

# Zoning Ordinance

CITY OF MALVERN, IOWA

UPDATE BY: SOUTHWEST IOWA PLANNING COUNCIL  
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# Ordinance

# ARTICLE I

## *PURPOSE AND JURISDICTION*

1.1	<b>Title</b>	1.4	<b>Interpretation of Standards</b>
1.2	<b>Purposes and Objectives</b>	1.5	<b>Application of Regulations</b>
1.3	<b>Jurisdiction</b>	1.6	<b>General Interpretation</b>

**1.1 TITLE.** This Ordinance shall be known and may be cited and referred to as the “Malvern, Iowa Zoning Ordinance”.

**1.2 PURPOSES AND OBJECTIVES.** This Zoning Ordinance is adopted to preserve and promote the public health, safety, peace, comfort, convenience, prosperity, and general welfare of the citizens of Malvern, Iowa, all in accordance with and as permitted by the provisions of Chapter 414, Code of Iowa, as amended. More specifically, the Ordinance is adopted in order to achieve the following objectives:

- 1.2.1 To provide a precise plan for the physical development of the City in such a manner as to achieve progressively the general arrangement of land uses depicted in the Land Use Plan.
- 1.2.2 To foster a harmonious, convenient, workable relationship among local uses and a wholesome, serviceable, and attractive living environment.
- 1.2.3 To promote the stability of existing land uses which conform with objectives and policies of the Land Use Plan to protect them from inharmonious influences and harmful intrusions.
- 1.2.4 To ensure that public and private lands ultimately are used for the purposes which are most appropriate and most beneficial from the standpoint of the City.
- 1.2.5 To promote the beneficial development of those areas which exhibit conflicting patterns of use.
- 1.2.6 To prevent excessive population densities and overcrowding of the land with structures.
- 1.2.7 To promote a safe, effective traffic circulation system.
- 1.2.8 To foster the provisions of adequate off-street parking and truck loading facilities.
- 1.2.9 To facilitate the appropriate location of public facilities and institutions.
- 1.2.10 To protect and promote appropriately located agricultural, commercial, and industrial pursuits in order to preserve and strengthen the City’s economic base.
- 1.2.11 To protect and enhance real property values.
- 1.2.12 To conserve the City’s natural assets and to capitalize on the opportunities offered by its terrain, soils, vegetation and waterways.

**1.3 JURISDICTION.** The provisions of this Ordinance shall apply to all of the incorporated territory of Malvern, Iowa.

**1.4 INTERPRETATION OF STANDARDS.** In their interpretation and application, the provisions of this Ordinance shall be held to be minimum requirements. Whenever the requirements of this Ordinance are at variance with the requirements of any lawfully adopted rules, regulations, ordinances, deed restrictions, covenants, or other provisions of law, the most restrictive or that imposing the higher standards, shall govern.

**1.5 APPLICATION OF REGULATIONS.** The regulations set by this Ordinance with each district shall be minimum regulations and shall apply uniformly to each class or kind of structure or land, and particularly, except as hereinafter provided:

1.5.1 No building, structure or land shall hereafter be used or occupied and no building or structure or part thereof shall hereafter be erected, constructed, reconstructed, moved, or structurally altered unless in conformity with all the regulations herein specified for the district in which it is located.

1.5.2 No building or other structure shall hereafter be erected or altered to (a) change its use, (b) accommodate or house a greater number of families, (c) exceed the height, (d) occupy a greater percentage of lot area, (e) have narrower or smaller rear yards, front yards, side yards or other open spaces or (f) reduce the number of off-street parking and loading spaces herein required, or in any other manner contrary to the provisions of this Ordinance.

1.5.3 No part of a yard or other open space or off-street parking or loading space required about or in connection with any building for complying with this Ordinance shall be included as part of the yard, open space or off-street parking or loading space similarly required for any other building.

**1.6 GENERAL INTERPRETATION.** Any use that is not specifically permitted in a district as a principal use, an accessory use or a conditional use, is hereby specifically prohibited. In the regulations for some zones specific excluded uses are enumerated for clarification of intent, but such lists of excluded uses are not to be interpreted as including all excluded uses.

## ARTICLE II

### DEFINITIONS

**2.1 Construction of Terms**  
**2.2 Words Not Defined Herein**

**2.3 Definitions**

**2.1 CONSTRUCTION OF TERMS.** For the purposes of this Ordinance, certain terms and words are hereby defined. The following rules of construction shall apply unless inconsistent with the plain meaning of the context of this Ordinance:

2.1.1 TENSE: Words used in the present tense include the future tense.

2.1.2 NUMBER: Words used in the singular include the plural, and words used in the plural include the singular.

2.1.3 SHALL AND MAY: The word “shall” is mandatory; the word “may” is permissible.

2.1.4 GENDER: The masculine shall include the feminine and the neuter.

2.1.5 PERSON: The word “person” includes a firm, association, organization, partnership, trust, company, or corporation as well as an individual.

2.1.6 USED OR OCCUPIED: The word “used” or “occupied” include the words intended, designed, or arranged to be used or occupied.

2.1.7 HEADINGS: In the event that there is a conflict or inconsistency between the heading of a chapter, section or subsection of this Ordinance and the context thereof, the said heading shall not be deemed to affect the scope, meaning or intent of such context.

**2.2 WORDS NOT DEFINED HEREIN.** Words or terms not herein defined shall have their ordinary meaning in relation to the context used.

**2.3 DEFINITIONS:**

1. **ACCESSORY USE OR STRUCTURE:** A subordinate structure or use which customarily is incidental to that of the *principal or conditional use* of the premises. Customary residential *accessory uses* include but are not limited to, tennis courts, swimming pools, *detached garages*, air conditioners, garden houses, children’s play houses, barbecue ovens, fire places, patios and residential storage sheds; but under no circumstances include incomplete or inoperable motor vehicles. *Garages* or other *accessory uses* attached to the principal *structure* shall be considered a part thereof and meet the requirements of the principal *structure*.
2. **AGRICULTURE:** The use of land for agricultural purposes, including animal husbandry, apiculture, dairying, farming, floriculture, forestry, groves, horticulture, orchards, poultry husbandry, ranching, viticulture, and the necessary accessory uses for packing, treating or storing the produce; however, the operation of the accessory uses shall be subordinate to that of the normal agriculture activities.
3. **ALLEY:** A dedicated public *right-of-way*, other than a *street* which provides only a secondary means of access to abutting property.

4. ALL WEATHER SURFACE: Shall mean a road surface capable of allowing vehicle access during any weather condition, including packed gravel, seal-coated asphalt, asphalt, concrete or similar material.
5. ALTERATION, STRUCTURAL: Any change in the supporting members of a building such as bearing walls, columns, beams or girders.
6. AMENDMENT: A change in wording, context or substance of this ordinance or a change in the zoning or district boundaries of the “official Zoning Map”, a part of this ordinance, when adopted by ordinance passed by the proper authoritative body in the manner prescribed by law.
7. ANIMAL PRODUCTION: the raising of animals or production of animal products, such as eggs or dairy products. Typical uses include grazing, dairy farming and poultry farming. Animal production shall not mean the use of a site of more than five thousand (3,000) square feet as a commercial feedlot for the feeding of livestock or poultry.
8. APARTMENT HOTEL: Shall mean an apartment house which furnishes services for the use of its tenants which are ordinarily furnished by hotels, but the privilege of which are not primarily available to the public.
9. AUTO WRECKING: Shall mean the collecting, burning out, dismantling or wrecking of used motor vehicles, wheeled or track-laying equipment, or trailers, or the storage, sale or dumping of dismantled, partially dismantled, obsolete or wrecked motor vehicles, wheeled or track-laying equipment, or trailers or their parts. The dismantling and rebuilding other than custom repair, of more than one motor vehicle, piece of wheeled or track-laying equipment, or trailer at a time even though not for profit or a principal use of a parcel of land shall be defined as auto wrecking. The storage of a partially dismantled motor vehicle, piece of wheeled or track-laying equipment or trailer shall be considered auto wrecking.
10. BASEMENT: That portion of a building having part but not more than one-half (½) of its height below grade. A basement is counted as a story for the purpose of height requirements.
11. BED AND BREAKFAST HOME: A private residence which provides lodging and meals for guests, in which the host or hostess resides and in which no more than two guest families are lodged at the same time and which, while it may advertise and accept reservations, does not hold itself out to the public to be a restaurant, hotel or motel, does not require reservations and serves food only to overnight guests.
12. BILLBOARD: Shall mean any structure or portion thereof, situated on private premises, on which lettered, figured or pictorial matter is displayed for advertising purposes, except the name and occupation of the user of the premises, the nature of the business conducted on the premises and having an area of one hundred (100) square feet or more shall be considered a billboard. This definition shall not include any board, sign or surface used to display any official notices issued by a court or public agency or bulletin boards used to display announcement of meetings to be held on the premises on which such bulletin boards are located, nor shall it include a real estate sign advertising for sale or rent the property upon which it stands when such sign does not exceed one hundred (100) square feet.
13. BLOCK: Shall mean a piece or parcel of land entirely surrounded by public highways, streets, streams, railroad rights-of-way, parks, or a combination thereof. There may be more than one numbered block as shown on a plat, falling within a single block as herein defined.
14. BOARD: The Board of Adjustment of Malvern, Iowa.
15. BOARDING OR ROOMING HOUSE: A building other than a hotel where, for compensation and by pre-arrangement for definite periods, lodging and/or meals, are provided for four (4) or more persons, but not exceeding twenty (20) persons. Individual cooking facilities are not provided.
16. BOUNDARY OF DISTRICT: The centerline of a street or right-of-way or the centerline of the alleyway, between the rear or side property lines of all lots or passageway exists, the rear or side property lines of

all lots bordering on any district limits or any district boundary shown on the maps adopted by this ordinance.

17. BUILDING: Any structure designed or intended for the support, enclosure, shelter or protection of persons, animals or property, but not including signs or billboards.
18. BUILDING HEIGHT: The vertical dimension measured from the grade to the highest point of the coping of a flat roof; to the deck line of a mansard roof; or to the average height between the plate and ridge of a gable, hip or gambrel roof.
19. BUILDING, PRINCIPAL: Shall mean a building in which is conducted the primary use of the site on which it is situated. In any residential district any dwelling shall be deemed to be the principal building of the site on which it is located.
20. CAMPGROUND, COMMERCIAL AND RECREATIONAL VEHICLE PARK: Any premises where two (2) or more camping units are parked/placed for camping purposes, or any premises used or set apart for supplying to the public, camping space for two (2) or more camping units for camping purposes, which include any buildings, structures, vehicles, or enclosure used or intended wholly or in part for the accommodation of transient campers.
21. CAMPING UNIT: Any recreational vehicle or other vehicle, tent, or other movable shelter used for camping purposes.
22. CELLAR: That portion of a building having more than one-half (½) of its height below grade. A cellar is not counted as a story for the purpose of height requirements.
23. CEMETERY: Land used or intended to be used for the burial of the dead and dedicated for cemetery purposes including crematory, mausoleums and mortuaries when operated in conjunction with and within the boundary of such cemetery.
24. CERTIFICATE OF OCCUPANCY: Shall mean a permit issued by the Zoning Official indicating that the use of the building or land in question is in conformity with these regulations or that there has been a legal variance therefrom as provided by these regulations.
25. CHURCH: any building or site whose primary use is public religious worship.
26. CLINIC, MEDICAL: Shall mean a building or portion of a building containing the offices and associated facilities of one or more practitioners providing medical, dental, psychiatric, osteopathic, chiropractic, physical therapy or similar service for out-patients only, with or without shared or common spaces and equipment.  
  
A common area pharmacy or drug dispensary available to persons other than patients being treated therein or making charges separate from bills for professional services of said practitioners shall not be considered as medical clinic use.
27. CLUB: Club shall include clubhouse and shall mean a voluntary association of persons organized for cultural, recreational, fraternal, civic, charitable or similar purpose, but shall not include an organization or premises the chief activity of which is a service or activity customarily carried on as a business even through it may be chartered and named for purposes herein defining a club.
28. COMMISSION: The Planning and Zoning Commission of Malvern, Iowa.
29. CONDITIONAL USE: Shall mean a use which is not allowed in the zone as a matter of right, but which is permitted upon findings of the Board that under the particular circumstances present such use is in harmony with the Principal Permitted Uses of the Zone.

30. COUNTY: The unincorporated portions of NAME County, Iowa.
31. COUNTRY CLUB: Shall include golf courses, par-3 golf course, swimming pools, tennis clubs and neighborhood clubhouses any and each of which shall be located on a site of not less than one acre and open only to membership subscribing for the use of all facilities for a term of not less than one year and members non-paying guests. Sleeping facilities other than quarters for one caretaker or manager and his family shall be prohibited. Clubs operated as restaurants, cocktail lounges, card rooms, beer taverns, bowling alleys, pool and billiard parlors and similar activities normally carried on as a business shall be excluded from the definition of a country club. Nothing herein shall be construed to limit the method of operation of such facilities enumerated in this definition when owned or operated by a governmental agency.
32. DAY CARE NURSERY OR NURSERY SCHOOLS: Any public or private agency, institution, establishment or place which provides supplemental parental care and/or educational work, other than lodging overnight, for six (6) or more children of preschool age, for compensation.
33. DISTRICT: A part or parts of the City within which regulations governing the use of buildings or premises or the height and location of buildings are uniform.
34. DISTRICT, OVERLAY: A district which acts in conjunction with the underlying zoning district.
35. DRIVE-IN: May be used as a noun or adjective and shall refer to a business which is designed to serve patrons while they are reposed in vehicles or by means of service windows with the intent that products be consumed in automobiles. This shall not be construed to include places for making deposits from automobiles such as drive-in bank windows, post office drop boxes or laundry or cleaning drop boxes.
36. DOG KENNEL: The keeping of any dog or dogs, regardless of number, for sale, breeding, boarding or treatment purposes, except in a dog hospital, dog beauty parlor or pet shop, as permitted by law, or the keeping of (5) or more dogs, six (6) months or older, on premises used for residential purposes, or the keeping of more than one (1) dog on vacant property or on property used for business or commercial purposes, shall constitute a kennel.
37. DUMP: A premises used for the disposal of “clean” type fill or refuse such as dirt, rocks, cans, tree branches and similar materials, but not including organic matter of any type such as garbage or dead animals or portions thereof.
38. DWELLING: Shall mean a building, or portion thereof, designed or used exclusively for residential occupancy, including single-family dwellings, two-family dwellings, multi-family dwellings and group dwellings; provided however that the following are not dwellings:
- A. Hotels, motels, tourist courts and cabins;
  - B. In a building that contains one or more dwelling units or lodging rooms in addition to one or more non-residential uses, the portion of such building that is devoted to such non-residential uses, except when accessory to the residential uses;
  - C. Used for the institutional care of people such as hospitals, rest homes, orphanages, and homes for the aged.
32. DWELLING, SINGLE-FAMILY: A building designed for or occupied by one (1) family.
33. DWELLING, TWO-FAMILY: A building designed for or occupied exclusively by two (2) families living independently of each other.

34. DWELLING, MULTIPLE FAMILY: A building or portion thereof designed for or occupied by three (3) or more families.
35. DWELLING UNIT: Shall mean one or more rooms that are located in a dwelling and that are arranged, designed, or used as living quarters for one-family only. Each dwelling unit contains one and only one, complete set of kitchen facilities, permanently installed. Solely for the purpose of determining compliance with lot area per dwelling unit requirements, each lodging room in a group dwelling shall be considered as one-half (½) a dwelling unit. No lodging room in a group dwelling shall be included as part of a dwelling unit.
36. EASEMENT: A grant by the property owner to the public, a corporation, or persons of the use of a tract of land for a specific purpose(s).
37. FAMILY: One (1) or more persons occupying a premise and living as a single housekeeping unit, whether or not related to each other by birth or marriage, as distinguished from a group occupying a boarding house, lodging house or hotel. A family as defined herein, shall include not more than four (4) unrelated persons.
38. FAMILY HOME: A community based residential home licensed as a residential care facility to provide a family environment for not more than eight (8) developmentally disabled persons and any necessary support personnel.
39. FARM: Means an area of ten (10) acres or more which is used for growing of the usual farm products, such as vegetables, fruits, trees and grain, and their storage on the area, as well as for the raising thereon of the usual farm poultry and farm animals. The term “farming” includes the operating of such an area for one or more of the above uses, including the necessary accessory uses for treating or storing the produce; provided, however, that the operation of such accessory uses shall be secondary to that of the normal farming activities, and provided further, that farming does not include the feeding of garbage or offal to swine or other animals.
40. FENCE, SIGHT-OBSCURING: A fence or planting arranged in such a way as to obstruct vision.
41. FLAMMABLE LIQUIDS: Shall mean any liquid which gives off flammable vapors, as determined by the flash point from an open cup tester as used for test of burning oils, at or below a temperature of eighty (80) degrees Fahrenheit, is flammable.
42. FLOODPLAIN: Those areas contiguous to a river, stream or other drainage course which have been inundated by flood waters or where inundation by flood waters can be expected to occur at a frequency of at least once in one hundred (100) years.
43. FLOODWAY: The channel of a river, stream, or watercourse and those portions of the floodplain adjoining the channel which are reasonably required to carry and discharge the flood water.
44. FLOOR AREA: Shall mean the floor area of a building as used in calculating the *gross floor area ratio* or as otherwise used in these regulations, shall include all areas having headroom of seven (7) feet or more, including basement areas where they are used as a dwelling unit for sleeping accommodations, or other family eating or living purposes, but not including basement floor areas used for utility and storage purposes. Floor area for business and industrial buildings shall include all useable floor space above grade and that portion of basements used for the conduct of business or industry, but not including utility areas of said basements. Measurements shall be made at the outside of the outside walls. An area may be surfaced with natural earth and still be considered a floor. (Floor Area / Lot Area = Floor Area Ratio.)
45. FRONTAGE: All the property on one (1) side of a street (road) between two (2) intersecting streets (crossing or terminating), measured along the line of the street, or if the street is dead ended, then all of the property abutting on one (1) side between an intersecting street and the dead end of the street.

46. GARAGE, PRIVATE: An accessory building designed or used for the storage of not more than three (3) passenger or recreational vehicles owned and used by the occupants of the building to which it is accessory. Not more than one (1) of the vehicles may be a commercial vehicle of not more than two (2) ton capacity.
47. GRADE: The average level of the finished surface of the ground adjacent to the exterior walls of the building.
48. GREENHOUSE: An accessory structure constructed chiefly of glass or other translucent material, which is devoted to the protection or cultivation of flowers or other tender plants and may have the sale of plants and associated items which is at least 50% of the total sales.
49. GOLF COURSE: Shall mean standard sized layouts of at least nine (9) holes and shall not include miniature golf courses, par-3 golf courses, pitch and putt courses or driving ranges
50. GROSS FLOOR AREA RATIO (G.F.A.R.): Shall mean the floor area of a building divided by the area of the zoning lot as defined herein. (For example, a building one-story high covering an entire lot would have a G.F.A.R. of 1.0 whereas a building two-stories high covering an entire lot would have a G.F.A.R. of 2.0 while a one-story high covering half a lot would have a G.F.A.R. of 0.5). Both principal and accessory buildings shall be considered in calculating gross floor area.
51. GROUND COVERAGE: Shall mean the area of a zoning lot occupied by all buildings expressed as a percentage of the gross area of the zoning lot.
52. GRAIN ELEVATOR: A structure or group of structures whose purpose is limited to the receiving, processing, storage, drying and transporting of bulk grain.
53. HIGHWAY: An officially designated state or federal numbered highway, or another major street or road designated by the county as a thoroughfare.
54. HOME OCCUPATION: Any occupation or profession conducted solely by resident occupants in their place of abode, involving primarily service and not the sale of commodities upon the premise; provided further that not more than one-quarter (1/4) the area of not more than one (1) floor level of the building may be used in pursuit of the occupation, and in connection therewith there is used not sign other than one (1) name plate affixed to the outer wall, of not more than one (1) square foot in area that will indicate from the exterior that the building is being utilized in part for any purpose other than that of a dwelling; not more than one person other than the occupants of the building may be employed.
55. HOTEL: A building occupied as the more or less temporary residence of individuals who are lodged, with or without meals, and in which there are six (6) or more sleeping rooms or suites or rooms with no provisions made for cooking in any individual room or suites or rooms with no provisions made for cooking in any individual room or suite of rooms, and entrance is through a common lobby or office.
56. INOPERABLE MOTOR VEHICLE: Shall mean any motor vehicle which lacks (a) current registration or (b) one or more wheels or other component parts, the absence of which renders the vehicle totally unfit for legal use on highways.
57. JUNK: Shall mean all old or scrap copper, brass, lead, or other nonferrous metal; old rope, rags, batteries, paper, trash, rubber debris, water, dismantled or inoperable vehicles, machinery and appliances or parts of such vehicles, machinery or appliances; iron steel or other old or scrap ferrous materials; old discarded glass, tin ware, plastic, or old discarded household goods or hardware.
58. JUNK YARD: Shall mean any place not fully enclosed in a building, used in whole or in part for the storage, salvage or deposit of junk, used lumber or salvaged wood, whether in connection with a business or not, which encompasses an area of two hundred (200) square feet or more, or any place where more than two (2) inoperable motor vehicles, or used parts and materials thereof when taken together equal

the bulk of two (2) motor vehicles, are stored and deposited. For the purposes of this Ordinance, junk yard shall include salvage yard, wrecking yard, used lumber yard and places for storage of salvaged wood.

59. KENNEL, COMMERCIAL: The term “Commercial Kennel” shall apply to any person who keeps or maintains more than three (3) dogs and/or any person who shall raise, sell, trade or transfer more than six (6) offspring, with a total value in excess of one hundred (100) dollars, during any calendar year. The term shall also include any kennel for dogs and/or cats which performs one or more of the following activities:
- A. Board of such animals not owned by the proprietors;
  - B. Breeding of such animals for sale, whether or not such animals are raised, trained, groomed or boarded by proprietors;
  - C. Grooming and training services of such animals.
60. KENNEL, PRIVATE: A noncommercial kennel at, in or adjoining a private residence where dogs are kept for hobby of the householder, in using them for hunting or practice training or for exhibiting them in shows of field or obedience trials or for guarding or protecting the householder’s property and from which offspring with a total value in excess of one hundred (100) dollars are sold, traded, or exchanged during a calendar year. The keeper of a private kennel may keep or maintain three (3) dogs, six (6) months old or older of either sex per year and may raise or sell not more than six (6) offspring during any calendar year without changing the status of the kennel. If the keeper of a private kennel sells, trades or transfers more than six (6) offspring during any calendar year, he shall be subject to the regulations of a commercial kennel.
61. LOADING SPACE, OFF-STREET: Space logically and conveniently located for bulk pickups and deliveries, scaled to delivery vehicles expected to be used, and accessible to such vehicles when required off-street parking spaces are filled. Required off-street loading space is not to be used as off-street parking in computation of required off-street parking spaces.
62. LOT: For the purpose of this Ordinance, a lot is a parcel of land of at least sufficient size to meet the minimum zoning requirements for use, coverage and area to provide such yards and other open spaces as are herein required. Such lot shall have frontage on an improved public street or on a private street approved prior to the effective date of this Ordinance and may consist of (a) a single lot of record; (b) a portion of a lot of record; (c) a combination of complete lots of record; and (d) a parcel of land described by metes and bounds; provided that in no case of division or combination shall any residual lot or parcel be created which does not meet the requirements of this Ordinance. In no case shall a parcel of land conveyed under a lease be construed as a lot, unless said lot has been platted as a lot in an approved subdivision.
63. LOT FRONTAGE: That portion of a lot or parcel of land which abuts a street. Each side of a lot so abutting a public street shall be considered as a separate lot frontage. The frontage of a lot or lots shall be measured along the street line.
64. LOT LINES: The property lines bounding a lot.
- A. FRONT LOT LINE. The lot line separating the front of the lot from the street. However, for purposes of determining lot requirements in cases where the front lot line is located within a street or highway right-of-way or easement, the street line shall be used.
  - B. REAR LOT LINE: The lot line which is opposite and most distant from the front lot line. In the case of an irregular, triangular or odd shaped lot, it shall mean a straight line ten (10) feet in length which (a) is parallel to the front lot line or its chord and (b) intersects the two (2) other lot lines at points most distant from the front lot line.

- C. **SIDE LOT LINE:** Any lot line other than a front or rear lot line. A side lot line separating a lot from a front or rear lot line. A side lot line separating a lot from another lot or lots is called an interior side lot line.
65. **LOT MEASUREMENTS:** For the purposes of this Ordinance the following lot measurements apply:
- A. **LOT AREA:** The gross horizontal area within the lot lines of a lot, exclusive of any area contained within a street or highway right-of-way or easement.
  - B. **LOT DEPTH:** The mean horizontal distance between the front and rear lot lines. In the case of an irregular, triangular or odd shaped lot, the depth shall be the horizontal distance between the midpoints of the front and rear lot lines.
  - C. **LOT WIDTH:** The horizontal distance between the side lot line as measured perpendicular to the line comprising the lot depth at its point of intersection with the required minimum front yard setback. Where the lot width is decreasing from front to rear, the horizontal distance between the side lot lines as described above shall be measured at its point of intersection with the required minimum rear yard setback.
66. **LOT OF RECORD:** A lot which is a part of a subdivision recorded in the office of the County Recorder, or a lot or parcel described by metes and bounds, the description of which has been so recorded.
67. **LOT TYPES:** For the purpose of this Ordinance the following types of lots are defined:
- A. **CORNER LOT:** A lot located at the intersection of two (2) or more streets, having the street right-of-way abut the front and one (1) or more side lines of the lot. A lot abutting on a curved street or streets shall be considered a corner lot if straight lines drawn from the foremost points of the side lot lines to the foremost point of the lot meet at an interior angle of less than one hundred thirty-five (135) degrees.
  - B. **DOUBLE FRONTAGE LOT:** A lot, other than a corner lot, having frontage on two (2) or more non-intersecting streets.
  - C. **INTERIOR LOT:** A lot, other than a corner lot, having frontage on only one (1) street.
  - D. **REVERSE CORNER LOT:** A corner zoning lot, the side street line of which is substantially a continuation of the front lot line of the zoning lot to its rear.
68. **MINI-WAREHOUSE:** A building or group of buildings not more than one (1) story or twenty (20) feet in height and not having any dimension greater than one hundred fifty (150) feet per building, containing varying sizes of individualized, compartmentalized, and controlled access stalls or lockers for the dead storage of customer's goods or wares, excluding junk, explosive, or flammable materials, and other noxious or dangerous materials, including, if any, caretaker or supervisors' quarters as an accessory use. No business activities other than rental of storage units shall be conducted on the premises.
69. **MANUFACTURED HOME:** Is a factory-built structure built under authority of 42 U.S.C. § 5403, is required by federal law to display a seal from the United States department of housing and urban development and was constructed on or after June 15, 1976. If a manufactured home is placed in a mobile home park, the home must be titled and is subject to the mobile home square foot tax. If a manufactured home is placed outside a mobile home park, the home is to be assessed and taxed as real estate.

(Code of Iowa, Sec. 435.1)

70. MOBILE HOME: Any vehicle without motive power used or so manufactured or constructed as to permit its being used as a conveyance upon the public streets and highways and so designed, constructed or reconstructed as will permit the vehicle to be used as a place for human habitation by one or more persons, but shall also include any such vehicle with motive power not registered as a motor vehicle in Iowa. A mobile home means any such vehicle built before June 15, 1976, which was not built to a mandatory building code and which contains no State or Federal seals.

(Code of Iowa, Sec. 435.1)

71. MOBILE HOME PARK: Any site, lot, field or tract of land upon which three (3) or more occupied mobile homes, manufactured homes, modular homes or a combination of any of these homes are placed on developed spaces and operated as a for profit enterprise with water, sewer or septic, and electrical services available.

(Code of Iowa, Sec. 435.1)

72. MODULAR HOME: A factory-built structure on a permanent chassis which is manufactured to be used as a place of human habitation, is constructed to comply with the Iowa State Building Code for modular factory-built structures and must display the seal issued by the State Building Code Commissioner.

73. MOTEL OR MOTOR HOTEL: A building or group of attached or detached buildings containing individual sleeping or living units for overnight auto tourists, with parking facilities conveniently located to each such unit, and may include such accessory facilities as swimming pools, restaurants, meeting rooms, and etc.

74. NOISE DISTURBANCE: Any sound which (a) endangers or injures the safety or health of humans or animals, or (b) annoys or disturbs a reasonable person of normal sensitivities, or (c) endangers or injures personal or real property.

75. NON-CONFORMING STRUCTURE: Any structure or building lawfully constructed prior to the effective date of this Ordinance (or amendment thereto) which does not conform with the bulk regulations of the district in which it is located.

76. NON-CONFORMING USE: The lawful use of any structure or land that was established prior to the effective date of this Ordinance (or amendment thereto) which does not conform with the regulations of the district in which it is located.

77. OBJECTIONABLE ODOR: An odor that is of such frequency, duration, quality, and intensity as to be harmful or injurious to human health and welfare, or so as to unreasonably interfere with the comfortable use and enjoyment of life and property of individuals or the public.

78. PAR-3 GOLF COURSE: A golf course other than a miniature golf course and other than a golf course as defined herein and having greens similar to a golf course and fairways of not less than fifty (50) yards in length. A par-3 golf course may not be lighted unless so specified as permitted in the text of this article.

79. PARKING SPACE, OFF-STREET: An area which includes the parking plus the maneuvering space required for the parking of motor vehicles. Space for maneuvering incidental to parking shall not encroach upon any public right-of-way. For purposes of rough computation, an off-street parking space and necessary access and maneuvering may be estimated at one hundred eighty square feet (180 s.f.), but off-street parking requirements will be considered to be met only when actual spaces meeting the requirements above are provided and maintained, improved in a manner appropriate to the circumstances of the case, and in accordance with all ordinances and regulations of the City.

80. PERMANENT FOUNDATION: An assembly of material constructed at, and not intended to be removed from, its installation site, which is designed to support the structure and engineered to resist the

imposition of external nature forces; which complies with existing state and local building codes, if so adopted by the governing body; and which is compatible with foundations on conventional dwellings in the area. A permanent foundation shall not under any circumstances be construed as a conventional mobile home skirting.

81. PLACE OF BUSINESS: Any vehicle, building, structure, yard, area, lot, premises, or part thereof, or any other place in or on which one or more persons engage in a gainful occupation.
82. PLANNING COMMISSION: The Planning and Zoning Commission of Malvern, Iowa.
83. PORCH, UNENCLOSED: A roofed projection which has no more than fifty percent (50%) of each outside wall area enclosed by a building or siding material other than meshed screens.
84. PREMISES: Any lot, plot or tract of land, building or buildings, structure or structures, used publicly or privately as a place of business, dwelling or meeting place.
85. PRINCIPAL BUILDING: The building situated or to be placed nearest the front property line and the use of which conforms to the primary use permitted by the zoning classification in which it is located.
86. PRINCIPAL USE: A principal use is the main use of the premises permitted outright in a particular zoning district as distinguished from a conditional use.
87. PRIMARY ZONE: A zoning classification which can stand alone as a classification of a parcel of property.
88. QUARTER-QUARTER SECTION: The northeast, northwest, southeast or southwest quarter of a quarter section delineated by the United States Government system of land survey and which is approximately forty (40) acres in size.
89. RECREATIONAL VEHICLE: A vehicular type camping unit primarily designed as temporary living quarters for recreational, camping, or travel use, which either has its own motive power or is mounted on or drawn by another vehicle. The basic entities are: travel trailer, camping or tent trailer, truck camper, and motor home or coach.
90. RECREATIONAL VEHICLE SITE: A plot of ground within a recreational vehicle park intended for the accommodation of either a recreational vehicle, tent, or other individual camping unit on a temporary basis.
91. RESTAURANT: A building, room or rooms, not operated as a dining room in connection with a hotel, motel, or other multiple dwelling, where food is prepared and served to a group of families, a club or to the public and for consumption on the premises.
92. RESUBDIVISION: Any change in the shape or size of any lot, tract or parcel of land previously platted for the purpose, whether immediate or future, of sale, rent, lease, building development, anchorages or other use. Any change in the shape or size of any lot, tract or parcel of land previously approved for building purposes whether immediate or future and regardless whether or not the same is vacant or improved in whole or in part, for sale, rent, lease, building development, anchorage or other use.
93. RIGHT-OF-WAY: The land area, the right to possession of which is secured or reserved for public purposes.
94. ROADSIDE STAND: A structure used seasonally for the sale of neighborhood agricultural products or other products grown or produced on the premises and so constructed that it might be readily moved.
95. ROOF LINE: The juncture of the roof and the perimeter wall of the structure.

96. SECTION: Shall mean a section of this ordinance unless some other ordinance, code or statute is indicated.
97. SERVICE STATION (GAS STATION): Any building or premises used for the retail sale of liquefied petroleum products for the propulsion of motor vehicles, and including such products as kerosene, fuel oil, packaged naphtha, lubricants, tires, batteries, antifreeze, motor vehicle accessories and other items customarily associated with the sale of such products; for the rendering of service and making of adjustments and replacements to motor vehicles, and the washing, waxing, and polishing of motor vehicles, as incidental to other services rendered; and the making of repairs to motor vehicles except of a major type. Repairs of a major type are defined to be spray painting, body, fender, clutch, transmission, differential, axle, spring, and frame repairs, major overhauling of engines requiring the removal of engine cylinder head or crankcase pan; repairs to radiators requiring the removal thereof; or complete recapping or retreading of tires. A service station is not a commercial garage nor a body or fender shop.
98. SETBACK: The required minimum horizontal distance between the front, rear or side lines of the lot and the front, rear or side lines of the building respectively for a particular zoning district. Setback may also be referred to as required yard. When two (2) or more lots under one (1) ownership are used, the exterior property line of the lots so grouped shall be used in determining setbacks.
99. SIGNS: Any device designed to inform or attract the attention of persons not on the premises on which the sign is located, provided, however, that the following shall not be included in the application of the regulations herein:
- A. Signs not exceeding two (2) square feet in area and bearing only property numbers, post box numbers, names of occupants of premises, or other identification of premises not having commercial connotations.
  - B. Flags and insignia of any government except when displayed in connection with commercial promotion.
  - C. Legal notices, identification, informational or directional signs erected or required by governmental bodies.
  - D. Signs directing and guiding traffic and parking on public or private property but bearing no advertising matter.
  - E. Warning signs, no trespassing, no hunting and similar signs not to exceed four (4) square feet in area located on the premises.
  - F. Integral decorative or architectural features of buildings, except letters, trademarks, moving parts, or moving lights.
100. SIGN, AREA: The sign shall be that area determined by the Zoning Administrator using actual dimensions where practicable, or approximate dimensions when irregularity of sign shape warrants. Such area shall include the extreme points or edges of sign, excluding the supporting structure which does not form part of the sign proper or of the display. The area of a sign composed of characters or words attached directly to a building or wall surface shall be the smallest rectangle which encloses the whole group. Where a sign has two (2) or more faces, the area of all faces shall be included in determining the area of the sign, except that where two (2) such faces are placed back to back and are at no point more than twenty-four (24) inches from one another. In this instance the area of the sign shall be taken as the area of one (1) face if the two (2) faces are of equal area, or as the area of the larger face if the two (2) faces are of unequal area.
101. SIGN, FREE-STANDING: A sign which is supported by structures or supports in or upon the ground and independent of support from any building or wall.

102. SIGN, PORTABLE: A free-standing sign which is not permanently anchored secure to the ground.
103. SIGN, PROJECTING: A sign, other than a wall sign, which is supported or attached to any building or wall and which extends more than one (1) foot out from the building wall.
104. SIGN, ROOF: A sign which is erected upon or above the roof or parapet of any building.
105. SIGN, TEMPORARY: A sign which is intended only for a limited period of display.
106. SIGN, WALL: A sign which is painted on or attached to and erected parallel to the face of the outside wall of any building and supported by such building or wall and which displays only one (1) advertising surface.
107. SPECIAL PERMIT: The authorization of a zoning certificate for special use of a lot by the Board of Adjustment following a review of the application for use by the planning commission. A special permit may be issued only for those uses listed under the “special uses” of this ordinance.
108. STABLE, COMMERCIAL AND RIDING ACADEMY: A building or structure used or intended to be used for the housing of horses which are let, hired, used or boarded on a commercial basis and for compensation. Riding instruction may be given in connection with a commercial stable or riding academy.
109. STABLE, PRIVATE: An accessory building or structure used or intended to be used for the housing of horses owned by the occupant of the property or temporary guests of the occupant on a noncommercial basis and not for compensation.
110. STABLE, RIDING CLUB: A building or structure used or intended to be used for the housing of horses owned by a group of persons on a noncommercial basis.
111. STORY: That portion of a building, other than a cellar, included between the surface of any floor and the surface of the floor next above it, or if there is no floor above it, then the space between the floor and the ceiling or roof next above it.
112. STORY, HALF: A space under a sloping roof which has the line of intersection of roof decking and wall face not more than four (4) feet above the top floor level.
113. STREET: The entire width between the boundary lines of every way intended for public use for the purpose of vehicular and pedestrian traffic and for the placement of utilities. The term “street” shall include avenue, circle, drive, highway, lane, place, thoroughfare, or any other similar designation.
114. STREET, HARD SURFACE: A street which has a full-depth surfacing consisting of concrete, or asphalt with a structural capacity equivalency of concrete, constructed in accordance with appropriate local, city, or state regulations.
115. STREET LINE: A dividing line between a lot, tract or parcel of land and the contiguous street. The boundary line of a street.
116. STRUCTURAL ALTERATIONS: Any replacement or change in the shape or size of any portion of a building or of the supporting members of a building or structure such as walls, columns, beams, arches, girders, floor joists, or roof trusses, beyond ordinary repairs and maintenance.
117. STRUCTURE: Anything constructed or erected with a fixed location on the ground or attached to something having a fixed location on the ground. Among other things, structures including buildings, mobile homes, billboards, signs, towers, sheds, storage bins, and gas and liquid storage tanks, but excluding driveways, parking areas, patios, and public items such as utility poles, street light fixtures, street signs, sidewalks and paving on streets.

118. SUBDIVISION: A division of lot, tract or parcel of land into three or more lots, plats, sites, or other subdivisions of land for the purpose, whether immediate or future, of sale, rent, lease, building development, anchorage, right-of-way dedication, or other use.
119. SUBSTANTIAL IMPROVEMENT: Any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds fifty (50) percent of the market value of the structure either (a) before the improvement or repair is started, or (b) if the structure has been damaged, and is being restored, before the damage occurred. For the purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. This term does not, however, include any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions.
120. TAVERN: An establishment in which the primary function is the public sale and serving of alcoholic beverages for consumption on the premises, including establishments commonly known as key clubs, which are open and in which alcoholic beverages are served only to members and their guests.
121. TRAVEL TRAILER OR CAMPING TRAILER: A vehicle with or without motive power used or so constructed as to permit its being used as a conveyance upon the public streets and highways and so designed to permit the vehicle to be used as a place of human habitation by one or more persons. Said vehicle may be up to eight (8) feet in width and any length provided its gross weight does not exceed 4,500 pounds, which shall be the manufacturer's shipping or the actual weight of the vehicle fully equipped, or any weight provided its overall length does not exceed twenty-eight (28) feet. Such vehicle shall be customarily used for vacation or recreation purposes and not used as a place of human habitation for more than ninety (90) days in any twelve (12) month period, or it shall be classed as a mobile home, regardless of the size and weight limitation provided herein. This definition shall also include house cars and camp cars having motive power and designed for temporary occupancy as defined herein.
122. USE: Use shall mean the purpose or purposes for which land or a building is designed, arranged or intended, or to which said land or building is occupied, maintained or leased.
123. USE, SPECIFICALLY EXCLUDED: A use of land or a structure which is excluded from a zone by the operation of the regulations of the zone, but which is specifically enumerated as excluded for purposes of clarity of intent and ease of reference.
124. VARIANCE: A variance is a relaxation of the terms of the Zoning Ordinance where such variance shall not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the action of the applicant, a literal enforcement of the Ordinance would result in unnecessary and undue hardship. As used in this Ordinance a variance is authorized only for height, area, and size of structures or size of yards and open spaces; establishment of a use otherwise prohibited shall not be allowed by variance, nor shall a variance be granted because of the presence of nonconformities in the zoning district or uses in an adjoining zoning district or because of conditions created by the landowner.
125. YARD: An open space unoccupied and unobstructed by any portion of a structure from two and one-half (2½) feet above the general ground level of the graded lot upward; provided however, that fences, walls, yard recreational and laundry drying equipment, arbors and trellises, flagpoles, yard lights, statuary and similar decorative items, and other customary yard accessories may be permitted in any yard subject to height limitations and requirements limiting obstruction or visibility. In measuring a yard for the purpose of determining the depth of a front yard or the depth of a rear yard, the least distance between the lot line and principal building shall be used. In measuring a yard for the purpose of determining the width of a side yard, the least distance between the lot line and the nearest permitted building shall be used.
- A. FRONT YARD: On a corner lot, the narrowest street side shall be considered the front yard.

- B. REAR YARD: A yard extending between side lot lines and measured horizontally and at right angles from the rear lot line to the nearest point of the principal building or structure.
- C. SIDE YARD: A yard extending between the front and rear yard and measured horizontally and at right angles from the side lot line to the nearest point of a permitted building or structures.

126. ZONING ADMINISTRATOR: Shall mean the official appointed by the administration or the Council and charged with the responsibility of enforcing these regulations.

# ARTICLE III

## GENERAL PROVISIONS

3.1	Not a Licensing Regulation	3.8	General Provisions Relating to Advertising Signs, Posters, and Billboards
3.2	Licenses to Conform	3.9	Street Frontage Required
3.3	Proposed Use Not Covered in Ordinance	3.10	Accessory Buildings and Garages
3.4	Permit Required	3.11	Corner Lots
3.5	Use of Public Right-of-Way	3.12	Front Yard
3.6	Severability Clause	3.13	Fences, Walls and Vision Clearance
3.7	Uses Common to All Residential Zones	3.14	Building Lines on Approved Plats
		3.15	Pending Applications for Building Permits

Subject to Article XVII the following provisions, regulations, or exceptions shall apply equally to all districts except hereinafter provided:

**3.1 NOT A LICENSING REGULATION.** Nothing contained in these regulations shall be deemed to be a consent, license or permit to use any property or to locate, construct, or maintain any structure or facility or to carry on any trade, industry, occupation, or activity.

Except as hereinafter specified, no building or structure shall be erected, converted, enlarged, reconstructed, moved or structurally altered, nor shall any building or land be used which does not comply with all of the district regulations established by this ordinance for the district in which the building or land is located.

The lawful use of a building existing at the time of the enactment of this ordinance may be continued even though such use may not conform with the regulations of this ordinance for the district in which it is located.

**3.2 LICENSES TO CONFORM.** All departments, officials, and employees of the City who are vested with the duty or authority to issue permits or licenses shall conform to the provisions of these regulations and shall issue no permit or license for a use, building, or purpose where the same would be in conflict with the provisions contained herein.

**3.3 PROPOSED USE NOT COVERED IN ORDINANCE.** Any proposed use not covered in this Ordinance as a permitted use or conditional use shall be referred to the Commission for a recommendation as to the proper district in which such use should be permitted and the Ordinance amended as provided in Article XXII before a permit is issued for such proposed use.

**3.4 PERMIT REQUIRED.** No building or structure shall be constructed, altered, or moved, nor shall the use of land be changed except after issuance of a permit for the same by the Zoning Official. It shall be the responsibility of the general contractor and/or owner to obtain and post the building permit. The Zoning Official and City police department shall have enforcement powers to include the issuance of citations.

**3.5 USE OF PUBLIC RIGHT-OF-WAY.** No portion of the public road, street or alley right-of-way shall be used, or occupied by an abutting use of land or structures for storage or display purposes, or to provide any parking or loading space required by this Ordinance, or for any other purpose that would obstruct the use or maintenance of the public right-of-way.

**3.6 SEVERABILITY CLAUSE.** Should any article or provision of this Ordinance be declared by a court of competent jurisdiction to be invalid, that decision shall not affect the validity of the Ordinance as a whole or any part thereof, other than the part so declared to be invalid.

**3.7 USES COMMON TO ALL RESIDENTIAL ZONES.** There are certain uses which are considered acceptable when found in any residential zone when developed according to space limits proper for a particular zone. The following uses are permitted in all residential areas subject to further restrictions or liberalization's which are imposed by a specific zone.

3.7.1 Principal Permitted Uses: The following principal permitted uses:

- A. Off-street parking shall be provided for all uses established in the residential zones.
- B. Only one building for living purposes shall be permitted on a zoning lot, except as otherwise provided herein.
- C. Single-family dwellings including manufactured homes subject to the following standards:
  - 1. For all building permits issued after the effective date of this ordinance, the principal structure shall have a floor area of not less than seven hundred twenty square feet (720'); and a minimum width for any building elevation of not less than twenty-five feet (25').
  - 2. All principal structures shall be roofed in the gable or hip styles and shall include an overhang of at least twelve inches (12").
  - 3. All principal structures shall be sided with material other than flat, ribbed or corrugated sheet metal.
  - 4. All principal structures shall be placed on a permanent foundation system that is provided for by Code, or is recommended by the manufacturer, and which make a dwelling permanently attached to the site.
- D. Public, parochial and private schools and colleges offering courses of general instruction when located on sites of at least five (5) acres, structures when located on the same site as the school or college.
- E. Day Cares for no more children than allowed by Iowa Code and Licensed Daycares.
- F. Churches, synagogues, chapels and similar places of religious worship and instruction of a quiet nature when located in a substantial structure.
- G. Crop and tree farming but not including the raising of animals or fowl for commercial purposes, or the sale of any products at retail on the premises.
- H. Parks and recreation areas operated by the City or other political subdivision.
- I. Public and quasi-public buildings for cultural use.
- J. Country clubs as defined herein.
- K. Family homes as defined in Article II.

3.7.2 Permitted Accessory Uses. The following accessory uses are permitted in all residential zones subject to further restriction or liberalization which are imposed by a specific zone.

- A. Private **garages that do not exceed 20 feet in height** and private parking areas.

- B. Private swimming pools exclusively for the use of residents of the premises and their non-paying guests and subject to any other regulations or ordinances of the City. Refer to the code of ordinances for pool safety guidelines.
- C. Domestic animals such as: cats, dogs, birds, tropical fish, etc., which are normally allowed to run free or are housed within the dwelling. Horses, cows, sheep, chickens, etc. normally considered farm or wild and untamed animals shall be excluded except as otherwise provided for in this ordinance.
- D. Flower and vegetable gardening.
- E. Greenhouses and horticultural nurseries for noncommercial gain.
- F. The parking of two of three recreational vehicles: non-storage utility trailer, and/or unoccupied camper not to exceed twenty-four (24) feet in length, and/or one pleasure boat on trailer within a building, or in a rear yard on a prepared surface, but subject to any permits required by law or ordinance. (See City Ordinance.)
- G. Signs not to exceed six (6) square feet in area identifying the premises and occupant, but not including advertising matter. Public, parochial, private schools and colleges, children's homes, churches, synagogues, chapels, and public and quasi-public buildings for cultural use, may have identification signs not to exceed twelve (12) square feet in area.
- H. Real estate lease or sales signs not over six (6) square feet in area and relating to the property on which the sign is located.
- I. Subdivision signs in subdivisions recorded after passage of these regulations which are non-illuminated, and which contain information pertaining only to the subdivision, for a period of four (4) years following the filing date or until seventy-five (75) percent of the lots have been sold, whichever occurs first, at which time the signs shall be removed. Subdivision signs shall be subject to the space limits of the zone in which located and shall not be closer than seventy-five (75) feet from property owned by other than the developer. The size of the sign shall not be greater than the following:

SIGN SIZE	NUMBER OF LOTS IN SUBDIVISION
Forty (40) Square Feet	Three (3) to Ten (10)
Sixty-Four (64) Square Feet	Eleven (11) to Twenty-Five (25)
Eighty (80) Square Feet	Twenty-Six (26) or More

- H. Other accessory uses and structures customarily appurtenant to a permitted use.

3.7.3 Conditional Uses. The following uses are conditionally permitted in all residential zones.

- A. Substitutions. If no structural alterations are made, a nonconforming use of a building or structure may be changed to another non-conforming use of the same or of a more restricted classification. Whenever a nonconforming use has been changed to more restricted use or to a conforming use, such use shall not thereafter be changed to a less restricted use.
- B. Utility substations when located according to the yard space rules set forth for dwellings and having a landscaped masonry barrier on all sides, and after a showing before the board that technical considerations necessary to the functioning of said utility requires the location of the facility in a residential zone. Structures shall

conform with all space limits of the zone in which located and shall have an exterior design in harmony with nearby properties.

- C. Discontinuance. In the event that a nonconforming use of any building, structure or land is discontinued for a period of one (1) year, the use of the same shall conform thereafter to the uses permitted in the district in which it is located. The use of land upon which no building or structure is erected or constructed which does not conform to the provisions of the ordinance and the use of land upon which no building is erected or constructed which becomes nonconforming by reason of a subsequent change in this Ordinance, shall be discontinued within one ( 1) year from the date of the change.
- D. Replacing Damaged Buildings. Any nonconforming building or structure damaged more than fifty (50) per cent of its then fair market value, as determined by the zoning administrator, exclusive of the foundations at the time of damage by fire, flood, explosion, war, riot, or act of God, shall not be restored or reconstructed and used as before such happening; but if less than fifty (50) per cent is damaged above the foundation, it may be restored, reconstructed or used as before, provided that it be done within six ( 6) months of such happening.
- E. The establishment and continuance of a bed and breakfast home shall be subject to the following requirements:
  - 1. Smoke detectors shall be operable in every room occupied by the public, as well as in all corridors of the areas of the structure utilized by the public. A centralized fire alarm system may be substituted for the aforementioned smoke detectors.
  - 2. In the event the bed and breakfast home provides facilities for the public on the second or higher level of the structure, one of the following shall be provided as an area of refuge or secondary egress on each level. There shall be a sign in each room occupied by the public denoting the emergency escape route and the area of refuge or secondary egress provided.
    - a. One or more balcony areas.
    - b. A fire ladder to the ground level.
    - c. A fire escape to the ground level.
    - d. An interior secondary stairway to the main floor of the structure. Said secondary stairway should be remote from the location of the primary stairway.

3.7.4 Space Limits. When two (2) or more lots in any block are occupied by buildings which existed on the effective day of these regulations, the average front yard depth of such lots shall be the established building line, provided it be equal to or greater than the minimum front yard required for the respective residential zone.

3.7.5 Development and Performance Standards. All primary and associated accessory buildings must follow these standard and each accessory building must match the primary building.

- A. The roof must be covered with roofing material that is residential in appearance, including, but not limited to, approved wood, asphalt composition shingles or fiberglass, but excluding corrugated aluminum, corrugated fiberglass or corrugated metal roofs.
- B. All roof structures shall provide an eaves projection of no less than six (6) inches, which may include a gutter.

- C. The exterior siding shall consist predominantly of vinyl or metal horizontal lap siding (the reflectivity of which does not exceed that of gloss white paint), wood or hardboard, brick, stone or stucco comparable in composition, appearance and durability to the exterior siding commonly used in standard residential construction in the city.
- D. Must have a continuous permanent masonry foundation or masonry curtain wall slab, unpierced except for required ventilation and access. All dwelling units including attached garages shall be placed on a permanent frost-free foundation. The foundation system must be visually compatible with permanent foundation systems of surrounding residential structures.
- E. Stairs, porches, entrance platforms, ramps and other means of entrance and exit to and from the home shall be installed or constructed in accordance with the building codes adopted by the city and attached firmly to the primary structure and anchored securely to the ground.
- F. All fuel supply systems shall be constructed and installed within the foundation wall or underground within all applicable building and safety codes.
- G. On all level sites the main floor shall be no greater than twenty (20) inches above finished grade at the foundation. On sloping or irregular site, the side closest to the grade level shall not be greater than twenty (20) inches above finished grade at the foundation.

**3.8 GENERAL PROVISIONS RELATING TO ADVERTISING SIGNS, POSTERS AND BILLBOARDS.** The following provisions shall be observed in all zoning districts:

- 3.8.1 Simulation of Official, Directional or Warning Signs. No advertisement, advertising structure, billboard or other object shall be erected, used or maintained which in any way simulates official, directional or warning signs erected or maintained by the City or by the State of Iowa.
- 3.8.2 Obstruction of Vision of Intersection. No sign or advertising device shall be erected or maintained at the intersection of streets in such a manner as to obstruct free and clear visions of the intersection.
- 3.8.3 Signs and Traffic Signals and Other Devices. No neon sign or other illuminated advertisement shall be of such color or located in such a fashion as to diminish or detract in any way from the effectiveness of any traffic signal or similar safety or warning device.
- 3.8.4 Flood Lights. Flood lights at ground level or located within twelve (12) feet of ground level shall be so located and shielded as to prevent any glare or blinding effect upon any lane of moving traffic.
- 3.8.5 Size of Independent Signs. For each business establishment any sign which is separate, independent, and not an integral part of the building shall not exceed twenty-four (24) square feet in area.
- 3.8.6 Signs Permitted in Zoning Districts. In the C - 1, C - 2, M - 1, and M - 2 zones, any advertising sign or poster board which conforms to the ordinance requirements of the City will be permitted.

**3.9 STREET FRONTAGE REQUIRED.** Lots containing any building used in whole or in part for residence purposes shall abut for at least forty (40) feet on at least one street, or unless it has an exclusive unobstructed private easement of access or right-of-way of at least twenty (20) feet wide to a street; and there shall be not more than one (1) single-family dwelling for such frontage or easement, except that a common

easement of access at least fifty (50) feet wide shall be provided for two (2) or more such single-family or for one (1) or more two-family or multiple dwellings.

**3.10 ACCESSORY BUILDINGS AND GARAGES.** No accessory building or structure which exceeds six (6) feet in height shall be erected in a required yard or court, except as provided hereinafter.

3.10.1 An accessory building or structure which is located entirely within the principal building area of the lot (the lot minus the required yards and courts) whether attached or detached to the principal building shall be subject to the regulations applicable to the principal building and must match the principal building.

3.10.2 Accessory buildings, except buildings housing animals may be erected as a part of the principal building or may be connected thereto by a breezeway or similar structure; provided said building shall comply with all yard requirements for a principal building.

3.10.3 The garage for any principal building on a lot abutting an alley may be located in a front, rear, or side yard area which abuts the alley; providing, however, that such garage shall comply with the following requirements:

- A. The garage shall be set back no less than five (5) feet from the lot line abutting the alley which the garage entrance faces; or shall be located no closer than thirty (30) feet to any garage or principal building which is located on the opposite side of the alley; whichever is the greater requirement.
- B. The garage building shall be considered an extension of the principal building and shall comply with all minimum yard requirements for the principal building other than the exception herein permitting the garage entrance to be located near the alley, i.e. a garage facing an alley which abuts a side lot line shall not encroach into the required front or rear yards; a garage facing an alley which abuts a rear lot line shall be set back from the side lot lines no less than the requirements for the principal building.
- C. The garage building shall not exceed one (1) story or twenty-five (25) feet in height.

3.10.4 An accessory structure which is adaptable to underground construction (such as a bomb or tornado shelter, garage, wine cellar, etc.) may be constructed beneath the ground surface of any yard area providing said structure shall comply with the following requirements:

- A. No portion of the structure shall be located less than two (2) feet, measured horizontally, from any lot line from which a minimum surface yard area is required.
- B. The surface area covering the structure shall be finished in a manner natural to the landscape so as to entirely conceal the underground structure.
- C. No portion of the grade of the finished surface area above the structure may exceed a two (2) foot height increase above the normal finished grade of a required yard area.

3.10.5 Accessory buildings and structures, regardless of height, which are constructed above the normal ground surface in any required yard area shall not occupy more than fifty (50) percent of the yard area in which it is located; however, this regulation shall not be interpreted to prohibit the construction of a two-car garage not to exceed five hundred fifty (550) square feet gross building area.

**3.11 CORNER LOTS.** For corner lots, platted after the effective date of this ordinance, the street side yard shall be equal in width to the minimum required side yard for the district, in which it is located, plus twenty (20) feet; i.e. for a minimum required side yard of ten (10) feet the street side yard shall be not less

than thirty (30) feet; provided, however, this regulation shall not be interpreted as to require a side street yard of greater width than the minimum required front yard depth.

For corner lots, platted after the effective date of this ordinance, the minimum required lot width shall be increased by an amount not less than twenty (20) feet so as to allow for the additional required street side yard, e.g. for a minimum required lot width of sixty (60) feet, the minimum width of a corner lot shall be not less than eighty (80) feet.

On corner lots platted and of record at the time of the effective date of this ordinance the same regulations shall apply except that this regulation shall not be so interpreted as to reduce the buildable width of the corner lot facing an intersecting street and of record or as shown by existing contract of purchase at the time of the effective date of this ordinance, to less than twenty-eight (28) feet nor to prohibit the erection of an accessory building.

On any corner lot, the depth of a front yard or side street yard abutting a major street shall be measured from the proposed right-of-way lines shown on the official major street plan.

**3.12 FRONT YARD.** In any residence district there shall be a minimum front yard required as stated in the yard requirements for that particular district; provided, however, that where lots comprising thirty (30) per cent or more of the frontage within two hundred (200) feet of either side lot line are developed with buildings at a greater or lesser setback, the front yard requirement shall be the average of these building setbacks and the minimum front yard required for the undeveloped lots. In computing the average setback, buildings located on reverse corner lots or entirely on the rear half of lots shall not be counted. The required front yard, as computed herein; need not exceed fifty (50) feet and shall be not less than twenty (20) feet in any case.

The front yard depth of any lot abutting a major street shall be measured from the proposed right-of-way lines shown on the official major street plan.

**3.13 FENCES, WALLS AND VISION CLEARANCE.**

3.13.1 On a corner lot, nothing shall be erected, placed, planted or allowed to grow in such a manner as to impede vision between a height of two and one-half (2-1 /2) feet and ten (10) feet above the centerline grades of the area described as follows:

A. That area bounded by the street right-of-way lines of a corner lot and a straight line joining points on said right-of-way lines twenty-five (25) feet from the point of intersection of said right-of-way lines.

3.13.2 In any district, fences and walls not exceeding six (6) feet in height are permitted within the limits of side and rear yards: A fence or wall not exceeding four (4) feet in height is permitted within the limits of front yards. In the case of retaining walls supporting embankments, the above requirements shall apply only to that part of the wall above the ground surface of the retained embankment.

A. In any district where a fence or wall is required by a section of this ordinance, the subdivision ordinance or other ordinance, to serve as a screening wall, buffer wall or other separating or protective wall, the restrictions of paragraph 1 above, shall yield to the requirements of the specific ordinance.

B. Grade for determining the maximum height above grade for fences and walls:

(1) For a fence or wall along a street right-of-way grade shall be the highest point of the pavement lying between the intersection of the centerline and a projection of the side lot lines.

(2) For a fence or wall between the front lot line and the front building line, grade shall be pro-rated between the grade at the front lot line and the grades at the building.

(3) For a fence or wall along the rear lot line. Or between the front building line and the rear lot line, grade shall be the grade at the building.

C. Fences and walls on a corner lot shall comply with the vision clearance requirements of paragraph 1.

**3.14 BUILDING LINES ON APPROVED PLATS.** Whenever the plat of a land subdivision approved by the Planning and Zoning Commission and on record in the office of the county recorder shows a setback building line along any frontage for the purpose of creating a front yard or side street yard line, the building line thus shown shall apply along such frontage in place of any other yard line required in the ordinance unless specified yard requirements in the ordinance requires a greater setback.

**3.15 PENDING APPLICATIONS FOR BUILDING PERMITS.** Nothing herein contained shall require any change in the overall layout, plans, construction, size or designated use of any building, or part thereof, for which approvals and required building permits have been granted before the enactment of this ordinance, the construction in the conformance with such plans shall have been started prior to the effective date of this ordinance and completion thereof carries on in a normal manner and not discontinued for reasons other than those beyond the builder's control.

# ARTICLE IV

## ZONING MAP AND DISTRICT REGULATIONS

- |     |  |     |  |
|-----|--|-----|--|
| 4.1 | <b>Official Zoning Map</b>                   | 4.5 | <b>Zoning District Dividing Property</b> |
| 4.2 | <b>Identification of Official Zoning Map</b> | 4.6 | <b>Vacated Streets or Roads</b>          |
| 4.3 | <b>Amendments to Official Zoning Map</b>     | 4.7 | <b>Annexation</b>                        |
| 4.4 | <b>Interpretation of District Boundaries</b> | 4.8 | <b>Zones</b>                             |

**4.1 OFFICIAL ZONING MAP.** The official zoning map and the explanatory material thereon, is hereby adopted by reference and declared to be a part of this Ordinance.

**4.2 IDENTIFICATION OF OFFICIAL ZONING MAP.** The official zoning map shall be identified by the signature of the Mayor and attested to by the City Clerk under the following statement:

“This is to certify that this is the official zoning map referred to in Article IV of the Malvern, Iowa Zoning Ordinance as adopted this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_”

The official zoning map shall be on file in the office of the City Clerk and shall be the final authority as to the current zoning status of the land, buildings and other structures in the City.

**4.3 AMENDMENTS TO OFFICIAL ZONING MAP.** No changes in the official zoning map shall be made except by amendment to this Ordinance as provided for under Article XXII herein. Such changes shall be promptly made and the ordinance number, nature of change and date of change shall be noted on the map, with the signature of the Clerk of Administrative Official approving such change. No amendment to this Ordinance which involves matter portrayed on the official zoning map shall become effective until after such change and entry has been made on said map.

4.3.1 Any unauthorized change of any kind whatsoever in the official zoning map by any person or persons shall constitute a violation of this Ordinance and said violation shall be brought to the City Council.

**4.4 INTERPRETATION OF DISTRICT BOUNDARIES.** Where uncertainty exists as to the boundaries of districts as shown on the official zoning map, the following rules shall apply:

4.4.1 Boundaries indicated as approximately following centerlines of streets, highways or alleys shall be construed to follow such centerlines.

4.4.2 Boundaries indicated as approximately following platted lot lines, township lines or section lines shall be construed as following such lines.

4.4.3 Boundaries indicated as approximately following railroad lines shall be construed to be midway between the main tracks.

4.4.4 Boundaries indicated as following shore lines of streams or other bodies of water shall be construed to follow such shore lines, and in the event of change in the shore line, shall be construed as moving with the actual shore line; boundaries indicated as approximately following the centerlines of streams, rivers or other bodies of water shall be construed to follow such centerlines, and in the event of change in the centerline, shall be construed as moving with the actual centerlines.

4.4.5 Boundaries indicated as parallel to or extensions of features indicated in subsections 4.41 through 4.44 above shall be so construed. Distances not specifically indicated on the official zoning map shall be determined by the scale of the map.

4.4.6 Boundaries indicated as approximately following City limits shall be construed as following City limits.

4.4.7 Where physical features existing on the ground are at variance with those shown on the official zoning map or in other circumstances not covered by subsections 4.41 through 4.46 above, the Board of Adjustment shall interpret the district boundaries.

4.4.8 In case of doubt or dispute, the boundary lines shall be determined by the Board of Adjustment upon receiving an appeal from a ruling of the Administrative Official.

**4.5 ZONING DISTRICT DIVIDING PROPERTY.** Where one (1) parcel of property is divided into two (2) or more portions by reason of different zoning district classifications, each portion shall be used independently of the other in its respective zoning classification, and for the purpose of applying the regulations of this Ordinance, each portion shall be considered as if in separate and different ownership.

**4.6 VACATED STREETS OR ROADS.** Whenever any street, road, alley or other public way is vacated by official action as provided by law, the zoning district adjoining the side of such public way shall be automatically extended, depending on the side or sides to which such lands revert to include right-of-way of the public way thus vacated which shall thenceforth be subject to all regulations of the extended district or districts.

**4.7 ANNEXATION.** Any land subsequently annexed to the City shall upon such annexation automatically be classified in the R -1 Single-Family Residential and remain so zoned until an amendment to these regulations shall place such annexed land in a different zone or zones. The Commission shall review the zoning classification of any annexed land and shall report thereon to the Council giving their recommendations as to the proper classification. Said report shall be submitted within six (6) months of the effective date of the annexation.

**4.8 ZONES.** Symbols, titles, and a brief description of each of the zones established by these regulations are as follows:

4.8.1 Residential Zones. Following are the residential zones.

- A. RA: Agricultural District, provides for agriculture, very low density residential development, and interim uses under specific conditions.
- B. R - 1: Single-Family, Residential, 5,000 square foot per structure zone, provides for low density residential uses.
- C. R - 2: Two-Family Residential, 6,000 square foot per structure zone, provides for multiple dwellings and compatible office buildings.
- D. R - 3: Multi-Family Residential, 2,000 square foot per unit zone, provides for multiple dwellings and compatible office buildings.
- E. R - 4: RESERVED
- F. R - 5: Single Family Residential, 12,000 square foot per structure zone.

4.8.2 Business Zones. Following are the business zones established.

- A. C - 1: Downtown Commercial District. Provides a general business zone which will take into account the special characteristics of the Central Business District.
- B. C - 2: Commercial District. To provide for efficient use of business land near major highways and highway interchanges.

4.8.3 Industrial Zones. Following are the industrial zones established.

- A. M - 1: Light Manufacturing Zone. Provides for most uses which can meet rigid specifications but prohibiting residences.
- B. M - 2: Heavy Manufacturing Zone. Provides for greater latitude in meeting performance standards than the M - 1 zone but prohibiting residences and limiting retail and service businesses.

# ARTICLE V

## *SPECIAL USE PERMITS IN (A-1) AGRICULTURAL ZONE*

### **5.1 Standards**

### **5.2 Procedure**

**5.1 STANDARD.** The Board is authorized to grant special use permits for property within the A-1 Agricultural Zone allowing for uses not allowed as a matter of right in said zone under the following conditions:

(Code of Iowa, Sec. 414.4, 414.7 & 414.12)

5.1.1 Open Type Land Use. The proposed use shall be an open land type of use and shall not involve the erection of permanent buildings or other permanent improvements and shall be located in an undeveloped area of the City, provided, however, that permanent buildings shall be allowed which conform with the zoning in force upon the parcel.

5.1.2 Not Unsightly. The proposed use and the placement thereof upon the land shall be such that it shall not be unsightly to the general public nor interfere with the enjoyment or use of neighboring properties.

5.1.3 Permanent Structures. All temporary uses and structures shall comply with all provisions of the zone in which the proposed use is located except that the list of permitted uses may be modified by the special use permit.

5.1.4 Temporary Uses and Structures. All temporary uses and structures shall comply with all provisions of the zone in which the proposed use is located except that the list of permitted uses may be modified by the special use permit.

5.1.5 Board May Set Conditions. The Board may append reasonable conditions to any special use permit to the end that the objective of this chapter may be upheld.

**5.2 PROCEDURE.** The following shall apply to the issuance of special use permits.

(Code of Iowa, Sec. 414.4 and 414.7)

5.2.1 Public Hearing and Notice. Before issuing any special use permit, the Board shall hold a public hearing and shall give notice thereof to all property owners within two hundred (200) feet and to the Commission and the Council.

5.2.2 Recommendation of Commission and Enforcement by Zoning Official. Before approving any special use permit the Board shall request and receive the favorable recommendation of the Commission. The Zoning Official shall enforce compliance with the terms of the special use permit and shall initiate action for renewal or cessation of the activity at the expiration of the special use permit.

(Code of Iowa, Sec. 372.13)

5.2.3 Duration of Special Use Permit. No special use permit shall be issued for a period to exceed two (2) years, provided however, that such special use permit may be renewed for additional periods not to exceed two (2) years each, after a notice and public hearing and a finding that conditions have not changed sufficiently to warrant denial of such a renewal.

5.2.4 No Property Owner or Owner of Other Interest to Have Vested Rights in Renewal. No property owner or owner of other interest in the land shall have a vested right in the renewal of any special use permit.

# ARTICLE VI

## *RA – RESIDENTIAL AGRICULTURAL ZONE*

<b>6.1</b>	<b>Statement of Intent</b>	<b>6.5</b>	<b>Space Limits</b>
<b>6.2</b>	<b>Principal Permitted Uses</b>	<b>6.6</b>	<b>Off-Street Parking and Loading</b>
<b>6.3</b>	<b>Permitted Accessory Uses</b>	<b>6.7</b>	<b>Exceptions and Modifications</b>
<b>6.4</b>	<b>Conditional Uses</b>		

**6.1 STATEMENT OF INTENT.** The Residential Agricultural District recognizes residential development in and around outer border of the city limits. Land within this district is likely to continue being subdivided or otherwise used for low-density rural residential development.

**6.2 PRINCIPAL PERMITTED USES.** The following are permitted principal uses:

- 6.2.1 Agriculture, including the raising of field crops, horticulture, animal husbandry subject to the rules and regulations of the board of health, including feed lots, poultry farms and kennels. Farm Animals as related to the agriculture and farm definitions under 100 pounds full-grown limited to two (2) per acre and under 50 pounds full-grown limited to four (4) per acre.
- 6.2.2 Ranch and farm dwellings pertaining to agricultural operations.
- 6.2.3 Parks and recreation areas operated by the City, or other political subdivision.
- 6.2.4 Riding academies.
- 6.2.5 Country clubs as defined herein, when located on a lot of at least five (5) acres.
- 6.2.6 Recreational camps operated by public, charitable or religious organizations.
- 6.2.7 Buildings and installations geographically necessary to operate a public utility, but not including general offices, material yards or repair shops. Such facilities shall observe yard space rules but shall not be required to provide the full lot size and lot width requirements.
- 6.2.8 Greenhouses.
- 6.2.9 Railroad through or spur tracks, but no siding or other terminal type facilities and no service repair or administrative facilities.
- 6.2.10 Single-family residential dwellings.

**6.3 PERMITTED ACCESSORY USES.** The following are permitted accessory uses:

- 6.3.1 Living quarters for persons regularly employed on the premises, but not including labor camps or dwellings for transient labor.
- 6.3.2 Guest houses, not rented or otherwise conducted as a business.
- 6.3.3 General home occupations.

- 6.3.4 Offices incidental to and necessary for conducting a permitted use.
- 6.3.5 Private garages, stables and barns.
- 6.3.6 Roadside stands not exceeding four hundred (400) square feet in floor area, for the sale of agricultural products grown on the premises.
- 6.3.7 Name plates and non-illuminated signs not to exceed twenty (20) square feet in area identifying the premises, but not containing over twenty (20) percent brand advertising.
- 6.3.8 The keeping of not more than two (2) roomers or boarders.
- 6.3.9 Other accessory uses and buildings customarily appurtenant to a permitted use.

**6.4 CONDITIONAL USES.** The following are conditional uses:

- 6.4.1 Quarters for transient labor.
- 6.4.2 Cemeteries, crematories, mausoleums, columbiums.
- 6.4.3 Commercial mines, quarries and sand and gravel pits.
- 6.4.4 Par-3 golf courses.
- 6.4.5 Public and quasi-public buildings and structures and uses of an administrative, educational, religious, cultural or public service type including colleges.

**6.5 SPACE LIMITS.** The following are space limits in the A-1 zone:

- 6.5.1 Minimum lot area: Two (2) acres.
- 6.5.2 Minimum width of lot: three hundred feet (300').
- 6.5.3 Maximum height of building - thirty-five feet (35').
- 6.5.4 Minimum front yard - twenty-five feet (25').
- 6.5.5 Minimum rear yard - twenty-five feet (25').
- 6.5.6 Minimum side yard - ten feet (10').
- 6.5.7 Minimum side yard at street side of corner twenty-five feet (25').
- 6.5.8 Maximum ground coverage including accessory buildings - ten percent (10%).
- 6.5.9 Maximum floor area ratio (percentage): 0.1 (10%)

**6.6 OFF-STREET PARKING AND LOADING.** See Article XVIII.

**6.7 EXCEPTIONS AND MODIFICATIONS.** See Article XVII.

## ARTICLE VII

### *R - 1 SINGLE-FAMILY RESIDENTIAL*

#### 5,000 SQUARE FOOT ZONE

<b>7.1</b>	<b>Statement of Intent</b>	<b>7.5</b>	<b>Space Limits</b>
<b>7.2</b>	<b>Principal Permitted Uses</b>	<b>7.6</b>	<b>Off-Street Parking and Loading</b>
<b>7.3</b>	<b>Permitted Accessory Uses</b>	<b>7.7</b>	<b>Exceptions and Modifications</b>
<b>7.4</b>	<b>Conditional Uses</b>		

**7.1 STATEMENT OF INTENT.** This zone is designed to stabilize and protect the residential characteristics of the district and to encourage a suitable family life on small to medium size lots. More uses are allowed as a matter of right throughout the zone than in the larger lot size zones.

**7.2 PRINCIPAL PERMITTED USES.** The principal permitted uses common to all residential zones. See Section 3.7.1.

**7.3 PERMITTED ACCESSORY USES.** The permitted accessory uses are:

7.3.1 The permitted accessory uses common to all residential zones. See Section 3.7.2.

7.3.2 Limited home occupations. See Article XVI.

**7.4 CONDITIONAL USES.** The conditional uses common to all residential zones. See Section 3.7.3.

**7.5 SPACE LIMITS.** The space limits are:

7.5.1 Minimum lot area: five thousand (5,000) square feet for residential uses, two (2) acres for religious and cultural uses.

7.5.2 Minimum width of lot: fifty feet (50').

7.5.3 Maximum height of building: thirty-five feet (35').

7.5.4 Minimum front yard: twenty-five feet (25').

7.5.5 Minimum rear yard: thirty feet (30').

7.5.6 Minimum side yard: seven and a half feet (7.5')

7.5.7 Minimum side yard on street side of corner lot: twenty-five feet (25'). See Section 3.11.

7.5.8 Maximum gross floor area ratio (percentage): 0.3 (30%)

7.5.9 Maximum ground coverage including accessory buildings: thirty percent (30%).

**7.6 OFF-STREET PARKING AND LOADING.** See Article XVIII.

**7.7 EXCEPTIONS AND MODIFICATIONS.** See Article XVII.

# ARTICLE VIII

## *R - 2 TWO-FAMILY RESIDENTIAL*

### 6,000 SQUARE FOOT ZONE

<b>8.1</b>	<b>Statement of Intent</b>	<b>8.5</b>	<b>Space Limits</b>
<b>8.2</b>	<b>Principal Permitted Uses</b>	<b>8.6</b>	<b>Off-Street Parking and Loading</b>
<b>8.3</b>	<b>Permitted Accessory Uses</b>	<b>8.7</b>	<b>Exceptions and Modifications</b>
<b>8.4</b>	<b>Conditional Uses</b>		

**8.1 STATEMENT OF INTENT.** This zone is designed to provide for one or two-family dwelling units on lots of small to moderate in size.

**8.2 PRINCIPAL PERMITTED USES.** The principal permitted uses common to all residential zones. See Section 3.7.1.

**8.3 PERMITTED ACCESSORY USES.** Permitted accessory uses are:

8.3.1 The permitted accessory uses common to all residential zones. See Section 3.7.2.

8.3.2 Limited home occupations. See Article XVI.

**8.4 CONDITIONAL USES.** The conditional uses common to all residential zones. See Section 3.7.3.

**8.5 SPACE LIMITS.** The space limits are as follows:

8.5.1 Minimum lot area: Five thousand (5,000) square feet per dwelling unit for residential buildings containing one dwelling unit. Residential dwelling units containing two (2) dwelling units shall have a minimum of six thousand (6,000) square feet: one (1) acre for religious or cultural uses.

8.5.2 Minimum width of lot: sixty feet (60').

8.5.3 Maximum height of building: thirty-five feet (35').

8.5.4 Minimum front yard: thirty feet (30').

8.5.5 Minimum rear yard: twenty-five feet (25').

8.5.6 Minimum side yard: seven and a half feet (7.5').

8.5.7 Minimum side yard on street side of corner lot: thirty feet (30'). See Section 3.11.

8.5.8 Maximum gross floor area ratio (percentage): 0.3 (30%)

8.5.9 Maximum ground coverage including accessory buildings: fifty percent (50%).

**8.6 OFF-STREET PARKING AND LOADING.** See Article XVIII.

**8.7 EXCEPTIONS AND MODIFICATIONS.** See Article XVII.

# ARTICLE IX

## *R - 3 MULTI-FAMILY RESIDENTIAL*

<b>9.1</b>	<b>Statement of Intent</b>	<b>9.5</b>	<b>Space Limits</b>
<b>9.2</b>	<b>Principal Permitted Uses</b>	<b>9.6</b>	<b>Off-Street Parking and Loading</b>
<b>9.3</b>	<b>Permitted Accessory Uses</b>	<b>9.7</b>	<b>Exceptions and Modifications</b>
<b>9.4</b>	<b>Conditional Uses</b>		

**9.1 STATEMENT OF INTENT.** This zone is designed to provide for moderately high-density apartment development and other uses which have characteristics similar to those found in the operation of apartment houses.

**9.2 PRINCIPAL PERMITTED USES.** Following are the principal permitted uses:

- 9.2.1 The principal permitted uses common to all residential zones. See Section 3.7.1.
- 9.2.2 Multiple dwellings, containing not more than twelve (12) dwelling units.
- 9.2.3 Hospitals and rest homes, nursing homes.
- 9.2.4 Rooming houses and boarding houses.
- 9.2.5 Apartment hotels.
- 9.2.6 Private clubs, lodges and similar establishments, but specifically excluding those establishments which have a name or legal basis as the aforesaid but are in fact operated as a business enterprise and also excluding concessions associated with the aforesaid which are operated as a business enterprise.
- 9.2.7 The offices of one or more professional persons engaged in the activities which generate a limited amount of contact with the general public, but including medical clinics, offices of lawyers, accountants, architects, planners, engineers and similar professions.
- 9.2.8 Buildings of non-profit community organizations and social welfare establishments.

**9.3 PERMITTED ACCESSORY USES.** The permitted accessory uses common to all residential zones. See Section 3.7.2.

**9.4 CONDITIONAL USES.** Following are the conditional uses:

- 9.4.1 The conditional uses common to all residential zones. See Section 3.73.
- 9.4.2 Buildings of non-profit community organizations and social welfare establishments other than those providing living accommodations.
- 9.4.3 Office buildings for the conduct of the administrative business of a single company when such business does not deal with the public directly from the site of such office building.
- 9.4.4 Mortuaries, funeral homes and funeral chapels.

**9.5 SPACE LIMITS.** Following are the space limits:

- 9.5.1 Minimum lot area: two thousand (2,000) square feet per dwelling unit except that residential buildings containing one dwelling unit shall have a minimum lot area of five thousand (5,000) square feet and residential buildings containing two (2), three (3), or four (4) dwelling units shall have a minimum lot area of three thousand (3,000) square feet per dwelling unit.
- 9.5.2 Minimum zoning lot: five thousand (5,000) square feet.
- 9.5.3 Minimum width of lot: forty feet (40').
- 9.5.4 Maximum height of building: seventy-five feet (75').
- 9.5.5 Minimum front yard: thirty feet (30').
- 9.5.6 Minimum rear yard: ten feet (10').
- 9.5.7 Minimum side yard: seven and a half feet (7.5').
- 9.5.8 Minimum side yard on street side of corner lot: thirty feet (30'). See Section 3.11.
- 9.5.9 Maximum gross floor ratio (percentage): 0.3 (30%) - possibly three-story apartment building.
- 9.5.10 Maximum ground coverage including accessory buildings: eighty percent (80%).
- 9.6 OFF-STREET PARKING AND LOADING.** See Article XVIII.
- 9.7 EXCEPTIONS AND MODIFICATIONS.** See Article XVII.

## ARTICLE X

### *R - 4 -RESERVED*

Since there is no R-4 Zone, if a mobile home is demolished, a mobile home cannot replace it. A modular home can. A modular home will become a permanent housing unit once it is put on the foundation. It is treated just like a regular single-family home.

# ARTICLE XI

## *R - 5 - SINGLE-FAMILY RESIDENTIAL*

### 10,000 SQUARE FOOT ZONE

<b>11.1</b>	<b>Statement of Intent</b>	<b>11.5</b>	<b>Space Limits</b>
<b>11.2</b>	<b>Principal Permitted Uses</b>	<b>11.6</b>	<b>Off-Street Parking and Loading</b>
<b>11.3</b>	<b>Permitted Accessory Uses</b>	<b>11.7</b>	<b>Exceptions and Modifications</b>
<b>11.4</b>	<b>Conditional Uses</b>		

**11.1 STATEMENT OF INTENT.** This zone is designed to stabilize and protect the residential characteristics of the district and to encourage a suitable family life on large size lots.

**11.2 PRINCIPAL PERMITTED USES.** The principal permitted uses common to all residential zones. See Section 3.71.

**11.3 PERMITTED ACCESSORY USES.** The permitted accessory uses are:

11.3.1 The permitted accessory uses common to all residential zones. See Section 3.7.2.

11.3.2 Limited home occupations. See Article XVI.

**11.4 CONDITIONAL USES.** The conditional uses common to all residential zones. See Section 3.7.3.

**11.5 SPACE LIMITS.** The space limits are:

11.5.1 Minimum lot area: ten thousand (10,000) square feet for residential uses, two (2) acres for religious and cultural uses.

11.5.2 Minimum width of lot: eighty feet (80').

11.5.3 Maximum height of building: thirty-five feet (35').

11.5.4 Minimum front yard: thirty feet (30').

11.5.5 Minimum rear yard: thirty feet (30').

11.5.6 Minimum side yard: ten feet (10') for lots platted any time after the effective date of these regulations.

11.5.7 Minimum side yard on street side of corner lot: ten feet (10').

11.5.8 Maximum gross floor area ratio (percentage): 0.3, (30%)

11.5.9 Maximum ground coverage including accessory buildings: thirty percent (30%).

**11.6 OFF-STREET PARKING AND LOADING.** See Article XVIII.

**11.7 EXCEPTIONS AND MODIFICATIONS.** See Article XVII.

## ARTICLE XII

### *C-1 COMMERCIAL DISTRICT*

12.1	Statement of Intent	12.5	Space Limits
12.2	Principal Permitted Uses	12.6	Off-Street Parking and Loading
12.3	Permitted Accessory Uses	12.7	Exceptions and Modifications
12.4	Conditional Uses		

**12.1 STATEMENT OF INTENT.** This zone is designed to provide for the effective use of land situated in relationship to major roads, thoroughfares, and highways and highway interchanges to efficient grouping of activities can develop to serve the traveling public. Front yard requirements are designed to provide for the safety of the traveling public by provision for adequate off-highway maneuvering and parking space.

**12.2 PRINCIPAL PERMITTED USES.** Following are the principal permitted uses:

- 12.2.1 Any use permitted in the R-3 Multi-Family Residential Zone.
- 12.2.2 Apartment houses, apartment hotels, and mixed business and apartment buildings constructed to the applicable standards of the R-3 Zone.
- 12.2.3 Automotive repair, except heavy truck equipment work or body and fender, and painting work.
- 12.2.4 Business and commercial schools.
- 12.2.5 Commercial parking lots.
- 12.2.6 Feed and seed stores.
- 12.2.7 Garage for storage of automobiles, but not including major repair, body and fender work or painting.
- 12.2.8 Gasoline service stations which do not conduct major automotive repairs, body or fender work or automobile painting, and at which all used and waste materials are kept within a solid enclosure so that the contents are not visible from a street, highway, interstate highway or other properties. Gasoline pumps and other facilities shall be considered as structures and shall not be located within a required yard space.
- 12.2.9 Greenhouses, commercial; nursery stock sales yards.
- 12.2.10 Mortuaries, funeral homes and funeral chapels.
- 12.2.11 Motel and motor hotels designed for accommodation of the traveling public, and including swimming pools, children's play yards, golf putting greens and similar uses when they are a part of said motel or motor hotel developments.
- 12.2.12 Printing job, hen mechanical operation is not visible from a street and employing not over four (4) persons.
- 12.2.13 Radio and television stations, except transmission towers over thirty-five feet (35') high.

- 12.2.14 Self-operated vending devices, provided such devices shall be placed for operation and stored behind the building line specified herein for conventional structures.
- 12.2.15 Drive-in configurations of any business otherwise permitted in this zone, provided that any such establishment shall provide adequate off-street space for the maneuvering and storage of patrons' vehicles, and further provided that there be a sturdy, close-woven or solid fence suitable for retaining of any discarded paper or other material on all sides of the parking area except the front, and provided no music or loud speaker system shall be installed or operated that can be heard at neighboring, residential, motel or motor-hotel properties, and providing all lighting shall be directed and shielded so as to light only the property of such establishment.
- 12.2.16 Wholesale stores, but no establishments operated primarily as a warehouse. A wholesale store shall be distinguished from a warehouse if there is one square foot of office, sales, and display space for each square foot of warehousing space, and the buildings so arranged as to encourage walk-in trade.
- 12.2.17 Combination display store, office, warehouse, and fabrication shop for electrical, plumbing, heating, and refrigeration contractors, and automobile supply house with minor overhaul and machining of parts.
- 12.2.18 New and used automobile, truck, tractor, construction equipment, boat, trailer, and farm machinery sales rooms and lots, but excluding the storage of vehicles, boats, trailers, or machinery no in operable condition or in the process of salvage, or the major parts thereof.
- 12.2.19 Tavern, cocktail lounge, club operated as a tavern or cocktail lounge, and craft breweries.

**12.3 PERMITTED ACCESSORY USES.** Following are the permitted accessory uses:

- 12.3.1 Accessory uses for commercial development shall include those normally appurtenant to such development, except as further specified herein, and shall be located in accordance with the space limits of this zone.

**12.4 CONDITIONAL USES.** The conditional uses common to all commercial zones.

**12.5 SPACE LIMITS.** The space limits are:

- 12.5.1 Minimum lot area: ten thousand (10,000) square feet for business or industry.
- 12.5.2 Minimum width of lot: seventy-five feet (75') for business or industry.
- 12.5.3 Maximum height of building: fifty-five feet (55') for business or industry.
- 12.5.4 Minimum front yard: one hundred fifty feet (150') from the center line of the fronting street or highway, provided no building shall be located closer than twenty-five feet (25') from a street or highway right-of-way, except that one identification sign or decorative pylon sign may be placed at a property line or within the required yard space.
- 12.5.5 Minimum rear yard: None for business or industry.
- 12.5.6 Minimum side yard: None except that no building shall be located closer than twenty-five feet (25') from any street or highway right-of-way line, except as provided herein.
- 12.5.7 Maximum gross floor area ratio (percentage): 0.6, 60%, 6:10; ie: one-story building covering 60% of ground, two-story building covering 30% of ground, three-story building covering 15% of ground.

- 12.5.8 Maximum ground coverage: sixty percent (60%) of business or industry.
- 12.6 **OFF-STREET PARKING AND LOADING.** See Article XVIII.
- 12.7 **EXCEPTIONS AND MODIFICATIONS.** See Article XVII.

# ARTICLE XIII

## *C-2 DOWNTOWN COMMERCIAL DISTRICT*

13.1	Statement of Intent	13.5	Space Limits
13.2	Principal Permitted Uses	13.6	Off-Street Parking and Loading
13.3	Permitted Accessory Uses	13.7	Exceptions and Modifications
13.4	Conditional Uses		

13.1 **STATEMENT OF INTENT.** This zone is designed to provide a general business zone which will take into account the special characteristics of the central business district of the City.

13.2 **PRINCIPAL PERMITTED USES.** Following are the principal permitted uses:

- 13.2.1 Any use permitted in the R-3 Multi-Family Residential Zone. Second story buildings only. First floor must be for commercial or non-residential purposes.
- 13.2.2 Bakery or pastry shops.
- 13.2.3 Bicycle sales and repair shops, excluding sales and repair of motor driven vehicles.
- 13.2.4 Billboards and general advertising signs.
- 13.2.5 Bowling alleys, trampoline or rebound equipment centers, miniature golf courses, pool halls, dance halls, kiddy parks, and skating rinks.
- 13.2.6 Building other than heavy storage and maintenance shops for municipal or governmental purposes.
- 13.2.7 Clinics – Medical clinics and small-animal veterinary clinics.
- 13.2.8 Dancing schools including group instruction.
- 13.2.9 Frozen food lockers for individual or family trade, but no slaughtering, killing, eviscerating, skinning, or plucking on the premises.
- 13.2.10 Light retail establishments such as apparel, drug, variety, florist, gift, grocery, jewelry, small appliance, bakery and dairy.
- 13.2.11 Light service establishments such as tailor, dressmaker, barber, beauty operator, dance studio (but excluding dance hall), real estate, insurance, photographer, professional offices, self-service laundry and dry cleaning.
- 13.2.12 Other light retail and service establishments which may be determined by the board to be similar to the above listed principal permitted use and which area in harmony with the purpose of the zone.
- 13.2.13 Liquor stores.
- 13.2.14 Loan offices.
- 13.2.15 Extremely light professional type manufacturing and repair of such items as eye glasses, custom jewelry, prosthetic devices, and other similar services and manufacture.

- 13.2.16 Motels, hotels. A tavern bar, or cocktail lounge need not be located in the same building as a restaurant in the overall design of a motel or motor hotel when such tavern, bar, or cocktail lounge is less than ten percent (10%) of the floor area of said motel or motor hotel and is not located on the front or highway side of such motel or motor hotel complex.
- 13.2.17 General office buildings.
- 13.2.18 Pawn shops.
- 13.2.19 Pet shops.
- 13.2.20 Restaurants and eating places, provided, however, that no such establishment shall be operated as a restaurant or eating place in which more than half of the gross receipts are derived from the sale of liquor, mixed drinks, beer, or other intoxicating beverages.
- 13.2.22 Stationery and office machine sales and service.
- 13.2.23 Tavern, cocktail lounge, club operated as a tavern or cocktail lounge, and craft breweries.
- 13.2.24 Theater other than drive-in.
- 13.2.25 Upholstery shops.
- 13.2.26 Vending structures (automatic) when located on that portion of a lot on which a principal building is permitted.
- 13.2.27 Other retail and service establishments, which may be determined by the Board to be similar to the above listed principal permitted uses, and which area in harmony with the purposes of this zone, but not including any use not enumerated as permitted in this zone but which is specifically provided for in another zone.

**13.3 PERMITTED ACCESSORY USES.** Following are the permitted accessory uses:

- 13.3.1 Accessory uses for residential development shall include those listed under the R-3 Zone and shall be established and conducted in accordance with the regulations of that zone.
- 13.3.2 Signs, including illuminated signs.
- 13.3.3 Other accessories uses normally appurtenant to uses permitted in this zone.

**13.4 CONDITIONAL USES.** No conditional uses in this zone.

**13.5 SPACE LIMITS.** Following are the space limits:

- 13.5.1 Minimum lot area for business: None. Minimum lot area for residential structures or mixed business and residential structures: six thousand (6,000) square feet.
- 13.5.2 Minimum width of lot: None.
- 13.5.3 Maximum height of building: No restriction, except by gross floor-area ratio.
- 13.5.4 Minimum front yard: None.
- 13.5.5 Minimum rear yard: None.
- 13.5.6 Minimum side yard: None.

- 13.5.7 Minimum side yard on street side of corner lot: None.
- 13.5.8 Maximum gross floor area ratio (percentage): 3.0, 300%, 3:1; no more than three stories.
- 13.5.9 Maximum ground coverage: One hundred percent (100%).
- 13.6 OFF-STREET PARKING AND LOADING.** No parking requirement.
- 13.7 EXCEPTIONS AND MODIFICATIONS.** See Article XVII.

# ARTICLE XIV

## *M - 1 - LIGHT MANUFACTURING ZONE*

<b>14.1</b>	<b>Statement of Intent</b>	<b>14.6</b>	<b>Performance Standards</b>
<b>14.2</b>	<b>Principal Permitted Uses</b>	<b>14.7</b>	<b>Space Limits</b>
<b>14.3</b>	<b>Specifically Excluded Uses</b>	<b>14.8</b>	<b>Off-Street Parking and Loading</b>
<b>14.4</b>	<b>Permitted Accessory Uses</b>	<b>14.9</b>	<b>Exceptions and Modifications</b>
<b>14.5</b>	<b>Conditional Uses</b>		

**14.1 STATEMENT OF INTENT.** This zone provides for a wide range of commercial and industrial uses, all of which shall be able to meet comparatively rigid specifications as to nuisance free performance. The zone specifically excludes residences on the theory that the mixture of residential use, and public services and facilities for residences with those for industry is contrary to the purposes of these regulations irrespective of whether the industry is encroaching on a living area or a living area is encroaching on an industrial area.

**14.2 PRINCIPAL PERMITTED USES.** The following are the principal uses in the M - 1 Zone:

14.2.1 Any use allowed in the C - 1 or C - 2 Zones, except that all dwellings and other types of living accommodations shall be prohibited except that one quarter for a watchman or caretaker shall be permitted as an accessory use for any permitted use occupying more than twenty thousand (20,000) square feet of lot area.

14.2.2 Any business, commercial or industrial use which can meet the performance standards set forth for this zone but not specifically excluded or specifically mentioned as belonging in another less restrictive zone.

**14.3 SPECIFICALLY EXCLUDED USES.** The following uses are hereby declared incompatible with the purpose of the M - 1 Zone and are hereby expressly excluded:

14.3.1 Dwellings, except for caretaker and watchmen quarters as set forth herein.

14.3.2 Public, parochial and private schools and colleges, except trade schools.

14.3.3 Hospitals, clinics, rest homes and other institutions for the housing or care of human beings.

14.3.4 Motels, hotels, and mobile home parks.

14.3.5 Any use not enumerated as permitted in this zone, but which is specifically in another zone or zones.

**14.4 PERMITTED ACCESSORY USES.** Any accessory use normally appurtenant to a permitted use shall be allowed provided such use shall conform with all performance standards set forth for this zone.

**14.5 CONDITIONAL USES.** Recreational uses which are temporary in nature and do not involve any appreciable amount of fixed construction and which will not interfere with the efficient functioning of the zone for its primary purpose of providing for manufacturing and heavy commercial establishments, may be allowed only upon appeal to the Board.

**14.6 PERFORMANCE STANDARDS.** The following performance standards shall apply:

14.6.1 Physical Appearance: All operations shall be carried on within an enclosed building except that new materials or equipment in operable condition may be stored in the open. Normal daily

wastes of an inorganic nature may be stored in containers not in a building when such containers are not readily visible from a street. The provisions of this paragraph shall not be construed to prohibit the display of merchandise or vehicles for sale or the storage of vehicles, boats, farm machinery, trailers, mobile homes or similar equipment when in operable condition.

14.6.2 Fire Hazard: No operation shall involve the use of highly flammable gasses, acid, liquids, grinding processes or other inherent fire hazards. This provision shall not be construed to prohibit the use of normal heating fuels, motor fuels and welding gasses when handled in accordance with other ordinances of the City.

14.6.3 Noise: No operation shall be carried on which involves noise in excess of the normal traffic noise of the adjacent street at the time of the daily peak hour of traffic volume. Noise shall be measured at the property line and when the level of such noise cannot be determined by observation with the natural senses, a suitable instrument may be used and measurement may include breakdowns into a reasonable number of frequency ranges. All noises shall be muffled so as not to be objectionable due to intermittence, beat, frequency, or shrillness.

14.6.4 Sewage and Liquid Wastes: No operation shall be carried on which involves the discharge into a sewer, water course or the ground of liquid wastes of any radioactive nature, or liquid wastes of a chemical nature which are detrimental to normal sewage plant operation or corrosive and damaging to sewer pipes and installations:

14.6.5 Air Contaminants:

- A. Air contaminants and smoke shall be less dark than designated Number One on the Ringleman Chart as published by the United States Bureau of Mines, except that smoke of a density designated as Number One shall be permitted for one four (4) minute period in each one-half hour. Light colored contaminants of such an opacity as to obscure an observer view to a degree equal to or greater than the aforesaid shall not be permitted.
- B. Particulate matter or dust as measured at the point of emission by any generally accepted method shall not be emitted in excess of two-tenths grains per cubic foot as corrected to a temperature of five hundred (500) degrees Fahrenheit, except for a period of four (4) minutes in any one half ( $\frac{1}{2}$ ) hour, at which time it may equal but not exceed six tenths grains per cubic foot as corrected to a temperature of five hundred degrees Fahrenheit.
- C. Due to the fact that the possibilities of air contamination cannot reasonably be comprehensively covered in this section there shall be applied the general rule that there shall not be discharged from any sources whatsoever such quantities of air contaminants or other material in such quantity as to cause injury, detriment, nuisance or annoyance to any considerable number of persons or to the public in general or to endanger the comfort, repose, health or safety of any such considerable number of persons or the general public or to cause or have a natural tendency to cause injury or damage to business, vegetation or property.

14.6.6 Odor: The emission of odors that are generally agreed to be obnoxious to any considerable number of persons, shall be prohibited. Observations of odor shall be made at the property line of the establishment causing the odor. As a guide to classification of odor it shall be deemed that strong odors of putrefaction and fermentation tend to be obnoxious and that such odors as associated with baking or the roasting of nuts and coffee shall not normally be considered obnoxious within the meaning of this chapter.

14.6.7 Gasses: The gasses sulfur dioxide and hydrogen sulfide shall not exceed five (5) parts per million, carbon monoxide shall not exceed five (5) parts per million. All measurements shall be taken at the zoning lot line.

14.6.8 Vibration: All machines including punch presses and stamping machines shall be so mounted as to minimize vibration and in no case shall such vibration exceed a displacement of three thousandths of an inch measured at the zoning lot line. The use of steam or broad hammers shall not be permitted in this zone.

14.6.9 Glare and Heat: All glare, such as welding arcs and open furnaces shall be shielded so that they shall not be visible from the zoning lot line. No heat from furnaces or processing equipment shall be sensed at the zoning lot line to the extent of raising the temperature of air or materials more than five (5) degrees Fahrenheit.

**14.7 SPACE LIMITS.** The following space limits are applicable in the M - 1 Zone:

14.7.1 Minimum lot area for business or industry: ten thousand (10,000) square feet.

14.7.2 Minimum width of lot: fifty feet (50').

14.7.3 Maximum building height: No restriction except as limited by gross floor area ratio and by any restrictions which may be imposed by virtue of aircraft approach and turning zone height restrictions.

14.7.4 Minimum front yard: twenty feet (20').

14.7.5 Minimum rear yard: None.

14.7.6 Minimum side yard: None.

14.7.7 Minimum side yard on street side of corner lot: ten feet (10').

14.7.8 Maximum ground coverage: seventy-five percent (75%).

**14.8 OFF-STREET PARKING AND LOADING.** See Article XVIII.

**14.9 EXCEPTIONS AND MODIFICATIONS.** See Article XVII.

## ARTICLE XV

### *M - 2 - HEAVY MANUFACTURING ZONE*

<b>15.1</b>	<b>Statement of Intent</b>	<b>15.6</b>	<b>Performance Standards</b>
<b>15.2</b>	<b>Principal Permitted Uses</b>	<b>15.7</b>	<b>Space Limits</b>
<b>15.3</b>	<b>Specifically Excluded Uses</b>	<b>15.8</b>	<b>Off-Street Parking and Loading</b>
<b>15.4</b>	<b>Permitted Accessory Uses</b>	<b>15.9</b>	<b>Exceptions and Modifications</b>
<b>15.5</b>	<b>Conditional Uses</b>		

**15.1 STATEMENT OF INTENT.** This zone provides for the widest range of industrial operations permitted in the City. It is the zone for location of those industries which have not reached a technical stage in processing which renders them free of nuisance factors or where economics precludes construction and operation in a nuisance free manner.

**15.2 PRINCIPAL PERMITTED USES.** The following are the principal permitted uses in the MH Zone:

15.2.1 Any use permitted in the M-1 Zone and any use which can meet the performance standards for this zone, except as herein modified.

15.2.2 The following uses shall be allowed only in this zone:

- A. Trucking terminals containing in excess of four (4) loading or transfer bays.
- B. The storage above ground of liquid petroleum products or chemicals of a flammable or noxious nature when more than one hundred fifty thousand (150,000) gallons are stored on one (1) zoning lot of less than an acre in size or when more than twenty-five thousand (25,000) gallons are stored in one (1) tank.
- C. The storage of flammable or noxious gasses above or below ground in excess of five million (5,000,000) cubic feet on any one (1) zoning lot of less than one (1) acre or two million (2,000,000) cubic feet in any one (1) tank.

**15.3 SPECIFICALLY EXCLUDED USES.** The following uses are hereby declared incompatible with the purpose of the M - 2 Zone and are hereby expressly excluded:

15.3.1 Any use which cannot meet the performance standards set forth herein.

15.3.2 Dwellings, except caretaker and watchmen's quarters as set forth in the provision of the M - 1 Zone.

15.3.3 Schools and colleges, except trade schools.

15.3.4 Hospitals, clinics, rest homes and other institutions for the housing or care of human beings, except that medical facilities accessory to any industrial operation shall be permitted.

15.3.5 Motels, hotels, and mobile home parks.

**15.4 PERMITTED ACCESSORY USES.** Any accessory use normally appurtenant to a permitted use shall be allowed provided such use shall conform with all performance standards set forth for this zone.

**15.5 CONDITIONAL USES.** The Board may allow recreational uses which are temporary in nature and do not involve any appreciable amount of fixed construction and which will not interfere with the efficient functioning of the zone for its primary purpose of providing for manufacturing and heavy commercial establishments.

**15.6 PERFORMANCE STANDARDS.** The following are performance standards for the M - 2 Zone:

15.6.1 Appearance: Junk, salvage, auto wrecking and similar operations shall be shielded view from streets and from adjacent properties in another zone by means of a sturdy, sight-obscuring fence in good repair.

15.6.2 Fire Hazard: All flammable substances involved in any activity established in this zone shall be handled in conformance with the standards of the National Board of Fire Underwriters and any additional regulations of the City.

15.6.3 Noise: All noise and noise causing activities shall be muffled so that they will not create a disturbance greater than normal peak hour traffic noise on a major street when observed from any area zoned residential. Major street noise for comparison purposes shall be measured on the primary state highway nearest the industry.

15.6.4 Sewage and Liquid Wastes: No operation shall be carried on which involves the discharge into a sewer, water course or the ground of liquid wastes of any radioactive nature, or liquid wastes of a chemical nature which are detrimental to normal sewage plant operation or corrosive and damaging to sewer pipes and installation.

15.6.5 Air Contaminants:

- A. Air contaminants and smoke shall be less dark than designated Number Two (2) on the Ringleman Chart as published by the United States Bureau of Mines, except that smoke of a density designated as Number Two (2) shall be permitted for one four-minute period in each one-half hour. Light colored contaminants of such opacity as to obscure an observer view to a degree equal to or greater than the aforesaid shall not be permitted.
- B. Particulate matter or dust as measured at the point of emission by any generally accepted method shall not be emitted in excess of two-tenths grains per cubic foot as corrected to a temperature of five hundred (500) degrees Fahrenheit.
- C. Due to the fact that the possibilities of air contamination cannot be comprehensively covered in this section there shall be applied the general rule that there shall not be discharged from any source whatsoever such quantities of air contaminants or other material in such quantity as to cause injury, detriment, nuisance or annoyance to any considerable number of persons or to the public in general or to endanger the comfort, repose, health or safety of any such considerable number of persons or the general public or to cause or have a natural tendency to cause injury or damage to business, vegetation or property.

15.6.6 Odor: Odor causing operations shall be controlled so as to reduce escape of odors to the minimum practical within the limits of technology and economics.

15.6.7 Gasses: All noxious gasses shall be controlled to the extent that they will not be injurious to life and property. The gasses sulfur dioxide and hydrogen sulfide shall not exceed five (5) parts per million, carbon monoxide shall not exceed twenty-five (25) parts per million, and nitrous fumes shall not exceed five (5) parts per million. All measurements shall be made at the zoning lot line.

15.6.8 Vibration: All machines, including punch presses and stamping machines, shall be mounted so as to minimize vibration. Vibration shall not be so excessive that it interferes with industrial operations on nearby zoning lots.

**15.7 SPACE LIMITS.** The following space limits shall apply:

15.7.1 Minimum lot area for business or industry: ten thousand (10,000) square feet.

15.7.2 Minimum width of lot: fifty feet (50').

15.7.3 Maximum building height: No restrictions, except as limited by gross floor area ratio and by restrictions which may be imposed by virtue of aircraft approach and turning zone height restrictions.

15.7.4 Minimum front yard: twenty feet (20').

15.7.5 Minimum rear yard: None.

15.7.6 Minimum side yard: None.

15.7.7 Minimum side yard on street side of corner lot: thirty feet (30').

15.7.8 Maximum ground coverage: fifty percent (50%).

**15.8 OFF-STREET PARKING AND LOADING.** See Article XVIII.

**15.9 EXCEPTIONS AND MODIFICATIONS.** See Article XVII.

## ARTICLE XVI

### *HOME OCCUPATIONS*

#### **16.1 Home Occupation**

**16.1 HOME OCCUPATION.** A business, occupation or profession carried on within a residential dwelling by the resident thereof, and which shall have the following characteristics:

16.1.1 There shall be no external evidence of the occupation, with the exception of one unlighted name plate not more than two (2) square feet in area attached flat against the building. Advertising displays and advertising devices displayed through a window of the building shall not be permitted.

16.1.2 There shall be no emission of smoke, dust, odor, fumes, glare, noise, vibration, electrical or electronic disturbance detectable at the zoning lot line.

16.1.3 There shall not be a stock of goods on the premises in excess of thirty (30) cubic feet in volume, none of which shall be of a flammable nature.

16.1.4 There shall be no signs, radio, television, newspaper, handbill or similar types of advertising linking the address of the premises with the home occupation.

16.1.5 Said home occupation shall not involve continual visits by the general public, except that music lessons may be given to one pupil at a time; dance and art lessons may be given to four (4) pupils at a time; a dressmaker may have two (2) customers at a time; a beauty operator may have two (2) customers at a time, and a professional person may have one client or patient at a time.

16.1.6 The above listed characteristics of a home occupation shall not be construed to restrict the sale of garden produce grown on the premises, provided this exception shall not extend to allow the operation of a commercial greenhouse or nursery.

16.1.7 Said occupation may include the caring of children, according to Iowa State Code, for hire.

16.1.8 Room or board for hire, but not for more than two (2) persons.

Any business, occupation or profession the operation of which does not meet the aforesaid characteristics, shall not be interpreted to be a home operation despite the fact that it may attempt to operate in a residential building.

# ARTICLE XVII

## EXCEPTIONS AND MODIFICATIONS

- |             |  |             |  |
|-------------|--|-------------|--|
| <b>17.1</b> | <b>Height Exceptions, General Rule</b> | <b>17.3</b> | <b>Lot Area Exception, Existing Platting</b> |
| <b>17.2</b> | <b>Yard Space, General Rule</b>        | <b>17.4</b> | <b>Fences and Hedges, Corner Visibility</b>  |

**17.1 HEIGHT EXCEPTIONS, GENERAL RULE.** Any building hereafter erected or altered shall comply with the height limitations of the zone in which it is located except as specified below. However, no exception listed below shall exceed the height restrictions of an aircraft approach and turning zone.

17.1.1 Height Exceptions, Appurtenances. The following appurtenances may exceed the prescribed height limit except when they would violate the height restrictions of an aircraft approach and turning zone provided they are normally required for a use permitted in the zone in which they are erected or constructed: flagpoles, chimneys, cooling towers, elevator bulkheads, belfries, penthouses for other than living purposes, grain elevators, stacks, silos, storage towers, observation towers, ornamental towers, monuments, cupolas, domes, spires, standpipes and other necessary mechanical appurtenances and their protective housing provided, however, that any of the above except flagpoles and chimneys when located in any zone with a height limit of forty feet (40') or less, shall be allowed only upon finding of the Board that such appurtenances will not be unduly detrimental to the surrounding property.

17.1.2 Height Exceptions, Public and Semi-Public Buildings. Public and semi-public buildings and structures such as hospitals, churches, sanitariums, schools and water reservoir towers may exceed the height limits of the zone in which they are located provided that such buildings and structures shall provide at least one (1) additional foot of yard space on each side for each additional foot that such building or structure exceeds the specified height limit of the zone in which it is located and further provided that a finding is made by the Board that such additional height will not be materially detrimental to surrounding property.

**17.2 YARD SPACE, GENERAL RULE.** Any building, structure or use hereafter erected, altered or established shall comply with the yard space requirements of the zone in which it is located, except as specified below. The required yard space for any building, structure or use and such required yard space shall fall entirely upon land in a zone or zones in which the principal use is permitted. Any required yard space shall be open from thirty inches (30") above the ground to the sky, except as specified herein.

17.2.1 Yard Space Encroachments, Eaves. Eaves, cornices and similar features may extend one (1) foot into a required yard space, except that eaves may encroach three (3) feet into a yard space when such yard space is ten (10) feet or more in width.

17.2.2 Yard Space Encroachments, Chimneys. Chimneys when not more than four (4) feet wide, may extend one (1) foot into any required yard space. Chimneys in excess of four (4) wide may extend two (2) feet into any yard space, when such yard is ten (10) feet or more in width but shall not encroach upon a yard space of lesser width.

17.2.3 Yard Space Encroachments, Porches and Terraces. Open, uncovered porches or terraces no higher than the first floor above grade on the side of the building to which they are appurtenant and in no event higher than thirty (30) inches above grade of the lot on the side of the building where such porch or terrace is located, may extend into any required side yard. No railing or other barrier higher than thirty-six inches (36") shall be placed around such porch or terrace and no such barrier

which interferes appreciably with the passage of light or air shall be within five (5) feet of any property line, except as otherwise provided in this article. Any such porch or terrace when located on a lot at the intersection of two streets or a street and an alley shall comply with the provisions designed to insure proper sight distances as set forth in this chapter for fences and hedges. Any side yard on a corner lot when such yard is twenty (20) feet or more in width may be considered as a front yard for the purposes of determining permitted encroachments.

17.2.4 Yard Space Encroachments, Rear Yard. Accessory buildings shall be permitted to occupy a required rear yard with the following restrictions:

A. Distance from Street and Height. No such accessory building shall be greater than fifteen (15) feet in height, nor be closer than twenty (20) feet from any street line.

B. Distance from Inside Lot Line. An accessory building may be constructed within two (2) feet of an inside lot line when the entire structure is within forty (40) feet of the rear property line, or on the rear half of a lot if the adjacent lot is built upon and the accessory building will be entirely to the rear of the line of any principal building on the said neighboring lot.

C. Party Walls. Adjoining property owners may construct accessory buildings with party walls in lieu of the two (2) foot side yard, but in compliance with the general location rules of 17.242 above, provided such walls conform with the requirements of the building code, if so adopted, and a finding is made by the Board that such party wall development will be appropriate to topographic conditions and in harmony with the character of development of the neighborhood.

17.2.5 Yard Space Encroachments, Canopies. Canopies and overhangs on any side of a business building may extend four (4) feet into a required yard space. Signs mounted on the face of any such canopy or overhang shall not exceed eight (8) inches in height in any zone in which flat wall signs are specified. Canopies and awnings on a residential building may extend four (4) feet into any required side yard or seven (7) feet into any required front or rear yard when they are attached to and supported entirely by or from a wall of the building.

17.2.6 Yard Space Exception, Steep Slopes. Automobile storage garages may be allowed within a required front or side yard when such garage will be entirely below the grade of the lot and after a finding by the Board that topographic conditions make such a location necessary, that such orientation will not create a hazard to automobile or pedestrian traffic in the street, and that such orientation will be in harmony with the character of development of the neighborhood.

**17.3 LOT AREA EXCEPTION, EXISTING PLATTING.** A single-family dwelling may be built on any platted lot of record containing seventy-five percent (75%) of the required lot area for the district in which the lot is located if said lot was in separate ownership and separate control at the effective date of these regulations, provided the front, side and rear yard requirements for the district in which the lot is located are met and provided dwellings are permitted in the district in which the lot of record is located. It is not the intention of this exception to allow building as a matter of right on a platted parcel which was never intended as a building site, but rather was numbered on a plat for identification purposes under a scheme in which multiple lots were intended to provide one (1) building site. If two (2) or more lots or combinations of lots and portions of lots with continuous frontage in single ownership are of record at the time of passage or amendment of these regulations, and if all or part of the lots do not meet the requirements established for lot width and area, the lands involved shall be considered to be an undivided parcel for the purposes of this article, and no portion of said parcel shall be used or sold in a manner which diminishes compliance with lot width and area requirements established by these regulations, nor shall any division of any parcel be made which creates a lot with width or area below the requirements stated in these regulations.

**17.4 FENCES AND HEDGES, CORNER VISIBILITY.** Except in zones allowing the construction of buildings to the property line, there shall be provided an unobstructed view across the triangle formed by

joining points measured twenty (20) feet distance along the property line from the intersection of two (2) streets or fifteen (15) feet along both the street and alley line from the intersection of a street and an alley. Within said triangle there shall be no sight obscuring or partly obscuring wall, fence or foliage higher than thirty (30) inches above curb grade or in the case of trees, foliage lower than five (5) feet. Vertical measurement shall be made at the top of the curb on the street or alley adjacent to the nearest side of the triangle or if no curb exists, from the edge of the nearest traveled way.

17.4.1 Fences and Hedges, Other Than Corner. On portions of a lot not covered by street or alley intersection restrictions, the height of fences or structures of any length, and foliage continuous for five (5) feet or more, shall be limited to forty-two (42) inches on any street line and the front fifty (50) feet of any side lot line. On all other portions of lot lines, fences, hedges and continuous foliage barriers may not exceed a height of eighty (80) inches.

17.4.2 Fences and Hedges, Within Building Lines. Fences, structures and hedges erected within a portion of a zoning lot on which a principal building, but not an accessory building, may be erected, may conform with height limits of buildings which may be erected on such lot, but shall be subject to any building code provisions, if so adopted, which may be applicable for buildings.

17.4.3 Fences and Hedges, Measurement Rule. Heights of fences, structures, hedges and other continuous foliage shall be measured from the adjacent top of the street curb, surface of an alley or the official established grade thereof whichever is the higher. On inside lot lines the measurement shall be from the average grade thereof, whichever is higher.

17.4.4 Fences and Hedges, Exception, Board of Adjustment. The Board may approve or may direct as a condition for granting an appeal, that fences or plantings of a height in excess of these regulations be placed as shielding between different uses, or between like uses upon agreement between the parties affected thereby, provided that no such approval shall have the effect of reducing corner visibility as provided for herein.

# ARTICLE XVIII

## OFF-STREET PARKING AND LOADING

<b>18.1 Purpose</b>	<b>18.7 Group “A” Uses: Off-Street Parking and Loading Requirements</b>
<b>18.2 New Structures and Additions</b>	<b>18.8 Group “B” Uses: Off-Street Parking and Loading Requirements</b>
<b>18.3 Reduction in Off-Street Parking and Loading</b>	<b>18.9 Group “C” Uses: Off-Street Parking and Loading Requirements</b>
<b>18.4 Surfacing</b>	
<b>18.5 Board to Determine Requirements for Uses Not Listed</b>	
<b>18.6 General Off-Street Parking and Loading Standards</b>	

**18.1 PURPOSE.** It is the intent of these regulations that all buildings, structures and uses of land shall provide off-street parking and loading space in an amount sufficient to meet the needs caused by the building or use of land and that such parking and loading spaces be so oriented that they are in fact readily usable for such purpose. Because of the pedestrian orientation of the core of the central business district it is intended that parking be provided at the periphery of the core.

**18.2 NEW STRUCTURES AND ADDITIONS.** Each use of land and each building or structure hereafter constructed or established, and each addition to a structure in excess of three hundred (300) square feet, except as herein provided, shall provide off-street parking and loading according to the standards set forth herein. When an addition is made to a building non-conforming as to parking or loading, a conforming amount of parking shall be supplied based upon the size of the addition.

**18.3 REDUCTION IN OFF-STREET PARKING AND LOADING.** No addition to an existing building shall be constructed which reduces the number of spaces, area or usability of existing parking or loading space unless such building and its addition, conform with the regulations for parking and loading contained herein. Contractual agreements may be made between uses which generate parking demand at different times in such a manner that the requirements of more than one (1) use may be met by the same space, provided the parking demand for each such use involved is in fact met.

**18.4 SURFACING.** All off-street parking and loading spaces, access and aisles shall be paved or surfaced with concrete, asphalt or other approved non-permeable surface. On areas of slopes over three percent (3%), surfacing shall be poured concrete.

**18.5 BOARD TO DETERMINE REQUIREMENTS FOR USES NOT LISTED.** Uses listed below shall provide parking and loading in the amounts specified and at locations specified for the group in which such use falls. For any use not listed, the Board shall determine the proper requirements by classifying the proposed use among the uses specified herein so as to assure equal treatment. In making any such determination, the Board shall follow the principles set forth in the statement of purpose for the parking and loading provisions.

**18.6 GENERAL OFF-STREET PARKING AND LOADING STANDARDS.** For the purpose of these regulations a parking space shall be at least one hundred eighty (180) square feet in size and shall be of easily usable and convenient shape, orientation and grade. Each such space shall be readily accessible and aisles required for access to any space shall not be counted in meeting the requirements for spaces. Loading spaces shall be at least twelve (12) feet wide and sixty (60) feet long for industrial and warehouse type uses but may be twelve (12) feet wide and thirty (30) feet long for retail, service and institutional establishments. Aisles adequate to accommodate the maneuvering into position of such vehicles shall be provided accessory to such space or spaces. Specified distances from the principal use for which a parking space is provided shall be measured from the edge of the usable parking space to a normal entrance to the building or use along

a convenient and unobstructed pedestrian route. Required parking space shall not be provided within a required front yard, or a side yard at a corner. Handicapped parking provisions shall be provided in compliance with Chapter 321 L of the Code of Iowa.

**18.7 GROUP A USES: OFF-STREET PARKING AND LOADING REQUIREMENTS.** All uses of land and buildings enumerated under Group A shall provide off-street parking and loading space on the same zoning lot as such use or building and said parking or loading space shall have convenient and unobstructed pedestrian access across said zoning lot to a principal entrance to the building or use. Following are the uses and their off-street loading requirements:

**18.7.1 Dwellings**

- A. Two (2) parking spaces for each dwelling.
- B. No loading space required.

**18.7.2 Apartment Houses:**

- A. One and one-half (1½) parking spaces for each dwelling unit in a building containing four (4) or more dwelling units.
- B. One (1) loading space for any building containing ten (10) units plus one (1) additional space for each additional twenty (20) units or major fraction thereof.

**18.7.3 Boarding, Rooming and Lodging Houses:**

- A. One (1) parking space for each bedroom.
- B. No loading space required.

**18.7.4 Doctor's Offices, Medical and Dental Clinics:**

- A. Five (5) parking spaces for each medical or dental practitioner.
- B. No loading space required.

**18.7.5 Restaurants, Beer Parlors, Taverns, bars and Night Clubs:**

- A. One (1) parking space for each two and one-half (2½) seats.
- B. One (1) loading space.

**18.7.6 Retail Stores and Shops:**

- A. One (1) parking space for each two hundred (200) square feet of gross sales space.
- B. One (1) loading space for the first five thousand (5,000) square feet plus one (1) loading space for each additional thirty thousand (30,000) square feet or major fraction thereof.

**18.7.7 Furniture and Appliance Sales, and Furniture and Appliance Repairs:**

- A. One (1) parking space for each five hundred (500) feet of gross sales space and repair space.

- B. One loading space for the first five thousand (5,000) square feet plus one (1) loading space for each additional twenty thousand (20,000) square feet or major fraction thereof.

**18.7.8 Funeral Homes and Mortuaries:**

- A. One (1) parking space for each three (3) seats in chapels or one (1) for each fifty (50) square feet of public area whichever is greater.
- B. One (1) loading space for each hearse, ambulance or non-passenger vehicle.

**18.7.9 Real Estate Sales Offices:**

- A. Two (2) parking spaces for the first two hundred (200) square feet plus one (1) parking space for each one hundred (100) square feet of office and public space.
- B. No loading space is required.

**18.7.10 Small Item Service and Repair Shops:**

- A. One (1) parking space for each two hundred (200) square feet of gross floor area.
- B. One (1) loading space for the first four hundred (400) square feet of gross floor area plus one (1) loading space for each additional five thousand (5,000) square feet or major fraction thereof.

**18.7.11 Beauty and Barber Shops:**

- A. Two (2) parking spaces for each operator.
- B. No loading space is required.

**18.7.12 Automotive or Machinery Sales and Service Garages:**

- A. One (1) parking space for each four hundred (400) square feet of floor area.
- B. One (1) loading space for each five thousand (5,000) square feet of gross floor area.

**18.7.13 Bowling Alleys:**

- A. Five (5) parking spaces for each alley.
- B. No loading space required unless beer parlor or restaurant is attached, then one (1) loading space.

**18.7.14 Roller and Ice Rinks, Including Sports and Recreation Establishments and Dance Halls:**

- A. One (1) parking space for each three (3) fixed seats or one (1) parking space for each one hundred (100) square feet of gross floor area of public space as appropriate.
- B. No loading space is required.

**18.7.15 Banks, Professional Offices and General Offices:**

- A. One (1) parking space for each three hundred (300) square feet of floor area.

- B. No loading space is required.

**18.8 GROUP B USES: OFF-STREET PARKING AND LOADING REQUIREMENTS.** All uses of land and buildings enumerated under Group B shall provide off-street parking and loading on the same zoning lot as such building or use for all customers or patrons frequenting the establishment and said parking or loading space shall have convenient and unobstructed pedestrian access across said zoning lot to a principal entrance to the building or use. That portion of the parking requirement that is attributed to employees may be provided within three hundred thirty (330) feet of the use or building. Following are the uses and their off-street parking and loading requirements:

**18.8.1 Hotel, Apartment Hotel, Motel and Club with Guest Rooms:**

- A. One (1) parking space for each unit for the first twenty (20) units, plus one (1) parking space for each two (2) units in excess of twenty (20) units on site. Plus one (1) parking space for each two (2) employees on the largest shift.
- B. One (1) loading space for the first forty thousand (40,000) square feet of floor area or fraction thereof, plus one (1)

**18.8.2 Hospitals and Rest Homes:**

- A. One (1) parking space for each four (4) beds, plus one (1) parking space for each two (2) staff physicians on site, plus one (1) parking space for each three (3) employees of all classes on the largest shift.
- B. One (1) loading space for the first forty thousand (40,000) square feet of floor area or fraction thereof, plus one (1) loading space for each additional one hundred fifty thousand (150,000) square feet of floor area or major fraction thereof.

**18.8.3 Clubs and Organization Halls:**

- A. One (1) parking space for each four (4) beds, plus one (1) parking space for each two (2) staff physicians on site, plus one (1) parking space for each three (3) employees of all classes on the largest shift.
- B. One (1) loading space for the first forty thousand (40,000) square feet of floor area or fraction thereof, plus one (1) loading space for each additional one hundred fifty thousand (150,000) square feet of floor area or major fraction thereof.

**18.8.4 Public Housing:**

- A. One (1) parking space for each four (4) dwelling units plus one (1) space for each two (2) employees.
- B. One (1) loading space for each fifty (50) dwelling units or fraction thereof.

**18.8.5 College Fraternities, College Sororities:**

- A. One (1) parking space for each two (2) bedrooms, half of requirement may be off-site.
- B. No loading space required.

**18.8.6 Single Occupancy Office Buildings of Ten Thousand (10,000) Square Feet or Over, if Less Than Ten Thousand (10,000) Square feet. See Section 23.715:**

- A. One (1) parking space for each five hundred (500) square feet of gross floor area on site, plus one (1) parking space for each six hundred (600) square feet.
- B. One (1) loading space for the first ten thousand (10,000) square feet, plus one (1) loading space for each additional forty thousand (40,000) square feet of gross floor area or major fraction thereof.

**18.8.7 Wholesale Stores with Stock of Goods, Wholesale Stores without Stock of Goods see General Offices:**

- A. One (1) parking space for each four hundred (400) square feet of gross floor area at least half of this requirement shall be on site.
- B. One (1) loading space for the first six thousand (6,000) square feet of gross floor area, plus one (1) loading space for each additional twenty thousand (20,000) square feet of gross floor area or major fraction thereof.

**18.8.8 Warehouses:**

- A. Four (4) parking spaces for the first five thousand (5,000) square feet of gross floor area, plus one (1) additional parking space for each additional five thousand (5,000) square feet or major fraction thereof. Twenty-five (25) percent of the total requirements shall be on site.
- B. Two (2) loading spaces for the first five thousand (5,000) square feet of gross floor area, plus one (1) loading space for each additional ten thousand (10,000) square feet of gross floor area or major fraction thereof.

**18.9 GROUP C USES: OFF-STREET PARKING AND LOADING REQUIREMENTS.** All uses of land and buildings enumerated under Group C shall provide off-street loading on the same zoning lot as such building or use and such loading space shall have convenient and unobstructed access to said building or use. Parking requirements for customers, patrons, and employees may be provided within six hundred sixty (660) feet of said use or building. Following are the uses and their off-street parking and loading requirements.

**18.9.1 Auditoriums, Stadiums (Except Schools), Theaters, Community Centers, and Similar Places of Public Assembly:**

- A. One (1) parking space for each five (5) seats in the main assembly area, or where no fixed seats are provided, one (1) parking space for each fifty (50) square feet of main assembly area.
- B. No loading space is required.

**18.9.2 Churches:**

- A. One (1) parking space for each four (4) seats in the main assembly area.
- B. No loading space is required.

**18.9.3 Libraries, Museums and Similar Places:**

- A. One (1) parking space for each four hundred (400) square feet of gross space to which the public has access.

- B. One (1) loading space for the first five thousand (5,000) square feet of gross floor area, plus an additional one (1) loading space for each additional ten thousand (10,000) square feet of gross floor area or major fraction thereof.

**18.9.4 Senior High Schools, Junior High Schools, and elementary Schools, including Public, Parochial, and Private:**

- A. One (1) parking space for each teacher or employee except that where living accommodations for such teachers or employees are provided on or near the site this requirement may be satisfied by the parking provided for the living quarters so provided, plus one (1) parking space for each one hundred (100) square feet of seating space in the auditorium or multi-purpose room whichever is larger.
- B. No loading space is required.

**18.9.5 Manufacturing, Freight Terminals:**

- A. Four (4) parking spaces for each ten thousand (10,000) square feet of gross floor area or major fraction thereof, plus one (1) space for each employee on the largest shift.
- B. Loading spaces sufficient to allow for completely off-street loading operation, but in no event, less than that required for a warehouse.

# ARTICLE XIX

## *NONCONFORMITIES*

<b>19.1</b>	<b>Statement of Intent</b>	<b>19.5</b>	<b>Repairs and Maintenance</b>
<b>19.2</b>	<b>Nonconforming Use of Land</b>	<b>19.6</b>	<b>Uses Under Conditional Use</b>
<b>19.3</b>	<b>Nonconforming Structures</b>		<b>Provisions Are Not</b>
<b>19.4</b>	<b>Nonconforming Uses of Structures</b>		<b>Nonconforming</b>

**19.1 STATEMENT OF INTENT.** Within the districts established by this Ordinance or amendments that may later be adopted, there exist lots, structures and uses of land and structures which were lawful before this ordinance was passed or amended, but which would be prohibited, regulated or restricted under the terms of this ordinance or future amendment.

Subject to Article III, it is the intent of this ordinance to permit these nonconformities to continue until they are removed, but not to encourage their continuation. Such uses are declared by this ordinance to be incompatible with permitted uses in the district involved. It is further the intent of this ordinance that nonconformities shall not be enlarged upon, expanded or extended, nor be used as grounds for adding other structures or uses prohibited elsewhere in the same district.

A nonconforming use of a structure, a nonconforming use of land or water, or a nonconforming use of a structure and land in combination shall not be extended or enlarged after passage of this ordinance by attachment on a building or premises of additional signs intended to be seen from off the premises, or by the addition of other uses of a nature which would be prohibited generally in the district involved.

To avoid undue hardship, nothing in this ordinance shall be deemed to require a change in the plans, construction, or designated use of any building on which actual construction was lawfully begun prior to the effective date of adoption or amendment of this ordinance and upon which actual building construction has been diligently carried on. Actual construction is hereby defined to include the placing of construction materials in permanent position and fastened in a permanent manner, except that where demolition or removal of an existing building, such demolition or removal shall be deemed to be actual construction, provided that work shall be diligently carried on until completion of the building involved.

(Code of Iowa, Sec. 414.2)

**19.2 NONCONFORMING USES OF LAND.** Where, at the effective date of adoption or amendment of this ordinance, lawful use of land exists that is made no longer permissible under the regulations imposed by this ordinance as enacted or amended, such use may be continued, so long as it remains otherwise lawful, subject to the following provisions:

19.2.1 No such nonconforming use shall be enlarged or increased nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this ordinance.

19.2.2 No such nonconforming use shall be moved in whole or in part to any other portion of the lot or parcel occupied by such use at the effective date of adoption or amendment of this ordinance.

19.2.3 If any such nonconforming use of land ceases for any reason for a period of more than thirty (30) days, any subsequent use of land shall conform to the regulations specified by this ordinance for the district in which such land is located.

**19.3 NONCONFORMING STRUCTURES.** Where a lawful structure exists at the effective date of adoption or amendment of this ordinance that could not be built under the terms of this ordinance by reason

of restrictions on area, lot coverage, height, yards, or other characteristics of the structure or its location on the lots, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

19.3.1 No such structure may be enlarged or altered in a way which increases its nonconformity.

19.3.2 Should such structure be destroyed by any means to an extent of more than sixty percent (60%) of its replacement cost at time of destruction, it shall not be reconstructed except in conformity with the provisions of this ordinance.

**19.4 NONCONFORMING USES OF STRUCTURES.** If a lawful use of a structure, or of structure and premises in combination exists at the effective date of adoption or amendment of this ordinance, that would not be allowed in the district under the terms of this ordinance, the lawful use may be continued so long as it remains otherwise lawful, subject to the following provisions:

(Code of Iowa, Sec. 414.1)

19.4.1 No existing structure devoted to a use not permitted by this ordinance in the district in which it is located shall be enlarged, extended, constructed, reconstructed, moved or structurally altered except in changing the use of the structure to a use permitted in the district in which it is located.

19.4.2 Any conforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such use at the time of adoption or amendment of this ordinance, but no such use shall be extended to occupy any land outside such building.

19.4.3 If no structural alterations are made, any nonconforming use of a structure, or structure and premises in combination may be changed to another nonconforming use provided that the Board of Adjustment, either by general rule or by making findings in the specific cases, shall find that the proposed use is equally appropriate to the district than the existing nonconforming use. In permitting such change, the Board of Adjustment may require appropriate conditions and safeguards in accordance with the provisions of this ordinance.

19.4.4 Any structure or structure and land in combination, in or on which a nonconforming use is superseded by a permitted use, shall thereafter conform to the regulations for the district in which such structure is located and the nonconforming use may not thereafter be resumed.

19.4.5 When a nonconforming use of a structure, or structure and premises in combination is discontinued or abandoned for six (6) consecutive months, the structure thereafter, shall not be used except in conformity with the regulations of the district in which it is located.

19.4.6 Where nonconforming use status applies to a structure and premises in combination, removal or destruction of the structure shall eliminate the nonconforming status of the land. Destruction for the purpose of this subsection is defined as damaged to an extent of more than sixty percent (60%) of the replacement cost at the time of destruction.

**19.5 REPAIRS AND MAINTENANCE.** On any nonconforming structure or portion of a structure containing a nonconforming use, work may be done in any period of twelve (12) consecutive months on ordinary repairs, or on repair or replacement of nonbearing walls, fixtures, wiring, or plumbing, to an extent not exceeding ten percent (10%) of the current replacement cost of the nonconforming structure or nonconforming portion of the structure as the case may be, provided that the cubic content existing when it became nonconforming shall not be increased. If a nonconforming structure or portion of a structure containing a nonconforming use becomes physically unsafe or unlawful due to lack of repairs and maintenance and is declared by any duly authorized official to be unsafe or unlawful by reason of physical condition, it shall not thereafter be restored, repaired, or rebuilt except in conformity with the regulations of the district in which it is located. Nothing in this ordinance shall be deemed to prevent the strengthening of or restoring to a safe condition of any building or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official.

**19.6 USES UNDER CONDITIONAL USE PROVISIONS NOT NONCONFORMING.** Any use permitted as a special exception in this ordinance which is lawfully existing at the date of adoption of this ordinance shall not be deemed a nonconforming use, but shall, without further action, be deemed a conforming use.

# ARTICLE XX

## *ADMINISTRATION, ENFORCEMENT, AND LEGAL STATUS PROVISION*

20.1	Administration and Enforcement	20.8	Occupancy Compliance Certificate
20.2	Application for Rezoning	20.9	Applications for Building Permits and Certificates
20.3	Appeals of the Decision of the Zoning Official	20.10	Expiration of Building Permit
20.4	Violations and Penalties	20.11	Other Legal Remedies
20.5	Separate Offenses May Be Charged	20.12	Review of Ordinance
20.6	Injunction, Mandamus	20.13	Force and Effect
20.7	Building Permit	20.14	Certificate of Occupancy, Record

### 20.1 ADMINISTRATION AND ENFORCEMENT.

**20.1.1** A **Zoning Official** designated by the City shall administer and enforce this ordinance. He/she may be provided with the assistance of such other persons as the City Council may direct. The zoning official, whose duties and responsibilities shall include, but are not limited to:

- A. Initiate amendments to the zoning ordinance and official zoning district map, including zone changes, variances and vacations;
- B. Accept and process all submitted applications for text amendments to the zoning ordinance and official zoning district map, including zone changes, variances and vacations;
- C. Prepare staff comments for review by the Planning and Zoning Commission, City Council and findings of facts for the Board of Adjustment regarding the appropriateness and nonconformance of requested amendments or variances;
- D. Coordinate with the City Clerk to maintain all records, minutes and the official zoning district map, related to the enforcement officer to ensure compliance with this ordinance;
- E. Serve as the enforcement officer to ensure compliance with this ordinance;
- F. Serve as liaison between the Planning and Zoning Commission and City Council; and
- G. Perform other duties as necessary and appropriate to uphold the provisions of the Ordinance.

**20.1.2** **The City Council** shall have the powers and duties to perform the following, in addition to those specified in the City Charter:

- A. Amend the zoning regulations of the City, in accordance with State Law;
- B. Initiate, on behalf of the City, any amendment in the zoning classification of any land within the City;
- C. Hear and decide on recommendations of the Planning and Zoning Commission, after receipt of a “final report” for applications relating to rezoning requests, text amendments and vacations; and
- D. Hear appeals related to rezoning decisions by the Planning and Zoning Commission.

**20.1.3** **The Planning and Zoning Commission** shall have the responsibility to perform the following, in addition to those specified in the City Code:

- A. Hear testimony on behalf of applicants and consider the facts, findings and recommendations of the Zoning Official;
- B. Consider the interests of the public relating to the public health, safety, morals and general welfare;

- C. Identify the appropriateness of requested zoning issues, text amendments and vacations considering conformance with the adopted zoning regulations and official zoning district map;
- D. Make recommendations to the City Council, in the form of a “final report,” related to approval or denial of an application in addition to stating the reasons for such approval or denial; and
- E. Perform other such duties and be vested with such powers, as the City Council shall from time to time prescribe.

**20.2 APPLICATION FOR REZONING**

A rezoning may be initiated by the Zoning Official, Commission, City Council or by a landowner filing an application with the Zoning Official. If the applicant is not the owner of the property under consideration, a letter from the landowner authorizing the applicant to act as agent on behalf of the landowner is required. Landowners shall submit, but are not limited to, the following:

- Name, address and telephone number of applicant(s), owner(s) and agent(s);
- A statement of the reasons why the rezoning is being requested;
- Legal description of the property proposed for rezoning, including a copy of a plat or survey;
- Filing fee, as established by the City Council; and
- Other information or documentation necessary to process the application, as required by the Zoning Official, the Commission and/or the City Council.

**20.2.1 Publication** – Notice must be published at least once not less than four (4) nor more than twenty (20) days before the date of the public hearing, in accordance with Section 362.2, Publication of notices, in the Iowa Code. Publication of notices must be in the newspaper published at least once weekly and having general circulation in the City. Where the hearing is for consideration of changes in the text of the ordinance, or a revision of the boundaries of zoning districts, the notice shall contain a statement regarding the proposed changes. If the hearing is on an application regarding specific property, the property shall be designated by legal description and a general street location.

**20.2.2 Notification** – The City will mail notices to owners of property located within 200 feet of the subject property, not less than ten (10) days prior to date set for the public hearing. Notice information to include proposed use and any condition of zoning proposed by applicant. Where all property located within 200 feet of the exterior boundaries of the subject property is under the same ownership, owners of all property abutting that of the same ownership shall be notified in the same manner as provided in this chapter. Failure of an owner of property to receive said notice shall not invalidate any proceedings held in connection with said proposed zoning change.

**20.2.3 Planning and Zoning Commission Hearing and Report** – The Commission will hold a public hearing on each proposed request for rezoning. After the public hearing, the Commission will send a report, this report shall be known as the “final report,” of meeting minutes to the City Council recommending denial or approval of the request. A tie vote on a request for a zoning change is deemed to be the Commission’s recommendation for denial. If the Commission recommends denial, an appeal may be substituted to the City Council, if the applicant files a written request for a public hearing with the Zoning Official within thirty (30) days of the date of denial.

**20.2.4 Criteria for Considering Rezoning Applications** – In considering any application for rezoning, the Commission and City Council may give consideration to the following criteria, to the extent pertinent to the application. In addition, other factors may be considered which may be relevant to the application:

- A. Conformance of the proposed zoning and use with the Malvern Comprehensive Plan and other City policies;
- B. The character of the neighborhood;

- C. The zoning and use of nearby properties, and the extent to which the proposed zoning and use would be compatible;
- D. The suitability of the property for the uses permitted by right in the proposed zoning district;
- E. The extent to which approval of the application would detrimentally affect nearby properties;
- F. The extent to which proposed use would adversely affect the capacity of safety of that portion of the street network or present parking problems in the vicinity of the property;
- G. The extent to which approval of the application would harm the value of nearby properties; and
- H. The gain to the public health, safety and welfare due to denial of the application as compared to the hardship imposed upon the landowner as a result of denial of the application.

**20.2.5 City Council Hearing and Action** – After receiving the “final report” of meeting minutes of the Commission, the City Council must hold a public hearing on the rezoning request, for which notice of the time and place of the hearing has been published in the newspaper not less than four (4) nor more than twenty (20) days before the date of the hearing, as required by state law. After the close of the public hearing, the City Council may approve or deny the request, return it to the Commission for further consideration, or take whatever other action the Council deems appropriate. The affirmative vote of at least three-fourths (3/4) of all members of the Council is required to:

- A. Overrule the Commission’s recommendation that a proposed change to a zoning boundary (or regulation in the case of text amendments) be denied; or
- B. Approve a change to a boundary (or regulation in the case of a text amendment), if the City receives a written and signed petition from at least twenty (20) percent of the property located within two hundred (200) feet of the exterior boundaries of the property for which the change or repeal is proposed. The protest, if filed, must be filed before or at the public hearing. In computing the percentage of land area, the area of streets and alleys shall be included.

**20.2.6 Reconsideration** – An application for a change in zoning classification that is denied by the City Council or which is withdrawn by an applicant after the Commission makes a report recommending denial must not be again submitted for filing with the Zoning Official within six (6) months of the original date of filing, except upon the consent of the City Council.

**20.2.7 Application Fees** – The City shall collect a fee in the amount of fifty dollars (\$50 USD) to each rezoning application submitted for consideration involving a public hearing.

**20.3 APPEALS OF THE DECISION OF THE ZONING OFFICIAL.** Appeals of any decision of the Zoning Official may be taken to the Board of Adjustment as provided in Article XX of this ordinance.

**20.4 VIOLATION AND PENALTIES.** Any person, firm or corporation who shall violate or fail to comply with the provisions of this ordinance shall be guilty of a misdemeanor and upon conviction shall be fined not more than one hundred dollars (\$100.00) or imprisoned for not more than thirty (30) days. Each day such violation continues shall constitute a separate offense.

**20.5 SEPARATE OFFENSES MAY BE CHARGED.** The owners or tenant of any building, structure, land or part thereof, and any architect, builder, contractor, agent, or other person who commits, participates in, assists in, or maintains a violation may each be charged with a separate offense and upon conviction suffer the penalties herein provided.

**20.6 INJUNCTION, MANDAMUS.** Nothing herein contained shall prevent the City from taking other lawful action as is necessary to prevent or remedy any violation.

**20.7 BUILDING PERMIT.** Subsequent to the adoption of this ordinance a building permit shall be obtained from the Zoning Official before any building or structure shall be erected, reconstructed, or structurally altered to increase the exterior dimensions, height, floor area, number of dwelling units or to accommodate a change in use of the building and/or premises or part thereof. The building permit shall state that the proposed construction complies with all provisions of this ordinance, and no subsequent modifications shall be made to plans or to actual construction that would be in violation of this ordinance.

Fees for building permits shall be as follows:

New Structure; Home or Commercial Building	\$ .40/sq. ft.
Add Basement, Addition	\$ .40/sq. ft. – min \$75
Unattached Garage, Covered Deck, Covered Patio, Porch, Carport, Utility Shed, Commercial Storage Units--500 sq.ft. and above	\$ .30/sq. ft. – min \$75
Deck, Driveway (2-D), gravel/surfaced pad	\$ .25/sq. ft. – min \$75
Add cover to deck/patio or add enclosure	\$ .25/sq. ft. – min \$75
Fences, Retaining Walls, Stand-Alone Signage	\$ .40/linear foot – min. \$50 For fence/retaining wall over 3' high
Sidewalks, Fences/Retaining Walls Under 3', Etc.	\$50.00
Minimum Building-Permit Fee	\$50.00
Time Extensions	\$50.00/month

**20.8 OCCUPANCY COMPLIANCE CERTIFICATE.** Subsequent to the effective date of this ordinance, no change in the use or occupancy of land nor any change in use or occupancy of an existing building, other than for single-family dwelling purposes shall be made, nor shall any new building be occupied for any purpose other than a single-family dwelling until an Occupancy Compliance Certificate has been issued by the Zoning Official. Every Occupancy Compliance Certificate shall state that the new occupancy complies with all provisions of this ordinance and no subsequent modifications shall be made to the occupancy, use, or method of operation that would be in violation of this ordinance.

**20.9 APPLICATION FOR PERMITS AND CERTIFICATES.** Applications for building permits and occupancy compliance certificates shall be made prior to beginning construction or assuming occupancy on fully completed application forms obtained from the Zoning Official accompanied by such plans and information necessary to determine that the proposed construction or occupancy complies with all applicable provisions of this ordinance. The Zoning Official shall within seven (7) days thereof, approve or deny said applications. If denied, the Zoning Official shall submit his reasons thereof in writing to the applicant.

**20.10 EXPIRATION OF BUILDING PERMIT.** If the work described in any building permit has not begun within six (6) months from the date of issuance thereof, said permit shall expire and shall be canceled by the Zoning Official; written notice thereof shall be given to the persons affected. However, upon request, the Zoning Official may extend this deadline for just cause shown by the applicant. If the work described in any building permit has not been substantially completed within eighteen (18) months of the date of issuance thereof, said permit shall expire and shall be canceled by the Zoning Official, a written notice thereof shall be given to the persons affected, together with notice that further work as described in the canceled permit shall not proceed unless and until a new building permit has been obtained.

**20.11 OTHER LEGAL REMEDIES.** In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted or maintained, or any building, structure or land is used in violation of this ordinance, the City Attorney, in addition to other remedies, shall institute any proper action or

proceedings in the name of Malvern, Iowa, to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use, to restrain, correct or abate such violation, to prevent the occupancy of said building, structure or land, or to prevent any illegal act, conduct, business or use in or about said premises.

**20.12 REVIEW OF ORDINANCE.** The provisions of this ordinance shall be subject to review by the Commission at least once every five (5) years. After such review, the recommendation and suggestions of the Commission shall be forwarded to the City Council for appropriate action.

**20.13 FORCE AND EFFECT.** This ordinance shall be in full force and effect from and after its final passage, approval, and publication as provided by law.

**20.14 CERTIFICATE OF OCCUPANCY, RECORD.** A public record of all certificates of occupancy shall be kept on file in the office of the City Clerk and copies shall be furnished on request to any person having a proprietary or tenancy interest in the building or ground. No fee shall be charged for an original certificate applied for coincident with the application of a building permit; for all other certificates or for copies of an original certificate there shall be a charge of one (1) dollar each.

# ARTICLE XXI

## BOARD OF ADJUSTMENT

<b>21.1</b>	<b>Board of Adjustment Created</b>	<b>21.6</b>	<b>Decisions of the Board of Adjustment</b>
<b>21.2</b>	<b>Proceedings of the Board of Adjustment</b>	<b>21.7</b>	<b>Appeals from the Board of Adjustment</b>
<b>21.3</b>	<b>Hearings; Appeals; Notice</b>	<b>21.8</b>	<b>Assistance from Other Departments</b>
<b>21.4</b>	<b>Stay of Proceedings</b>	<b>21.9</b>	<b>Termination of Variance</b>
<b>21.5</b>	<b>Powers and Duties of the Board of Adjustment</b>		

**21.1 BOARD OF ADJUSTMENT CREATED.** A Board of Adjustment is hereby established. The Board shall consist of five (5) members appointed by the Mayor, subject to approval by the Council. The five members of the first Board appointed shall serve terms of one (1), two (2), three (3), four (4) and five (5) years, respectively. Thereafter, terms shall be for five (5) years. Members of the Board of Adjustment may be removed from office by the Mayor, subject to approval by the Council for cause upon written charges and after public hearing. Vacancies shall be filled by the Mayor, subject to approval by the Council for the unexpired term of the member. One member shall be a member of the commission.

(Code of Iowa, Sec. 414.7 and 414.8)

**21.2 PROCEEDINGS OF THE BOARD OF ADJUSTMENT.** The Board of Adjustment may adopt rules necessary to the conduct of its affairs, and in keeping with the provisions of this ordinance. Meetings shall be held at the call of the chairperson and at such other times as the Board may determine. The chairperson, or in his absence the acting chairperson, may administer oaths and compel attendance of witnesses. All meetings shall be open to the public.

(Code of Iowa, Sec. 414.9)

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

(Code of Iowa, Sec. 414.9)

**21.3 HEARINGS; APPEALS; NOTICE.** Appeals to the Board of Adjustment concerning interpretation or administration of this ordinance may be taken by any person aggrieved or by any official or bureau of the governing body of the City affected by any decision of the Zoning Official. Such appeal shall be taken within thirty (30) days of such grievance by filing with the Zoning Official a notice of appeal specifying the grounds thereof. The Zoning Official shall forthwith transmit to the Board all papers constituting the record upon which the action appealed from was taken.

(Code of Iowa, Sec. 414.10 and 414.11)

The Board of Adjustment shall fix a reasonable time for the hearing of appeal, give public notice thereof as well as due notice to the parties in interest, including the owners of property within two hundred feet (200') of the property on which the appeal has been filed, and decide the same within a reasonable time. At the hearing any party may appear in person or by agent or attorney.

A fee of one hundred and twenty-five dollars (\$125) shall be paid to the Clerk at the time the notice of appeal is filed, which the Clerk shall forthwith pay over to the credit of the general revenue fund of the City.

**21.4 STAY OF PROCEEDINGS.** An appeal stays all proceedings in furtherance of the action appealed from, unless the Zoning Official from whom the appeal is taken certifies to the Board of Adjustment after the notice of appeal is filed with him, that by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life and property. In such case, proceedings shall not be stayed other 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 Zoning Official from whom the appeal is taken and on due cause shown.

(Code of Iowa, Sec. 414.11)

**21.5 POWERS AND DUTIES OF THE BOARD OF ADJUSTMENT.** The Board of Adjustment shall have the following powers and duties:

(Code of Iowa, Sec. 414.12)

**21.5.1 Administrative Review.** To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by the Zoning Official in the enforcement of this ordinance.

**21.5.2 Conditional Use Permit: Conditions Governing Applications: Procedures.** To hear and decide only such conditional uses as the Board of Adjustment is specifically authorized to pass on by the terms of this ordinance; to decide such questions as are involved in determining whether a Conditional Use Permit should be granted; and to grant conditional uses with such conditions and safeguards as are appropriate under this ordinance, and to deny conditional uses when not in harmony with the purpose and intent of this ordinance.

In granting any conditional use, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this ordinance. Violation of such conditions and safeguards when made a part of the terms under which the conditional use is granted, shall be deemed a violation of this ordinance and punishable under Article XXI of this ordinance. The Board of Adjustment shall prescribe a time limit within which the action for which the conditional use is required shall be begun or completed, or both. Failure to begin or complete, or both, such action within the time limit set shall void the conditional use.

A Conditional Use shall not be granted by the Board of Adjustment unless and until:

- A. A written application for a Conditional Use Permit, with \$250 fee payable to City of Malvern, is signed and submitted by the owner (proof by Title Certificate, Title Guarantee, or Warranty Deed) as identified by the County Assessor, through Lot and Block legal description, indicating the section of this ordinance under which the conditional use is sought and stating the grounds on which it is requested.
- B. Notice shall be given at least four (4), but not more than twenty (20) days in advance of the public hearing by publication in a newspaper of general circulation in the County.
- C. The public hearing shall be held. Any party may appear in person, or by agent or attorney.
- D. In reviewing an application for a Conditional Use Permit, the Board of Adjustment shall consider the most appropriate use of the land; the conservation and stabilization of property values; adequate open spaces for light and air; concentration of population; congestion of public streets; the promotion of the public safety, morals, health, convenience and comfort; and the general welfare of the persons residing or working in the general area.

E. The Board of Adjustment shall make a finding that it is empowered under the section of this ordinance described in the application to grant the Conditional Use Permit, and that the granting of the Conditional Use Permit will not adversely affect the public interest. In making its finding, the Board of Adjustment shall, where applicable, duly consider the following:

(1) Ingress and egress to property with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe;

(2) Off-street parking, loading and service areas where required;

(3) Economic, noise, dust, heat, glare, or odor effects of the special exception on surrounding properties;

(4) Utilities, with reference to locations, availability, adequacy and compatibility;

(5) Screens and buffers with reference to type, dimensions, character and adequacy;

(6) General compatibility with surrounding properties;

(7) Required yards and other open spaces;

(8) Signs, if any, and proposed exterior lighting, with reference to glare, traffic safety, economic effect, and compatibility and harmony with properties in the district.

(9) More explicitly, the Adjustment Board has the authority to add "Conditions" to the permit. In granting a Conditional Use Permit, certain expectations will be set. These Conditions will ensure positive impact to neighboring property values, views, peaceable living, etc. Conditions are to be investigated and discussed with the applicant prior to granting the permit.

F. A Conditional Use Permit is granted for as long as the same owner owns the property. If the property is sold or transferred/gifted to a member of the family, a new application for a conditional use permit is to go before the Board of Adjustment.

G. Uses by the original owner are not to exceed the original intent as described therein unless an addendum process is followed with \$125 fee payable to the City of Malvern. If Conditions are not sustained, the Board of Adjustment has the right to revoke the Conditional Use Permit upon action at an official Board of Adjustment meeting with notification of such meeting and action to the owners by U.S. Mail. Owners may appeal the decision through a written request of hearing to the Board of Adjustment.

**21.5.3 Variances: Conditions Governing Application, Procedures.** To authorize upon appeal in specific cases such variance from the terms of this ordinance as will not be contrary to the public interest where, owing to the special conditions, a literal enforcement of the provisions of this ordinance would result in unnecessary hardship. A variance from the terms of this ordinance shall not be granted by the Board of Adjustment unless and until:

A. A written application for a variance is submitted demonstrating:

(1) That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same district;

(2) That literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this ordinance;

(3) That the special conditions and circumstances do not result from the actions of the applicant;

(4) That granting the variance requested will not confer on the applicant any special privilege that is denied by this ordinance to other lands, structures, or buildings in the same district. No nonconforming use of neighboring lands, structures, or buildings in other districts shall be considered grounds for the issuance of a variance.

- B. Notice of public hearing shall be given as in Section 21.5.2 (B) above.
- C. The public hearing shall be held. Any party may appear in person, or by agent or by attorney.
- D. The Board of Adjustment shall make findings that the requirements of Section 21.5.2 have been met by the applicant for a variance.
- E. The Board of Adjustment shall further make a finding that the reasons set forth in the application justify the granting of the variance that will make possible the reasonable use of the land, building or structure.
- F. The Board of Adjustment shall further make a finding that the granting of the variance will be in harmony with the general purpose and intent of this ordinance, and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.

In granting any variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this ordinance. Violations of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this ordinance and punishable under Article XX of this ordinance. Under no circumstances shall the Board of Adjustment grant a variance to allow a use not permitted in the district involved, or any use expressly or by implication prohibited by the terms of this ordinance in said district.

**21.6 DECISIONS OF THE BOARD OF ADJUSTMENT.** In exercising the above-mentioned powers, the Board of Adjustment may, so long as such action is in conformity with the terms of this ordinance, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination as ought to be made, and to that end shall have powers of the Zoning Official from whom the appeal is taken. The concurring vote of three members of the Board shall be necessary to reverse any order, requirement, decision, or determination of the Zoning Official, or to decide in favor of the applicant on any matter upon which it is required to pass under this ordinance, or to affect any variation in application of this ordinance.

(Code of Iowa, Sec. 414.14)

**21.7 APPEALS FROM THE BOARD OF ADJUSTMENT.** Any person or persons, or any board, taxpayer, department, board or bureau of the City aggrieved by any decision of the Board of Adjustment may seek review by a court of record of such decision, in the manner provided by the laws of the State and particularly by Chapter 414, Code of Iowa.

**21.8 ASSISTANCE FROM OTHER DEPARTMENTS.** The Board may call on City departments for assistance in the performance of its duties, and it shall be the duty of such departments to render such assistance to the Board as may reasonably be required.

**21.9 TERMINATION OF VARIANCE.** Where property is in use under the terms of a variance and such use ceases; or in the case of a structure, such structure ceases to exist, then the variance shall terminate, unless the terms of the variance specify otherwise.

# ARTICLE XXII

## AMENDMENTS

22.1	City Council May Amend Ordinance	22.4	Public Hearing by Commission
22.2	Authorization for Amendments	22.5	Commission Recommendation
22.3	Application for Amendments	22.6	Public Hearing by City Council
		22.7	City Council Action

**22.1 CITY COUNCIL MAY AMEND ORDINANCE.** Whenever the public necessity, convenience, general welfare or good zoning practice require, the City Council may by ordinance subject to the procedure provided in this Chapter, amend, supplement or change the regulations, district boundaries or zoning classifications of property, now or hereafter established by this ordinance or amendments thereof.

**22.2 AUTHORIZATION FOR AMENDMENTS.** An amendment to the text of this ordinance or the official zoning map may be initiated by action of the City Council, Commission, or Board; or by application of an owner of property to be changed or affected by the proposed amendment or supplement; or by application signed by owners of fifty percent (50%) of all property lying within five hundred feet (500') of any part of the area proposed to be changed.

**22.3 APPLICATION FOR AMENDMENTS.** An application for an amendment shall be filed, upon the form provided, with the Zoning Official for submission to the Commission. The application shall be accompanied by a fee of (no fee required) and by such data and information as may be prescribed by the Commission to assure the fullest practicable presentation of facts for the permanent record. An application for a zoning text amendment shall contain a statement setting forth the proposed amendment or supplement to the regulations of this ordinance. An application for a zoning map amendment shall contain a legal description of the property for which the change is requested; the existing zoning classification and the proposed zoning classification; and a statement giving the names and addresses of the owners of all property lying within the area proposed to be changed who are not part of the application, and the names and addresses of the owners of all property lying within five hundred feet (500') of any part of the area proposed to be changed. If the applicant is the only owner of property within five hundred feet (500') of the property proposed to be changed, then the statement shall include the names and addresses of the next adjacent property owners. Each application shall be verified by the person or persons preparing the application, attesting to the truth and correctness of all facts and information presented with the application.

**22.4 PUBLIC HEARING BY COMMISSION.** Before taking final action on a proposed amendment to the text of this ordinance or the official zoning map, the Commission shall hold a public hearing thereon. Notice of the public hearing shall include the time and place of said public hearing and the place where the contents of the amendment may be examined, and shall be given in the following manner:

22.4.1 For an amendment to the text of this ordinance, a notice of the public hearing shall be given by one (1) publication in a newspaper of general circulation in the City not less than seven (7) days prior to the public hearing.

22.4.2 For an amendment to the official zoning map, a notice of the public hearing shall be given by one (1) publication in a newspaper of general circulation in the City not less than seven (7) days prior to the date of the public hearing.

22.4.3 For an amendment to the official zoning map, additional written notice shall be given to the property owners contained in the statement included as a required part of the application by placing said notice in the United States Mail, not less than seven (7) days prior to the date of the public hearing.

A. For mailing purposes, the names and addresses of such property owners shall be taken from the records of the County Auditor.

B. It shall be the intent of this subsection to give as full and adequate notice as practicable to the persons substantially interested in the appeal; however, failure to send notice to a person as specified in this subsection, or failure of a person to receive said notice shall not invalidate any decision of the Commission provided such failure was not intentional.

C. The requirements of this subsection shall not apply to a general revision of this ordinance.

22.4.4 The Commission may recess a hearing in order to serve further notice upon other property owners or persons that the Commission determines may be interested in the amendment or to obtain additional information. Upon recessing for this purpose, the Commission shall announce the time and date when said hearing will be resumed.

**22.5 COMMISSION RECOMMENDATION.** Following such hearing the Commission may recommend that the application be granted as requested, or it may recommend a modification of the zoning amendment requested, or it may recommend that the application be denied.

It shall be the duty of the Commission to submit to the City Council its written recommendation on all applications for amendments, supplements, or changes to the regulations, district boundaries or zoning classifications of property as established by this Ordinance.

**22.6 PUBLIC HEARING BY CITY COUNCIL.** After the receipt of the written recommendation of the proposed amendment from the Commission, the City Council shall hold a public hearing on the amendment. At least four – twenty (4 – 20) days’ notice of the time and place of such hearing shall be published in a newspaper having general circulation in the City.

**22.7 CITY COUNCIL ACTION.** Following such public hearing, the City Council shall consider such recommendation by the Commission and vote upon the passage of the proposed amendment.

Passage of the proposed amendment shall require an affirmative vote of not less than a simple majority of the entire City Council.

A. In case of protest against any changes or amendments signed by the owners of twenty percent (20%) or more either of the area included in such proposed change, or of the area immediately adjacent thereof, such changes shall not become effective except by favorable vote of at least seventy-five percent (75%) of all the members of the City Council.

B. Whenever any application for an amendment, supplement or change of the zoning or regulations herein contained or subsequently established shall have been denied by the City Council, then no new application covering the same property and additional property shall be filed with or considered by the City Council until one (1) year shall have elapsed from the date of the filing of the first application.