

**REVISED ORDINANCE  
8-18-05**

**ZONING ORDINANCE OF THE  
TOWN OF BEATRICE, ALABAMA**

The public interest requiring it to promote the health, safety, behavior, morals, and general welfare, to lessen congestion in the streets, to secure safety from fire, panic and other dangers, to provide adequate light and air, to prevent the overcrowding of land, to improve the aesthetic quality of property, to avoid the undue concentration of population, and to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements and under the authority granted by § 11-52-70 et. Seq. of the Code of Alabama (1975). As amended,

**BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BEATRICE, ALABAMA, AS FOLLOWS:**

**ARTICLE I**

**GENERAL PROVISIONS**

**SECTION 1. PURPOSE.** This ordinance is enacted and adopted for the purpose of dividing the territory within the corporate limits of the Town of Beatrice, Alabama into residential, business, and industrial districts and providing the kind, character, and use of structures and improvements that may be erected or made within the boundaries of such districts; regulating and restricting the erection, construction, reconstruction, alteration, repair, location and use of buildings, structures and land for trade, industry, residence and other specified uses within such districts; regulating and restricting the height, number of stories and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts and other open spaces, and the density of population within such districts; regulating as to the housing or residence of the different classes of inhabitants within such boundaries without discrimination in favor of or against any class of inhabitants; fixing standards to which buildings and structures shall conform within such districts; prohibiting uses, buildings or structures incompatible with the character of such districts, respectively; preventing additions to and alterations or remodeling of existing buildings or structures in such a way as to avoid the restrictions and limitations lawfully imposed hereunder; limiting congestion in the public streets by providing for the off-street parking and loading and unloading of vehicles; providing for the gradual elimination of nonconforming uses of land, buildings and structures; providing for the gradual elimination of unsafe, damaged or dilapidated structures and providing methods of administration of this ordinance and penalties for the violation thereof.

**SECTION 2. SHORT TITLE.** This ordinance shall be known as the “Zoning Ordinance of the Town of Beatrice, Alabama,” Ordinance No. 2005, and the map made a part of this ordinance shall be entitled and known as the “Zoning Map of the Town of Beatrice, Alabama,” and shall further be identified by the signature of the Mayor of the

Town of Beatrice, and attested by the Town Clerk. The Zoning Map of the Town of Beatrice, including all notations, references, explanatory matters and other information shown thereon, is hereby adopted, incorporated herein and made a part of this ordinance, and shall have the same force and effect as if the Zoning Map and all information shown thereon were fully set forth or described herein.

SECTION 3. DEFINITIONS. For the purpose of this ordinance, words used in the present tense shall include the future tense; words used in the singular number shall include the plural, and words used in plural number shall include the singular; the word “building” shall include the word “structure”; the word “lot” shall include the word “plot”; the word “shall” is mandatory and not directory. Certain words and terms used in this ordinance are hereby defined as follows:

3.01 Accessory Building or Use A subordinate building or use which is located on the same lot on which the main building or use is situated and which is reasonably necessary and incidental to the conduct of the primary use of such building or main use.

3.02 Acreage Any tract or parcel which has not been subdivided and platted.

3.03 Alley A public thoroughfare, not less than twenty feet wide, and not more than forty feet in width, which affords only a secondary means of access to abutting property.

3.04 Alteration, Altered The word “alteration” shall include any of the following:

- a. Any addition to the height or depth of a building or structure.
- b. Any change in location of any of the exterior walls of a building or structure.
- c. Any increase in the interior accommodations of a building or structure.

In addition to the foregoing, a building or structure shall be classified as altered when it is repaired, renovated, remodeled, or rebuilt at a cost in excess of fifty percent (50%) of its value prior to the commencement of such repairs, renovation or rebuilding.

3.05 Amusement device Any device which is either hand, electronically or manually operated whether or not a charge is made for its use, and which is primarily intended for the entertainment of the users.

3.06 Apartment A room or suite of rooms in a multiple-family structure, which is arranged, designed, used or intended to be used as a housekeeping unit for a single family.

3.07 Auto wrecking or junkyard Any place where two or more motor vehicles not in running condition, or parts thereof, are stored in the open and are not being restored to operation, or any land, building or structure used for wrecking or storing of such motor vehicles or parts thereof; and including any farm vehicles or farm machinery, or parts thereof, stored in the open and not being restored to operating condition; and including the commercial salvaging and scavenging of any other goods, articles or merchandise.

3.08 Automatic car wash Any coin operated apparatus for washing automobiles shall constitute an automatic car wash. Stacking lanes for vehicles entering or leaving the premises of such an establishment shall be provided by the owner. The

Board of Adjustment will determine the length of such lanes for each such establishment on an individual basis.

3.09 Automobile repair General repair, engine rebuilding or reconditioning of motor vehicles; collision service, such as body, frame or fender straightening and repair; overall painting of motor vehicles.

3.10 Automobile service station A place where gasoline stored only in underground tanks, motor oil and lubricants or grease, for operation of automobiles, are retailed directly to the public on premises, and including minor accessories and services for automobiles, but not including automobile repairs and rebuilding. When the dispensing sale or offering for sale or offering for sale of motor fuels or oil is incidental to the conduct of a public garage, the premises shall be classified as a public garage.

3.11 Basement A story partly or wholly underground. Where more than one-half of its height is above the average level of the adjoining ground, a basement shall be counted as a story for purpose of height measurement.

3.12 Billboard Any structure or portion thereof upon which are signs or advertisements used on an outdoor display. This definition does not include any bulletin boards used to display official court or public office notices, or signs advertising the sale or lease of the premises on which the sign is located.

3.13 Boarding house A building other than a hotel or restaurant, where meals are provided for compensation for four or more persons, but not exceeding twelve persons.

3.14 Building Any structure having a roof supported by columns or walls and designed or intended for the shelter, support, enclosure or protection of persons, animals or chattels.

3.15 Building area The building area of a lot is the space remaining after the minimum open space requirements of this ordinance have been complied with.

3.16 Building height The vertical distances measured from the sidewalk level or its equivalent established grade opposite the middle of the front of the building to the highest point of the roof in the case of a flat roof; to the deck line of a mansard roof; and to mean height level between eaves and ridge of a gable, hip or gambrel roof; provided that where buildings are set back from the street line, the height of the building may be measured from the average elevation of the finished lot grade at the front of the building.

3.17 Building line For the purpose of this ordinance the building line is the same as a front yard setback line.

3.18 Carnivals and street fairs Temporary carnivals and street fairs shall be permitted as conditional uses subject to the provisions and procedures set out in this ordinance for granting conditional uses, in any zoning district except "R" or residential districts. The minimum lot or area requirement is ten acres, and at least two acres of paved parking area shall be provided. No carnival or street fair shall be within 330 feet of any single family, duplex or multi-family dwelling.

3.19 Carport A structure attached or made a part of the main structure, and which is open to the weather on at least two sides, intended for the use of sheltering not more than two motor driven vehicles.

3.20 Chiroprapist A practitioner of the medical practice which consists of treatment of the foot.

3.21 Chiropractor Any practitioner licensed by the state who uses a system of therapy in which disease is considered the result of a neural malfunction and manipulation of the spinal column and other bodily structures is the preferred method of treatment.

3.22 Community service agency Any agency which has as its primary purpose service to the community.

3.23 Computer stores Any establishment where computers are offered for sale or where supplies are offered or repairs are made.

3.24 Conditional uses The following uses of land or structures, or both, may be permitted in any use district, subject to the provisions of Sections 24 and 25:

Bus terminal, railroad passenger station, or any other transportation terminal facilities;

Cable television control station or plant;

Cemeteries, crematories or mausoleums;

Churches and accessory buildings used for religious teaching;

Extraction of gravel, sand or other raw materials, oil, gas or minerals;

Golf courses, public or private;

Hospitals or sanitariums;

Municipal or privately owned recreational building or community center;

Nursery schools, day nurseries, and child care centers;

Parking area, public;

Police stations, fire stations, or place for storage of municipal equipment;

Public administration building, auditorium, gymnasium or any other publicly owned structure;

Public or private park or playground;

Public utility facilities, i.e., filtration plant or pumping station, heat or power plant, transformer station and other similar facilities;

Railroad right-of-way;

Schools, public or private;

Telephone exchange.

No conditional use shall be permitted in any location where it will be inconsistent with the existing adjacent and nearby uses.

3.25 Condominium An apartment building in which the units are owned individually. Also an apartment in such a building. See also office condominium.

3.26 Court An open unoccupied space, other than a yard, on the same lot with a building and bounded on two or more sides by such building.

3.27 Curb grade The established elevation of the curb in front of the building measured at the center of such front. Where no curb grade has been established, the city shall establish such curb level or its equivalent for the purpose of this ordinance.

3.28 Dentists' office A place where the practice of dentistry takes place.

3.29 Diet and health clinics Any establishment where advice is offered on dieting or where exercise or other programs intended to foster good health take place.

3.30 District A section or sections of the incorporated area of the city for which regulations and provisions governing the use of building and land are uniform for each class of use permitted therein.

- 3.31 Doctor's office An establishment of a person or persons trained in the healing arts and licensed to practice medicine or to perform surgery.
- 3.32 Dwelling A house or other building used primarily as a abode for one or two families except that the word "dwelling" shall not include boarding or rooming houses, tents, tourist camps, hotels, trailers, trailer camps or other structures designed or used primarily for transient residents.
- 3.33 Dwelling, multi-family A building designed for or occupied exclusively by three (3) or more families living independently of each another.
- 3.34 Dwelling, single-family A building designed for or occupied exclusively by one (1) family.
- 3.35 Dwelling, two-family (duplex) A building designed for or occupied exclusively by two (2) families living independently of each other.
- 3.26 Dwelling unit Any portion of a building used, intended or designed primarily for occupancy by one (1) family for living or sleeping purposes.
- 3.27 Drive-in theater A theater so arranged and conducted that the customer or patron may view the performance while being seated in a motor vehicle.
- 3.28 Easement A grant by a property owner of the use for specific purpose or purposes by the general public, a corporation, or a certain person or persons.
- 3.29 Family Any number of individuals living together as a single housekeeping unit and doing their cooking on the premises.
- 3.30 Frontage The distance for which the front boundary line of the lot and the street line are coincident.
- 3.31 Garage, private An accessory building for the storage of not more than three motor-driven vehicles, of which not more than one shall be a commercial vehicle of not more than two-ton capacity.
- 3.32 Garage, public A building other than a private garage, used for the care, repair, or equipment of automobiles, or where such vehicles are parked or stored for remuneration, hire or sale within the structure.
- 3.33 Garage sale Any sale conducted in any residential district, including R-1, R-2, R-3 and R-4 where tangible personal property is offered for sale in or out of any building or structure.
- 3.34 Guesthouse A structure for human habitation, containing one or more rooms with bath and toilet facilities, but not including a kitchen or facilities which would provide a complete housekeeping unit.
- 3.35 Home occupation An occupation in a dwelling unit, provided that:
- a. There shall be no more than three persons involved in such home occupation. Anyone involved must be a member of the household and an inhabitant thereof.
  - b. The use of the dwelling unit for the home occupation shall be clearly incidental and subordinate to its use for residential purposes by its occupation, and not more than 25 percent of the floor area of the dwelling unit shall be used in the conduct of the home occupation.
  - c. There shall be no change in the outside appearance of the building or premises, or other visible evidence of the conduct of such home occupation other than one sign, not exceeding one square foot in area,

non-illuminated, and mounted flat against the wall of the principal building.

d. No home occupation shall be conducted in any accessory building.

e. There shall be no public displays of goods in connection with such home occupation.

f. No traffic shall be generated by such home occupation in greater volumes than would normally be expected in a residential neighborhood, and any need for parking generated by the conduct of such home occupation shall be met off the street and other than in a required front yard.

g. No equipment or process shall be used in such home occupation which creates noise, vibration, glare, fumes, odors, or electrical interference detectable to the normal senses off the lot, if the occupation is conducted in a single-family residence, or outside the dwelling unit if conducted in other than a single-family residence.

3.36 Hospital or sanitarium An institution open to the public, in which sick patients or injured persons are given medical or surgical care; or for the care of contagious diseases or incurable patients.

3.37 Hotel A building designed for occupancy as the more or less temporary abiding place of individuals who are lodged with or without meals, in which there are six or more guest rooms, and in which no provisions are made for cooking in any individual room or suite. Unless the context indicates otherwise, "Hotel" includes a motel or motor hotel.

3.38 Institution A building, occupied by a nonprofit corporation or a nonprofit establishment, for public or semipublic use.

3.39 Junk yard Junk yards shall include any lot or parcel of land on which is kept, stored, bought or sold, articles commonly known as junk, including scrap paper and metal, automobile bodies from which the motors have been removed, and automobiles and parts thereof which are valuable only as junk. All junk yards, auto salvage or scrap yards shall be surrounded by either a solid wall or fence at least six feet in height. This fence shall be of such construction as to keep all junk on the premises of the junkyard from protruding into public streets, avenues, and alleys and shall be maintained in a state of good repair.

3.40  kennel Any lot or premises on which four or more dogs, at least four months of age, are kept for commercial purposes.

3.41 Laboratory A place devoted to experimental study such as testing and analyzing. Manufacturing of product or products is not to be permitted within this definition.

3.42 Loading space An off-street space or berth on the same lot with a building, or contiguous to a group of buildings, for the temporary parking of a commercial vehicle while loading or unloading merchandise or materials, and which abuts upon a street, alley or other appropriate means of access.

3.43 Lodging house A building with not more than five guest rooms where lodging is provided for compensation pursuant to previous arrangement, but not open to the public or transients.

3.44 Lot A parcel of land occupied or suitable for occupancy by one main building or use, with accessory buildings, including the open spaces required by this ordinance, and having its principal frontage upon a public street or highway.

3.45 Lot, corner A lot situated at the intersection of two or more streets.

3.46 Lot depth The horizontal distance between the front and rear lot lines measured in the mean direction on the side lot lines.

3.47 Lot of record A lot or parcel of land where existence, location and dimensions have been recorded in the office of the Judge of the Probate of Monroe County prior to the adoption of this ordinance.

3.48 Lot frontage The frontage of the lot shall be that boundary of a lot along a public street; and for a corner lot the front shall be the shorter lot boundary along a street.

3.49 Lot, interior A lot other than a corner lot,

3.50 Lot, width The horizontal distance between the side lot lines measures at right angles to the lot depth at a point midway between the front and rear lot lines.

3.51 Mall an enclosed or open common space for pedestrian traffic. See also shopping mall.

3.52 Mobile home The term “mobile home” shall be construed to mean and include any structure intended for, or capable of, human habitation, mounted upon wheels and capable of being driven, propelled, or towed from place to place without change in structure or design, by whatsoever name or title it is colloquially or commercially known. Removal of wheels and placing such a structure on the ground, piers or other foundation, shall not remove such a vehicle from this definition; provided, that this definition shall not include transport trucks or vans equipped with sleeping for driver or drivers. To be termed a mobile home, such structure shall not be less than 350 square feet.

3.53 Mobile theater Any theater with a mobile stage or mobile viewing equipment, but not including facilities where patrons remain in their cars.

3.54 Nonconforming use Any building, structure or land lawfully occupied by a use or lawfully situated at the time of the passage of this ordinance or amendments thereto, which does not conform after the passage of this ordinance or amendments thereto with the regulations of this ordinance.

3.56 Nursing home or rest home A private hospital for the care of children or the aged or infirmed, or a place of rest for those suffering bodily disorders, but not including facilities for the treatment of sickness or injuries, or for surgical care.

3.57 Office Condominium An office building in which units are owned separately. Also an office unit in such a building.

3.58 Open space A yard area which is not used for or occupied by a driveway-off-street parking, loading space or storage.

3.59 Outdoor concert or open air concert Any musical performance that is given out of doors but not including a performance at which patrons remain inside their cars.

3.60 Outdoor theater Any outdoor performance of a play, puppet show, skit or other performances and any outdoor facility for viewing any movie

or television program or other entertainment produced by any means, but not including facilities where patrons remain in their cars to view the performance.

3.61 Parking area, private An open area for the parking of privately owned automobiles and not for public use.

3.62 Parking space An area, enclosed in the main building, in an accessory building, or unenclosed, sufficient in size to store one standard automobile, which has adequate access to a public street or alley and permitting satisfactory ingress and egress of an automobile.

3.63 Porch A roofed entrance to a building, projecting out of a wall or walls of the main structure and commonly open to the weather in part.

3.64 Psychiatrist's office A place where a licensed physician especially trained for the purpose practices psychiatry.

3.65 Semi-public land uses Philanthropic and charitable land uses including: YMCA's, YWCA's, Salvation Army, churches and church related institutions, orphanages, humane societies, private welfare organizations, non-profit lodges and fraternal orders, hospitals, Red Cross, and other general charitable institutions.

3.66 Setback line A line parallel to the property line in front of which no structure may be erected.

3.67 Shopping center A place built and intended to be used for retail shops, department stores, restaurants, travel services and other allied businesses. The term shopping center also includes shopping malls.

3.68 Shopping mall A shopping center with a mall.

3.69 Signs, outdoor advertising Any card, cloth, paper, metal, painted, glass, wooden, plaster, stone or other sign of any kind or character whatsoever, placed for outdoor advertising purposes on the ground or on any tree, wall, bush, rock, post, fence, building, structure, or thing whatsoever. The term "placed" as used in the definition of "outdoor advertising sign" and "outdoor advertising structure" shall include erecting, constructing, posting, painting, printing, tacking, nailing, gluing, sticking, carving, or other fastening, affixing or making visible in any manner whatsoever.

3.70 Story That portion of a building included between the surface of any floor and the surface of the floor next above it, or if there be no floor, then the space between the floor and the ceiling next above it. Any portion of a story exceeding fourteen feet in height shall be considered as an additional story or fraction thereof.

3.71 Streets A dedicated and accepted public right of way for vehicular traffic which affords the principal means of access to abutting properties.

3.72 Structure Any combination of materials, including buildings, constructed or erected, the use of which requires location on the ground or attachment to any thing having location on the ground, including among other things, gasoline pumps, signs, billboards, but not including utility poles and overhead wires.

3.73 Terrace, open A level and other narrow plain, or platform, which for purposes of this ordinance is located adjacent to one or more faces of the main

structure, and which is constructed not more than four feet in height above the average level of the adjoining level of the adjoining ground.

3.74 Tourist home A dwelling in which overnight accommodations are provided or offered for transient guests.

3.75 Trailer, automobile A vehicle without motive power, designed to be drawn by a motor vehicle and to be used for human habitation or for carrying persons or property, including a trailer coach or house trailer.

3.76 Trailer camp, automobile Any premises occupied or designed, accommodate more than one family living in an automobile house trailer.

3.77 Use The purpose for which land or a building thereon is designed, arranged or intended, or which it is occupied or maintained, let or leased.

3.78 Veterinarian's office An enclosed structure for the treatment of diseased or injured animals by licensed personnel.

3.79 Yard An open space on the same lot with a main building, unoccupied and obstructed from the ground upward, except of the lot and the nearest line of the building.

3.80 Yard, front a yard extending across the full width of the lot and lying between the front line of the lot and the nearest line of the building.

3.81 Yard, rear A yard extending across the full width of the lot and lying between the rear line of the lot and the nearest line of the principal building.

3.82 Yard, side That part of the yard lying between the main building and a side lot line, and extending from the required front yard (or from the front lot line, if there is no required front yard) to the required rear yard.

## **ARTICLE II** **ESTABLISHMENT OF DISTRICTS**

For the purpose of this ordinance, the Town of Beatrice is hereby divided into the types of districts designated as follows:

### **SECTION 1. USE DISTRICTS**

R-1	RESIDENTIAL DISTRICT	Low Density – Single Family
R-2	RESIDENTIAL DISTRICT	Medium Density – Multi-family
R-3	RESIDENTIAL DISTRICT	Medium Density – Mobile Homes
B-1	BUSINESS DISTRICT	Municipal Shopping District
B-2	BUSINESS DISTRICT	General Business District
I-1	INDUSTRIAL DISTRICT	General Industrial District
A-1	AGRICULTURE DISTRICT	Commercial Agriculture District

**SECTION 2. DISTRICT BOUNDARIES.** The boundaries designated are hereby established as shown upon the Zoning Map of the Town of Beatrice. The Zoning Map of the Town of Beatrice is hereby made a part of this ordinance and on file in the office of the town clerk and all notations, references, and other information shown thereon are hereby made a part of this ordinance and have the

same force and effect as if the zoning map and all such notations, references, and other information shown thereon were fully set forth or described herein. Unless otherwise shown on said Zoning Map, the boundaries of districts are lot lines and centerline of streets or alleys or such lines extended, the centerline of railroad tracks, or the corporate limit lines as they existed at the time of enactment of this ordinance. Where uncertainty exists with respect to the boundaries of any of the aforesaid districts as shown on the Zoning Map, the following rules shall apply:

2.01 Where district boundaries are so indicated that they are approximately parallel to the centerline of streets, highways, or railroads, or right of way of same, such district boundaries shall be construed as being parallel thereto and at such distance therefrom as indicated on the Zoning Map. If no distance is given, such dimension shall be determined by the use of the scale shown on said Zoning Map. Each B-2 business district boundary which is approximately parallel to the centerline of streets, highways or railroads, or right of way of same shall be located a minimum of 200 feet from such centerline or right of way.

2.02 Where a district boundary line divides a lot in single ownership, the district requirements for the least restricted portion of such lot shall be deemed to apply to the whole thereof, provided that such extension shall not include any part of such a lot more than thirty-five (35) feet beyond the district boundary line.

2.03 All streets, alleys and railroad right-of-way, if not otherwise specifically designated, shall be deemed to be in the same district as the property immediately abutting upon such streets, alleys, and railroad right-of-way. Where the centerline of a street or alley serves as a district as the property immediately abutting upon such streets, alleys and railroad right-of-way, unless otherwise specifically designated, shall be deemed to be the same as that of the abutting property up to such center line.

2.04 In other circumstances not covered by the preceding rules, the Zoning Board of Adjustment shall interpret the district boundaries.

### **ARTICLE III** **APPLICATION OF REGULATIONS**

**SECTION 1. USES.** In each district no other use other than the types specified as “permitted” or “permitted on appeal.” shall be allowed. Uses specified as “permitted on appeal” are exceptions and conditional uses, and no permit shall be issued for such uses except with the written approval of the Board of Adjustment and subject to such conditions as said Board may require to preserve and protect the character of the district.

**SECTION 2. BUILDING LOTS, YARDS AND OPEN SPACES.** In each district, each structure hereafter erected or altered shall be provided with the years that such structure was erected or altered, specifying the details of such construction or alteration, and shall be on a lot of the area and width required in

Article IV. No open space or lot required for a building or structure shall during its life, be occupied by or counted as open space for another building or structure.

SECTION 3. HEIGHT. In each district each structure thereafter erected or altered shall not exceed the heights specified in the district requirements.

SECTION 4. REDUCTIONS IN LOT AREA PROHIBITED. No lot shall be reduced in area so that yards and other open space total less than minimum area required under this ordinance.

SECTION 5. STRUCTURES It is the intent of this ordinance that there shall be but one main structure plus any permitted accessory structures on any lot used for residential purposes; also, that accessory structures shall not include living quarters except that, in all districts, protective shelters approved by the Civil Defense Agency may provide temporary living quarters.

Trailers, buses, mobile homes, or any other structure so built to be, or give the reasonable appearance to be, mobile in the character of its construction will not be permitted in any district for any use other than for the purposes of transportation and transportation enterprises except that mobile homes may be located in districts which specifically allow such as a permitted use.

SECTION 6. NONCONFORMING USE. Any use or structure existing at the time of enactment or of subsequent amendment to this ordinance, but not in conformity with its provisions, may be continued with the following limitations. Any use or structure which does not conform to the provisions of this ordinance shall not be:

- a. Changed to another non-conforming use.
- b. Reestablished after discontinuance for one hundred and twenty (120) days.
- c. Extended except in conformity to this ordinance.
- d. Rebuilt, altered or repaired after damage exceeding eighty percent (80%) of its fair market value immediately prior to damage.

SECTION 7. ANNEXATION All territory which may hereafter be annexed to the town shall be considered to be in the R-I Residential District until otherwise classified.

SECTION 8. OFF-STREET AUTOMOBILE STORAGE. In each zoning district each structure shall be provided with off-street vehicle storage and parking facilities in accordance with the following:

8.01 RESIDENTIAL In all cases of new structures, converted structures or structures which are increased in capacity, facilities for the storage vehicles for the use of the occupants, employees and patrons of building hereafter erected, altered or increased in capacity, shall be provided and maintained on the premises in accordance with the requirements of each type of uses as follows:

a. RESIDENCES  
In R-1, R-2 and R-3 Districts two (2) parking spaces for each dwelling unit.

b. APARTMENTS:  
Two (2) parking spaces for each dwelling unit.

8.02 NON-RESIDENTIAL. In all cases of new structures or converted structures which are increased in capacity, facilities for the storage of vehicles for the use of the occupants, employees and patrons of buildings hereafter erected, altered or increased in capacity, shall be provided and maintained on the premises in accordance with the requirements of each type of use as follows:

a. SCHOOLS: One (1) parking space for each four (4) seats in the main assembly room plus one (1) space for each classroom.

b. CHURCHES, COMMUNITY BUILDINGS, AUDITORIUMS AND PLACES OF PUBLIC ASSEMBLY: One (1) parking spaces for each four (4) seats in the main assembly area (based on as 18" seat width), or in the case of general purpose rooms without fixed seats, there shall be one (1) parking space for each thirty-five (35) square feet of floor space.

c. HOTELS: One (1) parking space for each guest room.

d. MOTEL, TOURIST COURT, TOURIST HOUSE, BOARDING HOUSE, ROOMING HOUSE: One (1) parking space for each room or unit offered for rent plus one (1) additional parking space for each three (3) employees.

e. CLINICS OR PROFESSIONAL OFFICES: One (1) parking space for each professional plus one (1) parking space for each two (2) seats in the reception room, or one (1) parking space for each twenty-five (25) feet of floor space in such an area, whichever is the greater.

f. RESTAURANT OR OTHER EATING PLACE: One (1) parking space for each professional plus one (1) parking space for each two employees, or one (1) parking space for each fifty (50) square feet of floor space in such area, whichever is the greater.

g. OFFICE AND OFFICE BUILDINGS: One (1) parking space for each two hundred (200) square feet of floor area.

h. BOWLING ALLEYS: Five (5) parking spaces for each alley.

i. INDUSTRIAL USES: One (1) parking space for each one and one-half (1 ½) employees.

j. PLANNED SHOPPING CENTER: Area devoted to parking and access shall not be less than three (3) times the floor plan proposed; and within this parking area there shall be a minimum of eight (8) parking spaces per one thousand (1,000) square feet of floor area.

k. HOSPITAL, SANITARIUM OR NURSING HOME:

One (1) parking space for each six (6) beds plus (1) space for each staff or visiting doctor plus one (10 for each four (4) employees.

l. PRIVATE CLUB OR LODGE: One (1) parking space for each seven (7) members.

m. FOOD STORES AND MARKETS: One parking space for each two hundred (200) square feet of floor area.

n. **WHOLESALE USES AND STORAGE BUILDINGS, WAREHOUSES, LUMBER OR FUELS BUSINESS, TRUCK TERMINALS AND SIMILAR USES:**

One (1) parking space for each one and one-half (1 ½) employees.

o. **ANY USE NOT OTHERWISE SPECIFIED:** One (1) parking space for each one hundred eighty (180) square feet of floor space.

p. Whenever two (2) or more uses shall be made of the same property, the parking requirements for each shall apply.

q. Whenever a structure or use may qualify under two (2) or more classifications, the one with the larger requirement shall govern.

8.03 **MEASUREMENT OF AREA.** For the purpose of this section, "Floor Area" shall mean the gross floor area of all floors of a building or an addition to an existing building. The total parking area includes access drives within the actual parking area.

8.04 **EXISTING PARKING.** Any building which meets the parking requirements of this ordinance on the effective date hereof or at any other time, shall continue to comply fully with all requirements thereof. Any existing building which partially meets the requirements of this ordinance on the effective date thereof or at any subsequent time shall thereafter continue to comply as nearly with these requirements as the highest degree of compliance reached.

8.05 **GENERAL.** No off-street parking required for a building or structure shall during its life be occupied by or counted as off-street parking for another building or structure but may be counted as yard space.

8.06 **PARKING SPACE.** An off-street space, enclosed or unenclosed, containing not less than 200 square feet (10 x 20) of area exclusive of driveways appurtenant thereto, permanently reserved for the temporary storage of one motor vehicle and connected without obstructions to a street or alley shall be counted as off-street parking area or space.

8.07 **DESIGN.** No parking space shall be so designated as to require the vehicle parked therein to back on to a public street, with the exception of single and two family residences. All parking areas shall be surfaced according to city specifications.

**SECTION 9. OFF-STREET LOADING AND UNLOADING.** In each business and industrial district, each structure hereafter erected or altered shall be provided with off-street loading and unloading facilities as to specified in the district schedule.

**SECTION 10. CORNER VISIBILITY IN RESIDENCE AND LOCAL BUSINESS DISTRICTS.** In any district requiring a front yard set back, no fence, wall, shrubbery, sign, marquee, or other obstruction to vision between the heights of three and one-half (3 ½) feet and fifteen (15) feet above street level shall be permitted within twenty (20) feet of the intersection of the right of way lines of two streets or railroads or of a street and a railroad right of way line.

Accessory structures within twenty-five (25) feet of the rear lot of a corner lot shall be set back the minimum front yard depth required on the side street.

**SECTION 11. FUTURE STREET LINES.** On any lot which, at the time of adoption of this ordinance is changed by amendment thereafter, may be reduced in area by widening

a public street to a future street line as indicated on the duly adopted “Major Street Plan”, or as same may be hereafter amended, the minimum required yards, the minimum required lot area, the minimum required lot width, and the maximum building area shall be measured by considering the future street lines as the lot line of such lot.

SECTION 12 GARAGE SALES. Not more than one garage sale shall be conducted on the premises of any use in any calendar year.

SECTION 13 EASEMENTS. No easement shall be permitted in any residential district to serve any building or other use in any commercial district.

## **ARTICLE IV** **DISTRICT REGULATIONS**

### SECTION 1 R-1 RESIDENTIAL DISTRICT USE REGULATIONS

1.01 USES PERMITTED:

Single family dwellings;  
Accessory structures (carports and utility rooms and structures used for residential storage);  
Playgrounds;  
Parks;  
Public buildings, including public schools and libraries;  
One sign on each lot not exceeding twelve square feet in area, pertaining to the lease or sale of the building or premises on which the sign is located.

1.02 USES PERMITTED ON APPEAL:

Customary home occupations;  
Semi-public buildings;  
All conditional uses listed in Section 3.24 of this ordinance;  
Municipal, county, state or federal government use.

1.03 MINIMUM LOT SIZE Every lot shall have a minimum width at the front building line of one hundred (100) feet, and a minimum area of fifteen thousand (15,000) square feet, unless a greater area is required by the Public Health Authority, in which case the minimum required lot size will be that required by the Public Health Authority.

1.04 BUILDING HEIGHT No building or structure shall be erected or altered which exceeds two and one-half (2 and ½) stories, nor shall it exceed thirty-five (35) feet in height.

1.05 YARD AREAS No building or structure shall be erected or altered unless the following yards and lot areas are provided and maintained in connection with such building, structure, or alteration.

a. Front yard: There shall be a front yard of not less than thirty-five (35) feet.

b. Side yard: On interior lots, there shall be a side yard on each side of the main building of not less than fifteen (15) feet. On corner lots the side yard requirement shall be the same as for interior lots, except that there shall be maintained a

side yard of not less than twenty-five (25) feet on the side adjacent to the street which intersects the street upon which the building or structure maintains frontage.

c. Rear yard: There shall be a rear yard of not less than forty (40) feet.

1.06 ACCESSORY BUILDINGS Accessory buildings shall not encroach upon the front yard. They may encroach upon the side yards, provided no buildings are closer to the lot lines than ten feet, and provided further that on a corner lot accessory buildings may not encroach upon the side yard adjacent to the abutting street.

## SECTION 2 R-2 RESIDENTIAL DISTRICT USE REGULATIONS

### 2.01 USES PERMITTED:

Two-family and multi-family dwellings;  
Apartments;  
Town houses;  
Condominiums;  
All uses permitted in R-1 residential districts.

### 2.02 USES PERMITTED ON APPEAL:

Rooming or boarding house;  
Customary home occupation;  
Semi-public buildings;  
Nursing or rest homes;  
Lodges, or fraternal organizations, when not operated for a profit;  
All conditional uses listed in Section 3.24 of this ordinance; municipal, county, state, or federal government use.

2.03 MINIMUM LOT SIZE: Every lot shall have a minimum width at the front building line of one-hundred (100) feet. Every building hereinafter erected or structurally altered as a multi-family dwelling shall have a lot area per dwelling unit of not less than two thousand five hundred (2,500) square feet, unless a greater area is required by the Public Health Authority, in which case the minimum required lot size will be that required by the Public Health Authority. For single family and two-family dwellings, the minimum lot size shall be that required in R-1 districts. (1,500)

2.04 BUILDING HEIGHT No building or structure shall be erected or altered which exceeds two and one-half (2 and ½) stories, nor shall it exceed thirty-five (35) feet in height.

2.05 YARD AREAS No building or structure shall be erected or altered unless the following yards and lot areas are provided and maintained in connection with such building, structure, or alteration.

a. Front yard: There shall be a front yard depth of not less than thirty-five (35) feet.

b. Side yard: On interior lots, there shall be a side yard depth on each side of the building of not less than fifteen (15) feet. On corner lots the side yard requirement shall be the same as for interior lots, except that there shall be maintained a side yard depth of not less than twenty-five (25) on the side adjacent to the street which intersects the street upon which the building or structure maintains frontage.

c. Rear yard: There shall be a rear yard depth of not less than forty (40) feet.

2.06 ACCESSORY BUILDINGS Accessory buildings shall not encroach upon the front yard. They may encroach upon the side yards, provided no buildings are closer to the lot lines than ten feet, and provided further that on a corner lot accessory buildings may not encroach upon the side yard adjacent to the abutting street.

SECTION 3. R-3 RESIDENTIAL DISTRICT USE REGULATIONS

3.01 USES PERMITTED:

Mobile homes;

All uses permitted in R-1 and R-2 residential districts.

3.02 USES PERMITTED ON APPEAL:

Rooming or boarding house;

Customary home occupation;

Semi-public buildings;

Nursing or rest homes;

Lodges, or fraternal organizations, when not operated for a profit;

All conditional uses listed in Section 3.24 of this ordinance; municipal, county, state, or federal government use.

3.03 MINIMUM LOT SIZE: Every lot shall have a minimum width at the front building line of one-hundred (100) feet. Every building hereinafter erected or structurally altered as a multi-family dwelling shall have a lot area per dwelling unit of not less than two thousand five hundred (2,500) square feet, unless a greater area is required by the Public Health Authority, in which case the minimum required lot size will be that required by the Public Health Authority. For single family and two-family dwellings, the minimum lot size shall be that required in R-1 districts.

3.04 BUILDING HEIGHT No building or structure shall be erected or altered which exceeds two and one-half (2 and ½) stories, nor shall it exceed thirty-five (35) feet in height.

3.05 YARD AREAS No building or structure shall be erected or altered unless the following yards and lot areas are provided and maintained in connection with such building, structure, or alteration.

a. Front yard: There shall be a front yard depth of not less than thirty-five (35) feet.

b. Side yard: On interior lots, there shall be a side yard depth on each side of the building of not less than fifteen (15) feet. On corner lots the side yard requirement shall be the same as for interior lots, except that there shall be maintained a side yard depth of not less than twenty-five (25) on the side adjacent to the street which intersects the street upon which the building or structure maintains frontage.

c. Rear yard: There shall be a rear yard depth of not less than forty (40) feet.

d. Mobile homes must be skirted.

3.06 ACCESSORY BUILDINGS Accessory buildings shall not encroach upon the front yard. They may encroach upon the side yards, provided no buildings are closer to the lot lines than ten feet, and provided further that on a corner lot accessory buildings may not encroach upon the side yard adjacent to the abutting street.

**SECTION 4 B-1 MUNICIPAL SHOPPING DISTRICT USE REGULATIONS**

**4.01 USES PERMITTED:**

Retail stores and markets, including but not limited to, the following types of stores:

Food, general merchandise, apparel, furniture, household and hardware, appliance, radio and television, drugs and sundries, jewelry and gifts, florists, sporting goods, pet shops, computer, electronics, video and music;

Services, including, but not limited to, the following types:

Attorneys, chiropractors, podiatrists, dentists, doctors, dry cleaning and laundry pickup service, barber and beauty shops, shoe repair, hotels, motels, banks, post offices, theaters, veterinarians, engineers;

Apartments, provided that they are located above the first floor and above a business use;

Shopping centers

All uses permitted in R-1 and R-2 residential districts.

**4.02 USES PERMITTED ON APPEAL:**

Automobile service stations;

Rooming or boarding house;

Customary home occupation;

Semi-public buildings;

Public or private kindergarten or daycare centers;

Clubs, lodges, or fraternal organizations, when not specified for a profit;

All conditional uses listed in Section 3.24 of this ordinance except:

Cemeteries, crematories or mausoleums;

Extraction of gravel, sand or other raw materials,

Oil, gas or minerals;

Gold courses, public or private;

Hospitals or sanitariums;

Schools, public or private;

**4.03 SPECIFIC PROHIBITED USES**

Automobile repair;

Laundry and dry cleaning plant;

Mobile homes;

Auto wrecking or junk yard;

Junk yard.

**4.03 MINIMUM LOT SIZE** Each business use shall be located upon a lot of sufficient size to meet all requirements of this ordinance. Each residential use located in this district shall comply with the lot size requirements of the R-1 residential district.

**4.04 BUILDING HEIGHT** No building or structure shall be erected or altered which exceeds two and one-half (2 and ½) stories, nor shall it exceed thirty-five (35) feet in height.

4.05 YARD AREAS No building or structure shall be erected or altered unless the following yards and lot area are provided and maintained in connection with such building, structure, or alteration.

a. Business Uses

(1). Front Yard: There shall be a front yard depth of not less than ten (10) feet.

(2). Side yard: No side yard is required unless such business use is located on a corner lot, in which case there shall be maintained a side yard depth of not less than ten (10) feet on the side adjacent to the street which intersects the street upon which the building or structure maintains frontage.

(3). Rear yard: There shall be a rear yard depth of not less than twenty (20) feet.

b. Residential Uses

(1). Front yard: There shall be a front yard depth of not less than thirty-five (35) feet.

(2). Side yard: On interior lots, there shall be a side yard depth on each side of the main building of not less than fifteen (15) feet. On the corner lots the side yard requirement shall be the same as for interior lots, except that there shall be maintained a side yard depth of not less than twenty-five (25) on the side adjacent to the street upon which the building or structure maintains frontage.

(3).Rear yard: There shall be a rear yard depth of not less than forty (40) feet.

4.06 ACCESSORY BUILDINGS Accessory buildings shall not encroach upon the front yard. They may encroach upon the side yards, provided no buildings are closer to the lot lines than ten feet, and provided further than that on a corner lot accessory buildings may not encroach upon the side yard adjacent to the abutting street.

SECTION 5 B-2 MUNICIPAL SHOPPING DISTRICT USE REGULATIONS

5.01 USES PERMITTED:

Any retail or wholesale business or service not specifically restricted or prohibited;

Automobile repair

Automobile service stations;

Rooming or boarding house;

Customary home occupation;

Semi-public buildings;

Public or private kindergartens or daycare centers

Clubs, or fraternal organizations, when not operated for a profit;

All uses permitted in R-1 and R-2 residential districts.

5.02 USES PERMITTED ON APPEAL:

Dry cleaning;

Laundry and dry-cleaning plant;

Junk yard;

Modular units used for business purposes;

All conditional uses listed in Section 3.24 of this ordinance.

5.03 SPECIFIC PROHIBITED USES

Auto wrecking or junk yard;

5.03 MINIMUM LOT SIZE: Each business use shall be located upon a lot of sufficient size to meet all requirements of this ordinance. Each single family dwelling located in this district shall comply with the R-1 residential district use regulations, each two-family or multi-family use located in this district shall comply with the R-2 residential district use regulations, and each mobile home located in this district shall comply with the R-3 residential district use regulations.

5.04 BUILDING HEIGHT No building or structure shall be erected or altered which exceeds two and one-half (2 and ½) stories, nor shall it exceed thirty-five (35) feet in height..

5.05 YARD AREAS unless the following yards and lot areas are provided and maintained in connection with such building, structure, or alteration.

a. Business Uses

(1). Front yard: There shall be a front yard depth of not less than twenty (20) feet..

(2). Side yard: No side yard is required unless such business use is located on a corner lot, in which case there shall be maintained a side yard depth of not less than ten (20) feet on the side adjacent to the street which intersects the street upon which the building or structure maintains frontage.

(3). Rear yard: There shall be a rear yard depth of not less than forty (40) feet.

5.06 ACCESSORY BUILDINGS Accessory buildings shall not encroach upon the front yard. They may encroach upon the side yards, provided no buildings are closer to the lot lines than ten feet, and provided further that on a corner lot accessory buildings may not encroach upon the side yard adjacent to the abutting street.

## SECTION 6 I-1 INDUSTRIAL DISTRICT USE REGULATIONS

### 6.01 USES PERMITTED

Any industrial, service, or commercial use not specifically prohibited or specified as permitted on appeal..

### 6.02 USES PERMITTED ON APPEAL:

Stockyards;

Gasoline storage above ground in excess of five hundred (500) gallons;

All conditional uses listed in Section 3.24 of this ordinance.

### 6.03 SPECIFIC PROHIBITED USES

Fighting arenas;

Slaughter house;

Boiler and tank works;

Central mixing plant for cement, mortar, plaster, or paving materials;

Curing, tanning, or storage of hides;

Distillation of bones, coal, tar, or wood;

Fat and/or oil rendering and/or refining;

Forge plant;

Manufacture of acetylene, acid, alcohol, ammonia bleach, fertilizers, illuminating or heating gas including storage of same, paint, turpentine, varnish, soap or tar products;

Wood pulling or scouring;

Cotton waste reclaiming;

6.04 MINIMUM LOT SIZE: Each use shall be located upon a lot of sufficient size to meet all requirements of this ordinance.

6.05 BUILDING HEIGHT No building or structure shall be erected or altered unless the following yards and lot areas are provided and maintained in connection with such building, structure, or alteration.

6.06 YARD AREAS No building or structure shall be erected or altered unless the following yards and lot areas are provided and maintained in connection with such building, structure, or alteration.

a. Front yard: There shall be a front yard depth of not less than fifty (50) feet..

b. Side yard: On interior lots, there shall be a side yard depth on each side of the main building of not less than thirty-five (35) feet. On corner lots the side yard requirement shall be the same as for the interior lots, except that there shall be maintained a side yard depth of not less than fifty (50) on the side adjacent to the street which intersects the street upon which the building or structure maintains frontage.

c. Rear yard: There shall be a rear yard depth of not less than fifty (50) feet.

6.07 ACCESSORY BUILDINGS Accessory buildings shall not encroach upon the front yard. They may encroach upon the side yards, provided that no buildings are colder to the lot lines than ten feet, and provided further that on a corner lot accessory buildings may not encroach upon the side yard adjacent to the abutting street.

## SECTION 7 AG-1 AGRICULTURAL DISTRICT USE REGULATIONS

### 7.01 USES PERMITTED:

Any commercial agricultural use;

Any use permitted in R-1, R-2, R-3, B-1, and B-2 districts.

### 7.02 USES PERMITTED ON APPEAL:

Any use permitted in I-1 districts;

All conditional uses listed in Section 3.24 of this ordinance.

### 7.03 MINIMUM LOT SIZE

There is no minimum lot size for any commercial agricultural use located in this district. Each industrial or business use located in this district shall be located upon a lot of sufficient size to meet all requirements of this ordinance. Each single family dwelling located in this district shall comply with the R-1 residential district use regulations, each two-family or multi-family use located in this district shall comply with the R-2 residential district use regulations, and each mobile home located in the district shall comply with the R-3 residential district use regulations.

7.04 BUILDING HEIGHT No building or structure shall be erected or altered which exceeds two and one-half (2 and ½) stories, nor shall it exceed thirty-five (35) feet in height.

- 7.05 YARD AREAS No building or structure shall be erected or altered unless the following yards and lot areas are provided and maintained in connection with such building, structure, or alteration.
- a. Front yard: There shall be a front yard of not less than thirty-five (35) feet.
  - b. Side yard: On the interior lots, there shall be a side yard on each side of the main building of not less than fifteen (15) feet. On corner lots the side yard requirement shall be the same as for interior lots, except that there shall be maintained a side yard of not less than ten feet, and provided further that on a corner lot accessory buildings may not encroach upon the side yard adjacent to the abutting street.

**ARTICLE V**  
**EXCEPTIONS AND MODIFICATIONS**

SECTION 1.0 LOT OF RECORD Where the owner of a lot of official record at the time of adoption of this ordinance does not own sufficient adjacent land to enable him to conform to the yard and other requirements of this ordinance, one building and its accessory structures may be built, provided the yard space and other requirements conform as closely as possible, in the opinion of the Board of Zoning Adjustment, to the requirements of the district in which it is located; and further provided that neither side yard shall be reduced to less than five (5) feet in width.

SECTION 2.0 FRONT YARD SETBACKS. Where a structure is to be built between two existing structures which do not conform to the front yard setback required for that district, upon appeal, the Board of Adjustment may allow such structure to be built in conformance with the front yard setbacks of the two adjacent structures.

SECTION 3.0 ADVERTISING SIGNS AND STRUCTURES. In all districts other than residential districts, where front yard or setback requirements are required, outdoor advertising structures may be placed within such front yard or setback area of a place of business subject to the following terms and conditions:

- 3.01 Said structure must be used primarily for the purpose of identifying the place of business at that location.
- 3.02 No such structure shall be placed at intersection or locations which would obstruct the view of intersecting traffic.
- 3.03 No such structure exceeding in size, fifty (50) square feet, exclusive of necessary structural support, shall be placed within ten (10) feet of the front line or street right of way.

3.04 No such structure exceeding in size, fifty (50) square feet, exclusive of necessary structural support, shall be placed within ten (10) feet of the front line or street right of way.

SECTION 4.0 HEIGHT LIMITATIONS. Height limitations shall not apply to church steeples, hospitals, sanitariums, barns, silos, farm structures, chimneys, flag poles, public utility poles, radio and television towers, and aerials, cooling towers, water tanks; and industrial structures when required by manufacturing process but not to exceed twenty-five (25) percent of the area of the lot. In no event shall the total height exceed 25 feet.

SECTION 5.0 GROUP HOUSING PROJECTS. In the case of a housing project consisting of a group of two or more buildings to be constructed on a plot of ground of at least four acres not subdivided into the customary streets and lots and not to be so subdivided or where existing or contemplated street and lot layout make it impracticable to apply the requirements of this ordinance to the individual buildings in such housing projects, the application of such requirements to such housing projects shall be done by the Board of Zoning Adjustment with the advice of the Planning Commission, in a manner that will be in harmony with the character of occupancy, a density of land use no higher and a standard of open space at least as high as required by this ordinance in the district in which the proposed project is to be located, and will provide layout design and public utilities in harmony with the general requirements and minimum standards of design of the Subdivision Regulations of the municipality.

In no case shall the Board of Adjustment authorize a use or a building height or building area prohibited in the district in which the housing project is to be located.

## ARTICLE VI ADMINISTRATION, ENFORCEMENT AND PENALTIES

SECTION 1.0 ENFORCING OFFICER. The provisions of this ordinance shall be administered and enforced by the Municipal Officer. This official shall have the right to enter upon a premises at any reasonable time prior to the issuance of certificate of occupancy for the purpose of making inspections of buildings or premises necessary in carrying out his duties in the enforcement of this ordinance.

SECTION 2.0 ZONING PERMIT REQUIRED. It shall be unlawful to commence the excavation for or the construction of any building or other structure, including accessory structures or to store building materials or erect temporary field offices, or to commence the moving, alteration, or repair (except repairs, not changing the character of the structure and not exceeding \$2,000.00 in cost, or painting or wall-papering) of any structure, including accessory structures, until the Municipal Zoning Officer has issued for such work a Zoning

Permit including a statement that the plant, specifications, and intended use of such structure in all respects conform with the provisions of this ordinance. Application for a zoning permit shall be made to the Municipal Zoning Officer on forms provided for that purpose. Any zoning permit for construction issued shall become invalid unless the work authorized by it shall have been commenced within six (6) months of its date of issue, or if the work authorized by it is suspended or abandoned for a period of one (1) year.

**SECTION 3.0 APPROVAL OF PLANS AND ISSUANCE OF ZONING PERMIT.**

It shall be unlawful for the Municipal Zoning Officer to approve any plans or issue a building permit for any excavation or construction until he has inspected such plans in detail and found them in conformity with this ordinance. To this end, the Municipal Zoning Officer shall require that every application for a building permit for excavation, construction, use of land, moving or alteration be accompanied by a plan drawn to scale and showing the following in sufficient detail to enable the Municipal Building Inspector to ascertain whether the proposed excavation construction, use of land, moving or alteration is in conformance with this ordinance.

- a. The actual shape, proportion, and dimensions of the lot to be built upon.
- b. The shape, size and location of all buildings or other structures to be erected, altered or moved, and of any buildings or other structures already on the lot.
- c. The existing and intended use of all such buildings or other structures.
- d. The setback and sidelines of buildings on adjoining lots and such other or adjoining lots as may be essential for determining whether the provisions of this ordinance are being observed.

If the proposed excavation, construction, moving, or alteration, as set forth in the application, are in conformity with the provisions of this ordinance, the Municipal Zoning Officer shall issue a zoning permit accordingly. If an application for a zoning permit is not approved, the Building Inspector of the municipality shall state in writing, on the application, the cause for such disapproval. Issuance of a zoning permit shall, in no case, be construed as waiving any provision of this ordinance.

**SECTION 4.0 CERTIFICATE OF OCCUPANCY REQUIRED.** No land or building or other structure of part thereof hereafter erected, moved, or altered in its use shall be used until the Municipal Zoning Officer shall have issued a Certificate of Occupancy stating that such land or structure or part thereof is found to be in conformity with the provisions of this ordinance. Within three (3) days after the owner or his agent has notified the

Municipal Zoning Officer of the municipality that a building or premises or part thereof is ready for occupancy or use, it shall be the duty of the Municipal Zoning Officer to make a final inspection thereof, and to issue a Certificate of Occupancy if the building or premises or part thereof is found to conform with the provisions of this ordinance, or, if such certificate is refused, to state the refusal in writing with the cause..

SECTION 5.0 PENALTIES. Any person violating any provision of this ordinance shall be fined upon conviction not less than two dollars (\$2.00) nor more than one hundred dollars (\$100.00) and costs of court for each offense. Each day such violation continues shall constitute a separate offense.

SECTION 6.0 REMEDIES. In case any building or other structure is erected, construed, reconstructed, altered, repaired, converted or maintained, or any building, structure or land is used in violation of this ordinance the Municipal Zoning Officer or any other appropriate authority or any adjacent or neighboring property or neighboring property owner(s) who would be specially damaged by such violation, in addition to the remedies contained within this ordinance, may institute injunction, mandamus, or other appropriate action or proceeding to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use, to correct or abate such violation or to prevent occupancy of such building, structure or land.

## **ARTICLE VII BOARD OF ADJUSTMENT**

SECTION 1.0 ESTABLISHMENT AND MEMBERSHIP OF THE BOARD OF ADJUSTMENT. A Board of Adjustment is hereby established. The board shall consist of five (5) members, each to be appointed for a term of three (3) years by the Town Council. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant. Each member may be removed for cause by the appointing authority upon written charges and after a public hearing.

SECTION 2.0 MEETINGS, PROCEDURE AND RECORDS. Meetings of the Board shall be held at the call of the Chairman and at such times as the Board may determine. Such chairman, or in his absence the Acting Chairman, may administer oaths and compel the attendance of witnesses. All meetings shall be open to the public.

The Board shall adopt and publish its own rules of procedure and keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and of other official actions, all of which shall be immediately filled in the office of the Board and shall be public record.

SECTION 3.0 APPEALS. An appeal may be taken to the Board by any person aggrieved, or by an officer, department, board or bureau of the municipality affected by any decision of the Municipal Zoning Officer.

Such appeal shall be taken within a reasonable time, as provided by the rules of the Board, by filing with the officer from whom the appeal is taken and with the Board of Adjustment a notice of the Appeal specifying the grounds thereof.

An officer from whom the appeal is taken shall transmit forthwith to the Board all papers constituting the record upon which the action appealed was taken, An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the Board of Adjustment after the notice of appeal shall have been filed against him, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stated otherwise than by a restraining order which may be granted by the Board of Adjustment or by a court of record on application and notice to the officer from whom the appeal is taken and on due cause shown.

SECTION 4.0 HEARING. The Board of Adjustment shall have the following powers and duties:

- 5.01 To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this article or of any ordinance adopted pursuant thereto.
- 5.02 To hear and decide special exceptions to the terms of the ordinance upon which such board is required to pass under such ordinance.
- 5.03 To authorize upon appeal in specific cases such variance from the terms of the ordinance as will not contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship, and so that the spirit of the ordinance shall be observed and substantial justice done. In exercising the abovementioned powers, such Board may in conformance with the provisions of this article, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or by any court of competent jurisdiction, such holding shall not affect any other section, clause, provision or portion of this ordinance which is not in and of itself valid or unconstitutional.

SECTION 6.0 EFFECTIVE DATE. This ordinance shall take effect and be in force from and after its passage and adoption.

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Mayor

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Town Clerk

TOWN OF BEATRICE  
ZONING REGULATIONS

# MOBILE HOMES

## USES PERMITTED:

Mobile Homes are permitted in R-3 and G-1 zones. The town clerk or the zoning officer can help determine if a mobile home site is located within an R-3 or an AG-1 zone. Mobile Homes are permitted in B-2 zones on appeal. There is a Zoning Map available in City Hall.

## LOT SIZE & OTHER MOBILE HOME REQUIREMENTS:

There can be only one mobile home per lot. Two (2) or more Mobile homes on the same tract of land cannot be permitted until the tract of land is subdivided.

1. The minimum lot size for a mobile home is fifteen thousand (**15,000**) square feet.
2. The front yard must be at least thirty-five (**35**) feet in length and a width of at least one hundred (**100**) feet.
3. Side yards must be at least fifteen (**15**) feet in length.
4. Rear yards must be at least forty (**40**) feet in length.
5. Mobile homes must be **skirted**.

# Alabama League of Municipalities

P.O. Box 1270, Montgomery, AL, 36102 - (334) 262-2566 - FAX: (334) 263-0200

## Zoning for Aesthetics

To some extent, many zoning regulations are based on the public's need to regulate aesthetics. Of course, many of these ordinance also advance police power interests—that is, they benefit the public health, safety and welfare. When a municipality enacts a zoning ordinance regulating the size of signs over sidewalks, for instance, part of the purpose behind the ordinance is to preserve the public's use of the sidewalk—so that people don't have to walk in the street—and to protect the public from injury due to low-hanging protrusions. But another reason behind the regulation is the desire for an uncluttered look in the air above the sidewalk.

### The Nature of Zoning

Section 11-52-70, Code of Alabama, 1975, authorizes any municipality in Alabama to divide the territory within its corporate limits into districts in order to limit the uses of property within each district. Section 11-52-72 of the Code provides that zoning ordinances may be enacted "to lessen congestion in the streets, to secure safety from fire, panic and other dangers, to promote health and the general welfare, to provide adequate light and air, to prevent the overcrowding of land, to avoid undue concentration of population and to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements."

Because zoning ordinances are based on the exercise of municipal police power, courts tend to construe them liberally. *Roberson v. City of Montgomery*, 285 Ala. 421, 233 So.2d 69 (1970). But does a zoning ordinance that is based solely on aesthetics protect the public health, safety or welfare? Stated another way, are aesthetics considerations alone a legitimate exercise of municipal police power?

Early court decisions did not recognize the right of municipalities to regulate land use for aesthetic purposes. See, Regan, *You Can't Build that Here: The Constitutionality of Aesthetic Zoning and Architectural Review*, 58 Fordham L. Rev. 1013 (1990). In Alabama, in *Johnson v. City of Huntsville*, 249 Ala. 36, 29 So.2d 342 (1947), the Alabama Supreme Court held that zoning cannot "be left to the caprice, whim or aesthetic sense of a special group of individuals." These early decisions forced local governments to combine aesthetic zoning ordinances with the advancement of a separate police power interest in order to legitimize the ordinance.

In 1954, the United States Supreme Court indicated, in dictum, that the idea of protecting the general welfare was broad enough to include the preservation of aesthetic values. In this case, *Berman v. Parker*, 348 U.S. 26, 33 (1954), the Court stated that:

"the concept of the public welfare is broad and inclusive. The values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled."

Following this decision, several state courts upheld the authority of municipalities to zone for aesthetic reasons alone. Additionally, the United States Supreme Court, following its reasoning in *Berman*, acknowledged the need for aesthetic regulations in *Village of Belle Terre v. Boraas*, 416 U.S. 1 (1974):

"A quiet place where yards are wide, people few, and motor vehicles restricted are legitimate guidelines in a land-use project addressed to family needs. This goal is a permissible one within *Berman v. Parker*. The police power is not confined to elimination of filth, stench, and unhealthy places. It is ample to lay out zones where family values, youth values, and the blessings of quiet seclusion, and clean air make the area a sanctuary for people."

#### Prohibition of Aesthetics-Based Zoning

The commentator in the Fordham Law Review article cited above lists several reasons why courts generally refuse to allow zoning based on aesthetic factors alone. Some courts hold that aesthetics is not a valid police power. Other courts have held that aesthetics are based on subjective factors that defy attempts to develop objective standards, leading to arbitrary application and abuse of discretion. Still other courts have held that aesthetic regulations infringe on personal freedoms.

Another commentator has pointed out the difficulties in attempting to define the nature of aesthetic regulations as follows:

"'Aesthetics,' as the term is used in the visual beauty rationale, connotes pleasure or offense to the sense of sight resulting from the visual form of environmental features or settings. Consequently, aesthetic regulation's purpose is assumed to be the creation or preservation of features or settings that are 'beautiful'—pleasing to the eye—or, conversely, the proscription of those that are 'ugly'—offensive to the eye. [T]he search for aesthetic standards . . . necessarily assumes the physiological or sensory predisposition of human beings to experience visual qualities in a relatively uniform manner." Costonis, *Law and Aesthetics: A Critique and a Reformulation of the Dilemmas*, 80 Michigan L. Rev. 355, 396 (1982).

#### Are Aesthetics a Valid Zoning Concern?

While defining objective standards is difficult, many courts have recognized that a municipality, within the limits of its discretionary power, can limit a landowner's use of his or her property. When a municipality adopts a zoning ordinance, it is presumed valid. As Alabama courts have pointed in numerous cases, the wisdom of a municipal zoning

ordinance rests, in large measure, in the wise discretion of the local governing body. See, e.g., *Fleetwood Development Corp. v. City of Vestavia Hills*, 282 Ala. 439, 212 So.2d 693 (1968). The only limitations on municipal zoning ordinances is that they must be comprehensive and not in conflict with the laws of the state or the state and federal constitutions. *Jefferson County v. City of Birmingham*, 256 Ala. 436, 55 So.2d 196 (1951). Zoning ordinances are generally not overturned unless there is an abuse of discretion, or the ordinance itself is arbitrary and capricious. *Come v. Chancy*, 289 Ala. 555, 269 So.2d 88 (1972).

Because municipal zoning power in Alabama is derived from the legislature's police power, *White v. Luquire Funeral Home*, 221 Ala. 440, 129 So. 84 (1930), any regulations a municipality places in its ordinance must fit within the parameters of public protection. Ordinances based on police power are enacted to preserve and further the public peace, order, health, morality and welfare. *City of Homewood v. Wofford Oil Co.*, 232 Ala. 634, 169 So. 288 (1936). This is a very broad power, and as the courts have recognized, seems to allow municipalities to regulate on the basis of aesthetics.

Of course, as noted above, the enforcement of municipal ordinances cannot be left to the whim or discretion of officials. Therefore, it is important that the ordinance provide reasonable standards to govern the decisions of zoning officials, or create objective criteria that a property owner must meet in order to comply with the zoning ordinance.

Yokley, *Zoning Law and Practice*, § 4-4, quoting *State v. City of New Orleans*, 154 La. 271, 97 So. 440, (1923), points out the need for regulation of aesthetics through zoning:

"If by the term 'aesthetic considerations' is meant a regard for outward appearance and good taste in the matter of the beauty of the neighborhood itself, we do not observe any substantial reason for any saying that such consideration is not a matter of general welfare. The beauty of a residence neighborhood is for the comfort and happiness of the residents, and it sustains the value of the property in the neighborhood."

Changing times, increasing population density and environmental concerns seem to have led many courts away from the belief that aesthetics are not a valid police power concern. The Fifth Circuit Court of Appeals has stated that:

"[T]he value of scenic surroundings to tourists, prospective residents and commercial development cannot be overstated. But in an age in which the preservation of the quality of our environment has become such a national goal, a concern for aesthetics seems even more urgent." *Stone v. City of Maitland*, 446 F.2d 83 (5<sup>th</sup> Cir. 1971).

Of course, there are still jurisdictions which prohibit the use of a zoning ordinance to regulate for aesthetic purposes. The general trend, though, appears to approve of aesthetic regulation, provided the ordinance meets the accepted standards for upholding zoning ordinances.

## Nonconforming Uses

In *Modjeska Sign Studios, Inc. v. Berle*, 43 N.Y.2d, 373 N.E.2d 255 (1977), the New York Court of Appeals considered a billboard ordinance which required the immediate removal of prohibited signs within the district. The court refused to permit removal of the billboards, stating that "absent the urgency present in a safety-motivated regulation, the immediate benefit gained does not outweigh the loss suffered by those individuals adversely affected." Thus, exercise of the police power to eliminate existing signs for aesthetic reasons would have been unreasonable.

## The Development of Alabama Case Law

In *Sigler v. City of Mobile*, 387 So.2d 813, 814 (Ala. 1980), a landowner applied to the municipal planning commission for permission to resubdivide his property. When the commission subdivision. In holding that the property owner was entitled to subdivide the property, the Court stated:

"We are, of course, sympathetic with neighbors who would preserve the neighborhood as it is, and appreciate their desire to protect the aesthetic quality of the area. However, these are concerns which should be directed to the zoning authorities or some other appropriate agency."

This statement, at least implicitly, recognizes municipal power to regulate aesthetics through the zoning power.

The authority of a municipality to regulate aesthetics though its zoning power was directly challenged in *Pate v. City Council of Tuscaloosa*, 622 So.2d 405 (Ala. Civ. App. 1993). In this case, the City of Tuscaloosa passed a zoning ordinance restricting the construction of new off-site billboards in certain specified areas. The owner of an outdoor advertising business sued, arguing that the sole purpose behind the zoning ordinance was the advancement of aesthetic considerations. He contended that aesthetics considerations alone are not a valid exercise of the municipality's zoning power.

The Court of Civil Appeals refused to reach this issue. Instead, the court held that:

"Without addressing the propriety or impropriety of aesthetics as a purpose for zoning regulation by municipalities in Alabama, we hold that there is ample evidence regarding traffic safety concerns to satisfy the standards stated previously in Ala. Code 1975, § 11-52-72."

Thus, the court did not have to reach the issue of aesthetic regulation because other, more recognized police power reasons justified the ordinance in question.

Finally, though, in *Chorzempa v. City of Huntsville*, 643 So.2d 1021 (Ala. Crim. App. 1993), the Court of Criminal Appeals explicitly recognized the authority of municipalities in Alabama to use its zoning power to regulate aesthetics. In this case, a homeowner was

convicted in municipal court for storing junk in his yard and for illegally parking a one-ton van in a residential area in violation of the City's zoning ordinances. Citing numerous decisions from other jurisdictions, the court stated that:

"[C]urrent authorities recognize neighborhood aesthetics to be integrally bound to property values and to be relevant considerations in zoning when they bear in a substantial way upon land utilization. Aesthetic considerations have been held to be a valid basis for zoning in Florida. They have also be held valid in Wisconsin, in Illinois, and in Pennsylvania.

"We hold as the Superior Court of New Jersey held in *Livingston [Township v. Marchev*, 85 N.J. Super. 428, 205 A.2d 65, 67 (1964), cert. denied, 44 N.J. 412, 209 A.2d 145 (1965), appeal dismissed, 382 U.S. 201 (1965): 'It is apparent that the statutory grant of police powers to municipalities encompasses the authority to enact regulatory ordinances for the protection and preservation of property values affecting the general welfare of the community.'

"Further, the appellant was not deprived of his right to own a 'one-ton van.' He was only restricted from indulging in a use that would impinge upon the rights of other property owners." *Chorzempa v. City of Huntsville*, 643 So.2d at 1024. (Some citations and quotation marks omitted.)

Following this decision, it appears clear that municipalities in Alabama, under existing law, have the power to regulate for aesthetics purposes alone. Of course, the zoning ordinance must be valid in all other respects.denied his request, he petitioned for a writ of mandamus requiring the commission to approve his

#### Architectural Review Boards and Historic Preservation

Although space limitations do not permit a full discussion of architectural review boards and historic preservation, any discussion of zoning for aesthetic purposes must address these aspects, at least briefly. The easy question concerns zoning to maintain the esthetic nature of an historic district. This has been approved by the United States Supreme Court in *Penn Central Transportation Co. v. City of New York*, 438 U.S. 104 (1978).

As for architectural review, that is, control over the design of buildings, Yokley considers this "the most sensitive use of the aesthetic concept." Yokley, § 4-7. The purpose behind architectural review is to determine the aesthetic acceptability of structures before they are built. An architectural review board can refuse to permit the construction of a building that does not meet criteria established in an ordinance. Yokley cites numerous cases which have upheld the authority of municipalities to establish architectural review boards. Many of these cases, however, concern boards that existed in historic districts.

Section 11-68-13 of the Code authorizes municipalities in Alabama to establish an architectural review board. Again, however, the principal function of the board is to review plans for proposed development, maintenance and construction of structures within historic districts. There appears to be no general legislative

authority for Alabama municipalities to create architectural review boards for purposes other than the preservation of historic structures.