determines that the municipal utility pole cannot accommodate both uses.
- (2) **Installation and Maintenance.** The wireless provider shall install, maintain, repair and modify its small wireless facilities in safe condition and good repair and in compliance with the requirements and conditions of this Article. The wireless provider shall ensure that its employees, agents or contractors that perform work in connection with its small wireless facilities are adequately trained and skilled in accordance with all applicable industry and governmental standards and regulations.
- (3) **No Interference with Public Safety Communication Frequencies.**  
 The wireless provider's operation of the small wireless facilities shall not interfere with the frequencies used by a public safety agency for public safety communications.  
 A wireless provider shall install small wireless facilities of the type and frequency that will not cause unacceptable interference with a public safety agency's communications equipment.  
 Unacceptable interference will be determined by and measured in accordance with industry standards and the FCC's regulations addressing

unacceptable interference to public safety spectrum or any other spectrum licensed by a public safety agency.

If a small wireless facility causes such interference, and the wireless provider has been given written notice of the interference by the public safety agency, the wireless provider, at its own expense, shall remedy the interference in a manner consistent with the abatement and resolution procedures for interference with public safety spectrum established by the FCC including 47 CFR 22.970 through 47 CFR 22.973 and 47 CFR 90.672 through 47 CFR 90.675.

The City may terminate a permit for a small wireless facility based on such interference if the wireless provider is not in compliance with the Code of Federal Regulations cited in the previous paragraph. Failure to remedy the interference as required herein shall constitute a public nuisance.

- (4) The wireless provider shall not collocate small wireless facilities on City utility poles that are part of an electric distribution or transmission system within the communication worker safety zone of the pole or the electric supply zone of the pole.

However, the antenna and support equipment of the small wireless facility may be located in the communications space on the City utility pole and on the top of the pole, if not otherwise unavailable, if the wireless provider complies with applicable codes for work involving the top of the pole.

For purposes of this subparagraph, the terms "communications space", "communication worker safety zone", and "electric supply zone" have the meanings given to those terms in the National Electric Safety Code as published by the Institute of Electrical and Electronics Engineers.

- (5) The wireless provider shall comply with all applicable codes and local code provisions or regulations that concern public safety.

- (6) The wireless provider shall comply with written design standards that are generally applicable for decorative utility poles, or reasonable stealth, concealment and aesthetic requirements that are set forth in a City ordinance, written policy adopted by the City, a comprehensive plan or other written design plan that applies to other occupiers of the rights-of-way, including on a historic landmark or in a historic district. In particular, all antennas and related equipment shall be in a color that provides the most stealth appearance as determined by the City. Within the downtown district, in any area designated a historic landmark or historic district by any governmental entity, or on any decorative pole, as determined by the City, any attachment of an antenna and related equipment must be hidden within any pole or appear like an original part of any pole and must be concealed so that it provides the most stealth appearance with any structure to which it is attached. If these design restrictions cannot be complied with due to the wireless provider's technology, then the City may reduce the requirements or provide a waiver.

- (7) **Alternate Placements.** Except as provided in this Collocation Requirements and Conditions Section, a wireless provider shall not be required to collocate small wireless facilities on any specific utility pole, or category of utility poles, or be required to collocate multiple antenna systems on a single utility pole. However, with respect to an application for the collocation of a small wireless facility associated with a new utility pole, the City may propose that the small wireless facility be collocated on an existing utility pole or existing wireless support structure within **one hundred (100) feet** of the proposed collocation, which the



applicant shall accept if it has the right to use the alternate structure on reasonable terms and conditions, and the alternate location and structure does not impose technical limits or additional material costs as determined by the applicant.

If the applicant refuses a collocation proposed by the City, the applicant shall provide written certification describing the property rights, technical limits or material cost reasons the alternate location does not satisfy the criteria in this paragraph.

- (8) **Height Limitations.** The maximum height of a small wireless facility shall be no more than **ten (10) feet** above the utility pole or wireless support structure on which the small wireless facility is collocated. New or replacement utility poles or wireless support structures on which small wireless facilities are collocated may not exceed the higher of:
  - (a) **ten (10) feet** in height above the tallest existing utility pole, other than a utility pole supporting only wireless facilities, that is in place on the date the application is submitted to the City, that is located within **three hundred (300) feet** of the new or replacement utility pole or wireless support structure and that is in the same right-of-way within the jurisdictional boundary of the City, provided the City may designate which intersecting right-of-way within **three hundred (300) feet** of the proposed utility pole or wireless support structures shall control the height limitation for such facility; or
  - (b) **forty-five (45) feet** above ground level.
- (9) **Height Exceptions or Variances.** If an applicant proposes a height for a new or replacement pole in excess of the above height limitations on which the small wireless facility is proposed for collocation, the applicant shall apply for a variance in conformance with procedures, terms and conditions set forth in **Section 40-9-2**.
- (10) **Contractual Design Requirements.** The wireless provider shall comply with requirements that are imposed by a contract between the City and a private property owner that concern design or construction standards applicable to utility poles and ground-mounted equipment located in the right-of-way.
- (11) **Ground-mounted Equipment Spacing.** The wireless provider shall comply with applicable spacing requirements in applicable codes and ordinances concerning the location of ground-mounted equipment located in the right-of-way if the requirements include a waiver, zoning or other process that addresses wireless provider requests for exception or variance and do not prohibit granting of such exceptions or variances.
- (12) **Undergrounding Regulations.** The wireless provider shall comply with local code provisions or regulations concerning undergrounding requirements that prohibit the installation of new or the modification of existing utility poles in a right-of-way without prior approval if the requirements include a waiver, zoning or other process that addresses requests to install such new utility poles or modify such existing utility poles and do not prohibit the replacement of utility poles.
- (13) **Collocation Completion Deadline.** Collocation for which a permit is granted shall be completed within **one hundred eighty (180) days** after issuance of the permit, unless the City and the wireless provider agree to extend this period or a delay is caused by make-ready work for a municipal utility pole or by the lack of commercial power or backhaul availability at the site, provided the wireless provider has made a timely request within **sixty (60) days** after the issuance of the permit for commercial power or backhaul services, and the additional time to

complete installation does not exceed **three hundred sixty (360) days** after issuance of the permit. Otherwise, the permit shall be void unless the City grants an extension in writing to the applicant.

(D)

**Application Fees.** Application fees are imposed as follows:

- (1) Applicant shall pay an application fee of **Six Hundred Fifty Dollars (\$650.00)** for an application to collocate a single small wireless facility on an existing utility pole or wireless support structure, and **Three Hundred Fifty Dollars (\$350.00)** for each small wireless facility addressed in a consolidated application to collocate more than one small wireless facility on existing utility poles or wireless support structures.
- (2) Applicant shall pay an application fee of **One Thousand Dollars (\$1,000.00)** for each small wireless facility addressed in an application that includes the installation of a new utility pole for such collocation.
- (3) Notwithstanding any contrary provision of State law or local ordinance, applications pursuant to this Section shall be accompanied by the required application fee. Application fees shall be non-refundable.
- (4) The City shall not require an application, approval or permit, or require any fees or other charges, from a communications service provider authorized to occupy the rights-of-way, for:
  - (a) routine maintenance;
  - (b) the replacement of wireless facilities with wireless facilities that are substantially similar, the same size, or smaller if the wireless provider notifies the City at least **ten (10) days** prior to the planned replacement and includes equipment specifications for the replacement of equipment consistent with **Section 40-11-3(B)(1)(d)** titled Application Requirements; or
  - (c) the installation, placement, maintenance, operation or replacement of micro wireless facilities suspended on cables that are strung between existing utility poles in compliance with applicable safety codes.
- (5) Wireless providers shall secure a permit from the City to work within rights-of-way for activities that affect traffic patterns or require lane closures.

(E)

**Exceptions to Applicability.** Nothing in this Article authorizes a person to collocate small wireless facilities on:

- (1) property owned by a private party or property owned or controlled by the City or another unit of local government that is not located within rights-of-way, or a privately owned utility pole or wireless support structure without the consent of the property owner;
- (2) property owned, leased, or controlled by a part district, forest preserve district, or conservation district for public park, recreation or conservation purposes without the consent of the affected district, excluding the placement of facilities on rights-of-way located in an affected district that are under the jurisdiction and control of a different unit of local government as provided by the Illinois Highway Code; or
- (3) property owned by a rail carrier registered under Section 18c-7201 of the Illinois Vehicle Code, Metra Commuter Rail or any other public commuter rail service, or an electric utility as defined in Section 16-102 of the Public Utilities Act, without the consent of the rail carrier, public commuter rail service, or electric utility. The provisions of this Article do not apply to an electric or gas public utility or such utility's wireless facilities if the facilities are being used, developed and maintained consistent with the provisions of subsection (i) of Section 16-108.5 of the Public Utilities Act. For the purposes of this subsection, "public utility" has the meaning given to that term in Section 3-105 of the Public Utilities Act. Nothing in

this Article shall be construed to relieve any person from any requirement (a) to obtain a franchise or a State-issued authorization to offer cable service or video service or (b) to obtain any required permission to install, place, maintain, or operate communications facilities, other than small wireless facilities subject to this Article.

(F) **Pre-Existing Agreements.** Existing agreements between the City and wireless providers that relate to the collection of small wireless facilities in the right-of-way, including the collocation of small wireless facilities on City utility poles, that are in effect on **June 1, 2018**, remain in effect for all small wireless facilities collocated on the City's utility poles pursuant to applications submitted to the City before **June 1, 2018**, subject to applicable termination provisions contained therein. Agreements entered into after **June 1, 2018**, shall comply with this Article.

A wireless provider that has an existing agreement with the City on the effective date of the Act may accept the rates, fees and terms that the City makes available under this Article for the collocation of small wireless facilities or the installation of new utility poles for the collocation of small wireless facilities that are the subject to an application submitted **two (2) or more years** after the effective date of the Act by notifying the City that it opts to accept such rates, fees and terms. The existing agreement remains in effect, subject to applicable termination provisions, for the small wireless facilities the wireless provider has collocated on the City's utility poles pursuant to applications submitted to the City before the wireless provider provides such notice and exercises its option under this paragraph.

(G) **Annual Recurring Rate.** A wireless provider shall pay to the City an annual recurring rate to collocate a small wireless facility on a City utility pole located in a right-of-way that equals (i) **Two Hundred Dollars (\$200.00)** per year or (ii) the actual, direct and reasonable costs related to the wireless provider's use of space on the City utility pole.

If the City has not billed the wireless provider actual and direct costs, the fee shall be **Two Hundred Dollars (\$200.00)** payable on the first day after the first annual anniversary of the issuance of the permit or notice of intent to collocate, and on each annual anniversary date thereafter.

(H) **Abandonment.** A small wireless facility that is not operated for a continuous period of **twelve (12) months** shall be considered abandoned. The owner of the facility shall remove the small wireless facility within **ninety (90) days** after receipt of written notice from the City notifying the wireless provider of the abandonment.

The notice shall be sent by certified or registered mail, return receipt requested, by the City to the owner at the last known address of the wireless provider. If the small wireless facility is not removed within **ninety (90) days** of such notice, the City may remove or cause the removal of such facility pursuant to the terms of its pole attachment agreement for municipal utility poles or through whatever actions are provided for abatement of nuisances or by other law for removal and cost recovery.

A wireless provider shall provide written notice to the City if it sells or transfers small wireless facilities within the jurisdiction of the City. Such notice shall include the name and contact information of the new wireless provider.

**40-4-44 DISPUTE RESOLUTION.** The Circuit Court of Randolph County, Illinois shall have exclusive jurisdiction to resolve all disputes arising under the Small Wireless Facilities Deployment Act. Pending resolution of a dispute concerning rates for collocation of small wireless facilities on municipal utility poles within the right-of-way, the City shall allow the collocating person to collocate on its poles at annual rates of no more than **Two Hundred Dollars (\$200.00)** per year per municipal utility pole, with rates to be determined upon final resolution of the dispute.

**40-4-45 INDEMNIFICATION.** A wireless provider shall indemnify and hold the City harmless against any and all liability or loss from personal injury or property damage resulting from or arising out of, in whole or in part, the use or occupancy of the City improvements or right-of-way associated with such improvements by the wireless provider or its employees, agents, or contractors arising out of the rights and privileges granted under this Article and Public Act 100-0585. A wireless provider has no obligation to indemnify or hold harmless against any liabilities and losses as may be due

to or caused by the sole negligence of the City or its employees or agents. A wireless provider shall further waive any claims that they may have against the City with respect to consequential, incidental, or special damages, however caused, based on the theory of liability.

**40-4-46**      **INSURANCE.** The wireless provider shall carry, at the wireless provider's own cost and expense, the following insurance:  
(A)            property insurance for its property's replacement cost against all risks;  
(B)            workers' compensation insurance, as required by law; and  
(C)            commercial general liability insurance, including coverage for bodily injury and property damage, with respect to its activities on the City improvements or rights-of-way in the minimum amount of **One Million Dollars (\$1,000,000.00)** per occurrence.

The wireless provider shall include the City as an additional insured on the commercial general liability policy and provide certification and documentation of inclusion of the City in a commercial general liability policy prior in the form of a policy endorsement prior to the collocation of any wireless facility.

A wireless provider may self-insure all or a portion of the insurance coverage and limit requirement required by the City. A wireless provider that self-insures is not required, to the extent of the self-insurance, to comply with the requirement for the name of additional insureds under this Section. A wireless provider that elects to self-insure shall provide to the City evidence sufficient to demonstrate its financial ability to self-insure the insurance coverage limits required by the City.

**(Ord. No. 1403; 08-07-18)**

**(Relocated from Article XI)**

***[This page was left blank intentionally.]***

***[This page was left blank intentionally.]***

**ARTICLE V - SUPPLEMENTARY OFF-STREET PARKING AND LOADING REGULATIONS**

**40-5-1**      **APPLICABILITY OF ARTICLE.** Off-street parking and loading shall be provided in accordance with this Article for all structures and uses erected or established after the effective date of this Code.

(A)      **Existing Parking/Loading Facilities.**

- (1) Existing off-street parking or loading facilities located on the same lot as the use served shall not be reduced below, or if already less than, shall not be further reduced below the requirements and standards for similar new structures or uses.
- (2) When an existing structure or use is damaged or destroyed and subsequently repaired or rebuilt to the same square footage prior to damage, additional off-street parking and loading facilities need not be provided, but parking/loading facilities equivalent to any maintained at the time of such damage or destruction shall be restored.
- (3) Whenever the use of any structure or premises is intensified through addition of dwelling units, gross floor area, seating capacity, added employees, etc., additional parking and loading facilities commensurate with such increase in use-intensity shall be provided.
- (4) Whenever the existing use of a structure is changed to a different use, parking or loading facilities shall be provided as required herein for such new use.

**40-5-2**      **PARKING DESIGN AND MAINTENANCE STANDARDS.** The following shall be complied with:

(A)      **Spaces.**

- (1) Each required parking space shall be at least **nine (9) feet** wide and **nineteen (19) feet** long, and shall have at least **seven (7) feet** of vertical clearance. Every space shall be situated so that no part of any parked vehicle can overhang the public right-of-way, public or private sidewalks or property lines.
- (2) For Multi-Family Residential, Business and Industrial uses, markings shall be laid and restored as often as necessary to clearly delineate each parking space.

(B)      **Interior Aisles.** Aisles within parking lots in Multi-Family Residential, Business and Industrial Districts shall be sufficiently wide to permit safe and efficient vehicular movement in the aisles, and into and out of parking spaces. Aisles designed for two-way traffic shall be at least **twenty-four (24) feet** wide. One-way aisles designed for **sixty (60) degree** parking shall be at least **twenty (20) feet** wide.

(C)      **Access Way.**

- (1) Parking areas in the Multi-Family Residential, Business and Industrial Districts shall be designed so that ingress to and egress from a parking space is from an aisle or driveway, not directly from the public right-of-way.
- (2) No access way to any parking area shall be located within **thirty (30) feet** of any corner formed by the intersection of the rights-of-way of **two (2)** or more streets. At intersections where traffic control devices are installed, the Code Official may increase this requirement as necessary to prevent traffic hazards.
- (3) The access way to every parking lot in any Business and Industrial Zoning District shall be at least **twenty-four (24) feet** wide unless two one-way drives, each **twelve (12) feet** wide, are provided.

- (4) The access way to every parking area located in the Multi-Family Residential Zoning District shall be at least **ten (10) feet** wide; but if the parking area contains more than **eight (8) parking spaces** or if the access way is longer than **one hundred (100) feet**, access shall be provided either by one 2-way drive at least **twenty (20) feet** wide or by two 1-way drives, each at least **ten (10) feet** wide.

(D) **Lighting.** All light(s) used to illuminate any parking area shall be arranged or shielded so as to confine direct light rays within the parking area boundary lines to the greatest extent practicable.

(E) **Surfacing.** All open, off-street parking areas except those accessory to single-family dwellings, shall be improved with a compacted macadam base not less than **four (4) inches** thick, surfaced with not less than **one and one-half (1 1/2) inches** of asphaltic concrete or some other comparable all-weather dustless material, not less than oil and chip.

**40-5-3 LOCATION OF PARKING.** All off-street parking shall be located in conformity with the following requirements:

(A) **Residential Zoning District.**

- (1) Parking spaces accessory to dwellings located in any Residential Zoning District shall be located on the same lot as the dwelling. Such parking spaces shall not be located in any yard except in the driveway. No vehicle shall be allowed to park in any yard. No driveway may be located within **three (3) feet** of the property line as determined by the Code Administrator unless the Code Administrator gives written permission for other placement. Driveways for a new first time built dwelling structure shall be constructed of concrete or asphalt only. Driveway expansions abutting an existing driveway or driveway replacement for an existing structure must be constructed of the same surface material or better quality surface material. Each parking space accessory to a multi-family dwelling shall be unobstructed so that no vehicle need be moved in order to allow another vehicle to enter/exit the parking area. **(Ord. No. 1408; 10-01-18)**
- (2) All parking spaces accessory to permitted non-dwelling uses located in the Residential Zoning District generally shall be located on the same lot as the use served. However, by special use permit, such parking facilities may be located on another parcel within **two hundred (200) feet** of the use served. No vehicle exceeding **one (1) ton** cargo capacity shall be parked anywhere in a Residential District (except for normal loading, unloading, and service call) this includes on street and on private lots, unless a special use permit has been obtained. No vehicle repair work shall be permitted on any parking lot or driveway located in any Residential District.

(B) **Business And Industrial Zoning Districts.**

- (1) Parking spaces accessory to any dwelling located in any Business District shall be located within **two hundred (200) feet** of the dwelling. Parking spaces accessory to any other conforming use located in any Business or Industrial District shall be located within **five hundred (500) feet** of the use served.
- (2) No parking space accessory to any use located in Business or Industrial District shall be located in any Residential District except by special use permit; and in no case shall any such parking areas extend more than **five hundred (500) feet** into a Residential District.
- (3) In any Business or Industrial District, off-street parking facilities for different buildings or uses may be provided collectively if the total number



of spaces so located together is not less than the sum of the separate requirements for each use, and if all regulations governing location of parking spaces in relation to the use served are observed.

**40-5-4 DESIGN AND LOCATION OF OFF-STREET LOADING FACILITIES.** All off-street loading facilities shall conform to the minimum standards as indicated:

(A) **Size Of Space.** Every required off-street loading space shall be at least **twelve (12) feet** wide and **thirty (30) feet** long exclusive of aisle and maneuver space, and shall have vertical clearance of at least **fourteen (14) feet**. In no case shall a vehicle being loaded or unloaded overhang into the public right-of-way.

(B) **Access Way.** Every off-street loading space shall have a safe means of vehicular access to a street or alley. Such access way shall be at least **twelve (12) feet** wide.

(C) **Location.** Every off-street loading space, whether required or not, shall be located on the same parcel of land as the use served, and not closer than **fifty (50) feet** to the intersection of the rights-of-way of **two (2)** or more streets, and not on any required front yard.

**40-5-5 PARKING SPACES REQUIRED.**

| <u>Zoning Districts</u>   | <u>Loading Spaces Required (if any)</u>  |
|---|--|
| A, R-1, R-2, R-5  | Two (2) spaces per unit.   |
| R-4   | Two (2) parking spaces which must be behind the building line except for any unit which has its own attached garage. <b>(Ord. No. 1006; 01-07-02)</b>                              |
| B-1, B-2  |  |
| Auditorium, Churches, Libraries, Museums, Theaters (indoor), Halls, State and Uses Other Than Restaurants | One (1) space per each four (4) seats, or one (1) space per each three hundred (300) sq. ft. of total floor area, whichever is greater, plus one (1) space per employee per shift. |
| Restaurants, sit down type, Bars, Nightclubs and Taverns  | One (1) space per each fifty (50) sq. ft. of seating area or one (1) space per every three (3) seats, whichever is greater, plus one (1) space per employee per shift.             |
| Restaurants, drive-in   | One (1) space per each twenty-five (25) sq. ft. of used floor space plus stacking spaces plus one (1) space per employee per shift.  |
| Automobiles Service Stations, Banks, Hospitals  | As recommended by Code Official.   |

Zoning Districts

Loading Spaces  
Required (if any)

Bowling Alleys

Four (4) spaces for each alley, plus such additional spaces as may be required herein for affiliated uses—restaurants and the like.

Hotels, Motels

One (1) space per each guest room, plus one (1) space per employee per shift.

Machinery Sales, Motor Vehicle  
Sales, Municipal Buildings

One (1) space per each three hundred (300) sq. ft. of total floor area.

Office Uses

One (1) space per each three hundred (300) sq. ft. of total floor area.

Retail Service Stores

One (1) space per each three hundred (300) sq. ft. of total floor area plus one (1) space for each employee per shift.

I-1

One (1) space per employee per shift plus spaces recommended by Code Official.

**ARTICLE VI - NONCONFORMITIES**

**40-6-1**        **PURPOSE OF ARTICLE.** The requirements imposed by this Code are designed to guide the use of land by encouraging the development of structures and uses that are compatible with the predominant character of each of the various Residential, Business and Industrial Districts. Lots, structures, and uses of land or structures that do not conform to the requirements of the district in which they are located impede appropriate development. For example, nonconformities are frequently responsible for heavy traffic on residential streets, the overtaking of parking facilities, the emission of noxious fumes or excessive noise, and/or the lowering of property values. The regulations in this Article are intended to alleviate such existing/potential problems by encouraging the gradual elimination of nonconformities.

**40-6-2**        **NONCONFORMING LOTS.** Any vacant lot that does not conform to **one (1)** or more of the lot size requirements of the district in which it is located may be used in the manner indicated at **Sections 40-6-2(1) and (2)** if it:

(A)            is of record on the date of the adoption or amendment of this Code;  
 (B)            has continuously remained in separate ownership from abutting tracts of land after the adoption of this Code; and

(C)            is at least **thirty (30) feet** wide.

(1)        **Residential.** On any existing nonconforming lot located in any residential district, any permitted structure may be erected, provided all the bulk (see definitions) and setback regulations of the particular district are observed. If the bulk and setback regulations cannot be met then a variance provided for in **Section 40-9-2** must be obtained.

(2)        **Other Districts.** On any existing nonconforming lot located in the Business or Industrial Districts, any structure permitted in the particular district may be erected if the bulk and setback requirements of that district are met. If the bulk and setback regulations cannot be met then a variance provided for in **Section 40-9-2** must be obtained.

(3)        **Two or More Lots in Common Ownership.** If **two (2)** or more lots or combinations of lots and portions of lots with continuous frontage were of record and in common ownership on the date of the enactment or amendment of this Code, and if **one (1)** or more of those lots does not meet the minimum lot width, depth, and area requirements of the district in which they are located, the land involved shall be considered an undivided parcel for purposes of this Code. No portion of any such parcel shall be developed except in compliance with this Code, nor shall any such parcel be divided so as to create a lot that does not meet the requirements of this Code.

**40-6-3**        **NONCONFORMING STRUCTURES.** Any lawful structure which exists on the date of the enactment or amendment of this Code, but which could not be erected under the terms of this Code because of restrictions on lot size, height, setbacks, lot coverage, or other characteristics of the structure, or its location on the lot, may lawfully remain, subject to the following provisions:

(A)            **Enlargement, Alterations.** No such structure shall be enlarged or altered in any way which increases its nonconformity.

(B)            **Relocation.** No such structure shall be relocated unless, after relocation, it will conform to all the regulations of the district in which it is located.

(C)            **Reconstruction.** Any structure (Residential, Business or Industrial) destroyed or damaged may be reconstructed provided it meets the following regulations:

(1)        the new structure shall not exceed the square footage of the original structure.

- (2) The setback requirements of the new structure shall not be less than the setback of the original structure.
- (3) Construction of the new structure must begin within **one (1) year** from the date the damage or destruction occurred.

**40-6-4**      **NONCONFORMING USES OCCUPYING A STRUCTURE.** If any lawful use occupying a structure exists on the date of the enactment or amendment of this Code, but would not be allowed under the terms of this Code, such a use may lawfully continue, subject to the following provisions:

(A)      **Maintenance.** Any structure housing a nonconforming use may be maintained through ordinary repairs.

(B)      **Enlargement, Alteration, Reconstruction, Relocation.** No structure housing a nonconforming use shall be enlarged, structurally altered, reconstructed or relocated unless the use of the structure is changed to a permitted use or special use.

(C)      **Extension of Use.** No nonconforming use may be extended to any part(s) of the structure not intended or designed to be devoted to such use, nor shall the nonconforming use be extended to occupy any land outside such structure.

(D)      **Change of Use.** A nonconforming use occupying a structure shall not be changed except to a use permitted under the applicable district regulations.

(E)      **Discontinuance of Use.** When a nonconforming use of a structure, or of a structure and premises in combination, is discontinued for **twelve (12)** consecutive months or for **eighteen (18) months** during any **three (3) year** period, the nonconforming use shall not thereafter be resumed. Any discontinuance caused by government action and without any contributing fault by the nonconforming user shall not be counted in calculating the length of discontinuance.

**40-6-5**      **NONCONFORMING USE OF LAND.** Any lawful use of land existing on the date of the adoption or amendment of this Code that would not be permitted under the terms of this Code may lawfully continue, subject to the following provisions:

(A)      **Intensification or Extension of Use.** A nonconforming use of land shall not be intensified, or extended to occupy a greater area of land than was occupied by such use on the date of the adoption or amendment of this Code.

(B)      **Relocation.** No nonconforming use of land shall be moved, in whole or in part, unless, upon relocation, such use will conform to all pertinent regulations of the district in which it will be located.

(C)      **Change of Use.** A nonconforming use of land shall not be changed except to a use that is permitted under the applicable district regulations.

(D)      **Discontinuance.** When a nonconforming use of land is discontinued for a period of **twelve (12)** consecutive months, it shall not thereafter be resumed, and any subsequent use of such land shall conform to the applicable district regulations. Any discontinuance caused by government action and without any contributing fault by the owner or operator shall not be counted in calculating the length of discontinuance.

**40-6-6**      **OPEN LAND, NONCONFORMING USE.** A nonconforming use not enclosed in a building or structure, or one in which the use of the land is a use exercised principally out-of-doors and outside of a building or structure shall after **three (3) years** from the date of notification become a prohibited and unlawful use and shall be discontinued.

**40-6-7**      **NONCONFORMITIES UNDER PERMIT AUTHORITY.** The regulations of this Article shall not apply to any change in an existing structure or to any change in the use of a structure or of land for which a permit was issued prior to enactment of this Code or any pertinent amendment thereto, provided that the work authorized by such permit is carried out and completed with diligence.

**ARTICLE VII - ADMINISTRATION AND ENFORCEMENT**

**40-7-1**        **CODE OFFICIAL.** The office of Code Official of this Municipality is hereby established. The Code Official shall be the executive head of this office and shall be appointed by the Mayor with the advice and consent of the City Council.

**40-7-2**        **DUTIES.** The Code Official is hereby authorized and directed to diligently administer and enforce the provisions of this Code. This broad responsibility encompasses, but is not limited to, the following specific duties:

- (A)            To review applications pertaining to land, structures and the uses of land and/or structures;
- (B)            To supervise inspections of land, structures, and the uses of land and/or structures to determine compliance with this Code, and where there are violations, to initiate appropriate action to secure compliance;
- (C)            To receive and file all applications for amendments and special use permits;
- (D)            To maintain up-to-date records of this Code including, but not limited to, district maps, special-use permits, variances, interpretative decisions of the Planning Commission, amendments, and all applications related to any of these matters;
- (E)            To periodically review the provisions of this Code to determine whether revisions are needed, and to make recommendations on these matters to the Planning Commission at least once each year;
- (F)            To cause copies of this Code (including the district map) and any amendments thereto to be printed from time to time, as necessary; and
- (G)            To provide information to the general public on topics related to this Code.

**40-7-3**        **PERMITS: OCCUPANCY, BUILDING, SPECIAL USE AND DEMOLITION.**

(A)        **Occupancy Permit.** No lot or structure that has been created, developed, erected, enlarged, altered, relocated or reconstructed after the effective date of this Code shall be used or occupied until an occupancy permit has been issued by the Code Official. The Code Official shall issue no occupancy permit unless he determines, by inspection, that the lot or structure as completed, and the proposed use thereof, conforms to all applicable provisions of this Code. Further, no occupancy permit shall be issued until the construction of sidewalks as indicated on the subdivision improvement plans and as detailed in **Chapter 34** of this Code is completed. **(Ord. No. 1257; 08-01-11)**

Notwithstanding the foregoing, the Code Official shall issue a partial occupancy permit if:

- (1)        The requirements set forth hereinbelow are met;
- (2)        The owner has applied for and received a new building permit as required by subsection (B) of this Section; and
- (3)        The entire structure cannot be completed due to strikes, accidents, acts of God, weather conditions, shortages of labor and materials, or other delays beyond the owner's control.

The partial occupancy permit shall be issued only for that portion of the structure that has:

- (1)        A complete and functioning restroom;
- (2)        All life safety improvements, including but not limited to smoke detectors, sprinklers, fire doors, emergency lighting, emergency egress, and security system, complete and functioning;
- (3)        All utilities, complete and functioning; and
- (4)        All remaining items required by the International Building Code, 2003 edition, including Appendix Chapters A through G as published by the International Code Council, complete and functioning.

A partial occupancy permit shall be valid for a period of **six (6) months** from the date of issuance, and shall cause the existing building permit to be null and void without further action of the City.

Before issuance of a partial occupancy permit, the owner shall file with the Code Official a performance bond payable to the City and for the use of the City, in a sum deemed sufficient by the Code Official to cover the costs of completion of the unfinished items required by the Building Permit. The bond shall be executed by the owner and shall be approved by the City Attorney. The condition of the bond shall be that if the owner shall comply with the building permit and complete the unfinished items, and shall fully indemnify and save the City harmless from all costs and damage which it may suffer by reason of failure of owner to do so, and shall fully reimburse and repay the City all outlay and expense which it may incur in making good any default of the owner, and shall pay all persons who have contracts directly with the owner for labor, equipment or materials, and shall indemnify and hold harmless the City from any and all costs, damage, and expense incurred by or arising directly or indirectly out of supplying all labor, equipment or materials necessary for compliance and provisions of the unfinished items, and from all costs that may accrue through the enforcing of the terms of the bond if action is brought on the bond, including reasonable attorney's fees in the case where such action is successfully maintained, and will appear in and defend and pay and satisfy any final judgment, if any is obtained, in any suits or actions arising out of supply of all labor, equipment or materials necessary or compliance and provision of the unfinished items, or on occasion by any act or omission on the part of the owner, the owner's subcontractors, agents, employees and servants, then the obligation shall be null and void. Further condition of the bond shall be that the penalty shall attach and the surety shall be liable if the owner shall not have complied with the conditions of the bond within **six (6) months** after the date of its execution.

In lieu of the performance bond referred to hereinabove, the owner may provide alternative forms of security satisfactory to the City Council. Said alternative form of security may include one of the following:

- (1) A letter of credit issued by a financial institution payable to the City in the event that the work is not completed by the owner;
- (2) A deposit of non-interest bearing cash with the City refundable once the work is completed or to be used by the City to complete the work in the event the owner fails to do it;
- (3) A restricted account in a financial institution in which account there is sufficient funds to complete the project. The restrictions on the account shall require the City's prior concurrence that each disbursement of funds from the account is for the purpose of completing the site plan, or the event the owner fails to perform the work that the financial institution will disburse the funds to the City for the purpose of completing the work.

**(Ord. No. 1237; 10-04-10)**

(B) **Building and Special Use Permits.**

- (1) No development or construction shall begin until the owner has applied for and received a building permit.
- (2) Building and Special Use Permits shall be valid for a period of **six (6) months** from the date of issuance or approval by the City for the purpose of commencing construction. Failure to commence construction or begin the Special Use within this time period shall cause the permit to be null and void without any action by the City.
- (3) The structure shall be completed so as to qualify for an occupancy permit within **eighteen (18) months** of issuance of the building permit. Failure to obtain an occupancy permit within the time period shall cause the building permit to be null and void without any action by the City.
- (4) If any building permit becomes null and void as provided either in this Subsection (B) or Subsection (A) of this Section, the owner must apply for and receive a new building permit before continuing construction. The structure shall be completed so as to qualify for an occupancy permit within **six (6) months** of issuance of the new building permit. Failure to obtain an occupancy permit within the time period shall cause the new building permit to become null and void without any action by the City. The owner may apply for additional building permits, each of which shall become null and void **six (6) months** after issuance without any action of

the City if the structure is not completed within the period so as to qualify for an occupancy permit. If the new building permit is not applied for and obtained within **fourteen (14) days** of the date it becomes null and void, the City may seek any and all remedies provided in **Section 40-7-7** of this Code.

- (5) The fee for each application for a building permit for a structure is **Fifteen Cents (\$0.15)** per square foot of space measured from the outside of the foundation, including attached garage, basement, and additional stories, with a minimum fee of **Twenty-Five Dollars (\$25.00)**. Notwithstanding the foregoing, the fee for an application for a building permit when a partial occupancy permit has been granted shall be calculated as follows: **Fifteen Cents (\$0.15)** per square foot of space measured from the outside of the foundation, including attached garage, basement, and additional stories, multiplied by a fraction, the numerator of which is the square foot of space of the entire structure less the square foot of space for which the partial occupancy permit has been granted and the denominator of which is the square foot of space of the entire structure.

**(Ord. No. 1237; 10-04-10)**

(C) Demolition permits are required in accordance with this Code. No demolition permit shall be issued by the Code Official until the City Utility and the City Street Departments have reviewed the demolition permit application and have inspected the site to determine that adequate safeguards are to be maintained with respect to utility hookups and traffic control. Upon receipt of written approval of the Utility and Street Departments, the Code Official Inspector may issue the demolition permit. Demolition must be completed within **twelve (12) months** of issuance of the demolition permit.

(D) The Code Official shall be responsible for compliance with this Section.

**40-7-4**      **PROCEDURES UPON VIOLATION.** Whenever the Code Official determines, by inspection or by other means, that reasonable grounds exist for believing that any lot, structure, or use is in violation of this Code, he shall so notify the responsible party in writing, and shall institute appropriate measures to secure compliance.

(A)      **Corrective Action Order.** To secure compliance with this Code, the Code Official may issue a corrective action order. Such order shall be deemed properly served upon the owner, occupant, or operator of the offending lot, structure, or use if it is served upon such party personally, sent by registered mail to his last known address, or posted in a conspicuous place on or about the affected premises. Corrective action orders shall include:

- (1) A description of the premises sufficient for identification;
- (2) A statement of what constitutes the violation with reference to the applicable provision(s) of this Code which is/are violated;
- (3) An outline of the remedial action necessary to effect compliance;
- (4) The date by which the violation must be corrected;
- (5) The date, **thirty (30) days** from the date of the order, by which any appeal of the correction action order must be filed with the Planning Commission, a statement of the procedure for so filing, and a statement that the failure to file an appeal shall be considered as a determination that the violation and correction action are admitted and accepted and that the offense will either timely terminate or the corrective action will be timely taken;
- (6) A statement that failure to abide by a correction action order constitutes a separate violation of this Code; and
- (7) A statement of the penalties attached to any violation of this Code.
- (8) A statement that all rights to appeal terminate if no timely appeal to the Planning Commission is filed.

(B) **Stop-Work Orders.** Whenever a Corrective Action Order is issued the Code Official may also issue a Stop-Work Order. The Code Official may order that such work be stopped immediately. The Code Official's Stop-Work Order may be served on any person engaged in or responsible for such work or use, or may be posted in a conspicuous place on or about the premises. Failure to abide by a Stop-Work Order shall be unlawful and deemed a separate violation of this Code. Any person served with a Stop-Work Order may appeal such Stop-Work Order to the Planning Commission. No work shall commence until the appeal is decided and if no appeal is made, the work shall cease permanently.

**40-7-5 EMERGENCY MEASURES.** Notwithstanding any other provisions of this Code, whenever the Code Official determines that any violation of this Code poses an imminent peril to life or property, he may institute, without notice or hearing, any necessary proceedings to alleviate the perilous condition. The Code Official shall take no such action until he has consulted with the City Attorney.

**40-7-6 COMPLAINTS.** Whenever any violation of this Code occurs, or is alleged to have occurred, any person may file a written complaint on forms provided by the Code Official. The Code Official shall record such complaints, immediately investigate, and, if necessary, institute appropriate corrective action.

**40-7-7 PENALTIES AND REMEDIES FOR VIOLATIONS.** The penalties and remedies for violating this Code are as follows:

(A) Failure to comply with any provisions of this Code shall constitute a misdemeanor, and each day that such violation continues shall be considered a separate offense.

(B) Any person who is convicted of a violation of this Code shall be fined not more than **Seven Hundred Fifty Dollars (\$750.00).**

(C) Nothing contained in this Section shall prevent this Municipality from taking any other lawful action that may be necessary to secure compliance with this Code.

(D) In addition to any other remedy or penalty, the City may institute any appropriate action or proceeding:

- (1) to stop or prevent the unlawful development, construction, reconstruction, alteration, repair, conversion, maintenance or use;
- (2) to stop or prevent the occupancy of the building, structure or land;
- (3) to stop or prevent any illegal act, conduct, business or use in or about the premises; or
- (4) to restrain, correct or abate the violation; or
- (5) to take such action available at law or equity to enforce the terms, purposes and intent of this Code.

**40-7-8 APPEALS PROCESS.** The appeal process shall follow the procedures stated in **Section 40-9-1(A)** through **(D)**.

**40-7-9 REVIEW UNDER ADMINISTRATIVE REVIEW LAW.** All final decisions of the Planning Commission under this Section shall be subject to judicial review pursuant to the provisions of the Administrative Review Law, and all amendments and modifications thereto and the rules adopted pursuant thereto. The Planning Commission shall not issue a final decision until it has provided a report of its findings and recommendations to the City Council who shall first approve the recommendations of the Planning Commission before the Planning Commission shall issue a final decision. The Planning Commission's report shall be provided to the City Council within **ten (10) days** following its hearing with the appellant. The City Council shall express its approval or disapproval to the Planning Commission at its next regularly scheduled meeting (or special meeting of the City Council if one is held). The City Council's approval or disapproval shall be reported to the Planning Commission before its next regularly scheduled meeting. After reviewing the City Council's opinion, the Planning Commission shall issue its final decision.



**ARTICLE VIII - SPECIAL USES AND AMENDMENTS**

**40-8-1**        **PLANNING COMMISSION.** The Planning Commission of this Municipality is hereby designated by the corporate authorities as the Commission which will conduct all public hearings concerning special uses and zoning amendments.

**40-8-2**        **SPECIAL USE PERMITS.** This Code divides this Municipality into various districts, and permits in each district only those uses which are clearly compatible with one another. Certain other uses, because of their special operational or physical characteristics, may or may not have a detrimental impact on nearby permitted use, depending upon their precise location, manner of operation, and other factors. Such "special uses" require careful case-by-case review and recommendation of the Planning Commission and then final approval by the City Council then holding office. A vote of at least the majority of all members of the City Council then holding office is required to pass or deny a special use permit when passage or denial is contrary to the recommendation of the Planning Commission.

(A)        **Applicant.** Every applicant for a special use permit shall apply on an application as provided by the Code Official. The Code Official shall forward his recommendation to the Planning Commission for further consideration.

(B)        **Hearing.** The Planning Commission shall hold a public hearing on any application for a special use permit not later than **thirty (30) days** after its filing. At the hearing, any interested party may appear and testify, either in person or by duly authorized agent or attorney.

(C)        **Notice.** Notice of the public hearing shall be given not more than **thirty (30)** nor less than **fifteen (15) days** before the hearing:

- (1) By registered mail to the applicant and to every owner of property adjacent to the premises for which the special use permit is requested; and
- (2) By publication in a newspaper of general circulation within this Municipality.

(D)        **Factors Considered.** In making their decision the Planning Commission shall consider the following factors:

- (1) Whether the proposed design, location, and manner of operation, of the proposed special use is protective of the public health, safety, and welfare;
- (2) The effect the proposal would have on the value of the neighboring property;
- (3) The effect the proposal would have on this Municipality's overall tax base;
- (4) The effect the proposal would have on public utilities and on traffic circulation on nearby streets; and
- (5) Whether there are any facilities nearby that require special protection.

(E)        **Recommendation by Planning Commission; Standards.** The Planning Commission shall submit their advisory report/finding of fact in writing to the City Council no later than **ten (10) days** after the public hearing. The Planning Commission may include conditions on the Special Use and shall determine that it meets the following conditions:

- (1) Protective of the public health, safety, and welfare;
- (2) In keeping with the general purposes of this Code and the Red Bud Comprehensive Plan;
- (3) Consistent with the characteristics of the general nature of the area in which the special use is to be located.

(F)        **Decision by City Council.** The City Council shall act on every proposed special use permit at their next regularly scheduled meeting (or at a special meeting if one is held before the regular meeting) following submission of the Planning Commission's advisory report. The City Council's decision shall be considered final. An appeal may be taken from this decision by following the procedures listed in **Section 40-8-4** below.

**40-8-3**        **AMENDMENTS.** In accordance with Illinois law and the provisions of this Section, the City Council may amend the regulations and texts thereof imposed and the districts established in this

Code. Amendments may be proposed by the City Council, the Code Official, Planning Commission, or any party of interest.

(A) **Filing.** Any proposal to amend this Code shall be filed on a prescribed form with the Code Official, who shall forward it, together with his recommendation, to the Planning Commission.

(B) **Hearing.** The Planning Commission shall hold a public hearing on every amendment proposal not later than **thirty (30) days** after its filing. At the hearing, any interested party may appear and testify, either in person or by duly authorized agent or attorney.

(C) **Notice.** Notice of the public hearing shall be given not more than **thirty (30)** nor less than **fifteen (15) days** before the hearing:

- (1) By registered mail to the applicant and to every owner of property adjacent to the premises for which the amendment is requested; and
- (2) By publication in a newspaper of general circulation within this Municipality.

This notice shall indicate the time, date, and place of the hearing, the particular location for which the amendment is requested, and the nature of the proposed amendment.

(D) **Advisory Report/Findings of Fact.** Not later than **ten (10) days** after the public hearing, the Planning Commission shall submit its advisory report/findings of fact in writing to the City Council. The Planning Commission shall not recommend the adoption of any amendment unless they find that such amendment is in the public interest and not merely for the benefit of the party proposing it. Where the effect of a proposed amendment is to alter district boundaries the Planning Commission shall make findings regarding all of the following matters:

- (1) Existing uses of property in the vicinity of the property in question;
- (2) The district classification of property in the vicinity of the property in question;
- (3) The suitability of the property in question for uses already permitted under the existing district classification; and
- (4) The trend of development in the vicinity of property in question, including changes (if any) which may have taken place since that property was placed in its present district classification.

(E) **Decision by City Council.** The City Council shall act on every amendment at its next regularly scheduled meeting (or at a special meeting if one is held before the next regular meeting) following submission of the Planning Commission's advisory report. The City Council, without further public hearing, may by simple majority vote of the members then holding office, pass any proposed amendment or may refer it back to the Planning Commission for further consideration

(F) **When Two-Thirds Majority Vote is Requested.** The favorable vote of at least **two-thirds (2/3)** of the members of the City Council then holding office is required to pass an amendment to this Code in each of the following instances:

- (1) When passage would be contrary to the recommendation of the Planning Commission.
- (2) When the amendment is opposed, in writing, by the owners of **twenty percent (20%)** of the frontage proposed to be altered, or by the owners of **twenty percent (20%)** of the frontage immediately adjoining or across an alley therefrom, or by the owners of **twenty percent (20%)** of the frontage directly opposite the frontage proposed to be altered.

(G) **Notice to Applicant of Written Protest.** In cases of written opposition to an amendment of this Code a copy of the written protest shall be served by the protestor or protestors on the applicant for the proposed amendment and a copy upon the applicant's attorney, if any, by registered mail at the address of such applicant and attorney shown in the application for the proposed amendment if applicant has an attorney.

**40-8-4 APPEAL OF DECISION BY CITY COUNCIL.** Any person aggrieved by the final decision or order of the City Council in matters dealing with special uses or amendments may appeal that decision or order. The appeal will be to the Circuit Court of Randolph County, Illinois. The Petition must be filed in the Circuit Court no later than **thirty (30) days** after the final decision of the City Council has been made. This hearing shall be by trial *de novo*. This appeal procedure excludes those instances where the City Council has referred the matter back to the Planning Commission for further consideration.

**ARTICLE IX – APPEALS, VARIANCES AND FILING FEES**

**40-9-1 APPEALS.** Any person aggrieved by any decision or order of the Code Official may appeal to the Planning Commission on a prescribed form. Every such appeal shall be made and treated in accordance with this Section.

(A) **Filing, Record Transmittal.** Every appeal shall be made within **forty-five (45) days** of the matter complained of by filing with the City Clerk and the Planning Commission a written notice specifying the grounds for appeal. Not more than **five (5)** working days after the notice of appeal has been filed, the City Administrative Assistant shall transmit to the Commission and the Code Official all records pertinent to the case.

(B) **Stay of Further Proceedings.** An appeal stays all further action on the matter being appealed unless the Code Official certifies to the Commission, after the notice of appeal has been filed with him, that for reasons stated in the certificate, a stay would cause imminent peril to life or property. In such case, further action shall not be stayed unless the Commission or the Circuit Court grants a restraining order for due cause, and so notifies the Code Official.

(C) **Hearing.** The Planning Commission shall hold a hearing on every appeal not later than **thirty (30) days** after the filing of the appeal notice. At the hearing, any interested party may appear and testify, either in person or by duly authorized agent or attorney.

(D) **Notice.** Notice of the hearing shall be given not more than **thirty (30)** nor less than **fifteen (15) days** before the hearing:

- (1) By registered mail to the petitioner and to every owner of property adjacent to which the appeal is requested; and
- (2) By publication in a newspaper of general circulation within this Municipality.

This notice shall indicate the time, date and place of the hearing, the particular location for which the appeal is requested and briefly describe the issue to be decided.

(E) **Decision By Planning Commission.** The Commission shall be required to decide all appeals within **ten (10) days** after the hearing thereon. The Commission may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination as in its opinion ought to be made in the premises and to that end has all the powers of the officer for whom the appeal is taken. A report of its findings and recommendation(s) shall be submitted to the City Council within **ten (10) days** after the hearing. The City Council shall act on every report at its next regularly scheduled meeting following receipt of the report. A certified copy of the City Council's decision shall be transmitted to the applicant or appellant and to the Code Official. Such decision shall be binding upon the Code Official and observed by him and he shall be required to incorporate the terms and conditions of the same in the Zoning Certificate to the applicant or appellant unless he appeals the decision. All final decisions of the City Council shall be subject to the judicial review pursuant to the provisions of **Section 40-8-4**. When the litigation is completed, the City and applicant shall abide by the Court's decisions.

**40-9-2 LOT SIZE/BULK VARIANCES.** A "lot size/bulk variance" means a relaxation of the strict application of the lot size and/or bulk requirements applicable to a particular lot or structure.

(A) **Application.** Every application for a lot size/bulk variance shall be filed with the City Clerk on a prescribed form. The application shall contain sufficient information to allow the Commission to make an informed decision

(B) **Hearing.** The Commission shall hold a public hearing on any variance application not later than **thirty (30) days** after its filing. At the hearing any interested party may appear and testify, either in person or by duly authorized agent or attorney.

(C) **Notice.** Notice of the public hearing shall be given not more than **thirty (30)** nor less than **fifteen (15) days** before the hearing:

- (1) By registered mail to the applicant and to every owner of property adjacent to the premises for which the variance is requested; and
- (2) By publication in a newspaper of general circulation within this Municipality.

This notice shall indicate the time, date and place of the hearing, the particular location for which the variance is requested, and the nature of the proposed variance.

(D) **Standards For Variances.** The Planning Commission shall not grant any lot size/bulk variance unless they find that the proposed variance is consistent with the general purposes of this Code. More specifically, the Commission shall not recommend nor shall the Commission decide upon a variance unless it determines, based upon the evidence presented to it that:

- (1) The property in question cannot yield a reasonable return if the district regulations are strictly applied;
- (2) The plight of the applicant is due to peculiar circumstances not of his own making; and
- (3) The variance, if granted, will not be detrimental to the public health, safety, and welfare.
- (4) The variance, if granted, will not alter the essential character of the area.

(E) **Decision By Planning Commission.** The Commission shall be required to decide all applications within **ten (10) days** after the final hearing thereon. The Commission may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination as in its opinion ought to be made in the premises and to that end has all the powers of the officer from whom the appeal is taken. A report of its findings and recommendation(s) shall be submitted to the City Council within **ten (10) days** after the hearing. The City Council shall act on every report at its next regularly scheduled meeting following receipt of the report. The report of the Commission shall specify the terms of relief granted (if any) in one statement and their findings of fact in another statement. The findings of fact shall clearly indicate the Commission's reasons for granting or denying any requested variance. A certified copy of the City Council's decision shall be transmitted to the applicant or appellant and to the Code Official and observed by him and he shall be required to incorporate the terms and conditions of the same in the Zoning Certificate to the applicant or appellant unless he appeals the decision. Appeals of the City Council's final decision shall be taken to the Randolph County Circuit Court pursuant to **Section 40-8-4** above.

(F) **Vote of the City Council Required.** Any proposed variation that fails to receive the approval of the Planning Commission shall require a **two-thirds (2/3) vote** of the Aldermen then holding office. Any vote of the City Council which affirms the recommendation of the Planning Commission need not be more than a simple majority of the City Council then holding office.

(G) **Unauthorized Variances (Use Variance).** Under no circumstances shall the Planning Commission grant a variance to allow any use that is specifically or by implication prohibited in the district involved. A "use variance" constitutes an amendment to this Code, and may be obtained only in the manner set forth at **Section 40-8-3**.

**40-9-3 FILING FEES.** By resolution, the City Council shall establish (and may periodically amend) a schedule of filing fees for the various permits and procedures listed in this Code or Section:

(A) **Intent.** Said fees are intended to defray the administrative costs connected with the processing/conducting of such permits or procedures. The fees do not constitute a tax or other revenue-raising device.

(B) **Schedule of Fees.**

- (1) Issuance of Building Permit.
  - (a) Residential and Commercial - \$.15 per square foot of space measured from outside of foundation (includes attached garage).
  - (b) Detached Garage or Shed - \$.10 per square foot - \$25.00 minimum.
  - (c) Porches and Decks - \$.10 per square foot - \$25.00 minimum.
- (2) Use Variance - **Two Hundred Dollars (\$200.00)** for hearing.
- (3) Bulk Variance - **Two Hundred Dollars (\$200.00)** for hearing.
- (4) Amendment - **Two Hundred Dollars (\$200.00)** for hearing unless proposed by the City Council, Code Official or Planning Commission in which event there is no charge.
- (5) Appeal - **Two Hundred Dollars (\$200.00)** for hearing.
- (6) Mobile Home Parks – Annual fee of **Fifty Dollars (\$50.00)**, plus **Three Dollars (\$3.00)** per trailer lot.

- (7) All of the above fees shall be paid at the time of filing the application, the appeal or license renewal application.
- (8) All fees hereafter are to be set by ordinance or resolution of the City Council following recommendation by the Planning Commission. A current schedule of filing fees shall be maintained in the Code Official's office and on file with the City Clerk.

**(Ord. No. 1141; 07-10-06)**