
MEMORANDUM

TO: Members of Council
FROM: Tanisha R. Briley, City Manager
DATE: January 5, 2018
RE: January 8, 2018

MEETINGS & REMINDERS

Monday, January 8 - 6:15 p.m. - Committee of the Whole
Wednesday, January 10 - 9:00 p.m. - Planning Commission
Thursday, January 11 - 6:00 p.m. - Meet Your Police
Monday, January 15 - City Hall and Community Center closed in recognition of Dr. Martin Luther King, Jr. Day

LEGISLATION

1. First Amendment to Water Transition Agreement
2. Amending Wage and Salary
3. Revised Chapter 158 Income Tax (House Hill 49)
4. Fall 2017 Zoning Amendments

GENERAL INFORMATION

1. Enclosed are the Council Update and Agendas.
2. Enclosed is an update from the Vice City Manager.
3. Enclosed is an update from the Public Works Director.
4. Enclosed is an update from the Planning and Development Director.
5. Enclosed is an update from the Economic Development Director.
6. Enclosed is the weekly activity report from the Fire Chief.
7. Enclosed is the weekly activity report from the Police Chief.
8. Enclosed are minutes for ABR.
9. Enclosed is the agenda for the Landmark Commission.
10. Enclosed are actions for the Planning Commission.

TRB/jkw
Enclosures



COUNCIL UPDATE

JANUARY 5, 2018

1. LEGISLATION

- **Fall 2017 Zoning Amendments.** This legislation amends various sections of Part Eleven, Zoning Code, of the Codified Ordinances of the City of Cleveland Heights.
- **First Amendment to Water Transition Agreement.** This legislation authorizes the City Manager to execute the First Amendment to the Transition Water Agreement, effective January 1, 2018, with the City of Cleveland
- **Amending Wage and Salary Ordinance.** This legislation will update the employee assistance program information in Ordinance No. 20-2017.
- **Chapter 158 Income Tax Revision.** This enacts Chapter 158, "Income Tax," of the Codified Ordinances of Cleveland Heights, effective January 1, 2018, to meet the mandates for municipal tax codes contained in Sub. H.B. 49, in which the 132th General Assembly comprehensively amended Chapter 718 of the Ohio Revised Code and reformed the imposition of municipal income taxes.

2. ZONING CODE AMENDMENTS

- Please see the enclosed memo from Assistant Law Director Rothenberg regarding the proposed zoning code amendments. Council took action on several amendments at the end of 2017; however, those discussed in the enclosed memo were held for further discussion which will take place Monday evening.

3. FIRST RING SUPERINTENDENTS & MAYORAL SUMMIT

- The First Ring Superintendents held a meeting with mayors and managers of first ring suburbs to discuss critical issues related to the State report card process and potential advocacy efforts. Ohio is one of very few states that translate student assessments and testing into rankings of schools and districts. This practice is harmful to communities, particularly racially and economically diverse communities, by negatively impacting community value. This has repercussions for economic development as perceptions of school district performance greatly influence neighborhood choice for families and businesses, and most of all sends

a negative message to education professionals, families and students about the perceived value of their educational experience.

- The group discussed strategies for advocating for more sound best practices in assessing and evaluating school and district performance at the State level and developed a plan to continue the discussion with the goal of enacting the plan in the early Spring.

4. HEIGHTS HILLCREST COMMUNICATION CENTER (HHCC)

- Cleveland Heights police dispatchers along with police dispatchers from Shaker Heights joined the fire dispatchers from EastCOM and police and fire dispatchers from South Euclid at the HHCC on December 13, 2017. The transition was a success and marked the end of separate dispatching for those communities. Richmond Heights will transition in mid-Spring and we have received inquiry from several other communities looking to become members.

5. RACIAL EQUITY INSTITUTE – GROUNDWATER PRESENTATION

- I attended a leadership forum for the Racial Equity Institute’s Groundwater Training workshop sponsored by the Greater Cleveland Partnership’s Commission on Economic Inclusion and Cleveland Neighborhood Progress. The Groundwater training was an introduction to racial equity using stories and data. The presentation introduced participants to a community-wide awareness building campaign to increase the region’s shared understanding of the tie between racial equity, and economic and community development.
- I found the workshop to be incredibly thought provoking and relevant and I am exploring ways to introduce the training to our leadership team.

6. CDC WORKING GROUP

- The CDC Working Group has held two meetings and a third is scheduled for Tuesday, January 9, 2018. We are making great progress towards the goals of defining the activities of the CDC. The group has spent our time thus far exploring existing programs and services and working toward establishing consensus around the services that the ideal CDC would provide to the community based on gaps in current offerings of programs and services. The next meeting will focus on finalizing the ideal CDC’s portfolio of services and beginning the discussion of the structure and resources needed to deliver those services.

7. METROHEALTH COMMUNITY HOSPITAL RIBBON CUTTING

- I had the pleasure of giving remarks at the MetroHealth Ribbon Cutting this week where the new community hospital was unveiled. The hospital is in addition to the emergency department and medical offices opened last year and represents a \$20+ million investment in Severance Circle.



- The hospital, constructed in the vacant second floor place of the east wing, will serve common adult conditions, and offers an state of the art environment outfitted with creature comforts to improve patient experience. The twelve private rooms are designed for maximum comfort and include comfortable spaces for up to two family members to stay in the room with the patient.
- MetroHealth is also working closely with the Orthodox Jewish community to ensure their needs are met as patients.

**CITY OF CLEVELAND HEIGHTS
LAW DEPARTMENT
MEMORANDUM**

TO: Members of Council:
Cheryl Stephens, Mayor
Jason S. Stein, Vice Mayor
Mary A. Dunbar
Melissa Yasinow
Kahlil Seren
Carol Roe
Michael N. Ungar

FROM: Elizabeth Wells Rothenberg, Assistant Law Director

cc: Tanisha R. Briley, City Manager
L. James Juliano, Jr., Law Director
Richard Wong, Planning Director
Karen Knittel, City Planner
Kara Hamley O'Donnell, City Planner

DATE: November 30, 2017

RE: Second Reading for Ordinance No. 105-2017

The revised zoning amendments contained in proposed Ordinance No. 105-2017 include *only* those changes that were supported by Council during the November 27, 2017 public hearing. All proposed amendments relating to changing the “C-1 Office District” into a “C-1 Transition District” and relating to notice requirements were eliminated. Last week’s public hearing demonstrated the need for further staff research and further discussion by Council on these important issues and will be tabled until 2018.

However, please note that a few changes to the C-1 Office District remain in the proposed ordinance. These changes are responsive to: (1) resident concerns about existing buildings being demolished to turn entire parcels into parking lots or decks; and (2) resident

desires to include artisan workshops in C-1 Districts. Staff understood Council to share those immediate concerns and desires and did not see a need to table these changes.

Also, please note that the development of a high tech corridor at Mayfield and Lee, a future use proposed in the Master Plan and supported by residents at the public hearing and by Planning Commission and Council, is currently permitted in a C-1 Office District.

Pursuant to Council's request, staff has further researched the proposed "family" definition and accompanying procedure to determine whether a group of persons is functioning as a "household." This research affirmed Planning staff's and the Law Department's initial recommendation. Before describing this additional research, the following history may be helpful to place the issue in context.

In 2011, the City commissioned Mullin & Lonergan Associates to prepare an *Analysis of Impediments to Fair Housing Choice in the City of Cleveland Heights* to satisfy requirements of the Housing and Community Development Act. That analysis concluded: "The City's zoning ordinance is in violation of the Fair Housing Act by the manner in which 'family' is defined. The definition should not distinguish between related and unrelated persons, nor impose numerical limitations on the number of persons that may constitute a family." *See id.* at 64-66. The Law Department's independent research confirmed that "family" definitions that center on biological, marital, or adoptive relationships likely violate fair housing laws, as well as federal and state constitutional rights to freedom of association, equal protection, and due process – despite such definitions of family being prevalent in surrounding communities and throughout the state.

The proposed definition of "family" is constitutional and complies with the Fair Housing Act because it focuses on the behavior of the group of persons living together, not on the biological, marital, or adoptive nature of the persons' relationship with one another. *See, e.g.,*

Baer v. Town of Brookhaven, 73 N.Y.2d 942, 540 N.Y.S.2d 234 (1989); *see also Moore v. City of East Cleveland*, 431 U.S. 494 (1977) (holding that in accordance with due process, a zoning ordinance may not differentiate between relatives of varying degrees of kinship). In other words, the Law Department has concluded there is little, if any, liability exposure for enacting the proposed family definition and household determination procedure.

Moreover, and unlike HUD’s definition of family (“one or more individuals who live together”), the proposed definition is not overly inclusive. Indeed, the proposed definition would not allow fraternities, sororities, halfway houses, or other transient populations in the City’s single-family districts. Additionally, since at least January of 2015, the Planning Staff, with legal consultation, has been using the proposed factors to determine whether a group is functioning as a “family” or single “household.” The success of this approach is the basis of our conclusion that the proposed definition would not permit transient populations to live in single-family districts.

Finally, since Monday, staff researched various definitions of “family” used by major national cities. This research did not find their handling of the “family” definition to be instructive because the cities had an illegal definition or because the definition addressed population issues irrelevant to Cleveland Heights. We did, however, find similar definitions in several smaller cities such as:

Kent, Ohio
Painesville, Ohio
Amherst, New York
Binghamton, New York
Eastchester, New York

Oneonta, New York
Poughkeepsie, New York
Knoxville, Tennessee
Burlington, Vermont

In summary, we conclude that the proposed amendments will achieve the desired zoning results without excessive risks.



CLEVELAND HEIGHTS

Committee of the Whole

January 8, 2018 Agenda

1. Report of City Council Members 6:15 p.m. – 6:25 p.m.
Goal: Mayor and City Council members will provide updates on items of interest
2. Legislation Overview 6:25 p.m. – 6:35 p.m.
Goal: Review legislation that will be considered at the next regular City Council meeting
3. Discussion of Meeting Protocols 6:35 p.m. – 6:55 p.m.
Goal: City Council will come to an agreement on basic protocols for meetings which can be incorporated in to Council Operational Guidelines in the future
4. Discussion of Council Committee Meetings 6:55 p.m. – 7:20 p.m.
Goal: Introduce the topic of improving the effectiveness of Council Committees
5. Water Transition Update 7:20 p.m. – 7:35 p.m.
Goal: Staff will provide an update regarding the transition to Cleveland Water
6. Zoning Code Amendments 7:35 p.m. – 7:55 p.m.
Goal: Discuss tabled amendments to the Zoning Code including proposed changes to the C-1 District and the family definition
7. Discussion of 2017 Council & City Manager Priorities 7:55 p.m. – 8:15 p.m.
Goal: Staff will present an update on 2017 Priorities
8. Discussion of Staff Reports 8:15 p.m. – 8:40 p.m.
Goal: Council members will ask staff questions about their reports and/or activities
9. Executive Session: To consider the terms of a lease of City-owned real property 8:40pm – 9:00pm

Draft Meeting Protocols, January 2018

Start on time:

6:15 for COW meeting

7:30 for Council meeting. Return after Council if COW agenda requires more discussion.

Be present and prepared for discussion:

Respectful review of emails and cell phone calls

Try to avoid side conversations

Try not to expect to speak a second time to any issue until all persons who wish to speak have spoken

Be prepared to ask questions regarding staff reports

Respectfully disagree

Agenda items

Thoughts to clarify process

TO : TANISHA R. BRILEY , CITY MANAGER

FROM: SUSANNA NIERMANN O'NEIL , ASSISTANT CITY MANAGER

RE: COMMUNITY OUTREACH UPDATE

DATE : JANUARY 5, 2018

CHARTER REVIEW COIMMISSION:

- **The Commission at their meeting last night decided that they would allow for public comment before each meeting and at the end of each meeting. Time limits will be in place. 5 residents spoke last night at the end of the meeting.**
- **A Questionnaire will be sent to Council members and Senior staff regarding their impressions of our form of government. It is hoped these will be returned quickly and available for discussion at the next meeting on Thursday January 18th . The Commission will also decide who they would like to interview in person.**
- **A survey to others in the community is also being considered and the facilitator will be drafting up that survey.**
- **All materials made available to the Commission will be posted online on the Charter web page. The video of each meeting is also posted and will go up as quickly as possible after each meeting.**
- **There was some discussion about the timeline for the Commission recommendations to Council but no decision was made on an end date just that they needed to do their due diligence.**

NOPEC/GAS AGGREGATION:

- **Materials regarding the gas aggregation program will be posted online on Monday. An informational meeting is being planned for the end of January.**

MARTIN LUTHER KING JR. CELEBRATION:

- **The event is on Wednesday January 17th at 7:00pm at the Community Center. The date had to be changed (usually it is before the MLK holiday) because our schools are not back in session until January 8th and we had to give the teachers more time for the essay contest.**

COMMUNICATION UPDATE:

- **A press release and notices on Facebook and Twitter went out regarding the Council swearing in ceremony on Tuesday.**
- **The mailing to artists soliciting applications for the 2018 Cain Park Arts Festival went out this week.**
- **A resident mailing regarding the sewer fee increase went out – includes a letter, FAQs and information regarding the affordability program. This information is also posted online and a summary of FAQs will also be in the Focus.**
- **Staff interviewed with Cleveland.com regarding the challenges of employees who are working in this cold weather.**



MEMORANDUM

TO: Tanisha Briley-City Manager
FROM: Alex Mannarino-Director of Public Works
DATE: January 5, 2018
RE: Weekly Update

Cedar Road Resurfacing/Cedar-Fairmount Streetscape

The project still has some hydraulic issues that require mitigation near the bottom of the multi-purpose path along Cedar-Glen Parkway. Due to the winter weather, the repairs are being put on hold until the spring.

City Hall Sidewalk Replacement

Contractor has received the final project documentation, and my office is waiting for them to submit them to close out the project.

2017 Surface Treating Program

The Contractor recently submitted a final request for payment. Final project documentation and final pay applications are being prepared.

Dominion East Ohio

Berkshire Road (Between Cottage Grove and Lee) PIR-3025

Work is complete. Final landscape and sidewalk restoration will not occur until spring of 2018.

Woodview and Elbon PIR-1527

Forestry is removing some trees in advance of the gas line replacement work scheduled to begin in the next couple of weeks.

Service Department

All operations continued as normal

MEMORANDUM

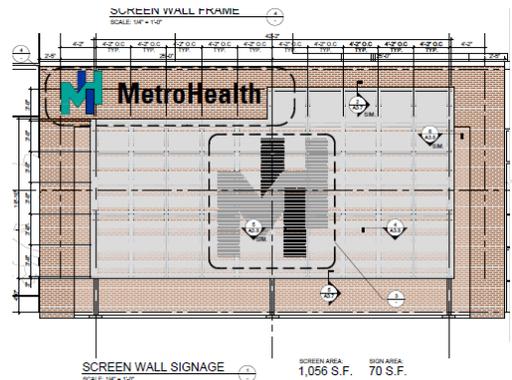
To: Tanisha Briley, City Manager
From: Richard Wong, Planning Director
Date: January 5, 2018
Subject: Weekly Update

Architectural Board of Review

Six cases were decided in an hour. The McClellans, purchasers of industrial designer and artist Viktor Schreckengost's house at 2265 Stillman, received approval to modify several doors and windows for a luxury kitchen.

Leah and Michael Tohn at 3743 Shannon received approval to add three bedrooms, a master bath and walk-in closets, upstairs laundry and super kitchen. ABR congratulated architect Bob Cancasci on the well-conceived design.

MetroHealth at 10 Severance Circle, represented by City Architecture's John Wagner, received approval of an artistic, comprehensive sign package. Both ends of the Health Center will have a metal screen wall adding interest and lightness.



Housing Council Appointments

Ohio Revised Code requires this body and the Housing Officer to annually inspect all tax abated properties, making a recommendation to City Council regarding continuation or discontinuation of abatement. They must meet before March 31. Members are as follows:

Mayor's appointments: Mary Dunbar, Cheryl Stephens
City Council appointments: Benjamin Hoen, Amanda Schaffer (moved)
Planning Commission: Leonard Horowitz (term expires April 2018)
Housing Council appointments: Betsy Andrews, Helen Hertz

With the exception of Len Horowitz, past members' terms have expired, however they remain in effect until new people are chosen. The appointments by the Mayor and City Council were for three years.

Cleveland Heights
Economic Development



To: City Manager Tanisha Briley
From: Economic Development Director Tim Boland
Subject: Activities Report – January 5, 2018

Activities and Initiatives:

1. Business Retention Expansion Attraction Creation (BREAC) Initiative:

- Evo DOMUS held a grand opening event for their new offices at 2176 Taylor Road on December 8. This city-assisted project should be a major asset to the Cedar Taylor District.
- Upcoming business openings:
 - Daylight Donuts on Mayfield Road
 - Kensington Pub on Lee Road



- Staff met with two individuals interested in opening a business in Cleveland Heights.
- Staff is also in preliminary discussions with two businesses pursuing potential loans or an SBA Small Business Grant.
- The City is transitioning to a new platform for our available properties tool. The previous service provider unexpectedly ceased operations last month leaving many real estate professionals and communities without a commercial real estate tool to utilize on their websites. Our goal is to have a new available properties tool up on the City website by the end of the month.

2. Outreach and Marketing

- As a follow up to the December 4 tour of the City, Cuyahoga County Development Director Ted Carter toured the remainder of the City on December 21 with Staff. The tour focused on the Noble corridor as well as several neighborhoods with high concentrations of city-owned vacant lots. Staff continues to follow up with the County on several initiatives.
- Approximately 75 people attended the Economic Development event at the Community Center on December 6. The PowerPoint presentation from that event is posted at: <http://files.constantcontact.com/d902fc2b301/9799f124-c179-4a61-a986-71d69b889442.pdf>.
- Other events that staff participated in included:

January 5, 2018

- First Suburbs Development Committee
- Coventry Village SID
- Cedar Fairmount SID
- Noble Neighbors
- Heights Hillcrest Chamber Board
- Heights Hillcrest Chamber Holiday Event
- Future Heights Planning Committee
- CDC Working Group – Meeting #2

Thank you,

Tim Boland

Economic Development Director



CLEVELAND HEIGHTS Economic Development

December 2017

New Business Openings Highlight End of the Year

As 2017 wraps up, Cleveland Heights has seen a number of new businesses open over the last month.

In November, the Cedar Lee District welcomed two new businesses as Boss Dog Brewing and Fresh Fix opened their doors. Boss Dog Brewing held their long anticipated grand opening after more than a year renovating a previously vacant building at 2719 Lee Road.

The City helped support that project with a loan to assist with the financing of the brewing equipment.



"We're very excited about Boss Dog and what it means for the entire Cedar Lee District," Economic Development Director Tim Boland said. "It reinforces the type of entertainment and destination district that

Cedar Lee has become and plays off of other craft beverage business on the street with the success of CLE Urban Winery and the BottleHouse Brewery."

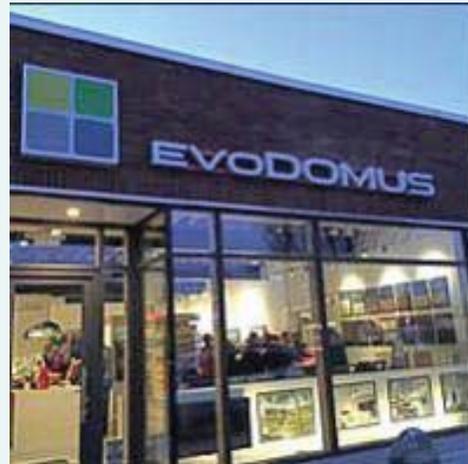
Just before Thanksgiving, Eric Rogers further expanded the Fix Brand with the opening of Fresh Fix at 2234 Lee Road. Fresh Fix focuses on healthy/vegan sandwiches, salads and smoothies to go with an 80s/90s pop culture theme. Lee Road is also home to Fix Bistro and Sweet Fix Bakery.



"Cleveland Heights and the Cedar Lee District have been a great fit for the Fix brand," Chef/owner Eric Rogers said. "It fits the type of district and neighborhood we want to be a part of and has a strong sense of community. We're looking forward to continuing to grow here on Lee Road."

On Taylor Road, the City

recently welcomed evo DOMUS, who had their grand opening of their new offices and showroom at 2176 S. Taylor Road on December 8. Evo DOMUS is a design-build firm specializing in ultra energy efficient, custom designed, contemporary homes. The City helped support their move to the City with an Economic Development Fund Loan.



For more information about doing business in Cleveland Heights, please contact Tim Boland at 216-291-4857 or tboland@clvhts.com.

City Hosts Economic Development Breakfast

More than 75 people attended the City's Business Appreciation Breakfast on December 6 at the Community Center. The attendees represented a diverse set of businesses and organizations that operate in the City. In addition to the opportunity to network, attendees were given an update from Economic Development staff on initiatives and programs going on in the City.

The keynote speaker was Dan Carmody, President of the Eastern Market in Detroit, who shared his experiences in community and economic development focusing on his efforts to create authentic places/neighborhoods that can support entrepreneurs.

>>>CITY ECONOMIC DEVELOPMENT PRESENTATION

>>>GUEST SPEAKER DAN CARMODY PRESENTATION

Cleveland Heights Business Development Toolbox

As part of the Business Appreciation Breakfast, the City unveiled a new Business Development Toolbox.

"We are very excited to have a set of programs available for us to help support businesses in Cleveland Heights," Economic Development Director Tim Boland said. "With such a high concentration of small businesses, we purposefully wanted to develop a set of programs that can help a broad spectrum of small businesses."

With the addition of the SBA Small Business Grant and the Microenterprise Loan Fund to complement existing commercial loan and storefront renovation programs, the City now has the ability to support business development from six-figure commercial loans to \$1,000 microenterprise loans.

>>>CLEVELAND HEIGHTS BUSINESS DEVELOPMENT TOOLBOX

For more information about Cleveland Heights' business development programs, please contact Brian Anderson at 216-291-2617 or banderson@clvhts.com.

City of Cleveland Heights
Economic Development
Contact Us

Tim Boland
Economic Development Director
tboland@clvhts.com
216-291-4857

Brian Anderson
Business Development Manager
banderson@clvhts.com
216-291-2617

www.clevelandheights.com

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City of Cleveland Heights, 40 Severance Circle, Cleveland Heights, OH 44118

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Sent by banderson@clvhts.com in collaboration with



Cleveland Heights Fire Department

Weekly Activity Report

Total Emergency Calls Year To Date	106
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Total Emergency Calls for Period	156
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Report Date Period: 12/29/2017 - 01/05/2018

Fire Data

	<u>Current Period</u>	<u>Year to Date</u>	<u>Last Year to Date</u>	<u>Current Year % of Run Count</u>
Emergency Fire Run Count	33	20	14	18.87 %
Emergency Structure Fire Count	1	1	1	
Emergency Non Structure Fire Count	31	19	13	
Emergency Vehicle Fire Count	1			

Emergency Medical Data

Total Emergency Run Count	123	86	68	81.13 %
Emergency Medical Run Count	121	84	67	
Automobile Accident Run Count	2	2	1	
Advanced Life Support Run Count	26	20	16	
Basic Life Support Run Count	98	67	52	
Total EMS Transports	82	58	40	
Total EMS Non Transports	40	27	28	

Mutual Aid Run Count to Date

Mutual aid received	SEFD A - 0 SHFD A - 1 ECFD A - 0 UHFD A - 0
Mutual aid given	SEFD A - 0 SHFD A - 0 ECFD A - 1 UHFD A - 0

<u>Fire Prevention Bureau</u>	<u>Current Period</u>	<u>Year to Date</u>
Total Completed Fire Inspections	3	2
Company Fire Inspections		
Fire Prevention Fire Inspections	2	1
Fire Alarm Test Inspections		
Kitchen Supression Test Inspections		
Sprinkler Test Inspections		
Other Inspections	1	1
Smoke Detectors Distributed	3	3

CITY OF CLEVELAND HEIGHTS



DEPARTMENT OF POLICE

ANNETTE M. MECKLENBURG, CHIEF

40 SEVERANCE CIRCLE, CLEVELAND HEIGHTS, OHIO 44118 – Telephone 216-291-4974

MEMORANDUM

To: Tanisha R. Briley, City Manager

From: Annette Mecklenburg, Chief of Police

Date: January 5, 2018

Subject: Weekly Update

On December 9, 2017, CHPD Officers participated in Shop with a Cop for the 7th straight year, along with several other area Police Departments. Five children participated this year and each child received \$150.00 dollars to spend at Target. All participants were also treated to a Pizza luncheon.



On December 19, 2017, CHPD once again also participated in Police Navidad. Members of the Community Response Team provided nine families in Cleveland Heights with a Holiday meal, which included a turkey and all the trimmings.



CITY OF
CLEVELAND
HEIGHTS 

DEPARTMENT OF POLICE

ANNETTE M. MECKLENBURG, CHIEF

40 SEVERANCE CIRCLE, CLEVELAND HEIGHTS, OHIO 44118 – Telephone 216-291-4974

On the evening of January 4th, Officers responded to a report of an Aggravated Robbery. The victim, who resides on Wilton, reported that she had just pulled into her driveway and parked her vehicle when she was approached by four males who brandished a firearm. The males demanded her car keys and purse. After the victim gave the males her property they entered her vehicle and fled the scene. Officers immediately began checking the vehicle and it was located on Case Court in Cleveland. Parked next to the vehicle was a van occupied by several males. The males, six juveniles and one adult, were taken into custody and returned to the station. Two handguns were found inside the van. The six juveniles were charged through Juvenile Court for their involvement in the crime and taken to the Juvenile Detection Home. The adult male was returned to the CHPD Jail as the investigation continues.

**CITY OF CLEVELAND HEIGHTS
ARCHITECTURAL BOARD OF REVIEW
MINUTES OF THE MEETING
DECEMBER 5, 2017**

MEMBERS PRESENT:

Melissa Fliegel, Chair
Erik Lund
Michael Wellman

STAFF PRESENT:

Richard Wong, Planning Director

CALL TO ORDER

Mr. Wong called the meeting to order at 7:00 PM at which time all members were present.

APPROVAL OF THE NOVEMBER 21, 2017 MINUTES

Members had no comments or questions so the minutes of November 21, 2017 were approved as submitted and were signed by Ms. Fliegel.

**PUBLIC HEARING
DECEMBER 5, 2017**

ABR 2017-233: Carol E. Lewis (tenant) and Winston and Narie Perera (owners), 14660 Superior Road, requests to build 4'-high wood fence from hedge to corner of home.

- Owner Narie Perera and tenant Carol Lewis said the fence would be the same style and color as the existing fence near the garage. Two posts from a previous fence will support hanging plants in their present locations. A third has become a mailbox post.

ACTION: Mr. Wellman moved to approve the fence as shown on the photos and plans, received November 21, 2017. Seconded by Mr. Lund, the motion was unanimously approved.

ABR 2017-234: Leroy Piper and Hermine Hinds, 881 Helmsdale Road, request to build a 2-car, detached garage.

- New Creation Builders' Diane Bija, 5309 Barkwill Avenue, 44127, said that the siding will be ivory. The trim and doors would be white. The roof will match the home's brown roof color.

ACTION: Ms. Fliegel moved to approve the garage as shown on the plans by New Creation Builders, received November 21, 2017. Seconded by Mr. Wellman, the motion was unanimously approved.

ABR 2017-235: Yuqin Li, 1651 Rydalmount Road, requests to build a detached, 2-car garage.

- The Great Garage Company's Tom D'Amico, 8550 Wallings Road, 44133, showed slides of the context. He brought sample boards for the siding and shingles. Double-5" colonial ivory vinyl siding was proposed with white doors. Brown shingles will match the home's roof.

- Ms. Fliegel thanked Mr. D'Amico for being so thorough.

ACTION: Mr. Lund moved to approve the garage as shown on the plans by the Great Garage Company, received November 21, 2017. Seconded by Mr. Wellman, the motion was unanimously approved.

ABR 2017-236: Allwork Inc., 2502 Princeton Road, requests to build a detached, 2-car garage.

- Greater Cleveland Masonry's Joe Thompson, 9111 Union Avenue, 44105, showed members the drawings, explaining that vinyl siding and roof shingles would match the house's colors. On each side of the overhead door, a brick veneer would be of brick that matched the home's brick.
- Members had positive comments about brick on the garage.

ACTION: Mr. Wellman moved to approve the garage as shown on the plans by Whitley/Whitley Architects and Planners, LLC, received December 4, 2017. Seconded by Ms. Fliegel, the motion was unanimously approved.

ABR 2017-237: Glenna Reynolds, 3887 Mayfield Road, requests to build a detached, 2-car garage.

- Glenna Reynolds and Dave Searcy described the proposed garage. Mr. Searcy said he took over this project after a floor had already been poured too close to a property line. That was corrected. The vinyl siding will be brown and cream to match the house.

ACTION: Ms. Fliegel moved to approve the garage as shown on the plans by Dave Searcy, received November 21, 2017. Seconded by Mr. Wellman, the motion was unanimously approved.

ABR 2017-238: Adrian Delgado, 2903 Washington Boulevard, requests to build a detached, 2-car garage.

- Mr. Driveway's Pete Malone, 5541 West Heisley Road 44060, said the garage would be white vinyl siding with a roof of a color that matched the home's. The roof would be a 6-in-12 pitch with 12" soffits on the left, right and front.

ACTION: Ms. Fliegel moved to approve the garage as shown on the plans by Mr. Driveway, received November 27, 2017. Seconded by Mr. Wellman, the motion was unanimously approved.

Old Business

ABR 2016-030 (approved by ABR on 3-15-2016): Request of GFO Properties, 1355-1366 Slate Court, to construct two clusters of six dwellings each, as part of the Bluestone development, per Chapter 1313.

- Mr. Wong said that the applicant furnished construction documents that had minor variations from the design approved by ABR on March 15, 2016. On the new elevations he had attached the old elevations for comparison.

ACTION: Ms. Fliegel moved to approve the design revisions for Bluestone Buildings 6 and 7 as shown on the plans by City Architecture, received November 30, 2017. Seconded by Mr. Wellman, the motion was unanimously approved.

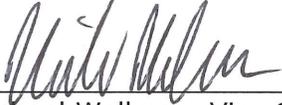
New Business

- Mr. Wong requested guidance regarding a home that had half of its windows previously replaced. New windows were double-hung without mullions, but the old windows that remained had mullions in the top sash.
- Ms. Fliegel said the windows that have yet to be replaced should match the other replacement windows for a consistent look.
- Mr. Wellman noted that the front second floor window trim on the right was slightly wider than the trim of the symmetrical windows on the left. He requested that the proposed replacement windows and trim match the width of the adjacent windows and trim.

Adjournment

The meeting was adjourned at 7:40 PM.

Respectfully Submitted,



Michael Wellman, Vice Chair

12/21/17
date



Richard Wong, Secretary

12-21-2017
date



CLEVELAND HEIGHTS

MEMORANDUM

TO: Landmark Commission Members, Staff and Interested Parties
FROM: Kara Hamley O'Donnell, Historic Preservation Planner
DATE: December 8, 2017
RE: Notification for January meeting

A regular meeting of the Cleveland Heights Landmark Commission is scheduled for:

Wednesday, January 3, 2018

5:30 p.m.

**Executive Conference Room, Cleveland Heights City Hall
40 Severance Circle, Cleveland Heights**

A G E N D A

1. Call to order
2. Election of Chair
3. Minutes of the November 9, 2017 Regular Meeting
4. Staff report
5. New Business
6. Old Business
 - *Master Plan/CLG/Landmark Ordinance*
 - *Lanphear-Callander Sears House, 3402 Ormond Road*
 - *Potential Landmarks*
 - *Amos N. Barron House, 2233 Devonshire Road*
 - *Werk House, 2956 Washington Boulevard*
 - *952 Woodview Road*
 - *Harry Payer House, 2420 Derbyshire Road*
 - *Gill-Herget House, 2178 Harcourt Drive*
 - *Landmark properties update*
 - *Preservation activities & lectures*
 - *CH-UH Archives group/Cleveland Memory/Cleveland Historical*
 - *National Register of Historic Places, district updates*
 - *Development updates*
 - *Landmark Commission research/write-up on Landmarks/historic districts*
7. New Business
8. Adjournment



Project No. 17-24: Spartan Hauling LLC/Ron Ambrosia, requests lot resubdivision to join 3186 & 3198 Euclid Heights Boulevard (PPN 684-24-303 & 684-24-064), MF-2 Multi-Family District, per Code chapters 1111, 1115, 1123.

Approved, 6-0, with the condition that, prior to submitting the plat to the County Recorder, it must be signed by the Director of Law and Director of Planning & Development.

Project No. 17-27: M. Ann Harlan & Ronald Neill, 2688 Colchester Rd., request lot resubdivision to join PPN 686-15-032 and 686-15-040, 'A' single-family district, per Code chapters 1111, 1115, & 1121.

Approved, 6-0, with the condition that, prior to submitting the plat to the County Recorder, it must be signed by the Director of Law and Director of Planning & Development.

Project No. 17-26: Shalika Williams/Tracy McArthur, 2490 Lee Blvd., 'C1' Office District, requests a conditional use permit for a medical training school per Code chapters 1111, 1115, 1131, 1151, 1153 & 1161.

Approved, 6-0, with the following additional conditions:

- 1. This use shall not be injurious to the use and enjoyment of other properties in the immediate vicinity or create a nuisance for adjacent properties; and*
- 2. The applicants shall work with staff to resolve any complaints from neighbors.*

Project No. 17-25: Voltage Training and Fitness Center, 1635 Lee Rd., 'C3' General Commercial District, requests a conditional use permit for a health club on an upper level (former location of Naturally Gifted Fitness) with required 25 parking spaces located within 300' of building at The Civic, 3130 Mayfield Rd., per Code chapters 1111, 1115, 1131, 1151, 1153 & 1161.

Approved, 6-0, with the following additional conditions:

- 1. That the use, including sound, will not be injurious to the use and enjoyment of other property in the immediate vicinity or create a nuisance for nearby businesses and residents;*
- 2. Soundproofing shall be maintained on exercise room's south side windows;*
- 3. The applicant shall work with staff to resolve any complaints from neighbors;*
- 4. Building occupancy shall not exceed allowable occupancy of 100. Maximum allowable occupancy shall be posted and observed at all times;*
- 5. An occupancy permit and business occupancy permit shall be obtained prior to occupying the upper level;*
- 6. Applicant shall maintain parking agreement for at least 24 parking spaces within 300' of the building in a form approved by the Director of Law;*
- 7. Applicant shall include information on allowable parking in every membership contract and will post parking rules;*
- 8. Applicant shall provide staff parking monitor at the front door for all group fitness classes for 20 minutes prior and 15 minutes after class start time;*
- 9. Daily, applicant shall circulate neighborhood and pick up trash;*

- 10. Hours of operation shall be between the hours of 6 a.m. and 8 p.m., however, group exercise classes in the large exercise space shall be limited to the hours of 8 a.m. and 8 p.m.;*
- 11. Upon occupancy of this upper level, applicant shall discontinue all use of the lower level fitness areas without approval of expansion by the Planning Commission;*
- 12. Proposed signage change shall require the approval of the Architectural Board of Review;
and*
- 13. All required construction and installation of the use shall be completed within 18 months of Planning Commission approval.*

Proposed: 10/2/2017

ORDINANCE NO. 105-2017 (PD),
Third Reading

By Council Member Dunbar

An Ordinance amending various sections of Part Eleven, Zoning Code, of the Codified Ordinances of the City of Cleveland Heights.

WHEREAS, on October 2, 2017, Council introduced this Ordinance to amend certain sections of Part Eleven, Zoning Code, of the Codified Ordinances of the City of Cleveland Heights; and

WHEREAS, at the conclusion of its November 8, 2017, meeting, the Planning Commission recommended that all of the proposed zoning amendments be granted by Council with modifications; and

WHEREAS, Council held a public hearing concerning Planning Commission's recommendation on November 27, 2017, at 6:30 p.m.; and

WHEREAS, Council has determined to adopt portions of Planning Commission's recommendation as set forth herein.

BE IT ORDAINED by the Council of the City of Cleveland Heights, Ohio, that:

SECTION 1. The following sections of Part Eleven, *Zoning Code*, of the Codified Ordinances of the City of Cleveland Heights as set forth in Exhibit A, a copy of which is attached hereto and is incorporated herein by reference, with the language of the new provisions underlined and the provisions to be deleted struck out or otherwise noted:

Chapter 1103 Definitions.

Section 1103.03 DEFINITIONS OF GENERAL TERMS
Section 1103.04 DETERMINATION OF HOUSEHOLD STATUS. (enacting)

Chapter 1109 Board of Zoning Appeals.

Section 1109.06 POWERS AND DUTIES OF THE BOARD.

Chapter 1111 Planning Commission

Section 1111.06 POWERS AND DUTIES OF THE COMMISSION

Chapter 1115 Procedures.

Section 115.01 PURPOSE
Schedule 1115.01 (deleted)
Section 1115.02 BUILDING PERMIT REQUIRED.
Section 1115.06 APPEAL PROCEDURE AND HEARING.
Section 1115.07 VARIANCES; PROCEDURES, AND REVIEW CRITERIA.
Section 1115.08 CONDITIONAL USES SUBMISSION REQUIREMENTS AND PROCEDURES.

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Section 1115.09 REVIEW OF DEVELOPMENT PLANS FOR CONDITIONAL USES.

Section 1115.11 REVIEW OF DEVELOPMENT PLANS FOR S-1 MIXED USE DISTRICT.

Chapter 1119 Amendments.

Section 1119.01 AMENDMENT BY COUNCIL.

Section 1119.02 CONTENTS OF APPLICATION OR PETITION FOR ZONING MAP AMENDMENT.

Chapter 1121 AA and A Single-Family and B Two-Family Residential Districts.

Section 1121.04 CONDITIONALLY PERMITTED USES.

Section 1121.09 DWELLING UNIT REQUIREMENTS.

Section 1121.12 ACCESSORY USE REGULATIONS.

Schedule 1121.12(a) MINIMUM YARD REQUIREMENTS FOR ACCESSORY USES

Schedule 1121.12(d) MAXIMUM AREA AND REAR YARD COVERAGE

Chapter 1123 MF-1, MF-2 and MF-3 Multiple-Family Residential Districts.

Section 1123.04 CONDITIONALLY PERMITTED USES.

Chapter 1131 Commercial Districts.

Schedule 1131.02 PERMITTED & CONDITIONALLY PERMITTED USES IN COMMERCIAL DISTRICTS

Section 1131.075 COMMERCIAL AND MIXED USE DISTRICT DESIGN STANDARDS.

Section 1131.08 ACCESSORY USE REGULATIONS.

Chapter 1133 Park District.

Section 1133.04 MINIMUM YARD REQUIREMENTS

Chapter 1141 Planned Development Objectives.

Section 1141.02 (deleted)

Chapter 1143 S-1 Mixed Use District.

Section 1143.02 PERMITTED USES.

Section 1143.07 PARKING AREAS.

Section 1143.09 LIGHTING.

Section 1143.10 PROCEDURES.

Chapter 1153 Supplemental Standards for Conditional Uses.

Schedule 1153.03 AREA, WIDTH AND YARD REGULATIONS FOR CERTAIN CONDITIONAL USES

Section 1153.05 SUPPLEMENTAL REGULATIONS FOR SPECIFIC USES.

Chapter 1155 Planned Residential Development.

Section 1155.02 APPROVAL CRITERIA.

Section 1155.03 PERMITTED USES.

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Section 1155.05 DEVELOPMENT STANDARDS.

Chapter 1161 Off-Street Parking and Loading Regulations.

Schedule 1161.03 REQUIRED OFF-STREET PARKING SPACES
Section 1161.10 NON-RESIDENTIAL JOINT USE DRIVEWAYS AND CROSS-ACCESS EASEMENTS
Section 1161.103 (deleted)
Section 1161.11 IMPROVEMENT AND MAINTENANCE STANDARDS.

Chapter 1163 Sign Regulations.

Section 1163.07 PROJECTING SIGNS.

Chapter 1166 Landscape Requirements.

Section 1166.04 GENERAL LANDSCAPE DESIGN STANDARDS.
Schedule 1166.04(k) (deleted)
Section 1166.05 LANDSCAPE YARDS.
Schedule 1166.05(b)(1) FRONT & CORNER SIDE YARD LANDSCAPING PLANT UNIT EXAMPLES
Section 1166.06 PARKING LOT LANDSCAPING.
Section 1166.07 BUFFER YARDS.
Section 1166.10 SCREENING REQUIREMENTS.

Chapter 1171 Intent and General Regulations.

Section 1171.02 EXISTING USE DEEMED CONDITIONAL USE; PERMIT REQUIRED FOR CHANGE.

Chapter 1175 Nonconforming Lots and Structures

Section 1175.02 NONCONFORMING LOTS OF RECORD,

SECTION 2. This proposed amending ordinance shall be transmitted to the Planning Commission pursuant to Section 1119.03 of the Codified Ordinances.

SECTION 3. Notice of the passage of this Ordinance shall be given by publishing the title and abstract of its contents, prepared by the Director of Law, once in one newspaper of general circulation in the City of Cleveland Heights.

SECTION 4. This Ordinance shall take effect and be in force at the earliest time possible permitted by law.

ORDINANCE NO. 105-2017 (PD)

XXXXXX, Mayor
President of the Council

LAURIE SABIN
Clerk of Council

PASSED:

ORDINANCE NO. 105-2017 (PD)

Exhibit A

CHAPTER 1103
Definitions

1103.03 DEFINITIONS OF GENERAL TERMS.

Words used in this Zoning Code are used in their ordinary English usage. However, for the purpose of this Zoning Code, certain words used herein are defined and whenever used in this Code shall have the meaning indicated in this section, whether or not capitalized or otherwise highlighted, except where the context clearly indicates a different meaning.

- (a) The following are general terms of reference:
- (1) "Board" means the Board of Zoning Appeals of Cleveland Heights, Ohio. (See Chapter 1109.)
 - (2) "City" means the City of Cleveland Heights, Ohio.
 - (3) "City Manager" means the chief administrative officer of the City.
 - (4) "Commission" means the City Planning Commission of Cleveland Heights, Ohio. (See Chapter 1111.)
 - (5) "Commissioner of Building" means the individual designated by the City Manager as being in charge of the Division of Building in the Department of Public Service, and is synonymous with "Building Commissioner".
 - (6) "Council" means the City Council of Cleveland Heights, Ohio.
 - (7) "Date of passage" means the date upon which this Zoning Code was passed by Council.
 - (8) "District" means a part of the City wherein regulations of this Zoning Code are uniform as classified by the provisions of Chapter 1105.
 - (9) "Municipal" means anything of or pertaining to the City.
 - (10) "Public notice" means advance notice of a hearing or proceeding as prescribed in this Zoning Code which states the subject matter to be heard and the time and place of the hearing or proceeding, printed once in a newspaper of general circulation in the Municipality.
 - (11) "Zoning Administrator" means the Planning and Development Director or the Director's designee. (See Chapter 1107.)
- (b) Certain general terms are hereby defined as follows:
- (1) "Abutting" means having a common border with, or being separated from such a common border by a right of way, alley or easement.
 - (2) "Accessory building" means a subordinate building which is incidental to or customarily in connection with the principal building or use and which is detached from the principal building but located on the same lot with such principal building or use.
 - (3) "Accessory use or structure" means a use, object or structure constructed or installed on, above or below grade which is incidental to or customarily in connection with, or subordinate to, the principal building or use and is located on the same lot with such principal building or use.
 - (4) "Alley" means a public or private way permanently reserved as a secondary means of access to abutting property.
 - (5) "Animal clinic" or "veterinary office" means a place where animals or pets are given medical or surgical treatment and the boarding of animals is limited to short-term care incidental to the clinic use, unless longer-term animal day care or overnight boarding of animals has been approved under the terms of Section 1153.05(bb).
 - (6) "Animal day-care facility" means a facility that cares for pet animals during the day at the request of the pets' owners. An animal day-care facility shall not include overnight boarding unless explicitly approved by the Planning Commission in the conditional use permit.
 - (7) "Automobile service station, major repair" means a building or portion of a building in which structural repair, rebuilding or reconditioning of motor vehicles, or parts thereof, is conducted, including collision service; spray painting; body, fender, clutch, transmission, differential, axle, spring, and frame repairs; major overhauling of engines requiring the removal of the engine cylinder, head or crankcase pan; repairs to radiators requiring the

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removal thereof; complete recapping or retreading of tires; or similar activities.

- (8) "Automobile service station, minor repair" (See also gasoline station) means a building or part of a building, structure or space used for the retail sale of lubricants and motor vehicle accessories, the routine maintenance and service and the making of repairs to motor vehicles, except that repairs described as major repairs in subsection (b)(6) hereof shall not be permitted.
- (9) "Bar, tavern or night club" means any premises wherein alcoholic beverages are sold at retail for consumption on the premises and minors are excluded therefrom by law for all or part of the time the establishment is open for business, and in which dancing may be permitted.
- (10) "Basement" means a portion of a building partly or entirely underground whose ceiling or underpart of the floor above is four (4) feet or less above the average finished ground elevation. The "average finished ground elevation" is the mean elevation of the finished grade around all of the exterior of the building.
- (11) "Blockface" means the properties that face the same side of a single street which are located between intersecting streets. A corner lot shall be part of the blockface parallel to the lot's front lot line.
- (12) "Boarding house". See lodging house.
- (13) "Building" means any structure having a roof supported by or suspended from columns or walls and which is completely enclosed to serve as a shelter or enclosure for persons, animals, chattels or property of any kind. The term "building" does not include any vehicle, trailer (with or without wheels) nor any removable device, such as furniture, machinery or equipment.
- (14) "Building height" means the vertical distance from the grade to the highest point of the roof surface if it is a flat roof; to the deck line for a mansard roof; and to the mean height level between eaves and ridge line for gambrel, gable or hip roofs.
- (15) "Building line" means an imaginary linear extension of the building wall parallel to the street right-of-way line defining the limits of the front yard, or in the case of a corner lot, the side yard abutting the street.
- (16) "Building, principal" means a building occupied by the main use or activity on the lot on which such building is located.
- (17) "Car wash" means a building or area that provides facilities for washing and cleaning motor vehicles, which may use production line methods with a conveyor, blower, or other mechanical devices and/or which may employ hand labor.
- (18) "Cellar". See basement.
- (19) "Cemetery" means land used or intended to be used for the burial of the human dead and dedicated for cemetery purposes, including columbariums and mausoleums, when operated in conjunction with and within the boundaries of such cemetery.
- (20) "Child day-care" means administering to the needs of infants, toddlers, pre-school children, and school children outside of school hours by persons other than their parents or guardians, custodians, or relatives by blood, marriage or adoption for any part of the twenty-four (24) hour day in a place or residence other than a child's own home.
- ~~(21) "Child day-care center" means any place other than a child day-care home in which child day-care is provided.~~
- (2221) "Child day-care home" means a permanent residence of the provider in which child day-care is provided for one (1) to six (6) children at one (1) time and in which no more than three (3) children may be under two (2) years of age at one (1) time. In counting children for the purposes of this definition, any children under six (6) years of age who are related to the

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provider and who are on the premises of the child day-care home shall be counted.

- (2322) "Clinic" means a building where human patients are admitted for examination and treatment by a group of physicians or dentists practicing medicine together, but who are not lodged overnight.
- (2423) "Cluster development" means a development design technique that groups buildings on the site, with no increase in overall density, to allow a better arrangement of open space.
- (24a24) "Community garden" means any piece of land (publicly or privately held) that is cultivated by a group of people rather than a single family or individual.
- (25) "Conditional use" means a use permitted in a district other than a principally permitted use which is allowed only under certain conditions, requiring a conditional use permit as regulated in Title Seven and approval of the City Planning Commission or Zoning Administrator in accordance with the standards and procedures of Sections 1115.08 and 1115.09.
- (26) "Conditional use permit" means a permit issued by the Zoning Administrator upon approval by the City Planning Commission, when required, to allow a use other than a principally permitted use to be established within the district on a specific parcel.
- (27) "Corner lot". See "lot types".
- (28) ~~"Child day~~Day-care center" means any place other than a child day-care home in which child day care is provided, an establishment in which the operator is provided with compensation in return for providing individuals with care for less than twenty-four hours (24) hours at a time. This term includes, but is not limited to, a day nursery, nursery school, pre-school, child or adult day care center and may include incidental facilities for the preparation and consumption of meals, rest and recreation. This term does not include a child day-care home.
- (2829) "Density" means the number of dwelling units permitted per acre of land.
- (2930) "Dormitory" means a building used as group living quarters for a student body, religious order, or other group as an associated use to a college, university, boarding school, orphanage, convent, monastery, or other similar use. Dormitories do not include kitchen facilities, except a group kitchen facility to serve all residents.
- (3031) "Drive-through facility" means any portion of a building or structure from which business is transacted, or is capable of being transacted, directly with customers located in a motor vehicle during such business transactions. The term "drive-through" also includes "drive-up" and "drive-in".
- (3132) "Dry-cleaning and laundry counter outlets" means a business that provides home-type washing, drying, and/or ironing machines for use by customers on the premises, or serves as a drop-off for dry-cleaning or laundry, but where no dry-cleaning processing is done on the premises.
- (3233) "Dwelling" means any building or portion thereof which is designed and used exclusively by one (1) or more human occupants for the purpose of residing for an extended time. A dwelling may be comprised of more than one (1) dwelling unit.
- (3334) "Dwelling, multiple family" means a building or portion thereof designed for occupancy by three (3) or more families living independently of each other in three (3) or more dwelling units where the units are separated by party walls with varying arrangements of entrances.
- (3435) "Dwelling, single-family" means a building designed or arranged for use by a single family consisting of one dwelling unit only in one of the following forms:
- A. "Dwelling, single-family detached" means a building designed or arranged for use by a single family consisting of one dwelling unit only, separated from other dwelling units by open space; or

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B. "Dwelling, single-family, attached" means a single-family dwelling that is joined by party walls to another single-family dwelling on a separate parcel.

(3536) "Dwelling, town house" means a building that has single-family dwelling units erected as a single building, each dwelling unit being separated from the adjoining unit or units by a party wall without openings extending from the basement floor to the roof and each such building being separated from any other building by space on all sides.

The words "townhouse", "terrace" and "row house" shall be considered synonymous.

(3637) "Dwelling, two-family" means a dwelling consisting of two (2) dwelling units arranged, intended or designed to be occupied by two (2) families only. The dwelling units may be either attached side by side or one (1) above the other.

(3738) "Dwelling unit" means a group of rooms arranged, maintained or designed to be occupied by a single family and consisting of a complete bathroom with toilet, lavatory and tub or shower facilities; one (1) and one (1) only complete kitchen or kitchenette with approved cooking, refrigeration and sink facilities; approved living and sleeping facilities. All of these facilities shall be in contiguous rooms and used exclusively by such family. The words "dwelling unit", "apartment" and "suite" shall be considered synonymous.

(3839) "Enclosed space" means an area that is surrounded on all sides. See also building.

(3940) "Family" means a group of individuals who function as a single, cohesive household. The Zoning Administrator shall determine whether a specified group of persons constitutes a household by virtue of being the functional equivalent of a family in the manner set forth in Section 1103.04. ~~one (1) individual or a number of individuals related by blood, adoption or marriage to the head of the household or to the spouse of the head of the household, and/or other relationships as provided hereinafter living as a single housekeeping unit in a single dwelling unit, but limited to the following:~~

~~A. Husband or wife of the head of the household.~~

~~B. Children and grandchildren of the head of the household or of the spouse of the head of the household.~~

~~C. Father, mother, grandfather and grandmother of the head of the household, or of the spouse of the head of the household.~~

~~D. A family may include those persons described in subsection D.1. or 2. hereof, or a combination of subsections D.1. and 2. hereof, so long as such combination does not exceed two (2) additional persons:~~

~~1. Not more than two (2) additional persons not related within the scope of subsections A. through C. hereof, whether or not otherwise related to the head of the household or to the spouse of the head of the household. Such additional persons shall be at least eighteen (18) years of age, provided that such additional persons may be less than eighteen (18) years of age if such persons are foster children, as defined by subsection (b)(43) hereof, placed with the head of the household, or with the spouse of the head of the household.~~

~~2. Not more than two (2) additional persons under eighteen (18) years of age, related by blood or adoption to the head of the household, or to the spouse of the head of the household, or to the child or parent of the head of the household, for whom such family member has been appointed legal guardian, or not more than one (1) additional person under eighteen (18) years of age who is the child or ward of an additional person, as defined in subsection D.1. hereof. In order for a person under~~

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~~eighteen (18) years of age to be considered the ward of another, such other person must have been appointed legal guardian by a court of competent jurisdiction.~~

~~E. A family may consist of one (1) individual.~~

~~F. One (1) person shall be designated as head of the household who shall be that person who customarily furnishes the greatest percentage of the financial support to the maintenance of the family.~~

~~G. Notwithstanding the provisions of this definition, no family unit shall exceed in total number those persons permitted under the applicable provisions of the Housing Code describing required habitable floor and bedroom areas for each occupant.~~

(39a41) "Farmers' Market" means a market consisting of individual vendors, mostly farmers/producers who sell directly to customers.

(4042) "Fence" means any structure composed of wood, iron, steel, masonry, stone or other material and erected in such a manner and in such location as to enclose, secure, partially enclose or secure, provide privacy, decorate, define or enhance all or any part of any premises. Trellises or other structures supporting, or for the purpose of supporting, vines, flowers and other vegetation, when erected in such a position as to enclose all or any part of the premises or otherwise satisfy the intent of this definition shall be considered a fence.

(4143) "Floor area, gross" means the total number of square feet of all floor space contained within the outside surface of the exterior walls of a building or from the center line of a common wall separating two (2) buildings but not including space in cellars or basements, space in machinery penthouses or floor space used for accessory off-street parking. However, if the cellar or basement is used for business or commercial purposes, it shall be counted as floor area in computing off-street parking requirements.

(4244) "Floor area of a dwelling unit" means the sum of the gross horizontal areas of a building devoted to residential use measured from the exterior faces of exterior walls or from the center line of common walls separating two (2) dwelling units. "Floor area of a dwelling unit" shall not include unfinished basement, attached garage, attic, terraces, breezeways, open porches and covered steps.

(4345) "Floor area ratio" means the ratio between the number of square feet of floor area and the number of square feet of land in the lot.

(4446) "Foster child" means a person under eighteen (18) years of age who is placed in a dwelling unit by an institution or agency, licensed or approved by an appropriate State-regulating agency to place foster children.

(4547) "Funeral home" means a building or part thereof used for human funeral services. Such building may contain space and facilities for:

A. Embalming and the performance of other services used in preparation of the dead for burial;

B. The performance of autopsies and other surgical procedures;

C. The storage of caskets, funeral urns, and other related funeral supplies; and

D. The storage of funeral vehicles, but shall not include facilities for cremation.

Where a funeral home is permitted, a funeral chapel shall also be permitted.

(4648) "Game rooms" means any premises open to the public other than a residence upon or within which there is located more than ~~three-seven (37)~~ billiard tables, bowling lanes or pinball machines, videogames or other similar player-oriented amusement devices, as defined by the Codified Ordinances, or any combination of billiard tables, bowling lanes and amusement devices in excess of ~~three-seven (37)~~. For the purposes of this definition, residence shall include any single-family, two-family and

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multi-family structure, and a dormitory for college students with a student union operated in conjunction with such dormitory facility, so long as such residence is open to residents and their invited guests only, and is not open to the general public.

- (4749) "Garage, parking" means a principal or accessory building or an enclosed space within the principal building in which motor vehicles owned by the general public are parked, including facilities operated as a business enterprise with a service charge or fee paid to the owner or operator of such facility, with no facilities for mechanical service or repair of a commercial or public nature.
- (48)50 "Garage, private" means a detached accessory building or portion of the principal building designed to store motor vehicles and other normal household accessories of the residents of the principal building, with no facilities for mechanical service or repair of a commercial or public nature.
- (4951) "Gasoline station" (See also automobile service station) means an establishment where liquids used as motor fuels are stored and dispersed into the fuel tanks of motor vehicles by an attendant or by persons other than the station attendant and may include facilities available for the sale of other retail products.
- (5052) "Grade" means the average level of the finished surface of ground adjacent to the exterior walls of the building, except when any wall of a building approximately parallels and is not more than five (5) feet from a street right-of-way line, then the elevation of the street center line at the center of the building wall adjoining the street shall be the grade.
- (5153) "Greenbelt" means an open area which may be cultivated or maintained in a natural state surrounding development or used as a buffer between land uses or to mark the edge of a developed area.
- (5254) "Green roof" means a roof of a building that is partially or completely covered with vegetation and a growing medium with the capacity to absorb rainwater and reduce a building's heat island effect.
- (5355) "Greenway" means a linear park, alternative transportation route, or open space conservation area that provides a passive recreational opportunity, pedestrian and/or bicycle paths and/or conservation of open spaces or natural areas.
- (5456) "Home occupation" means an occupation for gain which is subordinate and incidental to the use of the premises as a dwelling, carried on by a person in the home in which he or she resides.
- (5557) "Hotel" means a building in which lodging is provided and offered to the public for compensation on a daily rate and which is open to occupancy for periods of less than one (1) week, in contrast to a lodging house as defined in this section. Motels are not included in this definition.
- (5658) "Indoor recreation" means an indoor facility for any number of uses such as game courts, exercise equipment, exercise and/or dance floor area, pools, locker rooms, spa, whirlpool or hot tub, and which may include an accessory retail shop for the sale of related equipment.
- (5759) "Industrial design" means an establishment where the form, usability, physical ergonomics, marketing, brand development and sales of various products are researched and developed. An industrial design establishment may only create prototypes of products, but may not manufacture products for sale and distribution. Outside storage or display is prohibited. All business, servicing, processing and storage uses must be located within the building.
- (5860) "Junk motor vehicle" means any motor vehicle, licensed or unlicensed, without regard to its age or value, that is parked in any unenclosed area of any portion of a yard or lot, with or without the consent of the owner of the property, for a period of seventy-two hours (72) hours or longer, when such motor vehicle is apparently inoperable, or is in such condition that it

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could not be legally operated on the public streets, or is in an extensively damaged, dilapidated or disassembled condition.

- (5961) "Junk yard" means any building, open area, or part thereof, used as a place of storage of waste and refuse or of old material which is capable of being used again in some form.
- (6062) "Landscaped area" means an area that is permanently devoted to and maintained for the growing of trees, shrubs, grass or other plant material.
- (6463) "Live/Work Dwelling" means a space used by a single household as a dwelling unit and as a work space, where the work space occupies at least 50% of the unit's total floor area. The living space of the live/work dwelling shall contain a kitchen area and sanitary facilities. The work space in a live/work dwelling is designed or equipped exclusively or principally for the conduct of work activities and is to be regularly used for such activities by one or more occupants of the unit.
- (6264) "Loading space, off-street" means an area located totally outside of any public right-of-way for the temporary parking of vehicles entering the premises for picking up and making delivery,
- (6365) "Lodging house" means a building occupied for, or arranged, intended or designed to be occupied for rooming, or rooming and boarding for compensation by not less than four (4) persons by prearrangement for definite periods of not less than one (1) week in contrast to a hotel which is open for occupancy for shorter periods. The term "lodging house" includes "boarding house" and "rooming house".
- (6466) "Lot" means a parcel of land of sufficient size to meet minimum zoning requirements for use, coverage, and area, and to provide such yards and other open spaces as are herein required. The term "zoning lot" is used synonymously with "lot" in this Zoning Code. Such lot shall have frontage on an improved public street but not include any portion thereof, or on an approved private street, and may consist of:
 - A. A single lot of record;
 - B. A portion of a lot of record.
 - C. A combination of complete lots of record, of complete lots of record and portions of lots of record, or of portions of lots of record.
- (6567) "Lot area" means the area contained within the lot lines exclusive of any portion of the right of way of any public street.
- (6668) "Lot coverage" means the ratio of total ground floor area of all buildings on a lot to the area of the lot expressed as a percentage.
- (6769) "Lot line" means the boundary line defining the limits of the lot. "Lot line" is synonymous with "property line".
 - A. "Front lot line" means the line separating the lot from the street right of way on which the lot fronts. On a corner lot, the front lot line shall be the shorter lot line abutting a street except that if the lot is square (depth to width dimensions is a ratio of from 3:2 to 3:3) then the front lot line may be either lot line abutting a street.
 - B. "Rear lot line" means the lot line opposite and most distant from the front lot line; or in the case of triangular or otherwise irregularly shaped lots, a line ten (10) feet in length entirely within the lot, parallel to and at a maximum distance from the front lot line.
 - C. "Side lot line" means any lot line other than a front or rear lot line.
- (6870) "Lot of record" means a lot or parcel of land the deed of which has been recorded in the office of the Recorder of Deeds of Cuyahoga County prior to the effective date of this Zoning Code.
- (6971) "Lot types": Terminology used in this Zoning Ordinance with reference to corner lots, interior lots and through lots is as follows:
 - A. "Corner lot" means a lot abutting on two (2) streets at their intersection where the angle of such intersection is not more than

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- 135 degrees.
- B. "Interior lot" means a lot with only one (1) frontage on a street.
- C. "Through lot" means a lot other than a corner lot with frontage on more than one (1) street. Through lots abutting two (2) streets may be referred to as double frontage lots.
- (7072) "Lot width" means the distance between the side lot lines measured along a straight line parallel to the front lot line at the required front setback line.
- ~~(71) "Motel". (See hotel.)~~
- (7273) "Mural" means a graphic illustration or presentation other than a sign that is painted or otherwise applied to an outside wall, facade or surface of a building or structure.
- (7374) "Neighborhood high school" means an educational facility designed to serve residents of the community with educational services for high school aged youth.
- (7475) "Nonconformity" means a lot, use of land, building, use of buildings, or use of buildings and land in combination lawfully existing at the time of enactment of this Zoning Code or its amendments which do not conform to the regulations of the district or zone in which it is situated, and is therefore incompatible.
- A. "Nonconforming use" means any building or land lawfully occupied by a use on the effective date of this Zoning Code or any amendment thereto which, on such effective date, does not conform with the use regulations of the district in which it is situated.
- B. "Nonconforming site condition" means any lot, building or structure lawfully existing on the effective date of this Zoning Code or any amendment thereto, which, on such effective date, does not conform to the lot area, width or yard regulations, parking requirements, sign regulations, landscaping or screening requirements or other development standards of the district in which it is situated.
- (7576) "Nursing home" means an extended or intermediate care facility which provides skilled nursing and dietary care for persons who are ill or incapacitated or which provides service for the rehabilitation of the persons who are convalescing from illness or incapacitation, ~~excluding homes or similar institutions or facilities for persons suffering from acute or chronic alcoholism, or other drug dependency, or persons who are mentally incapacitated from causes other than simple senility or who regularly require restraint.~~
- (7677) "Ornamental Pool" means any water pool having less than 100 square feet of water surface containing less than two (2) feet of water at its deepest point, located out-of-doors on private property.
- (7778) "Outdoor Play Equipment" or "Recreational Equipment" means play apparatus such as swing sets and slides, sandboxes, poles for nets, trampolines and similar equipment.
- (7879) "Outdoor storage" means the keeping, in an unroofed area, of any goods, material, merchandise, vehicles, or junk in the same place for more than twenty-four (24) hours.
- (7980) "Overlay district" means a district described on the zoning map within which, through superimposition of a special designation, further regulations and requirements apply in addition to those of the underlying districts to which such designation is added.
- (8081) "Overnight boarding of animals" describes an activity that may be conditionally permitted in conjunction with an animal clinic, veterinary office, animal grooming facility, or animal day-care facility in which overnight care is provided for pet animals at the request of the pets' owners.

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- (8182) "Parcel" means a tract of land that is recorded by the Cuyahoga County Auditor as a distinct entity for taxing purposes and which is identified by a single permanent parcel number.
- (8283) "Parking deck" means a one (1) story unenclosed structure in which and on which motor vehicles may be parked.
- (8384) "Parking lot" (See also garage, parking) means an area not within a building where motor vehicles may be stored for the purposes of temporary, daily or overnight off-street parking.
- (8485) "Parking space, off-street" means an open or enclosed area adequate for parking an automobile with room for opening doors on both sides, with access to a public street. Arrangement of the parking space shall be such as to allow ingress and egress of an automobile without the necessity of moving any other automobile, and shall be located totally outside of any public right of way.
- (8586) "Personal services" mean any enterprise conducted for gain which primarily offers services to the general public such as shoe repair, watch repair, barber shops, beauty parlors, and similar activities.
- (8687) "Places of worship" mean a building in a residential district originally designed for and only for, and used primarily for public worship. The word "place of worship" includes the words "church", "chapel", "synagogue", ~~and~~ "temple", ~~and~~ "mosque", and their uses and activities which are customarily related. Church, chapel, synagogue, temple, mosque or other place dedicated to worship located in a commercial district shall be treated as a "meeting room" for the purposes of enforcing this Zoning Code.
- (86a88) "Planned Development" or "PD" shall mean an area of land in which a variety of residential, commercial and/or office uses are accommodated as a conditional use in a pre-planned environment under more flexible standards, such as lot sizes and setbacks, than those restrictions that would normally apply under the standard district regulations. The procedure for approval of such development contains requirements in addition to those of permitted uses.
- (8789) "Portable on-demand storage structure" means any container, storage unit, shed-like container or other portable storage structure with a volume equal to or exceeding fifty cubic feet other than an accessory building or shed complying with Code requirements that can be or is used for the storage of personal property of any kind and which is located for such purpose outside a building.
- (8890) "Premises" means a lot together with all buildings and structures thereon.
- (8991) "Public land" means any land owned by the City or by any other governmental entity.
- (9092) "Public use" means any use of a building or land by the City or by any other governmental entity for any public purpose.
- (9193) "Recycling collection station" means an accessory use that serves as a neighborhood drop-off point for the collection and temporary storage of small recoverable resources such as glassware, plastic jugs and metal cans, but which does not involve any processing.
- (9294) "Regional high school" means an educational facility marketed and designed to serve a larger area than the community with educational services for high school aged youth.
- (9395) "Research and development, limited" means an establishment where research and development is conducted in industries that include, but are not limited to, green technology, biotechnology, pharmaceuticals, medical instrumentation or supplies, communication and information technology, electronics and instrumentation, and computer hardware and software. Limited research and development does not involve the manufacture, fabrication, processing or sale of products, except as incidental to the research and development business. Outside storage or display is

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prohibited. All business, servicing, processing and storage uses must be located within the building.

(9496) "Research and testing laboratory" means a building or group of buildings for scientific research, investigation, testing or experimentation, but not facilities for the manufacture or sale of products, except as incidental to the main purpose of the laboratory.

~~(95) "Residential home for handicapped persons" means any building or portion thereof which is designed and used exclusively for sole, bona fide and permanent residential purposes by more than three (3) handicapped persons, including resident staff, who are not related by blood, adoption or marriage and live together as a single housekeeping unit in a single dwelling unit. As used herein, the term "handicapped" shall mean having:~~

~~A. A physical or mental impairment that substantially limits one (1) or more of such person's major life activities so that such person is incapable of living independently;~~

~~B. A record of having such an impairment; or~~

~~C. Being regarded as having such an impairment.~~

~~However, "handicapped" shall not include current illegal use of or addiction to a controlled substance, nor shall it include any person whose residency in the home would constitute a direct threat to the health and safety of other individuals. The term "residential home for handicapped persons" does not include "halfway house", "quarterway house", "three quarterway house" or other housing facilities serving as an alternative to incarceration, "nursing home", "rest home", "boarding house", "rooming house", "lodging house", "residential treatment home/center", "special care home" or any other such similar building or use of a building.~~

~~(9697) "Restaurant, counter service" means a retail service establishment whose principal business is the sale of foods, frozen desserts, or beverages in ready to consume individual servings, for consumption either within the restaurant building or for carry-out, and where customers are not served their food, frozen desserts, or beverages by a restaurant employee at the same table or counter where the items are consumed.~~

~~(97) "Restaurant, table service" means a retail service establishment wherein the entire business activity, or substantially all of the business activity, consists of the sale of foods to patrons seated at tables for consumption within the building.~~

(98) "Right-of-way" means a strip of land taken, dedicated or otherwise recorded as an irrevocable right of passage for use as a public way. In addition to the roadway, it normally incorporates the curbs, lawn strips, sidewalks, water and sewer lines, lighting, and drainage facilities, and may include special features (required by the topography or treatment) such as grade separation, landscaped areas, viaducts and bridges. "Right-of-way line" also means "street line".

(99) "Row house". (See dwelling, town house.)

(100) "Satellite dish receiving antenna" also referred to as a satellite earth station, means a round parabolic antenna designed to receive television broadcasts relayed by microwave signals from communications satellites orbiting the earth.

(101) "School facilities" mean publicly or privately owned facilities providing full-time day instruction and training at the elementary, junior high and high school levels in accordance with the requirements of Ohio R.C. Chapter 3313; or publicly or privately owned facilities providing kindergarten or nursery school training and care whose annual sessions do not exceed the school sessions for full-time day schools and which are operated by a board of education or an established religious organization.

(102) "Senior citizen apartments" mean a building or group of buildings containing independent living units of which no less than eighty percent

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(80%) are occupied by persons sixty-two (62) years or older or by disabled persons.

(103) "Setback" means the required minimum horizontal distance between a lot line and a structure as established by this Zoning Code.

(104) "Setback line" (See also "~~required~~ yard, ~~required~~") means a line established by this Zoning Code generally parallel with and measured from the lot line, defining the limits of the required yard in which no building, or structure may be located above ground, except as may be provided in this Zoning Code. The term "setback line" also includes "required setback line".

~~(105) "Shopping center" means a group of commercial establishments offering a wide range of retail and service uses planned, constructed, and managed as a total entity with customer and employee parking provided on site.~~

(105) "Sign" means any identification, description, illustration or device which is affixed to or integrated into a building, structure or land, or otherwise situated on a lot and which is intended to direct or attract attention to, or announce or promote a product, place, activity, person, institution or business by means of letters, words, designs, colors, symbols, flags, banners, fixtures, images or illuminations. Signs shall be further classified by physical design or structure, and function or purpose based on the following:

A. Physical Characteristics.

1. "Advertising device" means any banner affixed on a pole, wire or rope, or streamer, wind operated device, flashing lights or other similar device.
2. "Awning" means a sign located on the face of the awning material.
3. "Freestanding" means a sign which is supported from the ground or a structure, other than a building.
4. "Marquee" means a sign affixed to a marquee which marquee is over an entrance to a building and supported from that building. For the purposes of these regulations, a marquee shall be permitted only for an auditorium used for dance, plays, concerts, movies and other similar productions.
5. "Portable" means a sign which is designed to be moved and is not permanently, or intended to be permanently, attached to a building, structure or the ground.
6. "Projecting" means a sign erected on the outside wall of a building and which projects out at an angle therefrom.
7. "Temporary" means a sign which is designed to be used for a period not to exceed forty-five (45) days, and which is either a window sign that is not painted on or otherwise permanently affixed to a window or glass portion of a door, or a yard sign.
8. "Wall sign" means a sign erected parallel to or affixed on the outside wall of any building, and not extending more than twelve (12) inches therefrom, and which does not project above the roof line or beyond the corner of the building.
9. "Window" mean a sign on the inside of a building affixed to, or near, a window for the purposes of being visible to and read from the outside of the building.

B. Functional.

1. "Building marker" means a sign indicating the name of a building and date and incidental information about its construction or historical significance, which sign is cut into a masonry surface or made of bronze or other

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permanent material, and mounted at the time the building was constructed or affixed subsequent to a structure being designated as an historical landmark.

2. "Commercial identification" means a sign primarily intended to identify the use, activity, service or business on the premises.
3. "Construction" means a sign identifying a building project only during the time of construction, including new construction, additions and renovations.
4. "Directional" means a sign located near the street directing or guiding traffic and parking on private property with no part of any such sign more than four (4) feet above grade.
5. "Institutional identification" means a sign identifying the name and/or address of a place of worship, school, public library, public safety facility, public park or playground, public recreation facility, cemetery, or public parking lot or garage, and which may include a bulletin board, and which contains only messages pertaining to activities on the site.
6. "Instructional" means a sign intended to instruct employees, customers or users as to specific parking requirements; the location or regulations pertaining to specific activities on the site or in the building; specific services offered, or methods of payment accepted.
7. "Name plate" means a sign indicating only the name and address of the person, business, profession or activity occupying the lot, or building(s).
8. "Public purpose/safety" means a sign erected by a public authority, utility, public service organization or private industry upon the public right-of-way or on private property which is required by law or otherwise intended to control traffic, direct, identify or inform the public, or provide needed public service as determined by the rules and regulations of governmental agencies or through public policy.
9. "Residential identification" means a sign identifying the name and address of a completed residential subdivision, or the name, address and phone number of a multiple-family development. A residential identification sign for a multiple-family development may also include a removable insert advising of a unit for rent in the building, subject to the provisions of Sections 1163.06(f)(2) and 1163.06(f)(6) herein.

| (~~107~~106) "Story" means that part of a building other than a basement or a half-story between any floor and the floor above, or, in its absence, the ceiling or roof above.

| (~~108~~107) "Street" means a public way which affords the principal means of access to abutting property.

| (~~109~~108) "Street center line" means a line halfway between the street right-of-way lines.

| (~~110~~109) "Structure" means anything constructed or erected, the use of which requires a fixed location on the ground or is attached to something having a fixed location on the ground, and including, but not limited to signs, fences, backstops for ~~tennis courts~~sports fields or courts, pergolas, decks, pools, patios, paved areas, sidewalks and gazebos.

| (~~111~~110) "Structural alteration" means any change that would prolong the life of the supporting members of a building or structure, such as the bearing walls, columns, beams or girders.

| (~~112~~111) "Swimming Pool" means any water pool having more than 100

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square feet of water surface, which is capable of containing in excess of two (2) feet of water at its deepest point, located out-of-doors on private property. All other pools are “ornamental pools.”

- (~~113~~112) “Sustainable” means in a manner which supports healthy, productive environments and minimizes waste and consumption of non-renewable materials.
- (~~114~~113) “Sustainable Development” means development which: increases the efficiencies with which buildings and their sites use energy, water and materials; and reduces building impacts on human health and environment through better siting, design, construction, operation, and maintenance.
- (~~115~~114) “Townhouse”. (See dwelling, townhouse.)
- (~~116~~115) “Veterinary office”. See “animal clinic.”
- (~~117~~116) “Wetlands” means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions , including swamps, marshes, bogs, and similar areas. (See 40 CFR 232.2(r)). Wetlands shall be delineated by a site survey approved by the City of Cleveland Heights using delineation protocols accepted by the U.S. Army Corps of Engineers and the Ohio EPA at the time of application of this regulation. If a conflict exists between the delineation protocols of these two agencies, the delineation protocol that results in the most inclusive area of wetlands shall apply.
- (~~118~~117) “White roof” means a roof that is white or light in color that reflects light and heat and measurably reduces a building’s heat island effect.
- (~~119~~118) “Yard” means an open space on the same lot with a principal building that lies between the principal building and the nearest lot line, unoccupied and unobstructed by any portion of the structure from the ground upward, except for accessory uses, structures or buildings as expressly permitted in this Zoning Code.
- (~~120~~119) “Yard, corner side” means on a corner lot, the yard between the principal building and the side lot line adjacent to the street and extending from the front yard to the rear lot line.
- (~~121~~120) “Yard, front” means a yard across the full width of the lot extending from the front of the principal building to the front lot line. On a residential corner lot in a residential district, the front yard shall face the shorter street dimension of the lot except that if the lot is square or almost square; i.e., has depth to width dimensions in a ratio of from 3:2 to 3:3, then the front yard may face either street. On a corner lot of a nonresidential use or in a nonresidential district, the front yard shall face the major street.
- (~~122~~121) “Yard line”. (See building line.)
- (~~123~~122) “Yard, rear” means a yard extending the full width of the lot between the principal building and the rear lot line. On a corner lot, the rear yard shall be the area between the rear lot line and the principal building, extending from the side lot line abutting an interior lot to the side yard abutting a street.
- (~~124~~123) “Yard, required” (See also setback line) means the open space between a lot line and a setback line that is the minimum area required to comply with the regulations of the district in which the lot is located, and within which no structure shall be located except as expressly permitted in this Zoning Code.
- (~~125~~124) “Yard, side” means a yard between the principal building and the side lot line and extending from the front yard to the rear yard on an interior lot.
- (~~126~~125) “Yard, width or depth” means the horizontal distance from a lot line to the principal building measured perpendicular to the building.

(~~127~~126) "Zoning lot". (See lot.)

1103.04 DETERMINATION OF HOUSEHOLD STATUS.

For the purposes of enforcement of this Zoning Code, as well as any other references within the Cleveland Heights Codified Ordinances, the following standards shall be used by the Zoning Administrator in order to make a determination of whether a specified group of persons constitutes a household by virtue of being the functional equivalent of a family. A group of three (3) or fewer unrelated persons shall be deemed the functional equivalent of a family regardless of the presence or absence of any factors described herein.

- (a) Responsibilities. It shall be the responsibility of the property owner to provide information / evidence as may be required by the Zoning Administrator as defined herein to document that a household meets the functional equivalency test as a family. The Zoning Administrator through the powers and duties set forth in Section 1107.02 shall have the final determination in deciding whether the functional equivalency test is met.
- (b) Factors. The determination of whether a group of four (4) or more unrelated persons living together are the functional equivalent of a family shall be based on the following factors. The presence or absence of any single factor is not necessarily determinative of whether the unit constitutes a family.
 - (1) The same group of persons, or a majority of them, has resided together at a different location for a period of no fewer than six (6) months, or resided together at the present location for at least twelve (12) months shall be considered evidence in support of the proposition that the group is a household.
 - (2) One (1) or two (2) members of the group have executed the lease for the entire premises, including the entire rental obligation, and there are no sub-lease, hold harmless or other arrangements to pro-rate the rent or recover the rent from other members of the group shall be considered evidence in support of the proposition that the group is a household.
 - (3) Individual members of the group have entered into separate leases for the same premises or parts thereof, with the obligation under each lease constituting only a portion of the total periodic rent payment due to the landlord for occupancy of the premises shall be considered evidence negating the proposition that the group is a household.
 - (4) The premises are furnished with key-operated locks on individual rooms or with other means through which one member of the group may prevent other members of the group from entering his/her room or portion of the premises when he/she is not physically present shall be considered evidence negating the proposition that the group is a household. Existence of a skeleton key, deadbolt, chain, or other locking device operated only from the inside of the room shall not be considered as evidence of the status of the group.
 - (5) Voter registration by a majority of the eligible members of the group listing the address of the group's dwelling shall be considered evidence in support of the proposition that the group is a household. Voter registration listing other addresses by a majority of the adult members of the group, or by a majority of those actually registered to vote shall be considered evidence negating the proposition that the group is a household.
 - (6) Drivers licenses held by a majority of the adult members of the group listing the address of the group's dwelling shall be considered evidence in support of the proposition that the group is a household. Driver's licenses listing other addresses by a majority of the adult members of the group, or by a majority of those actually holding such licenses shall be considered evidence negating the proposition that the group is a household.
 - (7) The registration of motor vehicles regularly found at the dwelling listing the address of the group's dwelling shall be considered evidence in support of the proposition that the group is a household. The regular presence at the dwelling of

- one or more motor vehicles belonging to members of the group and registered at one or more other addresses shall be considered evidence negating the proposition that the group is a household.
- (8) The filing of tax returns by a majority of the members of the group listing the address of the group's dwelling shall be considered evidence in support of the proposition that the group is a household. The filing of tax returns listing other addresses by members of the group shall be considered evidence negating the proposition that the group is a household. Evidence that one or more individuals are claimed as dependents on the income tax return of individuals not resident in the household shall be considered evidence that the group is not a household.
- (9) The presence of minor dependent children regularly residing in the dwelling unit and enrolled in local schools with one or more members of the group acting in the role of parents (and primary care-givers) shall be considered evidence in support of the proposition that the group is a household.
- (10) Evidence that different residents of the dwelling unit are away during the summer and that they have several as opposed to a single summer address shall be considered evidence negating the proposition that the group is a household.
- (11) Evidence of common acquisition and ownership of furniture and appliances shall be considered evidence in support of the proposition that the group is a household.
- (12) Full-time employment of some members of the group in the general community shall be considered evidence in support of the proposition that the group is a household.
- (13) Evidence that groceries are purchased and meals regularly prepared for the group as a whole shall be considered evidence in support of the proposition that the group is a household. For purposes of this factor, weekly joint purchases of groceries and the preparation and sharing of at least seven meals per week shall be considered "regularly prepared."
- (c) Evidence. In making the determination of whether the group constitutes a household, the decision shall be made based on the preponderance of the evidence made available to the Zoning Administrator by the property owner or designee. The property owner or designee shall carry the burden of proof.

CHAPTER 1109 Board of Zoning Appeals

1109.06 POWERS AND DUTIES OF THE BOARD.

For the purpose of this Zoning Code, the Board of Zoning Appeals is given the following powers and duties:

- (a) To hear and decide appeals where it is alleged there is an error in any order, requirement, decision, interpretation or determination made by the Zoning Administrator in the administration or enforcement of this Zoning Code.
- (b) To authorize such variances from the terms of this Zoning Code as will not be contrary to the public interest where, owing to the special conditions, a literal enforcement of this Code will result in practical difficulty or, in the case of a use variance, unnecessary hardship, and so that the spirit of this Code shall be observed and substantial justice done. Specifically, variances shall be reviewed according to the criteria set forth in Section 1115.07(e) and may be granted as guided by the following:
- (1) Vary the yard or height regulations for a permitted principal or accessory building or structure where there is an exceptional or unusual physical condition of a lot when the condition is not generally prevalent in the neighborhood and which, when related to the yard regulations of this Zoning Code, would prevent a reasonable arrangement of buildings on the lot.
- (2) Vary the sign regulations where topography or existing buildings interfere with usual visibility under such conditions, including time limits, as the

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Board may deem necessary in order to prevent the granting of a special privilege.

- (3) Vary the lot area or lot width requirements where there is an exceptional or unusual physical condition of a lot, when the condition is not generally prevalent in the neighborhood.
- (4) Vary the garage door requirements in multiple-family uses only, in exceptional or unusual circumstances, taking into consideration the following physical factors:
 - A. The topography, including the grade of lane where the building and accessory garage are situated and the entryway to the garage or garages;
 - B. The maneuvering space available to enter the parking stall;
 - C. The number of garages involved;
 - D. Design and usage of the garage structure; and
 - E. All other applicable factors included within Section 1109.06(b) hereof.
- (5) Vary the applicable off-street parking requirement established in Section 1161.03, or as reduced for shared facilities pursuant to Section 1161.04, or as modified by the Planning Commission as a conditional use pursuant to Section 1161.05, when there are exceptional or unusual circumstances that result in practical difficulty in complying with the requirements.
- ~~(6) Vary the restrictions contained in the definition of "family" to allow persons in addition to those permitted by the family definition provided the Board determines that such will:
 - A. Not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish and impair property values within the neighborhood, taking into consideration the size of the household, availability of public parks and school grounds in the immediate area, size of the family occupying the premises, and all other relevant considerations; and
 - B. Will not constitute an undue burden on the appropriate school district, taking into consideration school enrollment at schools involved, and all other relevant considerations. Unless authorities from the appropriate school district present evidence to the contrary, it shall be presumed that an undue burden is not a factor to be considered. The Commission shall adopt rules and regulations establishing procedures for the obtaining of prior approval by duly authorized agencies, institutions, and individuals for the occupancy of a dwelling unit by more than two (2) wards of the Court under eighteen (18) years of age or foster children.~~
- (c) To resolve any disputes with respect to the precise location of a zoning district boundary, using, where applicable, the standards and criteria of Section 1105.05.
- (d) To adopt rules or bylaws for the holding of regular and special meetings, for the transaction and disposition of its business and the exercise of its powers.
- (e) To allow or permit the expansion or extension of a nonconforming use where the enforcement of the regulations pertaining to nonconforming uses will result in unnecessary hardship.
- (f) To grant special exceptions from the off-street parking requirements for new uses in new or expanded buildings in certain major commercial districts, according to the criteria set forth in Section 1115.13 and Section 1161.13(a)(2).
- ~~(g) To grant special exceptions to provide a reasonable accommodation as required by state and/or federal law, according to the criteria set forth in Section 1115.13.~~

**CHAPTER 1111
Planning Commission**

1111.06 POWERS AND DUTIES OF THE COMMISSION.

For the purpose of this Zoning Code, the Planning Commission has the following powers and duties:

- (a) Pursuant to Article XI, Section 2, of the City Charter, the Planning Commission may make recommendations to Council and the City Manager on all matters affecting the physical development of the City. These may include, without limitation:
 - (1) To make recommendations on plans and maps of the whole or any portion of the City and make recommendations on changes in such plans or maps when it deems it advisable;
 - (2) To investigate and propose on its own initiative recommendations for such amendments to the Zoning Code as it may deem wise and proper;
 - (3) To investigate and prepare on its own initiative recommendations for the location and design of public parks, parkways, playgrounds, recreational facilities and other park areas;
- (b) In addition to the powers conferred by Charter, the Planning Commission shall have the following powers and duties:
 - (1) To review and approve or disapprove an application for a conditional use for a particular zoning lot;
 - (2) To determine that a proposed use that is not listed or provided for in this Zoning Code is substantially similar to a principal or conditionally permitted use that is listed and provided for in this Code;
 - (3) To review development plans and/or conditional uses as required by this Zoning Code;
 - (4) To hear any unresolved complaints concerning any conditional use permits, including those issued by the Zoning Administrator. Planning Commission shall have the power to revoke, modify, or affirm any issued conditional use permits that are the subject of unresolved complaints;
 - (5) To review any substantial changes to public parks.
 - ~~(46)~~ To review ordinances submitted to it by Council, including ordinances to amend the Zoning Code and Map and to submit to Council the Commission's recommendations with respect to such ordinances;
 - ~~(57)~~ To review and approve or disapprove plats for the resubdivision of any lots or parcels of land. As used in this chapter, resubdivision includes either dividing or joining of lots or parcels;
 - ~~(68)~~ To recommend to the Landmark Commission for its consideration such places, buildings, structures, works of art and other suitable objects as the Planning Commission shall believe may be eligible for a designation as a landmark, in accordance with Chapter 143 of the Codified Ordinances;
 - ~~(79)~~ At the request of Council to investigate and make recommendations to Council with respect to:

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- A. The general design and development plan for the location, relocation or removal (elimination or demolition) of, or major alterations in or with respect to, public buildings or other public structures, including landscaping with respect to any new or relocated facility referred to in this subsection.
- B. The establishment, location, relocation or vacation of streets, highways or other public places.
- C. Any proposed ordinance or regulation proposing or dealing with or related to any feasibility study with respect to the use and/or development of land within the City, including transportation plans or proposals, capital improvements, land acquisitions, land use and any and all other programs for the development and/or improvement of the City or a portion thereof.

(810) To adopt rules and bylaws for the holding of regular and special meetings, for the transaction and disposition of its business and the exercise of its powers.

(910) To otherwise fulfill responsibilities which may be conferred upon the Planning Commission by action of Council.

CHAPTER 1115 Procedures

1115.01 PURPOSE.

(a) In order to accomplish the purposes for which this Zoning Code is adopted, it is essential that its regulations be soundly and consistently applied, and that this Code be vigorously administered.

(b) Administrative provisions are accordingly established in this chapter to carry out the purposes and other substantive provisions of this Zoning Code, and in particular:

- (1) To establish procedures for the administration of this Code.
- (2) To establish procedures for considering and acting upon applications for building permits, appeals from administrative actions, requests for variances, requests for conditional uses, determination of similar uses and approval of development plans for a conditional use.

~~(c) The responsibilities for reviewing plans for a proposed use, building or structure under this Code are summarized in Schedule 1115.01.~~

~~Schedule 1115.01
SUMMARY OF ZONING APPROVAL RESPONSIBILITIES~~

	Permitted No Permit Required	Zoning Administrator Approval	Board/Comm- ission Approval
A. Principal Uses		X	
— 1. Principal building construction/alteration			
— 2. S 1 District			X
— 3. S 2 District (see D. Conditional Uses)		X	
— 4. Reoccupancy by a principal use		X	

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<u>B. Residential Accessory Uses</u>			
1. Detached garages		X	
2. Pavement/driveway		X	
3. Pool house/storage shed		X	
4. Swimming pool/ornamental pool		X	
5. Deck, porch, handicap ramp		X	
6. Fences:			
 Front/corner side yard			X
 Side/rear yard		X	
7. Sidewalks (private property)		X	
8. Garaging a truck		X	
9. Outdoor storage of recreational vehicles		X	
10. Use of carriage house as a dwelling		X	
11. Home occupation in dwelling unit	X		
12. Non-commercial greenhouse		X	
13. Vegetable/edible and flower gardens		X	
14. Children's play equipment	X		
15. Gatehouse/guardhouse		X	
16. Leasing office		X	
17. Retail in an MF Building		X	

	Permitted No-Permit Required	Zoning Administrator Approval	Board/Comm- ission Approval
<u>B. Residential Accessory Uses (Cont.)</u>			
18. Trash receptacles		X	
<u>C. Commercial Accessory Uses</u>			
1. Off street parking		X	
2. Storage building		X	
3. Employee cafeteria		X	

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4. Recycling and trash receptacle and enclosures/ screening		X	
5. Retail use in an Office Building		X	
6. Accessory parking garage		X	
7. Fences:			
Fences parallel and within 25 ft. of the street right of way (i.e., fences in front yard)			X
All other fences		X	
D. Conditional Uses			
1. Places of worship			X
2. Private golf course			X
3. Parochial school			X
4. Cemetery			X
5. Public library			X
6. Public safety facility			X
7. Private school			X
8. Day care home			
in AA, A Districts		X	
in B Districts			X
9. Outdoor community festival in Residential District			
Up to 1 day		X	
Renewal up to 1 day		X	
Longer than 1 day			X
Renewal longer than 1 day			X
10. Outdoor community festival in a Commercial District			
Up to 3 days		X	
Renewal up to 3 days		X	
Longer than 3 days			X
Renewal longer than 3 days			X
11. Satellite dishes			X
12. PDO Development Plan			X

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— 13. S 2 Planned Development			X
— 14. Planned Residential Development			X
— 15. Residential homes for the handicapped			
— 4 persons		X	
— 5-8 persons			X
— 16. Outdoor dining facility with 25 or fewer seats		X	
— 17. Outdoor dining facility with more than 25 seats			X
— 18. Adaptive Reuse of Existing Non-Residential Buildings in a Residential District			X
— 19. Farmers' Markets		X	
— 20. Community Gardens		X	
— 21. Commercial Renewable Energy Systems			X
<u>D. Conditional Uses (Cont.)</u>			
— 22. Chicken Coops and Chicken Runs		X	
— 23. Live/Work Dwellings in Commercial Districts			X
— 24. Greenhouses as Principal Use in Commercial Districts			X
— 25. Shared Renewable Energy Systems			X
— 26. All other conditional uses			X
<u>E. Site Improvements for Principal Uses</u>			
— 1. Required landscaping		X	
— 2. Required screening		X	
— 3. Land bank parking		X	
<u>F. Nonconforming Conditions</u>			
— 1. Reconstruction of a legal nonconforming garage—smaller than required		X	
— 2. Construction of addition to a nonconforming SF or 2F dwelling no closer to the side lot line than existing structure (AA, A and B Districts)		X	
— 3. Rear yard addition encroachments (A and B Districts)		X	

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G. Signs			
—1. Residential safety/security	X		
—2. Nameplate	X		
—3. Temporary window sign	X		
—4. Directional signs		X	
—5. Residential identification			X
—6. Institutional identification			X
—7. Commercial identification			X
—8. Instructional signs—10 sq. ft. or less		X	
—9. Instructional signs—more than 10 sq. ft. or within 25 ft. of the street right of way			X
—10. Building markers		X	
—11. Public purpose/safety signs		X	
—12. Construction signs		X(a)	
—13. Freestanding gas station signs			X
—14. S-1 District freestanding signs			X
—15. Projecting signs			X
—16. Permanent window signs			X
—17. Alterations to a nonconforming sign			X

(a) Unless Zoning Administrator determines it should be reviewed by the Architectural Board of Review.

1115.02 BUILDING PERMIT REQUIRED.

No building or other structure shall be erected, constructed, reconstructed, enlarged, moved or structurally altered nor shall any excavation or site improvements be commenced, until a building permit has been applied for and received by the owner of the property involved or a person having an interest in such property and acting under written authority of the owner, and issued by the Building Commissioner. No building permit shall be issued until the Zoning Administrator or designated agent has approved the application for the permit.

(a) Such approval shall be granted only when:

- (1) The Zoning Administrator or designated agent finds that all applicable requirements and standards of this Zoning Code have been complied with;
- (2) A request for a variance has been approved by the Board of Zoning Appeals in accordance with the limitations, procedures and requirements of this chapter and has been approved by Council, as applicable;
- (3) The Planning Commission or Zoning Administrator has issued a conditional use permit for the conditional use in accordance with the procedures described in this chapter;
- (4) The Planning Commission has made a determination in accordance with the procedures described in this chapter that a proposed use is

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- substantially similar to a principal or conditionally permitted use in the zoning district in which such use is located;
- (5) The Board of Control has approved a detailed development plan for a proposal in the S-1 District, according to the procedures established in Section 1143.10; and/or
 - (6) The Architectural Board of Review has approved the application for the proposed use, building or structure as required by the City's Codified Ordinances including this Zoning Code.
- (b) In the event that an application for a building permit requires approval by more than one (1) board or commission, the following order of review should generally be observed:
- (1) Review by the Board of Zoning Appeals;
 - (2) Review by the Architectural Board of Review;
 - (3) Review by the Planning Commission or Board of Control, as applicable;
 - (4) Review by Council.
- (c) In the event that an application for a fence permit requires approval by more than one (1) board or commission, the following order of review should generally be observed:
- (1) Review by the Architectural Board of Review;
 - (2) Review by the Board of Zoning Appeals;
 - (3) Review by the Planning Commission or Board of Control, as applicable;
 - (4) Review by Council.
- (d) It is the objective of this Zoning Code to process applications as expeditiously as possible. Therefore, recognizing the interrelationships of the various review components, the Zoning Administrator, prior to Council consideration and with the consent of the applicant, may alter the above order to accomplish the review in an order deemed more timely.

1115.06 APPEALS; PROCEDURE AND HEARING.

Appeals may be taken to the Board of Zoning Appeals by any person adversely affected by a decision of the Zoning Administrator.

- (a) Initiation of Appeal. Such appeal shall be taken within thirty (30) calendar days from issuance of notice of the decision of the Zoning Administrator by filing with the Zoning Administrator and the Secretary of the Board of Zoning Appeals a written notice of appeal specifying the grounds thereof and accompanied by the fee established by Council.
- (b) Transmittal to the Board. The Zoning Administrator shall forthwith transmit to the Board all of the papers constituting the record upon which the action appealed from was taken.
- (c) Public Hearing by Board. The Board shall select a reasonable time and place for the public hearing of the appeal within ~~sixty-seventy-five (6075)~~ days of the date the appeal was filed with the Zoning Administrator. Any person affected may appear and testify at the hearing, either in person or by duly authorized agent or attorney.
- (d) Notice of Public Hearing. Before conducting the public hearing required in subsection (c) hereof, notice of such hearing shall be given in one (1) or more newspapers of general circulation in the City at least ten (10) days before the date of such hearing. Also, a written notice of the hearing shall be mailed by the Zoning Administrator, by first class mail, at least ten (10) days before the day of the public hearing to the appellant, and to owners of any other property deemed by the Zoning Administrator to be affected.
- (e) Decision by the Board. The Board shall render a decision on the appeal without unreasonable delay. The Zoning Administrator shall notify the appellant in writing of the decision of the Board, and shall maintain a detailed report of the proceedings and decisions of the Board on each appeal heard by the Board.
- (f) Time Frame for Board Action. A person initiating an appeal to the Board may request that the Board decide such appeal within ninety (90) days after the start of

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the public hearing. An appellant may by subsequent written communication or by oral representation under oath agree to an extension of such prescribed time for Board action. Failure of the Board to act within the prescribed time (or as so extended) shall, at the election of the appellant, be deemed a denial of the appeal.

1115.07 VARIANCES; PROCEDURES; AND REVIEW CRITERIA.

A request for variance may be submitted to the Board of Zoning Appeals by the owner of the property involved or a person having a legal interest in such property or acting under written authority of the owner. Requests shall be filed with the Zoning Administrator upon the forms provided, and shall be reviewed by the Board pursuant to Section 1109.06(b), and in accordance with the following procedures:

- (a) Submission Requirements. A request for a ~~variation-variance~~ from a ~~numerical~~ standard in this Zoning Code shall be accompanied by the following requirements necessary to convey the reasons for the requested variance:
 - (1) Name, address, ~~email address~~ and phone number of applicant(s);
 - (2) Proof of ownership, legal interest or written authority ~~from owner~~;
 - (3) Description of property or portion thereof;
 - (4) Description or nature of variance requested;
 - (5) Narrative statements establishing and substantiating the justification for the variance pursuant to Section 1115.07(e);
 - (6) Site plans, floor plans, elevations and other drawings at a reasonable scale to convey the need for the variance;
 - (7) Payment of the application fee as established by Council;
 - (8) Any other documents deemed necessary by the Zoning Administrator.
- (b) Review for Completeness by the Zoning Administrator. Upon receipt of a written request for variance, the Zoning Administrator shall within ~~three-ten~~ (310) ~~working-business~~ days make a preliminary review of the request to determine whether such application provides the information necessary for review and evaluation and if it is determined that such application does not provide the information necessary for such review and evaluation, the Zoning Administrator shall so advise the applicant of the deficiencies and shall not further process the application until the deficiency is corrected.
- (c) Public Hearing by the Board of Zoning Appeals. The Board of Zoning Appeals shall hold a public hearing within ~~sixty-seventy-five~~ (6075) days from the date the application is accepted as complete by the Zoning Administrator.
- (d) Notice of Public Hearing. Before conducting the public hearing required in subsection (c) hereof, notice of such hearing shall be given in one (1) or more newspapers of general circulation in the City at least ten (10) days before the date of such hearing. In addition, written notice of the hearing shall be mailed by the Zoning Administrator by first class mail at least ten (10) days before the day of the public hearing to the applicant and also to the owner of the property if he or she is not the applicant, and to adjacent properties to the attention of the owners of such properties as follows:
 - (1) Properties on the same side of the street which abut the site on which the building or use is sought to be located;
 - (2) Properties on the same side of the street next contiguous to the premises so abutting;
 - (3) Properties across the street immediately opposite the site; and opposite the abutting and contiguous premises referred to in subsections (1) and (2) hereof; and
 - (4) All other premises abutting the site.The notice shall set forth the time and place of the public hearing and the nature of the proposed variance. The failure of any person to receive such notice shall not affect the right and power of the Board to hear such request or to take action in accordance with such public notice.
- (e) Review by Board. The Board of Zoning Appeals shall review each request for a variance to determine if such request complies with the purpose and intent of this Zoning Code and the applicant can demonstrate that the literal enforcement of this

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Code will result in practical difficulty or, in the case of a use variance, unnecessary hardship.

- (1) The following factors shall be considered and weighed by the Board in determining whether the applicant has met the burden of demonstrating practical difficulty by the preponderance of the evidence:
 - A. Whether special conditions and circumstances exist which are peculiar to the land or structure involved and which are not applicable generally to other lands or structures in the same Zoning District; examples of such special conditions or circumstances are: exceptional irregularity, narrowness, shallowness or steepness of the lot, or adjacency to nonconforming and inharmonious uses, structures or conditions;
 - B. Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance;
 - C. Whether the variance is substantial and is the minimum necessary to make possible the reasonable use of the land or structures;
 - D. Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer substantial detriment as a result of the variance;
 - E. Whether the variance would adversely affect the delivery of governmental services such as water, sewer, trash pickup;
 - F. Whether the property owner purchased the property with knowledge of the zoning restrictions;
 - G. Whether special conditions or circumstances exist as a result of actions of the owner;
 - H. Whether the property owner's predicament feasibly can be obviated through some method other than a variance;
 - I. Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting a variance; and
 - J. Whether the granting of the variance requested will confer on the applicant any special privilege that is denied by this regulation to other lands, structures or buildings in the same district.
- (2) No variance shall be granted to allow a use not permissible under the terms of this Zoning Code in the zoning district in which the property is located unless the Board finds, and Council approves, that the applicant for the variance has demonstrated that the applicant will suffer unnecessary hardship if strict compliance with the terms of the Code is required and the applicant has met the burden of demonstrating such hardship ~~must be demonstrated~~ by clear and convincing evidence as to all of the following criteria:
 - A. The property cannot be put to any economically viable use under any of the permitted uses in the zoning district;
 - B. The variance requested stems from a condition which is unique to the property at issue and not ordinarily found in the same zone or district;
 - C. The hardship condition is not created by actions of the applicant;
 - D. The granting of the variance will not adversely affect the rights of adjacent property owners or residents;
 - E. The granting of the variance will not adversely affect the public health, safety or general welfare;
 - F. The variance will be consistent with the general spirit and intent of the Zoning Code; and
 - G. The variance sought is the minimum which will afford relief to the applicant.
- (f) Action by Board of Zoning Appeals. After the public hearing required in subsection (c) hereof, the Board of Zoning Appeals shall either approve, approve

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with supplementary conditions as specified in subsection (g) hereof, or disapprove the request for variance. The Board shall further make a finding in writing that the reasons set forth in the application justify the granting of the variance that will make possible a reasonable use of the land, building or structure.

- (g) Conditions and Limitations by Board. The Board of Zoning Appeals may further prescribe any conditions, stipulations, safeguards and limitations on the duration of the variance so authorized as the Board determines and prescribes. Any variance when so issued by the Zoning Administrator upon order of the Board following approval by Council ~~as-if~~ required ~~in-by~~ subsection (i) hereof shall set forth such conditions, stipulations, safeguards and duration limit. The Board may not extend the scope or extend the duration of a variance previously issued upon its order. Any additional action so desired may be effected only upon application to the Zoning Administrator for approval of a new variance in accordance with the provisions of this Zoning Code.
- (h) Time Frame for Board Action. A person initiating a request for variance to the Board may request that the Board approve or disapprove such request for variance within ninety (90) days of the start of the public hearing. A person requesting a variance may by subsequent written communication or by oral representation under oath agree to an extension of such prescribed time for Board action. Failure of the Board to act within the ninety (90) days or extended time period as so agreed upon, shall, at the election of the person seeking such variance, be deemed a denial of the request for variance. A Board action not subject to Council approval by subsection (i) hereof becomes and is in full force and effect at the time of said Board action pursuant to Section 1109.05.
- (i) Approval by Council. A use variance shall be granted and have effect only following approval by Council. A certified copy of the ~~resolution-finding~~ of the Board granting such variance shall be filed with the Clerk of Council. The record before the Board shall be provided to Council and a staff report summarizing the same shall be made before the Committee of the Whole. If Council finds the applicant met the burden of demonstrating all the criteria set forth in Section 1115.07(e)(2) by clear and convincing evidence, Council shall approve the action of the Board. If Council does not find that the applicant demonstrated all the criteria set forth in Section 1115.07(e)(2) to the Board by clear and convincing evidence, Council shall disapprove the action of the Board. Council shall set forth the specific reasons for such disapproval. If, within the ~~thirty-fourty-five (3045)~~ day period next succeeding such filing, Council by a majority vote disapproves the Board's action in granting the use variance, the use variance shall be void and shall not be issued, otherwise ~~the use variance~~, together with any additional conditions imposed by Council, becomes and is in full force and effect on the day next succeeding the ~~thirty-fourty-five (4530)~~ day period. However, should Council approve the action of the Board within the ~~thirty-fourty-five (3045)~~ day period, the variance becomes in full force and effect from the date of the approval.
- (j) Terms of the Variance. Each variance granted by the Board of Zoning Appeals shall state upon its face the time limit within which the applicant shall complete the installation, construction or alteration of the structure which is the subject of the application. Failure on the part of the applicant to complete the installation, alteration or construction within the allotted time shall terminate all rights under such permit. However, the Board may, for good cause shown, extend from time to time the time limit but in no case more than a date eighteen (18) months from and after the date of the original time limit within which the applicant was required to complete the installation, construction or alteration ~~issuance of the variance~~, unless construction is actively underway. If any action is taken that is contrary to the terms of the variance or contrary to conditions accompanying the variance, or if the conditions stipulated are not properly maintained, the Board may revoke such variance. A variance granted pursuant to this chapter shall "run with the land" and be valid for successors in interest unless otherwise specified by the Board.

1115.08 CONDITIONAL USES; SUBMISSION REQUIREMENTS AND PROCEDURES.

When a proposed use is permitted in a zoning district as a conditional use as set forth in the district regulations, a conditional use permit is required prior to the issuance of a building permit. The owner, or agent thereof, of property for which such conditional use is proposed shall file with the Zoning Administrator an application for a conditional use permit upon forms provided by the Zoning Administrator. Conditional Use applications requiring approval by the Planning Commission shall be reviewed in Except where Zoning Administrator approval of the conditional use permit is permitted, tThe Planning Commission shall review each application in accordance with the following procedures:

- (a) Submission Requirements. An application for a conditional use permit shall be accompanied by plans, elevations, drawings, and other documentation as set forth in Section 1115.09, and the payment of the application fee as established by Council.
- (b) Review for Completeness by the Zoning Administrator. Upon receipt of an application, the Zoning Administrator shall, within ~~three-ten~~ (310) working days, make a preliminary review of the application to determine whether such application provides the information necessary for review and evaluation. If it is determined that such application does not provide the information necessary for such review and evaluation, the Zoning Administrator shall so advise the applicant of the deficiencies and shall not further process the application until the deficiency is corrected.
- (c) Public Hearing by the Planning Commission. The Planning Commission shall hold a public hearing within ~~sixty-seventy-five~~ (6075) days from the date the application is accepted as complete by the Zoning Administrator.
- (d) Notice of Public Hearing. Before conducting the public hearing required in subsection (c) hereof, notice of such hearing shall be given in one (1) or more newspapers of general circulation in the City at least ten (10) days before the date of such hearing. In addition, a written notice of the hearing shall be mailed by the Zoning Administrator or designated agent by first class mail at least ten (10) days before the day of the public hearing to the applicant, the owner of the property if he or she is not the applicant, and to adjacent properties to the attention of the owners of such properties as follows:
 - (1) Properties on the same side of the street which abut the site on which the building or use is sought to be located;
 - (2) Properties on the same side of the street next contiguous to the premises so abutting;
 - (3) Properties across the street immediately opposite the site; and the premises opposite the abutting and contiguous premises referred to in subsections (1) and (2) hereof; and
 - (4) All other premises abutting the site.The notice shall set forth the time and place of the public hearing and the nature of the proposed conditional use. The failure of any person to receive such notice shall not affect the right and power of the Commission to hear such application or to take action in accordance with such public notice.
- (e) Review by the Commission. The Planning Commission shall review each application for a conditional use permit to determine if such request complies with the purpose and intent of the conditional use regulations as set forth in Title Seven of this Zoning Code.
- (f) Action by the Planning Commission. After the public hearing required in subsection (c) hereof, the Commission shall either approve, approve with supplementary conditions as specified in subsection (g) hereof, or disapprove the request for conditional use permit.
- (g) Additional Conditions. The Planning Commission may impose such additional conditions, stipulations, safeguards and limitations on the duration of the use as it may deem necessary for the general welfare, for the protection of individual

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property rights, and for ensuring that the intent and objectives of this Zoning Code will be observed. Any conditional use permit when so issued by the Zoning

Administrator upon order of the Commission shall set forth such conditions, stipulations, safeguards and duration limit. The Commission may not extend the scope or extend the duration of a conditional use permit previously issued upon its order. Any additional action so desired may be effected only upon application to the Zoning Administrator for issue of a new conditional use permit in accordance with the provisions of this Zoning Code.

- (h) Time Frame for Commission Action. An applicant may request that an application for a conditional use permit be acted upon by the Commission within ninety (90) days of the start of the public hearing. An applicant may by subsequent written communication or oral representation under oath agree to an extension of such prescribed time for Commission action. Failure of the Commission to act within the ninety (90) days or extended time period as so agreed upon, shall, at the election of the applicant, be deemed a denial of the conditional use permit. A Commission action becomes and is in full force and effect at the time of said Commission action pursuant to Section 1111.05.
- (i) Terms of Conditional Use Permit. Each conditional use permit granted by the Planning Commission shall state upon its face the time limit within which the applicant shall complete the installation of the use, or the construction or alteration of the structure which is the subject of the application. Failure on the part of the applicant to complete the installation, alteration or construction within the allotted time shall terminate all rights under such conditional use permit. However, the Commission may, for good cause shown, extend from time to time the time limit but in no case more than a date eighteen (18) months from and after the date of the original ~~issuance of the conditional use permit~~ time limit within which the applicant was required to complete the installation of the use, unless construction is actively underway. If any action is taken that is contrary to the terms of the conditional use permit or contrary to conditions accompanying the conditional use permit, the Commission may revoke such conditional use permit. A conditional use permit issued pursuant to this chapter shall be valid only to the person to whom issued, unless a transfer of such permit has been approved by the Commission.

1115.09 REVIEW OF DEVELOPMENT PLANS FOR CONDITIONAL USES.

Application for a conditional use permit for development under the provisions of this chapter shall require the submission of a development plan for the proposed use or building. However, based on the nature of the proposed conditional use, the Zoning Administrator may waive certain submission requirements that are deemed unnecessary for the review and evaluation of such conditional use.

- (a) Preparation of Development Plan. Development plans shall be prepared by a qualified professional, drawn to an appropriate scale and shall include the following information:
 - (1) Plat, plot plan. Plat, property lines of the parcel or parcels proposed for development including existing utilities, easements, street rights-of-way, and locations of existing principal buildings and land uses on adjacent parcel and across existing streets. Permanent parcel numbers of the development and adjacent parcels shall be included.
 - (2) Topography. Topographic maps showing existing and generally proposed grading contours at not greater than two (2) foot intervals including integration into and topography on adjacent properties, wooded areas and trees of substantial size. The topography may be included on the plot plan.
 - (3) Principal and accessory buildings. The number, height, location and grouping of proposed dwelling units, nonresidential uses, recreational facilities and public uses, along with notation of the development standards for building spacing, setback from public streets and maximum building height.

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- (4) Traffic. The proposed system of on-site vehicular circulation, details for access to streets, methods for control of traffic, and an assessment of the impact of the proposed development on the existing circulation system.
 - (5) Parking areas. The layout, dimensions and estimate of the number of parking spaces, the landscaping and other design features of the parking area and types of pavement.
 - (6) Outdoor lighting fixtures. The location, type and illumination intensity of any existing or proposed outdoor lighting fixtures.
 - (7) Signs. Indication of the size, location, color and nature of any existing or proposed signs on the property.
 - (8) Landscaping and screening plan. A preliminary description of the location and nature of existing and proposed vegetation, landscaping and screening elements.
 - (9) Outdoor storage. The location and layout of all outdoor storage including storage of waste materials and trash receptacles.
 - (10) Phasing, sequencing of project. A detailed statement of the phasing and staging of specific elements of the plan, including a proposed construction sequencing schedule.
 - (11) Utilities. Show proposed location of new utilities and authority to connect these into existing infrastructure. Storm Water shall address requirements of Chapter 1335, Storm Water Management.
- (b) Review by Zoning Administrator. The Zoning Administrator shall determine that the application contains the above information or, when deemed unnecessary, make a written notation of those items specifically waived.
 - (c) Development Guidelines Prepared by Planning Commission. The Commission may prepare development guidelines for an area in an S-2 or for a planned residential development which shall set forth criteria for the development of a particular area. The guidelines shall contain those elements listed in subsection (a) hereof, as necessary, to set forth policy for permitted land use, building envelope, building height, allowable density and parking areas. Such development guidelines as prepared by the Planning Commission shall become the official Development Plan for the project area only upon approval by City Council. Subsequent to the approval of such Development Plan by Council a property owner, or agent thereof, may apply for a conditional use permit to develop all or a portion of the land within the area for which the Development Plan has been adopted. The applicant shall submit a project plan that contains the elements required in subsection (a) hereof to indicate compliance with the adopted Development Plan.
 - (d) Modifications to a Development Plan. After the issuance of a conditional use permit for a proposed development, the conditions, limitations, and phasing of construction specified in the permit shall only be altered or modified by the approval of a new conditional use permit according to the procedures of Section 1115.08.
 - (e) Preliminary Plans. The applicant may meet informally with the Planning Commission to review preliminary plans prior to preparing a development plan pursuant to subsection (a) hereof. Preliminary plans should be submitted to the Zoning Administrator ten (10) days prior to the Planning Commission meeting at which the review of the preliminary plan is scheduled on its agenda.

1115.11 REVIEW OF DEVELOPMENT PLANS FOR S-1 MIXED USE DISTRICT.

Application for approval for development within an S-1 Mixed Use District shall require the submission of a development plan as set forth in Chapter 1143. Development Plan shall address requirements of Chapter 1335, Stormwater Management.

**CHAPTER 1119
Amendments**

1119.01 AMENDMENT BY COUNCIL.

Whenever the public necessity, convenience, general welfare, [petition by application](#) or good zoning practices require, City Council may by ordinance amend, revise, rearrange, renumber or recodify this Zoning Code or amend, supplement, change or repeal the boundaries or classification of property according to the procedures set forth in this chapter and subject to the procedures provided by law. Such amending ordinance may be introduced upon Council's own initiative, upon recommendation of the Planning Commission, or upon petition.

1119.02 CONTENTS OF APPLICATION OR PETITION FOR ZONING MAP AMENDMENT.

Applications [or petitions](#) for amendments to the official Zoning Map adopted as part of this Zoning Code by Chapter 1105 shall contain at least the following information:

- (a) The name, address, and phone number of the applicant and the property owner if other than the applicant;
- (b) The proposed amending ordinance, approved as to form by the ~~City Law~~ Director [of Law](#);
- (c) A statement of the reason(s) for the proposed amendment;
- (d) Present use and zoning district;
- (e) Proposed use and zoning district;
- (f) A vicinity map at a scale approved by the Zoning Administrator showing property lines, thoroughfares, existing and proposed zoning, and such other items as the Zoning Administrator may require;
- (g) A statement on the ways in which the proposed amendment relates to the comprehensive plan or strategic plan;
- (h) The payment of the application fee as established by Council.

**CHAPTER 1121
AA and A Single-Family and B Two-Family Residential Districts**

1121.04 CONDITIONALLY PERMITTED USES.

The categories of conditional uses which may (together with their accessory uses) be permitted in the AA and A Single-Family and B Two-Family Residential Districts, provided they conform to the conditions, standards, and requirements of Title Seven and are approved for a particular zoning lot in accordance with the administrative provisions of Section 1115, shall include the following:

- (a) Planned Residential Developments (PRD);
- (b) Places of worship;
- (c) Elementary, junior and senior high schools;
- (d) Public libraries;
- (e) Public safety facilities;
- (f) Public and private parks and playgrounds;
- (g) Public recreation facilities;
- (h) Golf courses;
- (i) Cemeteries;
- (j) Public parking (surface lot or one-story covered garage) as principal use for a permitted use not on the same lot;
- (k) Accessory parking for a commercial use, contiguous with a C-1, C-2, C-2X or C-3 District ~~in compliance with Section 1131.08(a);~~
- ~~(l) Residential home for the handicapped; [intentionally omitted]~~
- (m) Day care center and ~~nursery~~ preschool in a school or religious institution;
- (n) Day care home;

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- (o) Home occupation in an accessory building;
- (p) Outdoor community festivals;
- (q) Satellite dish receiving antenna.
- (r) Attached single-family dwelling units, newly constructed or formed by the resubdivision of existing side-by-side two-family dwellings, may be conditionally permitted in B Districts. In A, AA, and MF Districts, attached single-family dwelling units may be conditionally permitted on lots which contain legally non-conforming side-by-side two-family dwellings in accordance with the additional regulations and standards set out in Section 1153.03(b)(50) and Section 1153.05(aa)
- (s) Adaptive reuse of non-residential buildings in residential districts
- (t) Farmers' markets
- (u) Community gardens

1121.09 DWELLING UNIT REQUIREMENTS.

In order to provide healthful living conditions and to preserve the character of the neighborhood, dwelling units shall be erected, altered, moved, maintained or occupied only in accordance with the following standards establishing minimum floor areas of dwelling units and required garage space.

- (a) Minimum Area of Dwelling Unit. The minimum floor area of a dwelling unit shall not be less than specified below. For the purpose of determining the minimum floor area, porches, steps, terraces, breezeways, attached or built-in garages, or other attached structures not intended for human occupancy shall be excluded.

District	Type of Dwelling	Minimum Floor Area Per Dwelling Unit (In Square Feet)
AA	Single Family	2,000
A	Single Family	1,500
B	Single Family	1,500
B	Two Family	1,000

- (b) Enclosed Parking Spaces Required. ~~Required Two (2)~~-off-street enclosed parking spaces shall be provided for each dwelling unit, either in a garage that is attached ~~to and integrated with~~ or ~~in one that is~~ detached and accessory to the dwelling unit in accordance with Schedule 1161.03. When 75% or more of a block ~~face face~~ have detached rear yard garages or attached garages with doors not visible on the street elevation, new attached garages shall have doors not visible on the street elevation. A new attached garage of a home on a corner lot may have garage doors visible on one of the streets. Furthermore, all parking areas shall be provided, designed and constructed in accordance with the accessory use standards in Section 1121.12 and the parking requirements in Chapter 1161.

1121.12 ACCESSORY USE REGULATIONS.

Accessory uses, buildings and structures permitted in AA, A and B Districts shall conform to the location, coverage and maintenance standards contained in this section. Attached garages as part of a dwelling are subject to all yard requirements for a principal building specified in Section 1121.08 and shall comply with the floor area regulations for garages established in subsection (e) hereof.

- (a) Minimum Yard Requirements for Accessory Uses. An accessory building or use permitted in an AA, A or B District shall be located as set forth in Schedule

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1121.12(a), however, an accessory use shall only be permitted to the extent such use complies with all other accessory use regulations set forth in subsections 1121.12(b) through (i).

Schedule 1121.12(a)
MINIMUM YARD REQUIREMENTS FOR ACCESSORY USES

<u>Permitted Use, Structure, Building</u>	<u>Yard in Which Permitted</u>	<u>Minimum Distance (in feet) From</u>			
		<u>Rear Lot Line</u>	<u>Side Lot Line</u>	<u>Side Street (Corner Lot)</u>	<u>Principal Building</u>
(1) Detached garage	Rear	3(a)(i)	3(i)	25(b)	10 0
	Side	5(a)(i)	(c)(i)	25(b)	10 0
(2) Pool house, storage shed (io), other similar buildings	Rear only	5	5	(e)	10 0
(3) Swimming pool (above and below ground)	Rear and side	15	15	15(b)	5
(4) Deck, porch, handicap ramp, steps, hot tub, and similar structures exceeding 3 feet in height (f) (k)	Rear and side	5	5	(d)	0
	Front		See Section 1121.12(b)		
(5) Deck, patio, porch steps, ornamental pool, coldframe and similar structures not exceeding 3 feet in height (f) (k)	Rear and side	3	3	(d)	0
	Front		See Section 1121.12(b)		
(6) Fences exceeding 3 feet in height	Rear and Side	(g)	(g)	(g)	0(g)
(7) Fences not exceeding 3 feet in height (k)	Front, side and rear	0(g)	0(g)	0(g)	0(g)
(8) Sidewalk and driveway	Front, side and rear	3	3	NA	0
(9) Open parking areas for storage of noncommercial vehicles and recreational equipment (h)(h)	Rear only	3	3	h NA	0

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(10) Freestanding air conditioning machinery, emergency generator, above-ground components of geothermal energy systems, and other similar equipment	Rear and side, except not in required minimum side yard (see Section 1121.08) and standard screening, see note (m).				
(11) Rain Barrels and Above Ground Cisterns (j)	Rear and side, provide standard screening, see note (m)	(j)	(j)	(k)	0
(12) Laundry clothesline	Rear only	3	3	NA	0
(13) Vegetable/edible gardens	(l)	(l)	(l)	(l)	(l)
(14) Compost Bin(s) (n)	Side and Rear	3	3	N/A	3
(15) Chicken coop and run	Rear	10	10	N/A	10

Notes to Schedule 1121.12(a)

- (a) When the rear yard of a corner lot abuts the side yard of an interior lot, a detached garage shall be located no less than 10 feet from the rear lot line.
- (b) Or no closer to the side street than the principal building, whichever is greater.
- (c) Shall maintain the minimum dimension for the side yard of a principal use as specified in Section 1121.08.
- (d) See Section 1121.12(b).
- (e) Shall be no closer to the side street than the principal building, unless specifically permitted elsewhere in this Zoning Code.
- (f) "Height" of a deck, porch, ramp, or steps means the vertical distance from the average finished ground elevation to the top of the floor surface.
- (g) See Section 1121.12(i) for additional fence regulations.
- (h) See Section 1165.02(c) for parking of non-passenger vehicles. See section 1121.12(k) for parking pad regulations.
- ~~(i) In a rear yard of 2,000 square feet in area or less, storage buildings shall be no closer than 3 feet from a rear or side property line.~~
- (i) The Zoning Administrator may approve reduced rear and side yard setbacks for a garage, provided that in no event shall the Zoning Administrator approve setbacks less than those of an existing or previously existing garage on the property and shall adhere to all applicable Building Code regulations.
- (j) See Section 1121.12(m) for additional regulations.
- (k) When in the front or corner side yard are permitted only with Architectural Board of Review approval.
- (l) See Section 1121.12(l) for additional vegetable/edible garden regulations.

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- (m) Standard screening means a fence, masonry wall or evergreen hedge which is eighty (80%) or more solid and either six (6) feet high or a height adequate to screen the view from a person six (6) feet tall standing on a public street or on adjacent property.
- (n) See Section 1121.12(o) for additional compost bin regulations.

(o) In a rear yard of 2,000 square feet in area or less, storage buildings shall be no closer than 3 feet from a rear or side property line.

- (b) Permitted Structures in Front Yard and Corner Side Yard. Unenclosed porches, decks, and patios, ~~handicap ramps and steps~~ may extend into a front or corner side yard no more than ~~ten twelve (1012)~~ feet in front of the building provided that it does not extend more than six (6) feet into a required front yard. provided further that Steps, ramps and lifts of the -which provide access to such- accessory structure may extend into the front or corner side yard subject to Architectural Board of Review approval.
- (c) Maximum Front and Side Yard Coverage. Accessory structures permitted in a front or side yard (as set forth in Schedule 1121.12(a)) shall cover no more of the front and side yard than set forth below:
- (1) Maximum coverage of the front yard shall be thirty percent (30%), provided that the area of pavement for sidewalks and driveways shall not exceed the following:
- A. 2,000 square feet total area for a lot with seventy-five (75) feet or less of street frontage.
- B. 3,000 square feet total area for a lot with more than seventy-five (75) feet of street frontage.
- ~~C. Only one driveway and one curb cut shall be permitted per lot. However, lots 100' wide or greater shall be permitted one (1) additional curb cut and/or circular driveway which shall comply with Schedule 1121.12(a)(9) which permits parking in rear yard only and 1121.12 (c) & (d); and~~
- ~~D. Ppavement width shall not exceed twelve (12) feet except where necessary to provide direct access to a garage.~~
- (2) Maximum coverage of the side yards on interior lots shall be sixty percent (60%) of the total area of both side yards.
- (3) The maximum coverage of the corner side yard shall be thirty percent (30%).
- (d) Maximum Area and Rear Yard Coverage of Accessory Uses. The percent of rear yard covered by accessory uses, buildings and structures (limited to those permitted in Sections 1121.05 and 1121.12) and the maximum floor area of such accessory use, building or structure, shall not be greater than as set forth in Section 1121.12(d). The area of building, structure or pavement shall be the maximum area of land on which, or above which, such building, structure or pavement is constructed. The percentage shall be the area of building, structure and/or pavement in ratio to the area of the rear yard. However, in no case shall an accessory use, building or structure exceed the maximum area set forth in Schedule 1121.12(d).

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Schedule 1121.12(d)
 MAXIMUM AREA AND REAR YARD COVERAGE

Permitted Use, Building Structure	Maximum Percentage of Rear Yard Coverage		Maximum Area (in sq. ft.)		
	AA and A District	B District (e)	AA District	A District	B District
(1) Accessory building	20 (a)(b)(c)(e)(f)	30 (a)(b)(c)(e)(f)	(e)	(e)	1,200 (e), (f)
(2) Accessory structures exceeding 3 feet in height	15	15	2,000	2,000	2,000
(3) Pavement related to parking, including driveway	30 (b)	30(b)	2,000	2,000	2,000
(4) Accessory structures not exceeding 3 feet in height, including sidewalks and patios	60	60	6,500	4,000	4,000
(5) Total maximum rear yard coverage (e)	60	60	12,000	----	----

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Notes to Schedule 1121.12(d)

- ~~(a) Nonconforming lots may be permitted to have up to 40% rear yard coverage by accessory buildings or parking pursuant to Section 1175.02(c).~~
- ~~(a) Nonconforming lots may be permitted to have up to 40% rear yard coverage by accessory buildings subject to Zoning Administrator approval of landscaping and screening plan which addresses stormwater management and minimizes adverse impact on neighboring lots. Total rear yard coverage shall not exceed 70%.~~
- ~~(b) Nonconforming lots may be permitted to have up to 40% rear yard coverage by pavement or unenclosed parking subject to Zoning Administrator approval of landscaping and screening plan which addresses stormwater management and minimizes adverse impact on neighboring lots. Total rear yard coverage shall not exceed 70%.~~
- ~~(bc) In the event that the construction of a required private garage on a nonconforming lot will exceed the rear yard coverage limitation permitted for a garage, the Zoning Administrator may approve a lesser number of enclosed parking spaces pursuant to Schedule 1161.03(a)(4).~~
- ~~(ed) See also Section 1121.12(e) for maximum floor area of a garage.~~
- ~~(de) While each specific category (1-4) has a maximum size limitation, the total coverage of all accessory uses shall not exceed the area limit for the rear yard.~~
- ~~(ef) On a corner lot, a garage may cover up to 60% of rear-yard area. Total permitted rear-yard coverage on a corner lot is 80% of rear-yard area.~~
- ~~(f) In the event the construction of a required private garage on a nonconforming lot cannot be undertaken without a variance, the Zoning Administrator may administratively approve a garage construction plan according to the following guidelines:~~
 - ~~(1) The Zoning Administrator may approve a garage which covers up to 130% of the rear yard area normally permitted for garage coverage if such approval accommodates an otherwise conforming rear yard garage;~~
 - ~~(2) If the exercise of the provisions of subsection (1) hereinabove is not sufficient, in and of itself, to accommodate an otherwise conforming rear yard garage, the Zoning Administrator may approve reduced rear and side yard setbacks for a garage, provided, however, that in no event shall the Zoning Administrator approve setbacks less than those of an existing or previously existing garage on the property;~~
 - ~~(3) In the event that the construction of a rear yard garage would result in pavement access of less than 20 feet to an enclosed parking space, the Zoning Administrator may approve a lesser number of enclosed parking spaces;~~
 - ~~(4) If the exercise of one or more of the options specified in subsections (1), (2) and (3) hereinabove does not result in an otherwise conforming garage, the property owner shall be required to seek a variance(s) from the Board of Zoning Appeals.~~

- (e) Maximum Floor Area of a Garage. A single-family dwelling shall be permitted no more than one (1) attached and one (1) detached garage with a total maximum area of 500 square feet plus one (1) additional square foot of garage area for every fifteen (15) square feet of lot area greater than 6,000 square feet. However, the area of ~~a~~ the garage(s) shall not exceed 1,200 square feet. A two-family dwelling shall be permitted no more than one (1) attached and one (1) detached garage with a maximum floor area of 1,200 square feet.

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- (f) Maximum Number of Accessory Buildings. A maximum of two (2) detached accessory buildings shall be permitted on a zoning lot, ~~provided that on a zoning lot there shall be no more than one (1) garage, detached or attached.~~
- (g) Maximum Height of Accessory Structures. A permitted accessory structure shall not exceed fifteen (15) feet in height, except as otherwise regulated in this Code.
- (h) Swimming Pools. In addition to the location and coverage regulations set forth in this section, swimming pools shall be subject to the following additional regulations.
 - (1) The term "swimming pool", as used in this section, means any water pool having more than 100 square feet of water surface, which is capable of containing in excess of two (2) feet of water at its deepest point, located out-of-doors on private property. All other pools are "ornamental pools" and need not comply with the following standards.
 - (2) Swimming pools shall be located in association with a permitted principal use and shall be used for private recreational purposes by the residents or in connection with a non-profit institution and not operated as a business.
 - (3) Every swimming pool shall be completely enclosed by a wall or fence of sturdy construction not less than six (6) feet in height, so constructed as not to permit access to such pool except by means of a necessary gate which shall be self-closing and self-latching construction and operation.
 - (4) Outdoor lighting shall be arranged so as not to shine on adjacent property.
- (i) Fences. Fences and walls to be erected, placed and maintained on a lot shall be approved by the Zoning Administrator and a fence permit issued unless otherwise noted. The appearance and height of fences shall be regulated and limited by its location on the lot as follows:
 - (1) A fence or wall located in a front or corner side yard shall have a maximum height of four (4) feet above ground level and shall require Architectural Board of Review approval. Fences within ten (10) feet of an intersection shall comply with Section 1165.03(e) and shall require Architectural Board of Review approval.
 - (2) Except as limited in subsection (i)(5) hereof, fences and walls located in a side or rear yard shall not exceed seven (7) feet above ground level provided that a fence or wall may be located parallel to a principal building no closer than a distance equal to the height of the fence or wall.
 - (3) When a side yard fence having a length greater than ten (10) feet is parallel to and visible from the street, it shall be landscaped according to an approved landscape plan.
 - (4) In the portion of the rear yard of a corner lot which abuts the front yard of an interior lot, a fence no greater than five (5) feet in height may be located in such rear yard provided it shall be no closer than five (5) feet to the rear lot line and shall be landscaped according to an approved landscape plan. The fence shall be approved by the Architectural Board of Review.
 - (5) The side of a fence closest to the adjacent property line and facing outward from the yard being fenced shall be the smooth finished side. All structural members shall be on the interior side of such fence.
 - (6) No chain link or mesh, wire fence or barb wire shall be constructed in a front yard or corner side yard.
 - (7) Deer net fencing - no fence permit required:
 - A. Deer net fencing around vegetable/edible and flower gardens is permitted in rear and interior side yards, and is limited to a maximum height of seven feet, including all posts.
 - B. Proper installation is required, including six inches of the fence grid flared onto the ground to prevent deer from pushing underneath the fence.
 - C. Deer net fencing is permitted in community gardens with no location limitations.

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- (8) Chicken coops and runs - no fence permit required. See Code Section 1153.05(gg).
- (j) Residential Use of Existing Carriage House. In an AA or A District there shall be only one (1) dwelling unit on a lot except that an existing carriage house may continue as a nonconforming dwelling unit in compliance with the following:
 - (1) The carriage house shall have been occupied (regardless of the length of time), designed for, constructed for, or intended for residential occupancy and legally constructed or created prior to the adoption of this Zoning Code.
 - (2) Alterations to the carriage house shall be regulated by Section 1173.01(a) and (b).
 - (3) For the purposes of this section, the occupants of the carriage house shall be considered as part of the family of the principal dwelling unit and shall comply with the family definition.
- (k) Single Family and Two Family Residential Parking Pad. In any District single-family and two-family dwellings are permitted a paved parking pad in addition to the required enclosed parking.
 - (1) Parking pads may be located in the interior side or rear yard but must be located three (3) feet from any lot line. Parking pads are prohibited in the front and corner side yard or forward of the front building line.
 - (2) Any driveways that access the parking pad are limited to twelve (12) feet in width and must meet the requirements of this Ordinance for single-family and two-family residential driveways.
 - (3) The maximum coverage requirements for the lot may not be exceeded to accommodate a parking pad.
 - (4) Paving pads must be surfaced and maintained in accordance with Section 1161.11(d). Paving with semi-pervious materials, permeable pavers, porous asphalt, porous concrete, grass-crete or gravel-crete, is encouraged. However, a semi-pervious parking pad or driveway is still subject to the coverage requirements of each individual yard.
- (l) Vegetable/Edible Gardens. Vegetable/edible gardens are allowed in all yards in the residential districts. Any vegetable/edible garden located in the front and corner side yard must comply with the following standards:
 - (1) Vegetable/edible gardens must be kept weed-free between plants and rows.
 - (2) There shall be no trash or debris in the vegetable/edible gardens.
 - (3) Vegetable/edible gardens are required to be harvested on a regular basis.
 - (4) The vegetable/edible gardens must be designed and maintained so that water and fertilizer will not drain onto adjacent property or the public right-of-way.
 - (5) Use of insecticides made from synthetic chemical materials is prohibited. Acceptable alternatives, applied in accordance with established safe handling instructions, include rotenone, pyrethrin and Safer Soap.
 - (6) The use of herbicides and weed killers is discouraged.
 - (7) Areas of dry, loose soil that may be moved by wind must be covered by mulch or otherwise confined.
 - (8) Vegetable/edible gardens fences shall meet the standards of subsection 1121.12(i) above.
- (m) Rain Barrels and Above Ground Cisterns.
 - (1) Rain barrels and above ground cisterns are permitted in the rear and interior side yards. Rain barrels and above ground cisterns are permitted in the front and corner side yard only with Architectural Board of Review approval.
- (n) Chicken Coops and Chicken Runs. The keeping of chickens shall be permitted as a conditional use on the property pursuant to Section 1153.05(gg).
- (o) Compost bins. Compost bins are permitted in the rear and interior side yard subject to the following maintenance standards:
 - (1) The organic waste must be generated and used on-site.

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- (2) An in-vessel is required (an enclosed container with no openings greater than one quarter (1/4) inch) for organic waste.
- (3) Composting activities must:
 - A. Not create a nuisance (odor, litter, dust or noise, or attracts vectors or pests).
 - B. Provide a rat and other vector (insects, rodents, birds and other vectors or pest) control. Control measures may include grinding ingredients, providing screening or netting, or conducting composting operations in an in-vessel.
 - C. Provide surface water control to prevent composting material from sitting in ponded seepage surface water.
 - D. Not contain sewage, sludge, seepage or catch basin waste.
 - E. Composting of animal flesh is prohibited.
- (4) Compost bins must be a minimum of three (3) feet from property line and a minimum of three (3) feet from any building foundation.

(p) Driveways. In addition to the location and coverage regulations set forth in this section, residential driveways shall be subject to the following additional regulations:

- (1) Only one driveway and one curb cut shall be permitted per lot except lots 100' wide or greater shall be permitted one (1) additional curb cut which shall comply with Schedule 1121.12(a)(9); and
- (2) Pavement width shall not exceed twelve (12) feet except where necessary to provide direct access to a garage.

**CHAPTER 1123
MF-1, MF-2 and MF-3 Multiple-Family Residential Districts**

1123.04 CONDITIONALLY PERMITTED USES.

When denoted by the letter C, a use listed below is a conditional use which may (together with its accessory uses) be permitted in the MF-1, MF-2 and MF-3 Residential Districts provided it conforms to the conditions, standards and requirements of Title Seven and is approved for a particular zoning lot in accordance with the administrative provisions of Chapter 1115.

	<u>Land Use Category</u>	MF- 1 District	MF- 2 District	MF- 3 District
(a)	Planned Residential Development (PRD)	C		
(b)	Places of worship	C	C	C
(c)	Elementary, junior and senior high schools	C	C	C
(d)	Colleges and universities	C	C	C
(e)	Special training schools and adult education facilities	C	C	C
(f)	Public libraries	C	C	C
(g)	Public safety facilities	C	C	C
(h)	Public and private parks and playgrounds	C	C	C
(i)	Public recreation facilities	C	C	C
(j)	Parking deck or one-story garage as a principal use for a permitted use that is not on the same lot	C	C	C

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(k)	Accessory parking for a commercial use, contiguous with a C-1 , C-2, C-2X or C-3 District	C	C	C
(l)	Day care center, nursery -preschool in a school or religious institution	C	C	C
(m)	Outdoor community facilities	C	C	C
(n)	Dormitories, fraternities, sororities	C	C	C
(o)	Lodging houses, boarding houses, convents, homes for the aged, other congregate living and residential care facilities	C	C	C
(p)	Nursing homes, intermediate and long-term care facility	C	C	C
(q)	Hospitals	C	C	C
(r)	Public use of public land	C	C	C
(s)	Public utilities	C	C	C
(t)	Satellite dish receiving antennas	C	C	C
(u)	Attached single-family dwelling units, newly constructed or formed by the resubdivision of existing side-by-side two-family dwellings, may be conditionally permitted in B Districts. In A, AA, and MF Districts, attached single-family dwelling units may be conditionally permitted on lots which contain legally non-conforming side-by-side two-family dwellings in accordance with the additional regulations and standards set out in Schedule 1153.03(b)(50) and Section 1153.05(aa).			
(v)	Farmers' Markets may be conditionally permitted in MF Districts subject to regulations and standards set out in Section 1153.05(dd).			
(w)	Community Gardens may be conditionally permitted in MF Districts subject to regulations and standards set out in Section 1153.05(ee).			

**CHAPTER 1131
Commercial Districts**

Schedule 1131.02

PERMITTED & CONDITIONALLY PERMITTED USES IN COMMERCIAL DISTRICTS

<u>Land Use Category</u>		C-1 Office <u>Dis</u> <u>trict</u>	C-2 Retail <u>District</u>	C-2X Multi- Use <u>Dis</u> <u>trict</u>	C-3 Commercial <u>District</u>
(a)	<u>Residential Uses:</u>				
(1)	Multiple-family dwelling as a free-standing building	P			

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	(2)	Multiple-family dwelling units above the first floor in association with permitted commercial use	P	P	P	P
	(3)	Lodging house and boarding house including convent, home for the aged, residential care facility, and other congregate living facility	C	C	C	C
	(4)	Nursing home including intermediate and long-term care facility	C	C	C	C
	(5)	Dormitories, fraternities, sororities	C	C	C	C
	(6)	Live/Work Dwelling subject to the regulations of Section 1131.13	<u>P</u>	<u>C</u>	<u>C</u>	<u>C</u>
(b)	<u>Office/Professional/Medical Uses:</u>					
	(1)	Business, medical and government offices Offices provided that only samples of merchandise are displayed or stored in the premises	P	P	P	P
	(2)	Financial establishment without drive-through facility	P	P	P	P
	(3)	Financial establishment with drive-through facility	C	C	C	C
	(4)	Financial establishment with Automatic Teller Machine (ATM)	C	C	C	C
	(5)	Animal clinics, veterinary offices, animal training, animal grooming facilities, animal day-care facilities, overnight boarding of animals in conjunction with animal clinics, veterinary offices, animal grooming facilities and animal day-care facilities	<u>C</u>	C	C	C
	(6)	Funeral homes and mortuaries		€	€	C
	(7)	Hospitals	C			C
	(8)	Urgent care clinics	C	C	C	P
(c)	<u>Retail/Service Uses:</u>					
	(1)	Retail establishments in wholly enclosed buildings		P	P	P
	(2)	Convenience retail and service establishments in an office building provided such business occupies no more than an area equal to 100% of first floor area	C	P	P	P
	(3)	Personal services including dry cleaning, laundry, beauty salon, tattoo parlor, body piercing		P	P	P

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	(4)	Restaurants, -(table and counter service)- bar, tavern, nightclub		P	P	P
	(5)	Catering		C	C	P
	(6)	Outdoor dining facility		C	C	C
	(7)	Drive-through facility in association with a permitted <u>restaurant</u> , retail or service use		C	C	C
	(8)	Hotels	C	C	C	C
(d)	<u>Automotive Uses:</u>					
	(1)	Automobile sales, new or new and used				C
	(2)	Automobile rental				C
	(3)	Truck, boat sales/rental				C
	(4)	Gasoline station				C
	(5)	Car wash establishment				C
	(6)	Automobile service station - major and minor repair				C
	(7)	Parking lot as a principal use	€	C	C	P
	(8)	Parking deck or parking garage as a principal use	€	C	C	P
(e)	<u>Commercial Entertainment/Recreation Uses:</u>					
	(1)	Indoor commercial entertainment facility including game room, bowling alley, skating rink, and movie theater		C	C	C
	(2)	Private indoor and/or outdoor recreation including a health, tennis and racquet club		C	C	C
	(3)	Dance studio, karate-exercise class		C	C	P
	(4)	Meeting room, banquet hall, party center		C	C	P
	(5)	<u>Banquet hall, party center</u>		<u>C</u>	<u>C</u>	<u>P</u>
	(56)	Mural	P	P	P	P
	(76)	Satellite dish receiving antenna	C	C	C	C
(f)	<u>General Commercial/Light Industrial Uses:</u>					
	(1)	Shops and studios for custom work of making articles to be sold at retail on the premises	<u>P</u>	P	P	P
	(2)	Printing and publishing	<u>P</u>	P	P	P

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	(3)	Storage and warehousing of goods, self-storage				C
	(4)	Research & Development, Limited	P	P	P	P
	(5)	Industrial Design	P	P	P	P
	(6)	Nursery and garden supply with accessory outdoor storage		C	C	C
	(7)	Greenhouse	C	C	C	C
(g)	<u>Educational Facilities:</u>					
	(1)	Elementary, junior and senior high school	C	C	C	C
	(2)	College, university, trade and training schools, adult education facilities	C	C	C	C
	(3)	Child day Day care center, nursery preschool, tutoring center	C	C	C	C
(h)	<u>Community Facilities:</u>					
	(1)	Places of worship	€	€	€	€
	(2)	Public library, museum	C	C	C	C
	(3)	Public safety facilities	C	C	C	C
	(4)	Public service and maintenance facilities	C	C	C	C
	(5)	Public parks and playgrounds	C	C	C	C
	(6)	Outdoor community festival longer than 3 days	C	C	C	C
	(7)	Public use of public land	€	€	€	€

1131.075 COMMERCIAL AND MIXED USE DISTRICT DESIGN STANDARDS.

The following standards are applicable to all commercial buildings in the City:

- (a) Windows. Windows must be constructed of clear or lightly tinted glass. Reflective glass and tinting above twenty percent (20%) is prohibited. A wall facing a public street must provide windows along at least 60% of its lineal frontage at street level. These windows shall provide views to allow people to see and be seen for passive security and to encourage pedestrian activity and district vitality.
- (b) Building Entrances and Siting.
 - (1) All buildings shall have a public entrance from the sidewalk along the Primary street frontage.
 - (2) Façades that abut parking areas and contain a public entrance shall make provisions for pedestrian walkways and landscape areas.
 - (3) If outlot buildings are a part of a large retail development, outlot buildings must define the street frontage by placement near the street with showcase windows and entrances oriented toward the street, as well as to the interior parking lot.
- (c) Roof Design. Green roof and white roof designs are encouraged.
- (d) Parking Structures. Parking structures are encouraged to be “faced” with

commercial uses along any façade that is adjacent to a public street.

1131.08 ACCESSORY USE REGULATIONS.

Accessory uses, buildings and structures permitted in a C Commercial District shall conform to the regulations of this section, and shall be landscaped and screened from view in accordance with ~~Section 1165.05~~Chapter 1166, as applicable.

(a) Off-Street Parking Lots. Off-street parking spaces in a parking lot may be located on the same lot as the principal use served, or may be located on a separate lot, or conditionally permitted in residential districts in accordance with Section ~~1161.11~~1161.06, and shall provided:

~~(1) A landscaped area not less than fifteen (15) feet in width adjacent to a public right-of-way.~~

~~(2) A landscaped area not less than ten (10) feet in width adjacent to a side or rear lot line which coincides with a side or rear lot line in an AA, A or B District.~~

~~(3) A landscaped area not less than five (5) feet in width adjacent to a side or rear lot line which coincides with a side or rear lot line in a MF District.~~

(4) Landscaping shall comply be accordance with the landscaping standards set forth in Sections 1166.06 and 1166.07. Any area located between a lot line and a parking area that is not covered by a permitted building shall be landscaped and maintained in accordance with Section 1166.06 and 1166.07.

~~(5) Conditionally permitted parking lots in residential districts shall comply with the regulations set forth in Section 1131.08(a).~~

(6) Parking shall not be permitted in front or corner-side yards or between a principal building and a public right-of-way. Drive aisles shall not be permitted between a principal building and a public right-of-way.

(7) Surface parking lots that exclusively serve a specific principal use or uses to the exclusion of other principal uses in the district are limited to sixty-two feet in width. Width shall be measured along the edge of the parking lot that is closest to and parallel or roughly parallel to the street.

(b) Location of Accessory Buildings/Structures. Accessory buildings and structures shall be located in a side or rear yard in compliance with the yard regulations for principal uses set forth in Schedule 1131.06.

(c) Fences. Fences may be erected in any commercial district provided they comply with the following regulations:

(1) A fence located in a front yard shall have a maximum height of ~~42~~48 inches above ground level.

(2) In a rear or interior side yard, a fence shall have a maximum height of seven feet above ground level.

(3) In a corner side yard, a fence shall have a maximum height of ~~42~~48 inches above ground, except as required by Section 1166.07 for lots adjacent to a residential district, or unless set back 15 or more feet from the public right of way, in which case a fence shall have a maximum height of seven feet above ground level.

(4) Any fence within 25 feet of a public right of way and parallel or approximately parallel to such street shall be approved by the Architectural Board of Review. No chain-link ~~or wire mesh~~ fencing shall be permitted in front or corner side yard.

(5) No barbed wire fence shall be constructed or erected on any lot. Any nonconforming barbed wire fence shall be removed following five years from the adoption of the amendment to this Zoning Code which made such fence nonconforming.

(6) A fence which has the sole purpose of enclosing a seasonal outdoor activity shall be removed during the times of the year when the seasonal activity is not in operation if it causes a nuisance or limits safe travel along public sidewalks.

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- (7) A pergola or other freestanding structure may be permitted in front of a building but not within the required front yard, subject to Architectural Board of Review approval.

**CHAPTER 1133
Park District**

1133.04 MINIMUM YARD REQUIREMENTS.

For each permitted use located in a Park District, front, side and rear yards shall be provided in accordance with the following:

- (a) Principal and accessory buildings and active recreational areas shall be located no less than fifty (50) feet from a front, side and rear lot line.
(b) Any playground structure or picnic shelter shall be located no closer to a front, side or rear lot line than a distance equal to its height.
(c) Off-street parking areas shall ~~be located~~ comply with Chapter 1161 and landscaped no closer than:

- ~~(1) Fifteen (15) feet to a public right of way;
(2) Ten (10) feet to an AA, A or B District;
(3) Five (5) feet to an MF District.~~ in accordance with Sections 1166.06 and 1166.07.

~~An area located between a lot line and a parking area that is not covered by a permitted building or structure shall be landscaped and maintained in accordance with Section 1165.05.~~

**CHAPTER 1141
Planned Development Objectives**

1141.02 ~~[intentionally omitted]~~ DEFINITION:

~~Planned Development or PD shall mean an area of land in which a variety of residential, commercial and office uses are accommodated as a conditional use in a pre-planned environment under more flexible standards, such as lot sizes and setbacks, than those restrictions that would normally apply under the standard district regulations. The procedure for approval of such development contains requirements in addition to those of permitted uses.~~

**CHAPTER 1143
S-1 Mixed Use District**

1143.02 PERMITTED USES.

Within the S-1 District, the following uses enumerated in this section are either permitted principal uses, conditional uses or accessory uses permitted in association with a principal use. All development shall be subject to the review and approval of the Board of Control as set forth in Section 1143.10.

- (a) Principal Uses. Any principal use or combination of uses permitted in the MF-3 or C-3 Districts is permitted in the S-1 District in accordance with the approved preliminary land use plan for the District.
(b) Accessory Uses. Accessory uses shall be permitted in association with a principal use subject to the regulations for such accessory uses in the respective MF or Commercial District.

1143.07 PARKING AREAS.

Parking areas shall be suitably screened with planting, and improved to meet the standards of Chapters 1161 and 1166. ~~In addition, for parking areas designed to accommodate twenty (20) or more vehicles, a minimum of ten percent (10%) of the parking lot shall be~~

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~~appropriately designed with landscaped areas and planted islands, developed and distributed throughout the parking lot as to interrupt the expanse of pavement. Such planted islands and landscaped areas shall be a minimum of ten (10) feet in any dimension. Shrub plantings adjacent to a building along the perimeter of the parking lot, or in any part of a yard, shall not be counted as interior landscaping. For the purpose of this section the area of a parking lot shall be the total vehicular surface area including circulation aisles. Curbing, at least five (5) inches in height, shall surround each landscaped island as protection from vehicles.~~

1143.09 LIGHTING.

All lighting of exterior and interior building areas, parking areas, grounds and signs shall be ~~so-designed that the light shall not cause undue glare or appear out of place, as determined by the Board of Control~~ according to the provisions of Section 1165.07.

1143.10 PROCEDURES.

Development in the S-1 Mixed Use District shall be permitted only after review and approval of a detailed development plan by the Board of Control according to the procedures set forth in this section:

- (a) Preparation of a Detailed Development Plan. A proposal for development shall be accompanied by a detailed development plan prepared by a qualified professional, drawn to an appropriate scale. The detailed development plan shall include the following information, provided that the Zoning Administrator may waive certain submission requirements that are deemed unnecessary for the review and evaluation of such proposed development.
 - (1) Plat, plot plan. Plat, property lines of the parcel or parcels proposed for development including existing utilities, easements, street rights of way, and locations of existing principal buildings and land uses on adjacent parcels and across existing streets. Permanent parcel numbers of the development and adjacent parcels shall be included.
 - (2) Topography. Topographic maps showing existing and generally proposed grading contours at not greater than two (2) foot intervals, including integration into and topography on adjacent properties, wooded areas and trees of substantial size. The topography may be included on the plot plan.
 - (3) Principal and accessory buildings. The number, height, location and grouping of proposed dwelling units, nonresidential uses, recreational facilities and public uses, along with notation of the development standards for building spacing, setback from public streets and maximum building height.
 - (4) Traffic. The proposed system of on-site vehicular circulation, details for access to streets, methods for control of traffic, and an assessment of the impact of the proposed development on the existing circulation system; data showing the average and maximum volume of traffic expected to be generated by the development.
 - (5) Parking areas. The layout, dimensions and estimate of the number of parking spaces, the landscaping and other design features of the parking area and types of pavement, the loading and unloading areas.
 - (6) Outdoor lighting fixtures. The location, type and illumination intensity of any existing or proposed outdoor lighting fixtures.
 - (7) Signs. Indication of the size, location, color and nature of any existing or proposed signs on the property.
 - (8) Landscaping and screening plan. A preliminary description of the location and nature of existing and proposed vegetation, landscaping and screening elements; a proposed maintenance plan to ensure the upkeep of natural areas.
 - (9) Outdoor storage. The location and layout of all outdoor storage including storage of waste materials and trash receptacles.
 - (10) Architectural drawings. Complete architectural drawings including floor plans, elevations and specifications for the proposed development.

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- (11) Phasing, sequencing of project. A detailed statement of the phasing and staging of specific elements of the plan, including a proposed construction sequencing schedule.
- (12) Utilities. Show proposed location of new utilities and authority to connect these into existing infrastructure. Storm Water must address requirements of Chapter 1335, Storm Water Management.
- (b) Review for Completeness by the Zoning Administrator. Upon receipt of the proposal, the Zoning Administrator shall, within three (3) working days, make a preliminary review of the application to determine whether such application provides the information necessary for review and evaluation. If it is determined that such application does not provide the information necessary for such review and evaluation, the Zoning Administrator shall so advise the applicant of the deficiencies and shall not further process the application until the deficiency is corrected.
- (c) Review by the Board of Control. The Board of Control shall review the proposal and shall grant approval only after determining that the proposal complies with the preliminary land use plan for the S-1 District and that the proposal is within the intent and purpose of the S-1 District and will not be harmful to surrounding properties. The Board may grant variances from relevant provisions of this chapter or from any other applicable provisions of the Zoning Code where practical difficulty is demonstrated. However, the Board shall not have the power to grant a use variance.
- (d) Review by Planning Commission. It is intended that any detailed development plan which will substantially change the use(s), building(s), or traffic pattern(s), within the S-1 Districts shall be reviewed by the Planning Commission prior to Board of Control approval or disapproval. Therefore, when a proposed development plan involves the placement of buildings on previously undeveloped land or a change in the circulation of traffic within the District or a change in the basic use to which land or a building is devoted, the Board shall refer the development plan to the Planning Commission for approval, approval with modifications or disapproval. The Commission shall be allowed a reasonable time, not less than thirty (30) days, for its consideration and recommendation. If the Planning Commission disapproves the proposal within such thirty (30) day period or thereafter, but prior to voting by the Board of Control upon the proposal, the Board of Control shall not approve the proposal except by the concurring votes of not less than three-fourths (3/4ths) of the members of the Board of Control. Any proposal may be amended prior to the voting thereon by the Board of Control without further notice or postponement, if such amendment to the proposal is in accordance with the recommendation, if any, of the Planning Commission.
- (e) Notice of Planning Commission Review. When such detailed development plan is referred to the Planning Commission, written notice shall be given by the Zoning Administrator to the applicant, the owner of property (if not the applicant), and to the owners of adjacent, abutting and contiguous properties. The notice shall either be hand delivered or sent by first class mail at least ten (10) days before the hearing by the Planning Commission on the development. The notice shall set forth the time and place of the hearing and the nature of the development proposal. The failure of any person to receive such notice shall not affect the right and power of the Planning Commission and/or Board of Control and/or Council to review such application or to take action on the application.
- (f) Council Approval. Approval by the Board of Control of a detailed development plan shall not become effective unless and until it has been approved by Council. If Council takes no action in approving or disapproving the plan within thirty (30) days from receipt of certification of approval by the Board of Control, the action of the Board of Control in approving the proposal shall become in full force and effect.
- (g) Building Permit. No building permit for the improvement of a parcel, or any portion thereof, or for the erection of any building shall be issued unless the

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detailed development plan has been approved in accordance with the provisions of this section. All construction and development under any building permit shall be in accordance with the approved, detailed development plan. Any departure from the approved plans shall be cause for revocation of the building permit.

- (h) Amendments to Plans. The preliminary land use plan or a detailed development plan may be amended according to the following:
- (1) An amendment to the preliminary land use plan shall be considered an amendment to the zoning map and shall be governed by Chapter 1119 of the Zoning Code.
 - (2) An amendment to the detailed development plan shall be governed by the provisions of this chapter pertaining to the approval of detailed development plans.

**CHAPTER 1153
Supplemental Standards for Conditional Uses**

1153.03 SPECIFIC AREA, WIDTH AND YARD REGULATIONS.

(a) Schedule 1153.03 sets forth regulations governing lot area, lot width and minimum yard dimensions for principal and accessory buildings and parking areas for conditional uses that require area, width and yard regulations different from the district regulations. Additional standards and requirements pertaining to such uses are set forth in Section 1153.05.

(b) In addition, all parking areas adjacent to a single-family or two-family dwelling shall be landscaped in accordance with Section 1165.05.

Schedule 1153.03
**AREA, WIDTH AND YARD REGULATIONS
FOR CERTAIN CONDITIONAL USES**

				<u>Min. Yard Dimensions (in feet)</u>				See Also <u>Section</u>
				<u>Buildings (d)</u>	<u>Parking</u>			
<u>Conditional Use</u>	<u>Min. Lot Area</u>	<u>Min. Lot Width (Feet)</u>	<u>Front</u>	<u>Side/ Rear</u>	<u>Side/ Front</u>	<u>Rear</u>		
(1) PRD	---	--	--	--	--	--	1155.01- 1155.08	
(1a) PDO Development District	2 acres						1147.01 - 1147.09	
(2) Place of worship	1 acre	150	50	50	50	10	1153.05(a)	
(3) School facilities	1 acre	150	50	50	50	10	1153.05(b)	
(4) Public libraries	1 acre	150	50	50	50	10	---	
(5) Public safety facilities	1 acre	150	50	50	50	10	---	
(6) Public and private parks and playgrounds, and public recreation facilities	None	None	50(a)	50(a)	(b)	(c)	1153.05(b)	
(7) Golf courses	None	None	50	50	50	50	---	

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(8)	Cemetery	---	--	--	--	--	--	1153.05(c)
(9)	Parking lot for a permitted use not on the same zoning lot	None	None	N/A	N/A	(b)	(c)	---
(10)	Accessory parking for a commercial use	---	--	--	--	--	--	1153.05(f)
(11)	Parking deck or one-story garage for a permitted use not on the same zoning lot	20,000 sq.ft.	100	30	15	N/A	N/A	---
(12)	Day care home	---	--	--	--	--	--	1153.05(d)
(13)	Day care center, nursery preschool, kindergarten	---	--	--	--	--	--	1153.05(e)
(14)	Residential home for the handicapped [intentionally omitted]	---	--	--	--	--	--	1153.05(g)
(15)	Home occupation in an accessory building	---	--	--	--	--	--	1153.05(h)
(16)	Outdoor community festivals	---	--	--	--	--	--	1153.05(i)

Schedule 1153.03
 AREA, WIDTH AND YARD REGULATIONS
 FOR CERTAIN CONDITIONAL USES (CONT.)

				Min. Yard Dimensions (in feet)				See Also Section
				Buildings (d)		Parking		
Conditional Use	Min. Lot Area	Min. Lot Width (Feet)	Front	Side/Rear	Side/Front	Rear		
(17)	Dormitories, fraternities, sororities	20,000 sq. ft.	100	30	15	30	15	1153.05(j)
(18)	Lodging houses, boarding houses, convents, home for the aged, other congregate living and residential care facilities	20,000 sq. ft.	100	30	15	30	15	1153.05(k)
(19)	Nursing home, intermediate and long-term care facility	1 acre	150	50	50	30	15	---
(20)	Special training schools and adult education facilities	1 acre	150	50	50	30	15	---
(21)	Hospitals	2 acres	200	50	50	30	15	---
(22)	Colleges and universities	2 acres	200	50	50	30	15	---
(23)	Drive-thru facilities	---	--	--	--	--	--	1153.05(l)

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(24)	Automatic Teller Machine	---	--	--	--	--	--	1153.05(m)
(25)	Funeral homes and mortuaries in a C-2 or C-3 District	20,000 sq. ft.	100	50	50	15	(b)	---
(26)	Animal clinics, veterinary offices, or animal grooming facilities	---	--	--	--	--	--	1153.05(n)
(26 A)	Animal day-care facilities and overnight boarding of animals	---	--	--	--	--	--	1153.05(bb)
(27)	Convenience retail in an office building	---	--	--	--	--	--	1153.05(o)
(28)	Catering	---	--	--	--	--	--	---
(29)	Outdoor dining	---	--	--	--	--	--	1153.05(p)
(30)	Dance studios, karate exercise classes and similar uses	---	--	--	--	--	--	1153.05(q)
(31)	Auto sales, new, (new and used) and auto rental	20,000 sq. ft.	100	(b)	(b)	15	(b)	1153.05(r)

Schedule 1153.03
 AREA, WIDTH AND YARD REGULATIONS
 FOR CERTAIN CONDITIONAL USES (CONT.)

				<u>Min. Yard Dimensions (in feet)</u>				
				<u>Buildings (d)</u>		<u>Parking</u>		
<u>Conditional Use</u>	<u>Min. Lot Area</u>	<u>Min. Lot Width (Feet)</u>	<u>Front</u>	<u>Side/Rear</u>	<u>Side/Front</u>	<u>Rear</u>	<u>See Also Section</u>	
(32)	Auto sales, used	20,000 sq. ft.	100	(b)	(b)	15	(b)	1153.05(s)
(33)	Truck, boat, sales/rental	20,000 sq. ft.	100	(b)	(b)	15	(b)	1153.05(s)
(34)	Gasoline stations	20,000 sq. ft.	100	(b)	(b)	15	(b)	1153.05(t)
(35)	Car wash establishment	20,000 sq. ft.	100	(b)	(b)	15	(b)	1153.05(u)
(36)	Auto service-major <u>& minor</u> repair	20,000 sq. ft.	100	(b)	(b)	15	(b)	1153.05(u)
(37)	Auto service-minor repair <u>[intentionally omitted]</u>	20,000 sq. ft.	100	(b)	(b)	15	(b)	1153.05(u)
(38)	Game rooms	---	--	--	--	--	--	1153.05(v)
(39)	Indoor commercial entertainment	---	--	--	--	--	--	---

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(40)	Private indoor/outdoor recreation	---	--	--	--	--	--	---
(41)	Meeting room, banquet Banquet hall, party center	---	--	--	--	--	--	---
(42)	Satellite dish receiving antenna	---	--	--	--	--	--	1153.05(w)
(43)	Murals Meeting room	---	--	--	--	--	--	1153.05(x)
(44)	Storage and warehousing of goods	---	--	--	--	--	--	---
(45)	Research and testing laboratories	---	--	--	--	--	--	---
(46)	Nursery and garden supply with accessory outdoor storage	---	--	--	--	--	--	1153.05(z)

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Schedule 1153.03
 AREA, WIDTH AND YARD REGULATIONS
 FOR CERTAIN CONDITIONAL USES (CONT.)

				<u>Min. Yard Dimensions (in feet)</u>					
				<u>Buildings (d)</u>		<u>Parking</u>			
<u>Conditional Use</u>		<u>Min. Lot Area</u>	<u>Min. Lot Width (Feet)</u>	<u>Front</u>	<u>Side/ Rear</u>	<u>Side/ Front</u>	<u>Rear</u>	<u>See Also Section</u>	
(47)	Public indoor/outdoor entertainment, public indoor recreation	---	--	50(a)	50(a)	(b)	(b)	---	
(48)	Reduction in parking requirements	---	--	--	--	--	--	1161.05	
(49)	Architecturally significant nonconforming signs	---	--	--	--	--	--	1163.11	
(50)	Attached single-family dwelling unit (e)	---	--	--	--	--	--	1153.05(aa)	
(51)	Chicken coop and run	---	--	--	10	--	10	1153.05(gg)	
(52)	Commercial Renewable Energy Systems (“Solar Farms”)	2 acres	--	25	25	--	--	1153.05(ff)	

Notes to Schedule 1153.03:

- (a) Playground structures and picnic shelters shall be located no closer to a front, side or rear lot line than a distance equal to its height.
- (b) Shall comply with the district regulations.
- (c) Shall comply with the parking regulations for multiple-family uses set forth in Section 1123.12(a).
- (d) Shall include principal and accessory buildings unless specified otherwise in this Zoning Code.
- (e) For the purpose of determining applicable lot area, width, and yard regulations, adjoining parcels containing attached single-family dwelling units and common areas shall be considered a single zoning lot. Any parcel on which an attached single-family dwelling unit is located shall have frontage on a public street.

1153.05 SUPPLEMENTAL REGULATIONS FOR SPECIFIC USES.

The following conditional use regulations are specific requirements pertaining to the location and maintenance of certain conditional uses and are in addition to the general criteria set forth in Chapter 1151 and the lot area, width and yard regulations set forth in Section 1153.03.

- (a) Places of Worship. In any-a residential district, a place of worship shall be used only for local purposes of the congregation ~~of the organization~~ and shall not be used or operated as or in connection with a business, except for the renting of rooms for a use that provides a service to the community, i.e., day care, exercise classes, ~~AA classes~~ meeting space.
- (b) Public and Private Schools, Parks and Playgrounds. In any district, the Planning Commission may require a school, park or playground to fence in the outdoor play area to minimize traffic hazards and buffer neighboring properties.
- (c) Cemeteries. Existing cemeteries are a conditionally permitted use in AA, A and

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B Residential Districts and may be permitted to expand no more than 150 feet from an existing property line provided no dwellings are destroyed in order to do so. No new cemeteries shall be permitted.

- (d) Day Care Home. A conditional use permit for a child day care home in an AA or A District may be administratively issued by the Zoning Administrator, however Planning Commission review shall be required for a day care home in a B District. The property on which the child day care home is located shall not be contiguous at any point (including sharing the intersection of two (2) property lines) with the property on which an existing day care home is located; not be within 150 lineal frontage feet of the property on which an existing day care home is located; and not be directly across the street from any existing child day care home. The provisions contained in Section 1165.02 governing home occupations shall apply to a child day care home except that there shall be no restrictions as to the hours during which motor vehicles may bring children to or pick up children from the home.
- (e) Day Care Center, Nursery-Preschool, Kindergarten. In a residential district, a day care center, ~~or nursery preschool or kindergarten~~ may be conditionally permitted provided the facility is located in a school, place of worship or a conditionally permitted adaptively reused non-residential building as set forth in Subsection 1153.05(cc) of this Code. In a commercial district such uses may be conditionally permitted ~~to locate in a building that meets the lot and yard requirements set forth in the district regulations. In residential and commercial districts, a day care center or preschool having 49 or fewer wards may be conditionally approved by the Zoning Administrator; a facility with more than 49 wards shall require Planning Commission approval.~~
- (f) Accessory Parking for a Commercial Use. In residential districts, parking lots contiguous to and within 150 feet of a ~~C-1~~, C-2, C-2X or C-3 District and accessory to a use located within that District and conforming to the requirements of Chapter 1161 may be conditionally permitted in compliance with the following:
- (1) For the purposes of this section, contiguous includes a parcel directly across a public right of way. The start of the 150 foot distance shall be measured from the side of the public right of way on such contiguous lot;
 - (2) An approved parking area shall be used solely for the parking of the passenger automobiles of the employees and customers of the use to which it is accessory;
 - (3) The Planning Commission may establish specific hours of operation; and
 - ~~(4) Each entrance and exit shall conform to the standards established for commercial uses adjacent to a residential district as set forth in Section 1161.10.~~
 - ~~(5) Landscaping ed buffers complying shall comply with the standards in sections Sections 1166.06 and 1166.07, shall be of the following dimensions:~~
 - ~~A. Not less than fifteen (15) feet in width adjacent to a public right of way.~~
 - ~~B. Not less than ten (10) feet in width adjacent to a side or rear lot line which coincides with a side or rear lot line in an AA, A or B District.~~
 - ~~C. Not less than five (5) feet in width adjacent to a side or rear lot line which coincides with a side or rear lot line in a MF District.~~
 - ~~D. Any area located between a lot line and a parking area that is not covered by a permitted building shall be landscaped and maintained in accordance with Section 1165.05.~~
- (g) [intentionally omitted] Residential Home for the Handicapped. In an AA, A or B Residential District, a residential home for the handicapped as defined in this Zoning Code shall be permitted provided such use complies with the criteria specified herein below. ~~A residential home for the handicapped which will have four residents may be approved administratively by the Zoning Administrator~~

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~~pursuant to the criteria herein. Applications for residential homes for the handicapped for five to eight residents shall be submitted to Planning Commission. The Zoning Administrator may require an applicant for a four-resident home to submit an application for a conditional use permit to the Planning Commission if the Administrator has questions as to whether the proposed home meets the criteria specified herein.~~

~~(1) The persons residing in such residential home shall live as a single housekeeping unit in a single dwelling unit and maintain such home as their sole, bona fide, permanent residence. The term "permanent residence" means:~~

~~A. The resident intends to live at the dwelling on a continuous basis; and~~

~~B. The resident does not live at the dwelling primarily to receive counseling, treatment, therapy or medical care;~~

~~(2) Prior to a handicapped person commencing residence in the home, either the applicant or the placement agency shall certify that it has determined that the resident is handicapped as defined in 42 U.S.C. Sec. 3602(h) and that the resident can function adequately in a community residential setting. The applicant or the placement agency shall have a continuing duty to provide such certification to the Zoning Administrator for each handicapped person who resides in the home after a conditional use permit is granted;~~

~~(3) The applicant or placement agency shall demonstrate that adequate qualified supervision will exist in the home as necessary;~~

~~(4) The home shall not have more residents than the maximum number of occupants permitted under the applicable provisions of the Housing Code describing required habitable floor and bedroom areas for each occupant; however, in no event shall the total number of persons residing at the home exceed eight;~~

~~(5) In order to maintain the single-family residential character of AA and A Districts, the dwelling shall not be changed or redesigned for any purpose other than a single housekeeping residential use and if modifications are made to the premises which may render it unmarketable as a single-family dwelling, the applicant is required and shall agree that upon termination of this conditional use for any reason, the applicant shall restore the premises to a condition in which it is marketable as a single-family dwelling, unless ownership and/or possession of the premises is transferred to a person(s) who has obtained a similar conditional use permit for the premises;~~

~~(6) Signs or other means of identification as a residential home for handicapped persons shall not be permitted;~~

~~(7) The applicant shall comply with the applicable parking regulations of the Zoning Code for the type of residential structure used by the residential home and shall make adequate provision for on-site parking of vehicles used by visitors, home supervisors, service providers and residents, if applicable;~~

~~(8) In considering whether to grant the conditional use permit, the Zoning Administrator or Planning Commission shall take into consideration the proximity and location of other such residential homes for handicapped persons within the neighborhood so as not to change the residential character of the area or create undue congestion in public ways;~~

~~(9) The owner/operator shall be licensed or certified by the State of Ohio or Cuyahoga County. Failure to maintain such license or certification shall result in immediate revocation of the home's conditional use permit.~~

(h) Home Occupation in an Accessory Building. A home occupation in an accessory building may be conditionally permitted by the Zoning Administrator in any district

~~A home occupation may be conducted in an accessory building~~ provided that the following standards are met and maintained:

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- ~~(1) The accessory building or portion of accessory building used for the home occupation shall be located no less than five (5) feet from the side and rear lot line;~~
- ~~(21) There shall be no display or other indication from the exterior that the building is being utilized for any nonresidential purpose, and the external appearance of the structure in which the use is conducted shall be compatible with the dwelling unit and neighboring residential structures;~~
- ~~(32) There shall be no merchandise manufactured or processed for sale, bought, sold, exchanged or traded in or on the premises. A home occupation involving individual works of art and involving some machine process as part of the creation of individual works of art is permitted, provided it meets all other criteria of this section, and involves no direct sales of such works of art to consumers on a regular basis from the premises;~~
- ~~(43) There shall be no person employed or engaged in the furtherance of the home occupation other than a member of the immediate family residing in the same dwelling unit as the home occupation;~~
- ~~(54) There shall be no mechanical, electrical or chemical equipment used in furtherance of such home occupation, except such as causes no disturbances of any kind beyond the premises where the home occupation is located;~~
- ~~(65) There shall be no storage of material, goods or equipment used for a business activity conducted off the premises;~~
- ~~(76) There shall be no motor vehicles bringing clients or customers to the place of the home occupation other than for the periods from 9:00 a.m. to 5:00 p.m. on weekdays, and from 9:00 a.m. to 12:00 noon on Saturday. All such vehicles visiting the place of the home occupation shall be parked on private property;~~
- ~~(87) No home occupation shall be permitted in any accessory building, or portion thereof, where the conduct of such home occupation is or will be offensive to neighboring property owners or occupants of the same dwelling structure by reason of excessive noise, late hours or business activity, the intensity of the business activity or other such reasons; and~~
- ~~(98) No home occupation shall be permitted in that portion of a garage that is required by this Zoning Code to provide enclosed parking spaces for a dwelling.~~
- (i) Outdoor Community Festivals. An outdoor community festival may be conditionally permitted in any district in compliance with the following:
 - ~~(1) In any district, the festival shall be sponsored by a street club, neighborhood association, religious or educational institution, or other nonprofit community organization, including in a commercial district, a merchant's organization;~~
 - ~~(2) In a commercial district, a local merchant's organization or special improvement district shall be permitted to sponsor a festival. In a residential district, the Zoning Administrator may authorize a nonprofit organization to conduct an outdoor festival so long as such outdoor activity is designed to accommodate and to be used primarily by the street residents, church membership or sponsoring nonprofit organization and provided further that such outdoor activity shall be limited in time to no more than twenty-four (24) hours. Festivals for a longer duration shall be approved by the Planning Commission;~~
 - ~~(3) In a commercial district, The Zoning Administrator may approve a conditional use permit for a festival lasting up to four (4) consecutive days. Festivals for five (5) or more consecutive days shall be approved by the Planning Commission.~~

~~the Zoning Administrator may authorize a civic, business or community nonprofit organization to conduct an outdoor festival that does not extend for a period longer than three (3) days. Festivals for a longer duration shall be approved by the Planning Commission;~~

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- (4) A festival may include activities in an area where property is publicly owned so long as the owner of such public property files with the application for such event a written consent to the activities proposed on its property;
- (5) The permit issued for such use shall contain special limitations thereon in accordance with the difference in circumstances which may attend each such requested use.
- (j) Dormitories, Sororities and Fraternities. In a multiple-family or commercial district, dormitories, sororities and fraternities, and associated dining halls may be conditionally permitted provided that:
 - (1) The land upon which such use or combination of uses is proposed to be located shall be owned by or under the permanent or continuing control of a recognized, established and operating educational institution which conducts a full-time program of educational instruction;
 - (2) The proposed use shall be for the purpose of furnishing housing or other permitted use facilities for students, faculty or permanent administrative personnel of such educational institution;
 - (3) Sleeping and living facilities shall be designed and arranged for such purposes only, and no student dormitory or other separate arrangement of dormitory rooms for such purposes shall contain any permanent cooking facilities in those rooms used for sleeping and living facilities;
 - (4) The land upon which it is proposed to establish such use shall be within one-half (0.5) mile of the educational facilities of the institution proposing to establish such use;
 - (5) The parcel upon which such use is to be established shall contain not less than 400 square feet of land area for each person proposed to be housed in any building to be constructed in connection with such use and have direct access to a duly dedicated public street or highway. Ingress and egress therefrom shall be provided by means of roads or drives of such number, location and character as shall be sufficient to supply necessary public or private services to the property and the residents therein;
 - (6) Off-street parking shall be supplied in accordance with Chapter 1161. However, in determining off-street parking requirements, the Planning Commission shall take into consideration and allow credit for any existing or proposed off-street parking facilities either owned or controlled by the educational institution the use of which is available to such educational institution in a manner other than as merely a member of the general public;
 - (7) The size, type, location and arrangement of all sleeping or living rooms in any building shall be such as will provide adequate light and air or other means of ventilation for the occupants thereof. However, no provision of any Codified Ordinance or ordinance establishing standards for area of rooms for multiple-family dwellings shall be deemed to apply to a building or use approved under this subsection, and in any combination of rooms designed for occupancy by more than one (1) person, there shall be contained not less than 150 square feet of floor area for the first occupant thereof, and not less than 100 additional square feet of floor area for each additional occupant thereof.
- (k) Boarding Houses, Lodging Houses, Convents, Monasteries and Other Congregate Living Facilities. Congregate living facilities may be conditionally permitted in multiple-family and commercial districts provided that the land area per bed shall be not less than the following:
 - (1) In a MF-1 District, the minimum land area per bed shall be 1,500 square feet;
 - (2) In MF-2, MF-3 and all commercial districts, the minimum land area per bed shall be 750 square feet.
- (l) Drive-Thru and Drive-In Facilities. Drive-thru and drive-in facilities may be conditionally permitted in a C-1, C-2, C-2X or C-3 Commercial District in

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association with a permitted use as set forth in Schedule 1131.02 and may be regulated according to the following:

- (1) Such facility should be located so as to be the least disruptive to pedestrian traffic;
 - (2) The location of access drives shall be evaluated according to Section 1161.10;
 - (3) For locations where such facility abuts a residential district, a buffer ~~zone~~ **yard** along the entire length of the common boundary between the commercial district and the residential district shall be required pursuant to Section 116~~6.075.05(b)~~;
 - (4) The Planning Commission may impose restrictions on the hours of operation.
 - (5) Drive aisles of drive-through facilities shall only be permitted in the rear or interior side yard. Such facilities shall be effectively screened from view along the public right-of-way and at the edges of sites adjacent to residential properties in order to minimize the impact of exterior site lighting, headlight glare and any menu intercom displays. Such screening shall be approved during the site plan review process and shall consist of an opaque masonry wall (stone, stucco or brick), a solid wood or simulated wood screen fence, or dense evergreen hedge six (6) feet in height. Plant materials shall be installed along any fence or wall to provide a softening effect.
- (m) Automatic Teller Machines. An Automatic Teller Machine (ATM) on the outside or in a vestibule of principal building, and which is accessible during no regular business hours or enclosed separately in a freestanding building, shall only be permitted as a conditional use and shall be developed according to the following:
- (1) Such facility should be located so as to be the least disruptive to pedestrian and vehicular traffic;
 - (2) There shall be adequate and safe standing space for persons waiting to use the facility;
 - (3) The Police Division has determined that the location and operation of the proposed ATM would not constitute a traffic or safety hazard;
 - (4) The Planning Commission may require additional parking spaces, if deemed necessary, than otherwise required for the principal use; and
 - (5) The ATM shall be owned and operated by the financial establishment on the same premises.
- (n) Animal Clinics, Veterinary Offices and Animal Grooming. An animal clinic, veterinary office or animal grooming establishment may be conditionally permitted in a C-2, C-2X or C-3 District provided such use is located in a building having adequate soundproofing and odor controls to ensure that any noises and odors associated with the operation of the facility are not detectible on neighboring properties. See subsection (bb), "Animal day-care facilities and overnight boarding of animals".
- (o) Convenience Retail in an Office Building. In a C-1 District, convenience retail uses may be conditionally permitted to occupy no more than an area equal to one hundred percent (100%) of the ground floor of a permitted office building, however when such use occupies less than fifty percent (50%) of the ground floor such use shall be deemed an accessory use and shall not require Planning Commission approval. In any case, access to such ground floor retail use shall be through the primary means of egress to the principal building and no exterior signage for such retail use shall be permitted.
- (p) Outdoor Dining. In ~~C-1, C-2, C2-X~~ and C-3 Districts, an outdoor dining facility may be conditionally permitted. An outdoor dining facility located on private property and having 25 or fewer seats may be approved by the Zoning Administrator; a facility with more than 25 seats shall require Planning Commission approval. In granting approval for an outdoor dining facility, the following standards shall apply:

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- (1) The facility shall only be used in conjunction with, and under the same management and exclusive control of, a restaurant located on the same or contiguous property.
- (2) The use shall not interfere with the flow of pedestrian traffic. The approving authority shall determine to what extent, if any, such use may encroach upon the public right-of-way, provided that an unobstructed walkway of a width specified in the conditional use approval is reserved for public passage. In no case shall the unobstructed walkway be less than six feet in width.
- (3) Before a conditional use permit is granted for the use, it shall be determined that the facility will not create an undue parking shortage within the district.
- (4) Temporary stanchions with chains or ropes may be approved for the outdoor dining facility, the extent and nature of which shall be set out in the conditional use permit. Architectural Board of Review approval shall be required only for fencing that is temporarily or permanently affixed to the ground or floor of the outdoor dining area. Fencing shall be subject to regulations in Section 1131.08(c).
- (q) Dance, Exercise, and Martial Arts Studios, Karate Classes and Similar Uses. In a C-2 District, establishments offering non-academic instruction should be located to be the least disruptive to the pedestrian traffic. Second floor is preferred. In commercial districts, dance, exercise or martial arts studios may be conditionally permitted. A dance, exercise or martial arts studio having 49 or fewer students may be conditionally approved by the Zoning Administrator; a facility with more than 49 students shall require Planning Commission approval.
- (r) Automobile Sales, New or New and Used, and Auto Rental. Establishments offering new or new and used vehicles for sale may be conditionally permitted in a C-2 or C-3 District, and establishments offering automobiles for rental may be conditionally permitted in a C-3 District, in compliance with the following items (1) through (6):
 - (1) Sale of new automobiles means a building and land used by a franchised automobile dealer principally for the sale of new automobiles. The sale of used automobiles may be permitted as an accessory use provided the inventory of used automobiles does not exceed fifty percent (50%) of the overall inventory at any one (1) time.
 - (2) Service garage, leasing department and other activities customarily incidental to a full service franchised automobile dealer shall be permitted as accessory to the sale of autos provided these activities are conducted in wholly enclosed buildings.
 - (3) Only repair of automobiles customarily associated with automobile sales shall be permitted, and shall be conducted inside a suitable building.
 - (4) No junk, inoperative or unlicensed vehicle will be permitted to remain outside on the property for more than forty-eight (48) hours.
 - (5) All outdoor wiring, including electrical and telephone wiring, shall be installed underground.
 - (6) Locations where such use abuts a neighborhood district or dwelling shall also provide a buffer zone along the entire length of the common boundary between the commercial use and the residential use which shall be maintained not less than ten (10) feet in depth. This buffer zone shall be landscaped with grass, shrubbery and trees, as approved by the Planning Commission and shall contain a solid brick wall three (3) feet in height from the residential building line of the adjoining residential use to the street, and six (6) feet in height from such residential building line to the rear property line of the adjoining residential use.
- (s) Sales and Rentals of New Trucks, New Trailers, and New Boats. In a C-3 District, the sale or rental of new trailers, new boats, and new trucks not exceeding three-quarter (3/4) ton rate capacity may be conditionally permitted provided that:
 - (1) The sale and storage of such vehicles is on the same lot or on a lot

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- (2) contiguous to the principal use;
 - (2) Vehicles may be stored outside provided the storage area is adequately screened in compliance with Section 1165.05(c);
 - (3) There shall not be more than fifty (50) vehicles located on the site outside of a completely enclosed building at any one (1) time;
 - (4) All work on vehicles, including but not limited to cleaning, servicing and repair, shall be done only inside a suitable service building;
 - (5) No junk, inoperative or unlicensed vehicle will be permitted to remain outside on the property for more than forty-eight (48) hours;
 - (6) All outdoor wiring, including electrical and telephone wiring, shall be installed underground;
 - (7) Locations where such use abuts a residential district or dwelling shall also provide a buffer zone along the entire length of the common boundary between the commercial use and the residential use which shall be maintained not less than ten (10) feet in depth. This buffer zone shall be landscaped with grass, shrubbery and trees, as approved by the Planning Commission and shall contain a solid brick wall three (3) feet in height from the residential building line of the use to the street and six (6) feet in height from such residential building line to the rear of the residential use or residential district property line.
- (t) Gasoline Stations. In a C-3 District, a gasoline station may be conditionally permitted in compliance with the following:
- (1) Such use should be located so as to be the least disruptive to pedestrian traffic;
 - (2) A gasoline station in a C-2 District shall comply with the standards and regulations set forth in Section 1131.09;
 - (3) A gasoline station may be combined with a car wash or service station provided that the minimum lot area shall be no less than 30,000 square feet and that such dual use is in compliance with the regulations established for each use.
- (u) Automobile Service Station - Major Repair, Automobile Service Station - Minor Repair, Car Wash. In a C-3 District, an automobile service station or a car wash may be conditionally permitted provided that:
- (1) There shall be a minimum building floor area of 1,200 square feet;
 - (2) All activities including cleaning, washing and drying operations shall take place inside the building;
 - (3) No merchandise except oil may be stored or displayed outdoors;
 - (4) No junk, inoperative or unlicensed vehicle will be permitted to remain outside on the property for more than forty-eight (48) hours;
 - (5) All outdoor wiring, including electrical and telephone wiring, shall be installed underground;
 - (6) Locations where such use abuts a residential district or dwelling shall also provide a buffer zone along the entire length of the common boundary between the commercial use and the residential use which shall be maintained not less than ten (10) feet in depth. This buffer zone shall be landscaped with grass, shrubbery and trees, as approved by the Planning Commission and shall contain a solid brick wall three (3) feet in height from the residential building line of the use to the street and six (6) feet in height from such residential building line to the rear of the residential use or residential district property line;
 - (7) An automobile service station or car wash may be combined with a gasoline station provided the minimum lot area shall be no less than 30,000 and the regulations for each use are maintained.
- (v) Game rooms. In a C-2, C-2X and C-3 District, an indoor game room may be conditionally permitted provided that:
- (1) The Fire Division shall determine that the premises is not in violation of any provision of any statute, ordinance or Fire Safety Code adopted by the State of Ohio or the City;

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- (2) The Fire Division shall determine that the floor plan submitted by the applicant as a part of the application for the permit would not violate any provision of any statute, ordinance or Fire Safety Code adopted by the State of Ohio or the City, and would not otherwise endanger the fire safety of persons using the premises;
 - (3) The Police Division shall determine that the supervision and security plan submitted by the applicant as a part of the application for the permit is adequate to maintain security and lawful order within the game room premises, in its required parking areas, and upon the public right of way abutting upon the premises;
 - (4) The Planning Commission shall determine that the sound control plan submitted by the applicant as a part of the application for the permit is adequately designed, in order that the sounds produced within the premises shall not be heard by persons outside of the premises;
 - (5) If the game room premises, or its required parking areas, are within 200 feet of the property line of any single, double or multiple-family residence, then the game room shall cease its operation not later than midnight on Friday and Saturday nights, and no later than 10:00 p.m. on all other nights, and shall not commence operation before 8:00 a.m. on any day. However, if such residence is located in a commercial use district, or in a special use district, then the Commission shall have the authority, based upon the evidence, to modify the requirements of this subsection;
 - (6) The applicant is in compliance with the applicable off-street parking ordinances and regulations of the City;
 - (7) Any conditional use permit issued pursuant to the provisions of this subsection shall be subject to the applicant's obtaining of the appropriate license from the City. The conditional use permit shall remain in effect only so long as the applicant possesses such a license and such license has not been suspended or revoked. The issuance of a conditional use permit is not intended to be, and shall not serve to modify in any way, the requirements for the obtaining of a license for a billiard room, bowling lane or amusement device, or with the jurisdiction of the City Manager relating thereto.
- (w) Satellite Dish Receiving Antenna. In any district, an antenna may be conditionally permitted by the Zoning Administrator subject to the following regulations:
- (1) No satellite dish receiving antenna shall be located in the front or side yard of a dwelling or other building;
 - (2) A satellite dish receiving antenna may be located on the roof of a building in a residential district only if it is not technically feasible to locate the dish in the rear yard and if the dish is located in such a manner that it is not visible from the public streets or any neighboring premises. A satellite dish receiving antenna may be located on the roof of a building in a commercial district only if it is located or screened so that it is not visible from the public streets, or, ~~if in the judgment of the Planning Commission,~~ its visibility will not adversely impact the overall character and orderly appearance of the neighborhood in which it is located.
 - (3) No sign shall be permitted on a satellite dish receiving antenna;
 - (4) The satellite dish receiving antenna shall be constructed and anchored in such a manner as to be able to withstand a wind force of up to 100 miles per hour;
 - (5) The perimeter of the satellite dish receiving antenna shall be landscaped or otherwise screened in such a manner as will not cause the presence of the satellite dish receiving antenna to interfere with or diminish the use and enjoyment of the adjacent properties;
 - (6) In all residential districts through MF-2, the landscaping or other screening must be sufficient to preclude visibility of the satellite dish receiving antenna from the first floor of adjacent residences;

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- (7) The diameter of a satellite dish receiving antenna shall not exceed ten (10) feet in any residential district through MF-2 and shall not exceed fifteen (15) feet in any other district;
 - (8) Except in cases where a satellite dish receiving antenna is located on the top of a building, the height of a satellite dish receiving antenna shall not exceed fifteen (15) feet in any residential district through MF-2 and shall not exceed twenty (20) feet in any other district;
 - (9) All setback requirements for the zoning district in which a satellite dish receiving antenna is to be located shall be complied with, and no variance shall be granted with respect to this requirement;
 - (10) A satellite dish receiving antenna shall not be used for the transmitting of any radio or television signal or for any other purpose that would result in an interference with the radio and/or television reception of surrounding properties;
 - (11) Application for the issuance of a conditional use permit pursuant to this section shall include a site plan indicating the location of the proposed satellite dish receiving antenna on the property and shall include all technical data necessary for the consideration of the application.
- (x) ~~(EDITOR'S NOTE: Pursuant to Ordinance 14-2017, passed March 20, 2017, subsection (x) has been deleted.)~~ Meeting Room. In commercial districts, meeting rooms may be conditionally permitted. A meeting room accommodating 49 or fewer persons may be conditionally approved by the Zoning Administrator; a meeting room which accommodates more than 49 persons shall require Planning Commission approval.
- (y) Flower or Plant Store Outdoor Display. Outdoor display of flowers and plants may be permitted at a flower or plant shop, provided that:
- (1) The location of the outdoor display is limited to privately owned property and shall not encroach upon public property;
 - (2) The spatial limits of the outdoor display shall provide adequate room for pedestrian ingress and egress;
 - (3) No price tags or signage shall accompany the outdoor display;
 - (4) Plant materials shall be in sturdy and substantial containers; and
 - (5) The display shall be for decorative purposes rather than commercial display of plant material merchandise.
- (z) Retail Plant Nursery and Garden Supply Business. A retail plant nursery and garden supply business with outdoor display of plant materials may be permitted in a C-2, C-2X and C-3 Districts in accordance with the following:
- (1) Outdoor display shall be limited to living plants in containers or balled and burlaped, and bulk supplies. All dead and diseased plants, empty tables and any other unutilized materials shall be immediately removed from outdoor areas;
 - (2) Storage and sale of firewood shall be a minimum of thirty feet from the property line of any residential use or district and fifteen feet from the property line of any commercial use or district. The Fire Warden shall also review any proposed firewood storage or sale area and may request that the Planning Commission place additional restrictions upon a specific installation due to potential fire hazards as described in the Ohio Fire Code. Additional regulations for the prevention of the harborage of pests may also be required.
 - (3) Plant identification and cost signs shall be limited in size to five tenths square feet (six inches by twelve inches) and in number to one sign for each distinct group of plants;
 - (4) Outdoor plant displays shall be set back from all property lines a minimum of ten feet or screened with a fence and/or evergreen hedge;
 - (5) Maximum fence and/or evergreen hedge height shall conform with district limits, with the exception of property lines along rights-of-way, where the maximum height shall be three feet, six inches;

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- (6) All outdoor lighting shall be directed from periphery toward interior of site, and there shall be no direct light spillover to adjacent properties;
 - (7) Drainage from outdoor plant display areas shall be contained on the property and directed to storm drains;
 - (8) Spraying shall not create a hazard or nuisance to neighboring properties;
 - (9) Motorized equipment shall be limited to devices with noise levels conforming with Section 509.03(b) of the Codified Ordinances;
 - (10) All outdoor activity shall be confined between the hours of 7:00 a.m. and 10:00 p.m.;
 - (11) The arrangement of principal and accessory structures may be varied by the Planning Commission to allow flexibility and encourage development of neighborhood garden centers. The minimum front, side and rear yard requirements for principal uses in the applicable district shall still be in effect. Excluding the area within these required setbacks however, principal and accessory structures and buildings may be arranged by approval of the Planning Commission without a variance from the Board of Zoning Appeals.
 - (12) Bulk storage and sale of materials such as peat moss, sand, mulch and topsoil shall be permitted outdoors if the materials are in individual bags in a location approved by the Planning Commission. Such bulk storage shall be a minimum of thirty feet from the property line of any residential use or district and fifteen feet from the property line of any commercial use or district. The Planning Commission may also approve bulk storage and sale of such materials if the material is fully surrounded by walled bins. Unreasonable runoff, dust and other undesirable side effects from such outdoor storage shall be mitigated so as to not create a nuisance to neighboring properties. The area occupied by bulk storage shall not exceed ten percent (10%) coverage of the lot area.
- (aa) Attached Single-Family Dwelling Unit. Attached single-family dwelling units may be conditionally permitted in B, A, AA, and MF Districts in accordance with the following:
- (1) In A, AA, and MF Districts, attached single-family dwelling units may be conditionally permitted only on lots which contain legally non-conforming side-by-side two-family dwellings.
 - (2) Each attached single-family dwelling unit must be on a separate parcel. When applicable, lots must be subdivided per Section 1111.06(b)(5).
 - (3) Attached single-family dwelling units shall be permitted only on corner lots on which each dwelling unit fronts upon a different street.
 - (4) Each attached dwelling unit shall have its own driveway and two-car garage.
 - (5) Before approving a necessary resubdivision or granting a conditional use permit for an attached single-family dwelling unit, the Planning Commission must ascertain that the following requirements have been met:
 - A. Existing dwelling units which are converted to attached single-family dwelling units must be brought into compliance with all applicable regulations of the Cleveland Heights Housing and Building Code.
 - B. To the extent feasible, each unit shall be required to have separate utility meters and separate HVAC systems.
 - C. The owner(s) shall provide, through deed restrictions or other appropriate legal documentation approved by the City's **Law Director of Law**, access to and maintenance of the common areas and other areas which, as a practical matter, should be maintained jointly including, without limitation, party walls, roofs, foundations, sewer and water lines, and mechanical systems which are not able to be separated, and to provide for uniform appearance of the exterior of the house.

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- (bb) Animal Day-Care Facilities and Overnight Boarding of Animals. An animal day-care facility may be conditionally permitted in a C-2, C-2X or C-3 District, provided the standards listed in this subsection are met. Overnight boarding of animals may be conditionally permitted in conjunction with an animal clinic, veterinary office, animal grooming facility, or animal day-care facility in a C-2, C-2X or C-3 District. In the process of applying for a conditional use permit, the applicant shall clearly set out a plan to assure that animals will be cared for in a humane, safe, and sanitary manner, and that all feasible steps will be taken to limit negative impacts on the surrounding neighborhood. The applicant shall provide floor plans and accompanying commentary explaining how the standards listed below shall be met.
- (1) Facilities shall be subject to inspection by an animal control officer, the Zoning Administrator, the Building Commissioner, or their designated agent(s) upon request during business hours.
 - (2) Facilities must provide and adhere to a plan for minimizing negative impact of the operation on neighboring properties due to noise, odors or other external effects of the operation.
 - (3) Facilities shall have adequate exhaust outlets as approved by the Building Commissioner. Outdoor exhaust shall terminate at a point at which it will not be drawn into a ventilation system of a neighboring property and any odors will not be detectible on neighboring properties.
 - (4) Outdoor runs and activity areas should be sufficiently distant from neighboring properties to ensure that activities therein do not cause a nuisance to occupants of those neighboring properties.
 - (5) All dogs on the premises must be licensed.
 - (6) All waste shall be disposed of with adequate frequency and in such a sanitary manner as to avoid odors, vermin or other nuisance conditions or the spread of disease.
 - (7) The facility shall be maintained in a humane, safe and sanitary condition in accordance with accepted veterinary standards to ensure the health, safety and welfare of animals on the premises.
 - (8) Failure to comply with the conditions set forth in this section and any additional conditions imposed by the Planning Commission shall be grounds for revocation of the conditional use permit.
- (cc) Adaptive Reuse of Existing Non-Residential Buildings in Residential Districts. The following provisions are for adaptive reuse of a non-residential building such as a place of worship, library or school into a use compatible with the larger residential district. Adaptive reuse of non-residential buildings in residential districts is allowed by conditional use and subject to the following standards:
- (1) The existing building is clearly non-residential in its original construction.
 - (2) A non-residential building in a residential district may be converted to the following uses:
 - A. Multi-family dwelling
 - B. Office
 - C. Industrial design
 - D. Limited research and development
 - E. Recreation and education classes such as exercise, art, writing, theater, continuing education, after-school programs, etc.
 - F. Other uses similar to (A) through (E) that are found to be compatible with the larger residential district.
 - (3) Off-street parking is required in accordance with Chapter 1161 of this Code.
 - (4) The character of the site and community amenities should be preserved, maintaining a balance between the building, green space and parking.
 - (5) These shall be no mechanical, electrical or chemical equipment utilized in furtherance of use, except as causes no disturbances of any kind beyond the premises where the use is located.

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- (6) The conduct of such use shall not be offensive to neighboring property owners or occupants by reason of excessive noise, late hours of business activity, the intensity of the business activity or other such reason.
 - (7) The use must provide and adhere to a plan for minimizing negative impact of the operation on neighboring properties due to noise, hours of operation or other external effects of the operation.
 - (8) Signage shall meet the requirements of the original use as set out in Chapter 1163.
 - (9) For any non-residential use, outside storage or display ~~if is~~ prohibited. All servicing, processing and storage uses must be fully enclosed.
 - (10) Diminished setbacks due to alterations or additions shall meet the setback requirements of the original use as set forth in schedule 1153.03 unless a variance is obtained.
- (dd) Farmers' Markets. A farmers' market may be conditionally permitted as a temporary use for specific periods of time and specific hours of operation in all districts by the Zoning Administrator in compliance with the following:
- (1) Farmers' markets may be operated on a property occupied by a house of worship, school facility, public park or other public property, library, an adaptive reuse of a nonresidential building or on a parking lot in a commercial districts.
 - (2) Farmers' markets may be operated in a parking lot only if parking within the lot is not necessary for off-street parking purposes during the time that the farmers' market will be operated.
 - (3) Farmers' markets may not be operated on a property principally used for residential purposes.
 - (4) Only the following products may be exhibited or offered for sale: fresh eggs and dairy goods, meats, fruits, vegetables, juices, flowers, plants, herbs and spices produced or grown by the vendor, foods made by the vendor, and arts and crafts made by the vendor.
 - (5) As a part of its application, the operator shall provide and commit to an appropriate litter abatement program.
 - (6) Operation of the farmers' market shall not cause a nuisance or disturbance to neighboring properties.
- (ee) Community Gardens. A community garden may be conditionally permitted in all districts by the Zoning Administrator provided the standards listed in this subsection are met:
- (1) The applicant shall establish that the contiguous property owners have been notified about the intended use and have no objection.
 - (2) The applicant shall provide information establishing that an adequate water source is available.
 - (3) Community gardens are limited to the cultivation of herbs, fruits, flowers, or vegetables including the cultivation and tillage of soil and the production, cultivation, growing and harvesting of any agricultural, floricultural or horticultural commodity.
 - (4) One bee hive may be kept in a Community Garden provided the following standards are met:
 - A. The community garden members have agreed to permit the keeping of bees in the community garden
 - B. At least 10 days prior to granting a conditional use permit which authorizes the keeping of bees, the Zoning Administrator shall cause notice of the intent to keep bees and opportunity for comment to be sent to the owners of all properties within 300 feet of the proposed Community Garden. The Zoning Administrator shall not permit the keeping of bees if he or she believes there is reasonable cause for withholding permission in light of any of the notified property owners' expressed concerns.
 - C. The bee hive must be registered with Ohio Department of Agriculture.

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- (5) The keeping of livestock or other animals is prohibited.
 - (6) The Applicant must establish that the soil to be used in the community garden has been tested and is sustainable for the intended use. Soil testing is not required for planter boxes.
 - (7) The site must be designed and maintained so that water and fertilizer will not drain onto adjacent property.
 - (8) The growing of intoxicating or poisonous plants is prohibited.
 - (9) The use of herbicides and weed killers is prohibited.
 - (10) The premises on which the community garden is located shall be maintained free of litter and debris.
 - (11) Composting shall comply with Section 1121.12(o).
 - (12) Areas of dry, loose soil that may be moved by wind must be covered by mulch or otherwise confined.
 - (13) ~~A landscape screen or open fence is required along the front and corner side lot line to define and screen the garden. Open fences of a minimum of three up to four (43) feet in height are required permitted along the front and corner side lot line~~ and shall be constructed of wood, ~~or~~ ornamental metal ~~or other material and are~~ subject to approval by the Architectural Board of Review. Decorative fences are encouraged along the front and corner side lot lines. Six (6) foot solid fences or the adjoining owner's consent for an alternative landscape or fence plan are required along the interior side and rear lot line.
 - (14) The use shall not require off-street parking.
 - (15) The application shall identify and show the location of any proposed compost bins or rain barrels or other proposed structures.
 - (16) Maintenance of the community garden will not cause a nuisance or disturbance to neighboring properties.
 - (17) Use of insecticides made from synthetic chemical materials is prohibited. Acceptable alternatives, applied in accordance with established safe handling instructions, include rotenone, pyrethrin and Safer Soap.
- (ff) Commercial Renewable Energy Systems. Commercial Renewable Energy Systems ("Solar Farms") may be permitted as a conditional use by the City Planning Commission in C-1, C-2 and C-3 Zoning Districts provided the standards listed in this section are met:
- (1) The minimum lot size for a Solar Farm shall be two (2) acres.
 - (2) Solar panels shall be erected no less than 25 feet from any property line and all other structures on the property must meet District yard requirements.
 - (3) On-site power lines shall be placed underground to the extent possible.
 - (4) The entry to office or guests facilities shall address the street, with direct access to office or guest facilities from street frontage and parking areas.
- (gg) Chicken Coops and Chicken Runs.
- (1) Chicken coops and runs may be conditionally permitted in the AA, A, and B residential districts by the Zoning Administrator provided the standards listed in this subsection are met:
 - A. A maximum of four (4) chickens may be kept on the property.
 - B. No commercial activity will result from the keeping of chickens on the property.
 - C. Roosters are not permitted.
 - D. Chicken coops and runs shall be allowed in the rear yard only.
 - E. Chicken coops and runs shall be located a minimum of ten (10) feet away from any principal building and ten (10) feet from an adjacent lot. At all times, chickens shall be contained within the coop and/or run.
 - F. The facility shall be kept in good repair, maintained in a clean and in a sanitary condition, and free of vermin, obnoxious smells and substances. The facility will not create a nuisance or disturb

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- neighboring residents due to noise, odor, damage or threats to public health.
- G. The ~~chicken~~-chicken coop and run shall be designed to ensure the health and well-being of the animal is not endangered by the manner of keeping or confinement and to protect the chickens from animals and to prevent unauthorized access to the chickens by general members of the public.
 - H. The chicken coop and run shall be adequately lighted and ventilated.
 - I. The coop and run enclosures shall be of uniform and sturdy design and shall be constructed and maintained in good condition to protect the safety of the chickens and the aesthetics of the neighborhood.
 - J. Chicken coop and run fencing material shall be securely fastened to posts of reasonable strength firmly set into the ground and, if used, chicken wire or other woven wire shall be stretched tightly between support posts.
 - K. No storage of chicken manure shall be permitted within twenty (20) feet of the property line.
 - L. Chickens shall be kept in coops from dusk to dawn.
 - M. Slaughtering of the chickens is prohibited.
- (2) Zoning Administrator shall verify general compliance with City Codes before issuing conditional use permit.
 - (3) Written notice of approved conditional use permits shall be mailed by the Zoning Administrator by first class mail to adjoining properties to the attention of the owners of such properties. Such notice shall reference this subsection and provide contact information for any questions or complaints relating to the approved use.
 - (4) Any unresolved complaints concerning the above listed conditions shall be sent by the Zoning Administrator to be heard by the Planning Commission who shall have the power to revoke, modify, or affirm the conditional use permit.
- (hh) Hotel. In a C-1, C-2, C-2X or C-3 district, a hotel may be conditionally permitted in compliance with the following:
- (1) Patron drop-off area(s) shall be located and/or screened to minimize negative effect on adjacent residential properties. The design and operation of the drop-off shall cause minimal disturbance to the flow of vehicles on public streets and safety of pedestrians on public sidewalks.
 - (2) All delivery, refuse, HVAC equipment, emergency power equipment areas, drop-off areas, and loading berths shall be located and oriented to minimize negative effect on adjacent properties and screened in accordance with Code Section 1166.10.
 - (3) Hotel staff shall be on-site 24 hours each day.
 - (4) Overnight parking of trucks with more than 2 axles or recreational vehicles shall be only in areas as designated on Planning Commission approved site plan.

**CHAPTER 1155
Planned Residential Development**

1155.02 APPROVAL CRITERIA.

A Planned Residential Development shall be approved by the Planning Commission as a conditional use. In addition to the general review criteria for conditional uses set forth in Chapter 1151, the Planning Commission shall review a proposed PRD giving particular consideration to the following:

- (a) Uses within the proposed PRD shall be located so as to reduce any adverse

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- influences and to protect the residential character of areas both within and adjacent to the PRD;
- (b) Diversity and originality in lot layout and individual building design shall be encouraged to achieve the best possible relationship between development and the land;
 - (c) Significant buffer zones with adequate landscaping shall be provided between ~~single-single~~-family dwellings and multiple-family dwellings;
 - (d) Roadway systems, service areas, parking areas, entrances, exits, and pedestrian walkways within the PRD shall be so designed as to have access to public, primary and secondary streets without creating traffic hazards or congestion;
 - (e) The layout of parking areas, service areas, entrances, exits, yards, courts, landscaping, signs, lighting, noise or other adverse influences shall be designed and located to protect the residential character within and adjacent to the PRD;
 - (f) ~~All drainage systems and utilities shall be located underground.~~ All utilities shall be located underground. Storm water must address requirements of Chapter 1335, Storm Water Management.

1155.03 PERMITTED USES.

As part of a Planned Residential Development, the uses and dwelling types permitted in each residential district are those denoted by the letter P below:

Use	Zonin			
	g District	AA	A	B
(a) Standard single-family subdivision	P	P	P	
(b) Cluster single-family	P	P	P	
(c) Two-family (attached side-by-side)	P	P	P	P
(d) Townhouses		P	P	P
(e) Apartments Multi-family dwelling				P
(f) Accessory recreational and community facilities for use by residents of PRD	P	P	P	P

1155.05 DEVELOPMENT STANDARDS.

A PRD approved as a conditional use shall comply with the purpose and approval criteria in Sections 1155.01 and 1155.02 and may vary from the standard requirements of the district as follows:

- (a) Maximum Density. The maximum density of a PRD in a particular zoning district shall be:
 - (1) 3.2 dwelling units per acre in an AA District;
 - (2) 6.7 dwelling units per acre in an A District;
 - (3) 8.4 dwelling units per acre in a B District;
 - (4) 14.9 dwelling units per acre in an MF-1 District.
 The total number of units permitted shall be calculated by multiplying the total land area, exclusive of public streets existing at the time the plan is submitted, by the maximum density allowable per acre.
- (b) Yard Requirements. ~~Buildings located within fifty (50) feet of a single-family property shall maintain the established building line of the adjacent property. The front, side and rear y~~All yard requirements may be varied by the Planning

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Commission to accommodate a variety of structural patterns, clustering designs, and housing types, ~~provided that for projects adjacent to substantially developed single family neighborhoods, buildings located within fifty (50) feet of such single family property shall maintain the established building line of the adjacent property.~~

- (c) Height Regulations. The height of buildings and structures in the AA, A and B Districts shall not exceed the height limits specified in the respective district regulations. In the MF-1 District, buildings and structures shall not exceed thirty-five (35) feet in height.
- (d) Additional Standards. Additional site specific development requirements formulated to achieve the objectives of this chapter shall be established at the time the conditional use request and Development Plan are reviewed. Any dimensional specifications adopted with such plan become binding land use requirements for the PRD and shall supersede those contained in the district regulations.

CHAPTER 1161

Off-Street Parking and Loading Regulations

1161.03 NUMBER OF PARKING SPACES REQUIRED.

The required number of off-street parking spaces for each facility or use shall be determined by application of the standards noted in Schedule 1161.03. For a use not specified in Schedule 1161.03, the Planning Commission shall apply the standard for a specified use which the Commission determines to be most similar to the proposed use.

Schedule 1161.03

REQUIRED OFF-STREET PARKING SPACES

	<u>Principal Building or Use</u>	<u>Minimum Spaces Required</u>
(a)	<u>Residential Uses:</u>	
	(1) Single-family dwellings	2 spaces, of which both spaces shall be enclosed (a)(b)
	(2) Two-family dwellings	2 spaces for each dwelling unit, of which both spaces per dwelling unit shall be enclosed (a)(b)
	(3) Townhouses	2 spaces for each dwelling unit, of which both spaces per dwelling unit shall be enclosed.
	(4) Apartments Multi-family dwelling	12 spaces for each dwelling unit, of which not less than 1.5 space per unit shall be enclosed.
	(5) Senior citizen apartments	1 space for each dwelling unit, of which not less than 0.5 spaces per dwelling unit shall be enclosed.
	(6) Lodging house, boarding houses	1 space for each bed.
	(7) Dormitories, sororities and fraternities	1 space for each 3 persons based on the maximum capacity as established in the Housing Code.
	(8) Nursing homes	1 space per 3 beds
(b)	<u>Office, Professional Service Uses: (b)</u>	
	(1) Business, professional and administrative offices and services (excluding medical and dental)Office, medical office, animal clinic & financial establishments	1 space for each 300 sq. ft. of floor area.

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	(2)	Medical, dental offices and clinics, including urgent care clinics	1 space for each 200 sq. ft. of floor area
	(3)	Financial establishments	1 space for each 300 sq. ft. of floor area.
	(4)	Animal clinic, veterinary office	1 space for each 300 sq. ft. of floor area.
	(5)	Funeral homes, mortuaries	1 space for each 50 sq. ft. of floor area in parlors or service rooms.
	(6)	Hospitals	2 spaces per room
(c) <u>Retail/Service Uses:</u> (b)			
	(1)	Retail or business uses permitted in any C District, unless specific standards given below	1 space for each 300 sq. ft. of floor area
(c) <u>Retail/Service Uses:</u> (b) (Cont.)			
	(2)	Furniture and appliance; retail nursery garden supply, establishments	1 space for each 500 sq. ft. of floor area
	(3)	Restaurants; bars; taverns; night clubs	1 space for each 300 sq. ft. floor area (outdoor dining area excluded)
	(4)	Hotels and motels	5 spaces plus 1 space for each sleeping room or suite
(d) <u>Automotive Uses:</u> (b)			
	(1)	Auto sales; new and used, auto, truck, boat sales, rental facilities	1 space for each 500 sq. ft. of floor area (indoor area only)
	(2)	Gasoline stations	.5 spaces per pump +1 per 500 sq. ft. of accessory retail area
	(3)	Car wash facilities	1 space per bay plus sufficient area for stacking spaces
	(4)	Automobile service stations — major & minor repair	4 spaces per bay
	(5)	Automobile service station — minor repair	4 spaces per bay
(e) <u>Commercial Entertainment/Recreation Uses:</u> (b)			
	(1)	Bowling alleys	2 spaces per each lane.
	(2)	Game rooms	1 space for each billiard table or amusement device
	(3)	Skating rinks	1 space per 200 sq. ft. of floor area
	(4)	Indoor movie theaters, auditorium and other public assembly places	1 space for every 4 seats for first 400 seats then 1 space per 10 seats
	(5)	Golf course	4 spaces per hole

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	(6)	Tennis or racquet ball court	2 spaces per court
	(7)	Indoor or outdoor swimming pools, public or private	1 space per 200 sq. ft. of water area.
	(8)	Health, fitness, recreation club	1 space for every 200 sq. ft. of exercise area, including locker room, and equipment room.
(f)	<u>General Commercial Uses:</u> (b)		
	(1)	Printing, publishing, storage and warehousing of goods	1 space for each 800 sq. ft. of floor area.
	(2)	Research and testing laboratories	1 space for each 400 sq. ft. of floor area.
(g)	<u>Educational Facilities:</u>		
	(1)	junior high schools, elementary schools and kindergartens	2 spaces per classroom +1 space per 15 seats in largest assembly hall
	(2)	Neighborhood high schools	2 spaces per classroom
	(3)	Regional high schools	5 spaces per classroom.
	(4)	Colleges, universities	10 spaces for every classroom
	(5)	Child -Day Care Centers, nursery preschools and similar uses	1 space for each staff person or employee plus a minimum of 2 pick-up/drop-off spaces
(h)	<u>Community Facilities:</u>		
	(1)	Places of worship	1 space for every 4 seats
	(2)	Community center, library, museum or similar public or private semi-public building	1 space for every 4 seats or for each 300 sq. ft. of floor area, whichever is greater.
(i)	Shopping Center		1 space per 250 sq. ft. of leasable floor area.

Notes to Schedule 1161.03:

- (a) All existing lots of record of a single-family and two-family dwelling that does not meet the minimum lot area or lot width requirements of the district are permitted to provide fewer enclosed parking spaces in a detached garage if the Zoning Administrator verifies that construction of a code-conforming detached garage cannot be accommodated on the site and approves a landscaping and screening plan which addresses stormwater management and minimizes adverse impact on neighboring properties. The site must meet one (1) or more of the following standards:
- (i) The maximum rear yard coverage limitation would be exceeded with the construction of a Code-conforming two-car detached garage.
 - (ii) The maximum lot coverage or impervious surface limitation would be exceeded with the construction of a two-car Code-conforming detached garage. This standard applies only if the principal building exceeds the minimum floor area of a dwelling unit by no more than ten percent (10%).
 - (iii) ———— The previously existing detached garage on the lot was a single-car garage for single-family dwelling or fewer than four-car garage for a two-family dwelling.
 - (iv) Special conditions peculiar to the land or structure which are not applicable generally to other lands or structures in the same Zoning

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District render a code-conforming garage impractical.

- ~~(v) Construction of a rear-yard garage would result in pavement access of fewer than 20 feet to an enclosed parking space.~~
- ~~(b) If the previously existing detached garage on the lot was a single-car garage for single-family dwelling or fewer than four-car garage for a two-family dwelling, the Zoning Administrator may approve a garage with the same number of enclosed spaces. A minimum of five (5) spaces is required unless otherwise modified pursuant to Sections 1161.04 or 1161.05.~~
- ~~(c) For the purposes of this section, a neighborhood shopping center shall include one (1) or more multitenant building and/or a group of buildings when the required parking spaces are provided in a shared parking lot, parking deck or parking garage.~~

~~**1161.10 ACCESS DRIVES IN COMMERCIAL DISTRICTS.**~~

~~In C-1, C-2 and C-3 Commercial Districts, there shall be adequate provision for ingress and egress to all parking and loading spaces and access drives shall be provided as follows:~~

- ~~(a) Each zoning lot shall be permitted one (1) entrance and one (1) exit per street frontage.~~
- ~~(b) One (1) additional entrance and exit drive may be permitted for every 150 feet of street frontage or fraction thereof.~~
- ~~(c) The width of an access drive measured at the front lot line shall not be less than twelve (12) feet per lane or have a total width greater than thirty six (36) feet.~~
- ~~(d) An access drive shall be located no closer than ten (10) feet to a residential district and the resulting adjacent open area shall be properly landscaped and maintained in accordance with the standards in Section 1166.07.~~

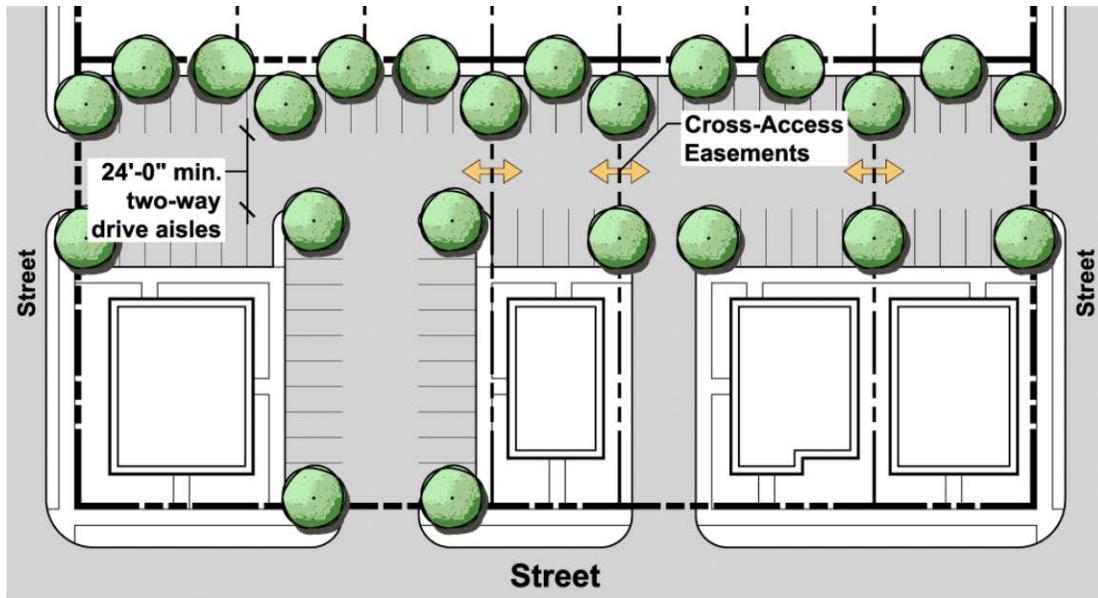
1161.103 NON-RESIDENTIAL JOINT USE DRIVEWAYS AND CROSS-ACCESS EASEMENTS.

(a) Adjacent non-residential uses that possess dedicated parking areas are encouraged to provide joint use driveways and cross-access easements to allow circulation between sites. Property owners are encouraged to pursue agreements with neighboring property owners prior to submittal of required permits and approvals. If joint use driveways and cross-access easements will be provided, the property owner must provide proof that adjacent property owners have been contacted in writing. (See Figure 1161.103(a): Joint Use Driveways and Cross-Access Easements)

- (b) Joint use driveways and cross-access easements must incorporate the following:
 - (1) A travel aisle and driveway width of twenty-four (24) feet to ensure two-way travel aisles to accommodate automobiles, service vehicles and loading vehicles.
 - (2) Bump-outs and other design features to make it visually obvious that the abutting properties are tied together.
 - (3) A unified access and circulation plan for shared parking areas.

(c) Pursuant to this section, property owners who establish cross-access easements must record an easement allowing cross-access to and from properties served by the joint use driveways and cross-access easement.

FIGURE 1161.103(a): JOINT USE DRIVEWAYS & CROSS-ACCESS EASEMENTS



1161.11 IMPROVEMENT AND MAINTENANCE STANDARDS.

All ~~required~~ off-street parking and loading facilities including entrances, exits, maneuvering areas, waiting areas, and parking and loading spaces shall be in accordance with the following standards and specifications.

- (a) Parking Space Dimensions. Each off-street parking space, open or enclosed, shall measure at least nine (9) feet by twenty (20) feet ~~exclusive of access drives or aisles~~. Compact parking spaces measuring at least seven feet six inches (7' 6") by sixteen (16) feet are permitted as regulated in 1161.107.
- (b) Waiting Space Dimensions. Each off-street waiting space for a drive-thru or drive-in facility shall have an area not less than 160 square feet (measuring eight (8) feet by twenty (20) feet) ~~exclusive of access drives and parking aisles~~.
- (c) Circulation Aisles. The ~~maximum width for a two-way circulation aisle shall be twenty-four (24) feet and the~~ minimum width for a circulation aisle shall be:
 - (1) Twenty-two (22) feet for 90 degrees or perpendicular parking;
 - (2) Eighteen (18) feet for 60 degrees parking;
 - (3) Thirteen (13) feet for 45 degrees parking.
- ~~(c1) Access drives. There shall be adequate provision for ingress and egress to all parking and loading spaces. Access drives shall be provided as follows:~~
 - ~~(1) Each zoning lot shall be permitted one (1) entrance and one (1) exit per street frontage.~~
 - ~~(2) The width of an access drive measured at the front lot line shall not be less than eleven (11) feet per lane nor greater than twelve (12) feet per lane and shall have a total width no greater than thirty-six (36) feet.~~
 - ~~(3) An access drive shall be located no closer than ten (10) feet to a residential district and the resulting adjacent open area shall be properly landscaped and maintained in accordance with the standards in Section 1166.07.~~
- (d) Paving. All ~~required parking~~ spaces, together with driveways, aprons, parking pads, other circulation aisles and access sidewalks, both public and private, shall be surfaced as follows:
 - (1) Parking lots and circulation aisles for parking lots: Concrete not less than

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six (6) inches in thickness, or with bituminous surface not less than three (3) inches in depth on top of a compacted crushed stone base not less than six (6) inches in depth. Paving with semi-pervious materials (e.g. permeable pavers, porous asphalt, porous concrete, grass-crete or gravel-crete) that are able to withstand vehicular traffic or other heavy-impact uses are permitted in accordance with Paragraph (4) below. Surfaces in areas designated as accessible parking and/or accessible pedestrian paths shall meet all applicable federal and state standards.

(2) Aprons: Concrete not less than six (6) inches in thickness for residential aprons and concrete not less than eight (8) inches in thickness for commercial aprons.

(3) Driveways: Concrete not less than four (4) inches in thickness, or with bituminous surface not less than four (4) inches thick consisting of two (2) inches of compacted #301 binder course and two (2) inches of compacted #404 surface course over a four (4) inch compacted aggregate base or paving with semi-pervious materials that are able to withstand vehicular traffic or other heavy-impact uses is permitted (e.g. permeable pavers, porous asphalt, porous concrete, grass-crete or gravel-crete).

(3a) Parking pads: Rear yard parking pads may be constructed of gravel subject to rear yard coverage and setback provisions and shall be designed and maintained to prevent displacement of gravel.

(4) Alternative paving materials: Semi-pervious materials, such as permeable pavers, porous asphalt, porous concrete, grass-crete or gravel-crete shall permit natural percolation of water and be installed and maintained in accordance with industry and manufacturer's standards and the following:

A. The manufacturer's specifications are applicable to the subject property's particular soil type and slope (gradient) so that vehicles are supported without rutting and water percolation is achieved.

B. Semi-pervious parking areas must allow storm water to percolate into the ground at a rate sufficient to accommodate the five-year, 24-hour storm event.

C. The City may inspect the semi-pervious parking areas as needed. If maintenance is required, the owner may be required to submit to the City documentation of the removal of visible surface sediment accumulations, and/or test results of infiltration rate through the pervious concrete and sub-grade soils system.

D. For non-residential uses, if only a portion of the parking area is designated for semi-pervious materials, the area designated for semi-pervious parking shall be located at the perimeter of the parking lot, and if possible, remote or furthest removed from the principal building.

(5) Sidewalks, both public and private: Concrete not less than four (4) inches in thickness, or an equivalent stone material. Sidewalks on private property may be constructed of alternative paving materials described in Section 1161.11(d)(4).

(e) Drainage. All required spaces, together with driveways and other circulation aisles, shall have adequate provision for underdrainage and for the disposal of storm water, so that water shall not flow onto adjoining property or adjacent sidewalks in a quantity or manner that would be detrimental thereto, or inconvenient to persons using the sidewalk.

(f) Curbs and Curb Inlets. A concrete or stone curb at least six (6) inches high shall be installed and maintained along the perimeter of a parking or loading area in accordance with the following:

(1) When abutting a landscaped area;

(2) When located in the front yard;

(3) When a commercial or public parking lot is located adjacent to a residential district.

(4) Curb inlets are required to allow water to flow into the landscape areas as

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- (g) Marking. The location of each parking space and the location and direction of movement along the driveways providing access thereto shall be indicated by painting upon the surface, by raised directional signs, or by markers or other similar measures placed in the surfacing.
- (h) Screening. Screening and landscaping of parking areas shall be provided pursuant to Section 1166.06 and 1166.10.
- (i) Signs. Signs shall be provided in accordance with Chapter 1163.
- (j) Lighting. Wherever a parking lot or garage is to be used during darkness, a system of floodlighting shall be installed to provide an adequate standard of illumination over the entire parking lot. All floodlights shall be shielded so that a minimum glare will extend to adjacent property and shall be in compliance with Section 1165.07.
- (k) Attendant's Shelter. A properly designed shelter for a parking lot attendant may be maintained on the lot and shall maintain the same distance from the right of way as the building on the adjacent parcels.
- (l) Maintenance. A parking lot or garage shall be maintained in a manner to keep it as free as practicable from dust, paper and other loose particles, and snow and ice shall be promptly removed by the operator. All adjacent sidewalks shall be kept free from dirt, ice, sleet and snow and in a safe condition for use by pedestrians. All signs, markers or any other methods used to indicate direction of traffic movement and location of parking spaces shall be maintained in a neat and legible condition. Any walls, trees and shrubbery, as well as surfacing of the parking lot or garage, shall be maintained in good condition throughout its use for parking purposes. All exposed concrete walls shall be painted or finished.

CHAPTER 1163
Sign Regulations

1163.07 PROJECTING SIGNS.

No projecting sign shall be constructed, erected or maintained on any lot in Cleveland Heights except in accordance with the requirements and procedures contained in this section.

- (a) Preparation of Projecting Sign Application. The following materials shall be provided:
 - (1) Building sections and elevations ~~drawn to scale, at a scale of 1/4" = 1'-0", or alternative scale approved by the Building Commissioner~~. Clearly describe materials, colors, dimensions, method of illumination (show conduit, meter, and other visible items), and method of attachment (supports, brackets, mounting hardware).
 - (2) Computation of the total sign area of the building, the area of each sign and the building frontage.
 - (3) Accurate indication on the elevations/section drawings of the location of each existing and proposed sign.
 - (4) Depiction and/or description of color scheme, lettering or graphic style, materials, location of sign on the building, sign proportions; framing; and method of attachment.
 - (5) Perspective rendering or photograph illustrating proposed sign in context with other building signage, neighboring businesses' signage, and the architectural character of the vicinity.
- (b) Guidelines and Regulations. Projecting signs shall comply with the following standards:
 - (1) ~~The area of a projecting sign shall not exceed sixteen (16) square feet per sign face.~~ The area of one face (as calculated from an elevation view) of a two-faced sign shall be part of the total identification sign area permitted in Schedule 1163.04.

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- (2) A projecting sign may not extend above the parapet line of a building, except on a single-story building or single-story wing of a multiple-story building, in which case its width, orientation and projection shall comply with the applicable building code.
 - (3) ~~A projecting sign shall not project out more than four (4) feet from the wall of the building. Projection shall comply with all applicable provisions of the Building Code.~~
 - (4) Projecting signs over a public right of way shall be permitted only in accordance with the liability stipulations of Code Section 1163.08(q).
 - (5) To avoid blocking view of traffic control signs and traffic, projecting signs shall not extend closer than four (4) feet to a curb as measured in plan.
 - (6) The lowest element of any sign above a pedestrian or vehicular way shall be at least ~~ten-seven~~ (107) feet above the finished grade of a sidewalk or other pedestrian way and at least fifteen (15) feet above the finished grade of pavement used for vehicular traffic.
 - (7) ~~Box-shaped s~~Signs having one internally lit plastic face per side shall not be permitted as projecting signs. The purpose of this restriction is to encourage projecting signs that are artistic, creative and fabricated with craftsmanship.
 - (8) Projecting signs shall be at a 90° angle to the facade of the building and projecting signs at the corner of a building shall be at a 135° angle to each facade. The Architectural Board of Review shall have discretion to vary this requirement.
- (c) Architectural Review Required. Projecting signs shall be subject to review and approval of the Architectural Board of Review.

CHAPTER 1166
Landscape Requirements

1166.04 GENERAL LANDSCAPE DESIGN STANDARDS.

Landscape plans, as described above will be evaluated and approved based on the following design criteria.

- (a) Scale and Nature of Landscape Material. The scale and nature of landscape materials must be appropriate to the size of the site and related structures.
- (b) Selection of Plant Material. Plant material must be selected for its form, texture, color, pattern of growth and suitability to local conditions. Species that are included on the list of prohibited species, which is maintained by and on file with the Planning Director, are prohibited.
- (c) Shade Trees. All deciduous shade trees at the time of installation shall have a minimum caliper of two and one-half (2.5) inches and a clear trunk height of at least six (6) feet, unless otherwise specified. Caliper of the trunk is taken at diameter-at-breast-height (DBH). DBH is defined as outside bark diameter at breast height. Breast height is defined as four and one-half (4.5) feet above the ground line on the uphill side of the tree. The ground line includes the duff layer that may be present, but does not include unincorporated woody debris that may rise above the ground line.
- (d) Evergreen Trees. Evergreen trees must have a minimum height of six (6) feet at installation.
- (e) Ornamental Trees. Single stem ornamental trees must have a minimum caliper of two (2) inches taken at DBH, unless otherwise specified. Multiple stem ornamental trees must have a minimum height of eight (8) feet at planting and a minimum of three (3) trunks, unless otherwise specified.
- (f) Shrubs. The minimum height at installation of all shrubs must meet the dimensions of Schedule 1166.04(f). Large shrubs are those species that reach five (5) or more feet in height at maturity. Small shrubs are those species that can grow up to five (5) feet in height if left unmaintained, but should be kept at heights of eighteen (18) to thirty-six (36) inches.

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SCHEDULE 1166.04(f) : SHRUB INSTALLATION SPECIFICATIONS	
SHRUB TYPE	MINIMUM DIMENSION
Deciduous, Large	3 feet
Deciduous, Small	18 inches
Evergreens, conifers	2-1/2 to 3 feet
	18 to 24 inches
Evergreen, broadleaf	2 to 2-1/2 inches
	18 inches

- (g) Perennials and Groundcovers. Unless otherwise specified, perennials and groundcovers must be a minimum of four (4) inch container stock and maximum twelve (12) inch on-center spacing.
- (h) Mulch. Unless otherwise specified, mulch must be a minimum two (2) and a maximum of four (4) inch dressing and must be applied on all exposed soil surfaces of planting areas except turf, creeping or rooting groundcovers, or direct seeding applications where mulch is contra-indicated. Bare soil should be left at the base of the plant to avoid trunk suffocation, "mulch volcanoes" or rot.
- (i) Irrigation.
 - (1) Sprinkler irrigation systems may be required for certain landscaped areas, as determined during landscape plan approval. All irrigation systems must be designed to minimize the use of water and are approved as part of the landscape plan.
 - (2) When irrigation is installed, irrigation should comply with the following standards:
 - A. Automatic controllers that are set to water between 7:00 p.m. and 10:00 a.m. to reduce evaporation.
 - B. Irrigation systems designed to avoid runoff, low-head drainage, overspray or other similar conditions where water flows or drifts onto adjacent property, non-irrigated areas, sidewalks, roadways or structures.
 - C. Low-volume irrigation systems with automatic controllers are recommended. Low-volume irrigation systems include low-volume sprinkler heads, dry emitters, and bubbler emitters.
 - D. Integral, under-the-head or in-line anti-drain, valves should be installed as needed to prevent low-head drainage.
 - E. Where automatic control systems are installed, the systems should be able to accommodate all aspects of the design. Automatic controllers should be digital, have multiple programs, multiple cycles and sensor input capabilities.
 - F. Soil moisture sensors and rain or moisture-sensing override devices are required.
 - G. Sprinkler heads selected and spaced for proper area coverage, application rate, operating pressure and adjustment capability, with matched precipitation and application rates within each control valve circuit.
 - H. Backflow prevention devices are recommended.
- (j) Energy Conservation. Plant material placement must be designed to reduce the energy consumption needs of the development. Shade trees must be included on the exposed west and south elevations when landscape is required.
- (k) Species Diversity. Diversity among required plant material for on-site landscaping is required not only for visual interest, but to reduce the risk of losing a large population of plants due to diseases or pests. ~~Schedule 1166.04(k) indicates the percentage of diversity required based on the total quantity of~~

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~~species being used. For example, if a development requires forty five (45) shade trees, no more than eighteen (18) trees nor less than five (5) trees can be of one (1) species, and there must be a minimum of five (5) different species within the forty five (45) trees.~~

SCHEDULE 1166.04(k): DIVERSITY REQUIREMENTS			
TOTAL NUMBER OF PLANTS PER PLANT TYPE	DIVERSITY REQUIREMENTS		MINIMUM NUMBER OF SPECIES
	MAXIMUM OF ANY SPECIES	MINIMUM OF ANY SPECIES	
1-4	100%	Not Applicable	1
5-10	60%	40%Not Applicable	2
11-15	45%	20%Not applicable	3
16-75	40%	10%	5
76-500	25%	5%	8
500-1,000	30%	5%	10
1,000+	15%	4%	15

1166.05 LANDSCAPE YARDS.

(a) Required Front Yard Landscaping. In all districts, every part of a front yard shall be open to the sky and unobstructed except for parking areas and signs as permitted and regulated in the district regulations and sign regulations, and shall be landscaped with grass, trees and shrubs to be permanently protected from soil erosion.

(b) Required Front and Corner Side Yard Landscaping for Multi-Family or Non-residential Uses. Where a multi-family dwelling of four (4) or more dwelling units, a mixed-use development, or a commercial or other non-residential use maintains a front or corner side yard of ten (10) or more feet, a landscape yard a minimum of ten (10) feet in width must be installed along that lot line in compliance with the following:

- (1) ~~Five (5) plant unit options are presented in Schedule 1166.05(b)(1). Any alternative or a combination of alternatives may be used.~~ Plantings may be spaced at various intervals and/or clustered based on specific site requirements or design scheme to be approved as part of the landscape plan. ~~Examples are presented in Schedule 1166.05(b)(1).~~
- ~~(2) One (1) plant unit per one hundred (100) linear feet must be provided.~~
- ~~(3) When figuring the number of plant units or quantity of plant material required, the number must be rounded up. For example, three and one-tenths (3.1) shade trees would be rounded up to four (4) shade trees.~~
- (42) All plant materials, excluding trees, must be in the bedline. All plant materials in raised planters do not meet the requirements of this section.
- (53) Ornamental rocks in lieu of groundcover plantings may not exceed ten percent (10%) of the total front yard landscape area, including driveways and walkways.

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SCHEDULE 1166.05(b)(1). : FRONT & CORNER SIDE YARD LANDSCAPING PLANT UNIT <u>OPTIONSEXAMPLES</u>		
PLANT UNIT OPTIONS	QUANTITY & TYPE OF PLANTS	ILLUSTRATION
STANDARD PLANT UNIT	1 Shade Tree 2 Ornamental Tree 20 Shrubs	
ALTERNATIVE UNIT A	1 Shade Tree 1 Ornamental Tree 1 Evergreen Tree 30 Shrubs	
ALTERNATIVE UNIT B	2 Ornamental Trees 3 Evergreen Trees 25 Shrubs	
ALTERNATIVE UNIT C	4 Evergreen trees 34 Shrubs	
ALTERNATIVE UNIT D	Native Landscaping Alternative	

1166.06 PARKING LOT LANDSCAPING.

- (a) Required Parking Lot Landscaping.
- (1) Perimeter parking lot landscaping is required for all parking lots and must be established along the edge of the parking lot.
 - (2) Interior parking lot landscaping is required for those lots of ten (10) or more spaces.
 - (3) For existing parking lots that currently do not comply with the required parking lot landscaping, such landscaping must be provided when any one (1) of the following occurs:
 - A. A new principal building is constructed on the site.
 - B. Over fifty percent (50%) of the total area of an existing parking lot is reconstructed.

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- C. When an existing parking lot up to ten thousand (10,000) square feet in area is expanded by fifty percent (50%) or more in total surface area.
 - D. When an existing parking lot of ten thousand (10,000) square feet or more in area is expanded by twenty-five percent (25%) or more in total surface area.
- (4) When an existing parking lot is required by this section to provide landscape which would result in creating a parking area that no longer conforms to the parking regulations of this Zoning Ordinance, the existing parking lot is not required to install all or a portion of the required landscape. The property owner is required to show that landscape cannot be accommodated on the site. ~~If only certain requirements are able to be accommodated on the site, only elements are required.~~ The Zoning Administrator will make the determination that all or a portion of required landscaping does not have to be installed.
 - (5) Nothing in this section prevents the applicant's voluntary installation of additional parking lot landscaping, so long as parking space requirements and parking lot design requirements are complied with.
 - (6) All parking lot landscape areas must be protected from parked cars by curbs.
Curb inlets are required to allow water into the landscape areas as permitted by grading.
- (b) Perimeter Parking Lot Landscaping. Perimeter parking lot landscaping provides for the enhancement and screening of parking lots and enhancement of the street's shade tree canopy by requiring a scheme of landscaping along public streets. A perimeter landscape yard is required for all parking lots and the landscape treatment must run the full length of the parking lot where it abuts a street. In the case of parking located at the front of the building, the front landscape yard requirements control. The perimeter parking lot landscape yard must be improved as follows. (See Figure 1166.06(b): Parking Lot Perimeter Landscape Yard)
- (1) The perimeter landscape yard must be a minimum of fifteen (15) feet in width.
 - (2) A single hedge row is required planted with one (1) shrub every thirty-six (36) inches on center, spaced linearly. The shrubs must measure a minimum of twenty-four (24) inches at planting, and a minimum of thirty-six (36) inches to a maximum of forty-eight (48) inches in height at maturity.
 - (3) A minimum one (1) foot of width of groundcover and/or mulch.
 - (4) One (1) shade tree every twenty-five (25) feet on-center, spaced linearly. Trees may be spaced at various intervals and/or clustered based on specific site requirements or design scheme to be approved as part of the landscape plan.
 - (5) Alternatively, a low pedestrian wall the height of which provides effective screening to a maximum height of three (3) feet may be used instead of shrubs. Where possible, plant materials must be installed between the sidewalk and the wall to provide a softening effect on the wall.
 - (6) All perimeter parking lot landscaping areas must be protected with raised curb and gutter. Curb inlets are required to allow water to infiltrate into the landscape areas as permitted by grading.
- (c) Interior Parking Lot Landscaping.
- (1) For parking lots consisting of ten (10) or more spaces, interior parking lot landscaping is required.
 - (2) One (1) parking lot island must be provided between every ten (10) contiguous parking spaces. As part of the landscape plan approval, parking lot island locations may be varied based on specific site requirements or design scheme, to be approved as part of the landscape plan, but the total number of islands must be no less than the amount required one (1) island for every ten (10) spaces.

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- (3) In addition to parking lot islands, additional landscaped areas must be provided within the interior of parking lots. All rows of parking spaces must terminate in a parking lot island or landscaped area. The minimum interior landscaped area, including parking lot islands, is ten percent (10%) of the parking lot area.
- (4) Parking lot islands or landscaped areas must be at least one-hundred twenty-five (125) square feet in area. Double rows of parking must provide double-row width islands. See Figure 1166.06(c)(4)
- (5) Parking lot islands must be at least six (6) inches above the surface of the parking lot and protected with concrete curbing, except where designed to apply sustainable techniques allowing the flow and access of runoff. Such islands and landscaped areas must be properly drained and irrigated to ensure survivability.
- (6) The following plantings are required in parking lot islands and landscaped areas:
 - A. Shade trees must be the primary plant materials used in parking lot islands and landscaped areas. Ornamental trees, shrubs, hedges and other plant materials may be used to supplement the shade tree plantings but must not create visibility concerns for automobiles and pedestrians. One (1) shade tree is required every parking lot island or landscaped area. If the island extends the width of a double row, then two (2) shade trees are required.
 - B. The remaining area of a parking lot island must be planted in shrubs, live groundcover, perennials or ornamental grasses. Mulch is required to fill in planting areas for early growth protection until the groundcover is established and covers the planting area. It is encouraged to mulch bare areas for three (3) to five (5) years, or until the plant material is fully established in the parking islands.
- (7) The above specific planting provisions may be waived during site plan review if the applicant presents an alternate landscape plan that provides a combination of tree canopy and non-reflective auto canopies that shade at least fifty percent (50%) of the parking lot paved surface. This may include areas designated for solar powered electric auto recharging stations.

1166.07 BUFFER YARDS.

~~(a)~~ Buffer yards maintain an appropriate relationship between adjacent developments by clarifying the delineation between properties and creating attractive and effective buffers between uses.

~~(b)(a)~~ Where the parking lot or a drive-thru/drive-in facility of a non-residential use or district abuts a residential district along the interior side or rear lot line, a buffer yard of ten (10) feet must be provided along the interior side lot line and/or rear lot line.

~~(e)(b)~~ The buffer yard must-shall be landscaped as follows:

- (1) A screen fence or wall six (6) feet in height is required. In front and corner side yard the fence or wall shall be three (3) feet in height. Screen fences must be solid and made of wood, simulated wood or masonry. Chain-link fences are prohibited.
- (2) A single hedge row planted with one (1) shrub every thirty-six (36) inches on center, spaced linearly. The shrubs must measure a minimum of twenty-four (24) inches at planting, and a minimum of thirty-six (36) inches to a maximum of forty-eight (48) inches in height at maturity.
- (3) One (1) shade tree for every twenty-five (25) linear feet of the adjacent property line.
- (4) The remainder of the area must be planted with turf or live groundcover.

1166.10 SCREENING REQUIREMENTS.

(a) Refuse Disposal Dumpsters and Refuse Storage Areas. All refuse disposal dumpsters, containers and refuse storage areas must be fully enclosed on three (3) sides by a

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solid wood or simulated wood screen fence, an opaque masonry wall (stone, stucco or brick) or principal structure wall at least six (6) feet in height. The enclosure must be gated. The materials used for screening, including the enclosure, must complement the architecture of the principal building. An extension of an exterior principal building wall may be used as one of the screening walls for a refuse container, provided that the wall is at least six (6) feet in height and is of the same building materials as the principal building. The wall may not serve as the required gated enclosure.

(b) Loading Berths. ~~Where feasible, H~~loading berths ~~must shall~~ be located and oriented so as not to be visible from the street and adjacent properties, while still allowing access to the use served. In addition, loading berths ~~must shall~~ be screened ~~as much as possible~~, unless such screening is determined unnecessary by the Zoning Administrator. Such screening must consist of an opaque masonry wall (stone, stucco or brick) or a solid wood or simulated wood screen fence at least six (6) feet in height.

(c) Outdoor Storage and Display Areas.

(1) Outdoor Storage and Display Areas.

A. All outdoor storage areas must be completely screened by an opaque masonry wall (stone, stucco or brick) or a solid wood or simulated wood screen fence six (6) feet in height. Where feasible, plant materials must be installed along the fence or wall located along the public right-of-way to provide a softening effect. No materials stored outdoors may exceed the height of the required fence or wall with the exception of construction material.

B. Outdoor storage areas must provide landscaping and shading of the interior with a combination of tree canopy and non-reflective canopies covering twenty-five percent (25%) of the site.

(2) Outdoor Sales and Display Areas.

A. When the rear or interior side yard of an outdoor display area abuts a residential district, the outdoor display area must be effectively screened from view by an opaque masonry wall (stone, stucco or brick), a solid wood or simulated wood screen fence or dense evergreen hedge six (6) feet in height.

B. All outdoor display areas must be designed with a landscape yard along the public right-of-way, excluding alleys, a minimum of ten (10) feet in width and planted with shade or evergreen trees at a rate of one (1) tree per twenty-five (25) feet, and supplemented with shrubs and perennials to enhance the view from the public right-of-way. These screening requirements are not intended to prohibit openings necessary for access drives and walkways. However, motor vehicle dealerships with outdoor sales and display lots are permitted to be designed with permanent screening that consists of small shrubs and/or a low pedestrian wall no less than three (3) feet in height.

C. Growing areas for nursery stock located in the front or corner side yard are considered to meet these screening requirements.

**CHAPTER 1171
Intent and General Regulations**

1171.02 EXISTING USE DEEMED CONDITIONAL USE; PERMIT REQUIRED FOR CHANGE.

A lawfully existing use that would be eligible for a conditional use permit in the district in which it is located shall not be a nonconforming use, but without further action, shall be deemed to have obtained a conditional use permit. A new conditional use permit shall be required, however, for any change of ownership or intensity of use, or change, modification, enlargement or alteration of such use, or site development conditions ~~or signs~~.

CHAPTER 1175
Nonconforming Lots and Structures

1175.02 NONCONFORMING LOTS OF RECORD.

Lots of record prior to passage of the Zoning Code, or amendments thereto which created such nonconforming lot(s) of record, with less area or width than heretofore established may be used in accordance with the following provisions:

- (a) Single Nonconforming Lots of Record. In an AA, A or B District, a single- ~~or two-~~ family dwelling and customary accessory buildings may be erected on any single nonconforming lot of record which existed prior to passage of the most recent amendments to the Zoning Ordinance ~~in 1921~~, notwithstanding limitations imposed by other provisions of this Zoning Code. Such lot must be in separate ownership and not of continuous frontage with other lots in the same ownership. This provision shall apply even though such lot fails to meet the requirements for area or width, or both, that are generally applicable in the district, provided that yard dimensions and requirements other than those applying to area or width, or both, of the lot shall conform to the regulations for the district in which such lot is located. Variances of requirements listed in this Code, other than parking requirements as provided for in subsection (c) hereof, lot area or lot width, shall be obtained only through action of the Board of Zoning Appeals as provided in Section 1115.07.
- (b) Nonconforming Lots of Record in Combination. If two (2) or more lots or a combination of lots and portions of lots with continuous frontage in single ownership are of record at the time of passage of this Zoning Code, and if all or part of the lots with no buildings 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 Code, and no portion of such parcel shall be used or sold in a manner which diminishes compliance with lot width and area requirements established by this Code, nor shall any division of any parcel be made which creates a lot with a width or area below the requirements stated in this Code.
- ~~(c) Accessory Use Regulations for Nonconforming Lots in a B District. The provisions of Sections 1121.09, 1121.12, and 1161.03 notwithstanding, for nonconforming lots in B Two Family Districts, the total area devoted to unenclosed paved areas and sidewalks shall not exceed thirty percent (30%) of the area of the rear yard. However, if the owner has installed landscaping and/or fencing in compliance with a landscape plan approved by the Zoning Administrator, the total area of unenclosed paved area and sidewalks shall not exceed forty percent (40%) of the area of the rear yard. The landscape plan shall be designed to minimize adverse impact on neighboring lots. The total area devoted to accessory buildings including, but not limited to, garages shall not exceed forty percent (40%) of the area of the rear yard. However, the total combined area of unenclosed paved area and sidewalks and accessory buildings including, but not limited to, garages shall not exceed seventy percent (70%) of the area of the rear yard. In the event that the parking standards for such use require a garage that would exceed the rear yard coverage limitations or that is not able to be accommodated on the zoning lot due to insufficient lot width, enclosed parking spaces and related pavement shall then be provided to the extent possible without creating additional nonconforming conditions.~~

Proposed: 01/16/2018

RESOLUTION NO. -2018 (MS), *First Reading*

By Council Member

A Resolution authorizing the City Manager to execute the First Amendment to the Transition Water Agreement, effective January 1, 2018, with the City of Cleveland; and declaring an emergency.

WHEREAS, this Council has determined it is in the best interest of the City and its residents to amend the Transition Agreement dated August 9, 2016, with the City of Cleveland, and to extend the deadline for installation of the Automatic Meter Reading System to December 31, 2018.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Cleveland Heights, Ohio, that:

SECTION 1. The City Manager be, and she is hereby, authorized and directed to execute the First Amendment to Transition Agreement with the City of Cleveland, effective January 1, 2018, in a form substantively similar to the agreement on file with the Clerk of Council and approved as to form by the Director of Law.

SECTION 2. Notice of the passage of this Resolution shall be given by publishing the title and abstract of its contents, prepared by the Director of Law, once in one newspaper of general circulation in the City of Cleveland Heights.

SECTION 3. This Resolution is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health and safety of the inhabitants of the City of Cleveland Heights, such emergency being the need to continue to provide residents with quality water and water related service. Wherefore, provided it receives the affirmative vote of five (5) or more of the members elected or appointed to this Council, this Resolution shall take effect and be in force immediately upon its passage; otherwise, it shall take effect and be in force from and after the earliest time allowed by law.

RESOLUTION NO. (MS)

CAROL ANN ROE, Mayor
President of Council

LAURIE SABIN
Clerk of Council

PASSED:

Proposed: 1/16/2018

ORDINANCE NO. (AS)

By Council Member

An Ordinance amending Ordinance No. 20-2017, "Wage and Salary Ordinance," to delete certain terms; and declaring an emergency.

WHEREAS, the City employee assistance program agreement with ease@work has expired, and the City intends to engage a different vendor.

BE IT ORDAINED by the Council of the City of Cleveland Heights, Ohio, that:

SECTION 1. Section 13 of Ordinance No. 20-2017, the "Wage and Salary Ordinance," shall be and hereby is amended to henceforth read as follows:

SECTION 13. HEALTH CARE INSURANCE AND ANCILLARY BENEFITS

(a) The City shall purchase or subscribe to and maintain in full force and effect for each full-time employee of the City a health care insurance plan, including medical-surgical protection, covering hospital and surgical benefits and related coverage, through one or more vendors subject to Council approval. Such health care insurance plan shall be maintained so long as such employee remains in the employ of the City. Council hereby authorizes Anthem as a vendor. The City shall contribute a minimum of ninety percent (90%) of the cost of the plan elected by the employee and the employee shall be responsible for any costs above the amount of established employer contribution.

(a) All full-time employees shall be offered participation in a prescription plan through Anthem.

(b) The City shall offer dental coverage for each full-time employee from one or more vendors subject to Council approval. Such coverage shall have a maximum benefit of \$1,500 per person. Coverage shall include two (2) yearly cleanings and check-up exams and coverage of eighty percent (80%) of basic and major services, less deductibles. Orthodontia benefits for dependents age 19 or younger also shall be offered with a \$1,000 maximum benefit per dependent. Council hereby authorizes EBSO as a vendor.

(c) The City shall offer a vision plan for each full-time employee from one or more vendors subject to Council approval. Such coverage shall have a maximum reimbursement of \$150 per person. Council hereby authorizes Medical Mutual as a vendor.

(d) The City shall offer a Flexible Spending Account for qualified medical or dependent care expenses to be funded with employee gross earnings through one or more vendors subject to Council approval. Council hereby authorizes NEO Administration as a vendor.

ORDINANCE NO. (AS)

(e) The City shall offer all employees access to an Employee Assistance Program ~~provided by ease@work~~ which offers short-term counseling; assistance with locating reliable childcare, general and special educational needs, and resources for the elderly; no cost attorney consultations with discount if retained; no cost financial consultations; nutritional coaching; and fitness coaching.

(f) The availability of health care insurance and ancillary benefits described in this Section to individual, part-time employees may be determined by City Manager pursuant to Codified Ordinance Section 139.20.

SECTION 2. All remaining provisions of Ordinance No. 20-2017 and subsequent amendments thereto shall remain in full force and effect.

SECTION 3. Notice of the passage of this Ordinance shall be given by publishing the title and abstract of its contents, prepared by the Director of Law, once in one newspaper of general circulation in the City of Cleveland Heights.

SECTION 4. This Ordinance is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health and safety of the inhabitants of the City of Cleveland Heights, such emergency being the need to implement said agreement as soon as possible. Wherefore, provided it receives the affirmative vote of five (5) or more of the members elected or appointed to this Council, this Ordinance shall take effect and be in force immediately upon its passage; otherwise, it shall take effect and be in force from and after the earliest time allowed by law.

CAROL ANN ROE, Mayor
President of Council

LAURIE SABIN
Clerk of Council

PASSED:

Proposed: 1/16/2018

ORDINANCE NO. 2018 (F)

By Council Member

An Ordinance enacting Chapter 158, "Income Tax," of the Codified Ordinances of Cleveland Heights, effective January 1, 2018, to meet the mandates for municipal tax codes contained in Sub. H.B. 49, in which the 132th General Assembly comprehensively amended Chapter 718 of the Ohio Revised Code and reformed the imposition of municipal income taxes; and declaring an emergency.

WHEREAS, the home rule amendment of the Ohio Constitution, Article XVIII, Section 3, provides that "[m]unicipalities shall have authority to exercise all powers of local self-government," and the municipal taxing power is one of such powers of local self-government delegated by the people of the State to the people of municipalities; and

WHEREAS, Article XIII, Section 6 of the Ohio Constitution provides that the General Assembly may restrict a municipalities power of taxation to the extent necessary to prevent abuse of such power, and Article XVIII, Section 13 of the Ohio Constitution states that "laws may be passed to limit the powers of municipalities to levy taxes and incur debts for local purposes"; and

WHEREAS, the General Assembly has determined that it is necessary and appropriate to amend Chapter 718 of the Ohio Revised Code, setting forth statutory requirements for municipal income tax codes in Ohio; and

WHEREAS, the Regional Income Tax Authority ("RITA") has suggested a model ordinance to its member communities that is compliant with the dictates of H.B. 49, and which is substantially similar to the proposed ordinance herein be adopted by January 31, 2018; and

WHEREAS, upon a detailed review of Sub. H. B. 49 and the Cleveland Heights Codified Ordinances, this ordinance is found and determined by this Council to enact the amendments required prior to the January 31, 2018 deadline to be in accord with the provisions and limitations specified in Chapter 718 of the Revised Code; and

WHEREAS, Chapter 157, "Income Tax," shall remain in effect for tax years 2015 and earlier.

BE IT ORDAINED by the Council of the City of Cleveland Heights, Ohio, that:

SECTION 1. Chapter 158, "Income Tax," of the Codified Ordinances of Cleveland Heights shall be, and is hereby, enacted and adopted in its entirety to read as Exhibit A attached hereto and incorporated herein. A complete copy of Exhibit A is also on file with the Clerk of Council.

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SECTION 2. The revisions to Chapter 158 shall be effective on January 1, 2018. Chapter 157, "Income Tax," shall remain effective through the tax year of 2015 and earlier.

SECTION 3. Notice of the passage of this Ordinance shall be given by publishing the title and abstract of its contents, prepared by the Director of Law, once in one newspaper of general circulation in the City of Cleveland Heights.

SECTION 4. This Ordinance is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health and safety of the inhabitants of the City of Cleveland Heights, such emergency being the need to implement said changes as soon as possible to meet state law requirements. Wherefore, provided it receives the affirmative vote of five (5) or more of the members elected or appointed to this Council, this Ordinance shall take effect and be in force immediately upon its passage; otherwise, it shall take effect and be in force from and after the earliest time allowed by law.

CAROL ANN ROE, Mayor
President of Council

LAURIE SABIN
Clerk of Council

PASSED:

Exhibit A

**Chapter 158
INCOME TAX**

SECTION 158.01 AUTHORITY TO LEVY TAX; PURPOSE OF TAX.

(a) To provide funds for the purposes of general municipal functions the City of Cleveland Heights (hereafter “City”) hereby levies an annual municipal income tax on income, qualifying wages, commissions and other compensation, and on net profits as hereinafter provided.

- (b)
- (1) The annual tax is levied at a rate of two and one quarter percent (2.25%). The tax is levied at a uniform rate on all persons residing in or earning or receiving income in the City. The tax is levied on income, qualifying wages, commissions and other compensation, and on net profits as hereinafter provided in Section 158.03 of this Chapter and other sections as they may apply.
 - (2) Intentionally left blank.

(c) The tax on income and the withholding tax established by this Chapter are authorized by Article XVIII, Section 3 of the Ohio Constitution. The tax is levied in accordance with, and is intended to be consistent with, the provisions and limitations of Ohio Revised Code Chapter 718 (O.R.C. 718).

SECTION 158.02 DEFINITIONS.

(a) Any term used in this chapter/ordinance that is not otherwise defined in this chapter/ordinance has the same meaning as when used in a comparable context in laws of the United States relating to federal income taxation or in Title LVII of the ORC, unless a different meaning is clearly required. If a term used in this chapter/ordinance that is not otherwise defined in this chapter/ordinance is used in a comparable context in both the laws of the United States relating to federal income tax and in Title LVII of the ORC and the use is not consistent, then the use of the term in the laws of the United States relating to federal income tax shall control over the use of the term in Title LVII of the ORC.

(b) The singular shall include the plural, and the masculine shall include the feminine and the gender-neutral.

- (c) As used in this Chapter:
- (1) **“Adjusted federal taxable income,”** for a person required to file as a C corporation, or for a person that has elected to be taxed as a C corporation under Subsection (c)(24)(D) herein, means a C corporation’s federal taxable income before net operating losses and special deductions as determined under the Internal Revenue Code, adjusted as follows:

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- (A) Deduct intangible income to the extent included in federal taxable income. The deduction shall be allowed regardless of whether the intangible income relates to assets used in a trade or business or assets held for the production of income.
- (B) Add an amount equal to five percent (5%) of intangible income deducted under Subsection (c)(1)(A) herein, but excluding that portion of intangible income directly related to the sale, exchange, or other disposition of property described in Section 1221 of the Internal Revenue Code;
- (C) Add any losses allowed as a deduction in the computation of federal taxable income if the losses directly relate to the sale, exchange, or other disposition of an asset described in Section 1221 or 1231 of the Internal Revenue Code;
- (D)
 - (i) Except as provided in Subsection (c)(1)(D)(ii) herein, deduct income and gain included in federal taxable income to the extent the income and gain directly relate to the sale, exchange, or other disposition of an asset described in Section 1221 or 1231 of the Internal Revenue Code;
 - (ii) Subsection (c)(1)(D)(i) herein does not apply to the extent the income or gain is income or gain described in Section 1245 or 1250 of the Internal Revenue Code.
- (E) Add taxes on or measured by net income allowed as a deduction in the computation of federal taxable income;
- (F) In the case of a real estate investment trust or regulated investment company, add all amounts with respect to dividends to, distributions to, or amounts set aside for or credited to the benefit of investors and allowed as a deduction in the computation of federal taxable income;
- (G) Deduct, to the extent not otherwise deducted or excluded in computing federal taxable income, any income derived from a transfer agreement or from the enterprise transferred under that agreement under Section 4313.02 of the O.R.C.;
- (H)

Deduct exempt income to the extent not otherwise deducted or excluded in computing adjusted federal taxable income.
- (I) Deduct any net profit of a pass-through entity owned directly or indirectly by the taxpayer and included in the taxpayer's federal taxable income unless an affiliated group of corporations includes that net profit

in the group's federal taxable income in accordance with Subsection (v)(3)(B) of Section 158.05.

- (J) Add any loss incurred by a pass-through entity owned directly or indirectly by the taxpayer and included in the taxpayer's federal taxable income unless an affiliated group of corporations includes that loss in the group's federal taxable income in accordance with Subsection (v)(3)(B) of Section 158.05.

If the taxpayer is not a C corporation, is not a disregarded entity that has made an election described in Subsection (c)(48)(B) herein, is not a publicly traded partnership that has made the election described in Subsection (c)(24)(D) herein, and is not an individual, the taxpayer shall compute adjusted federal taxable income under this section as if the taxpayer were a C corporation, except guaranteed payments and other similar amounts paid or accrued to a partner, former partner, shareholder, former shareholder, member, or former member shall not be allowed as a deductible expense unless such payments are in consideration for the use of capital and treated as payment of interest under Section 469 of the Internal Revenue Code or United States treasury regulations. Amounts paid or accrued to a qualified self-employed retirement plan with respect to a partner, former partner, shareholder, former shareholder, member, or former member of the taxpayer, amounts paid or accrued to or for health insurance for a partner, former partner, shareholder, former shareholder, member, or former member, and amounts paid or accrued to or for life insurance for a partner, former partner, shareholder, former shareholder, member, or former member shall not be allowed as a deduction.

Nothing in Subsection (c)(1) herein shall be construed as allowing the taxpayer to add or deduct any amount more than once or shall be construed as allowing any taxpayer to deduct any amount paid to or accrued for purposes of federal self-employment tax.

(2)

- (A) **“Assessment”** means a written finding by the Tax Administrator that a person has underpaid municipal income tax, or owes penalty and interest, or any combination of tax, penalty, or interest, to the municipal corporation that commences the person's time limitation for making an appeal to the Board of Tax Review pursuant to Section 21, and has "ASSESSMENT" written in all capital letters at the top of such finding.
- (B) “Assessment” does not include a notice denying a request for refund issued under Subsection (c)(3) of Section 158.09, a billing statement notifying a taxpayer of current or past-due balances owed to the municipal corporation, a Tax Administrator’s request for additional information, a notification to the taxpayer of mathematical errors, or a Tax Administrator's other written correspondence to a person or taxpayer that does not meet the criteria prescribed by Subsection (c)(2)(A) herein.

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- (3) **“Audit”** means the examination of a person or the inspection of the books, records, memoranda, or accounts of a person, ordered to appear before the Tax Administrator, for the purpose of determining liability for a municipal income tax.
- (4) **“Board of Tax Review”** or “Board of Review” or “Board of Tax Appeals,” or other named local board constituted to hear appeals of municipal income tax matters, means the entity created under Section 158.21.
- (5) **“Calendar quarter”** means the three-month period ending on the last day of March, June, September, or December.
- (6) **“Casino operator” and “casino facility”** have the same meanings as in Section 3772.01 of the O.R.C.
- (7) **“Certified mail,” “express mail,” “United States mail,” “postal service,”** and similar terms include any delivery service authorized pursuant to Section 5703.056 of the O.R.C.
- (8) **“Disregarded entity”** means a single member limited liability company, a qualifying subchapter S subsidiary, or another entity if the company, subsidiary, or entity is a disregarded entity for federal income tax purposes.
- (9) **“Domicile”** means the true, fixed, and permanent home of a taxpayer and to which, whenever absent, the taxpayer intends to return. A taxpayer may have more than one residence but not more than one domicile.
- (10) **“Employee”** means an individual who is an employee for federal income tax purposes.
- (11) **“Employer”** means a person that is an employer for federal income tax purposes.
- (12) **“Exempt income”** means all of the following:
 - (A) The military pay or allowances of members of the armed forces of the United States or members of their reserve components, including the national guard of any state.
 - (B) Intangible income.
 - (C) Social security benefits, railroad retirement benefits, unemployment compensation, pensions, retirement benefit payments, payments from annuities, and similar payments made to an employee or to the beneficiary of an employee under a retirement program or plan, disability payments received from private industry or local, state, or federal governments or from charitable, religious or educational organizations, and the proceeds of sickness, accident, or liability insurance policies. As used in Subsection (c)(12)(C) herein, “unemployment compensation”

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does not include supplemental unemployment compensation described in Section 3402(o)(2) of the Internal Revenue Code.

- (D) The income of religious, fraternal, charitable, scientific, literary, or educational institutions to the extent such income is derived from tax-exempt real estate, tax-exempt tangible or intangible property, or tax-exempt activities.
- (E) Compensation paid under Section 3501.28 or 3501.36 of the ORC to a person serving as a precinct election official to the extent that such compensation does not exceed \$1,000 for the taxable year. Such compensation in excess of \$1,000 for the taxable year may be subject to taxation by a municipal corporation. A municipal corporation shall not require the payer of such compensation to withhold any tax from that compensation.
- (F) Dues, contributions, and similar payments received by charitable, religious, educational, or literary organizations or labor unions, lodges, and similar organizations;
- (G) Alimony and child support received.
- (H) Compensation for personal injuries or for damages to property from insurance proceeds or otherwise, excluding compensation paid for lost salaries or wages or compensation from punitive damages.
- (I) Income of a public utility when that public utility is subject to the tax levied under Section 5727.24 or 5727.30 of the O.R.C. Subsection (c)(12)(i) herein does not apply for purposes of Chapter 5745 of the O.R.C.
- (J) Gains from involuntary conversions, interest on federal obligations, items of income subject to a tax levied by the state and that a municipal corporation is specifically prohibited by law from taxing, and income of a decedent's estate during the period of administration except such income from the operation of a trade or business.
- (K) Compensation or allowances excluded from federal gross income under Section 107 of the Internal Revenue Code.
- (L) Employee compensation that is not qualifying wages as defined in Subsection (c)(35) herein.
- (M) Compensation paid to a person employed within the boundaries of a United States air force base under the jurisdiction of the United States air force that is used for the housing of members of the United States air force and is a center for air force operations, unless the person is subject to taxation because of residence or domicile. If the compensation is subject to taxation because of residence or domicile, tax on such income

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shall be payable only to the municipal corporation of residence or domicile.

(N) Intentionally left blank

(O) All of the income of individuals under 18 years of age.

(P)

(i) Except as provided in Subsections (c)(12)(P)(ii), (iii), and (iv) herein, qualifying wages described in Subsections (c)(2) or (5) of Section 158.04 to the extent the qualifying wages are not subject to withholding for the City under either of those sections.

(ii) The exemption provided in Subsection (c)(12)(P)(i) herein does not apply with respect to the municipal corporation in which the employee resided at the time the employee earned the qualifying wages.

(iii) The exemption provided in Subsection (c)(12)(P)(i) herein does not apply to qualifying wages that an employer elects to withhold under Subsection (c)(4)(B) of Section 158.04.

(iv) The exemption provided in Subsection (c)(12)(P)(i) herein does not apply to qualifying wages if both of the following conditions apply:

(a) For qualifying wages described in Subsection (c)(2) of Section 158.04, the employee's employer withholds and remits tax on the qualifying wages to the municipal corporation in which the employee's principal place of work is situated, or, for qualifying wages described in Subsection (c)(5) of Section 158.04, the employee's employer withholds and remits tax on the qualifying wages to the municipal corporation in which the employer's fixed location is located;

(b) The employee receives a refund of the tax described in Subsection (c)(12)(P)(iv)(a) herein on the basis of the employee not performing services in that municipal corporation.

(Q)

(i) Except as provided in Subsection (c)(12)(Q)(ii) or (iii) herein, compensation that is not qualifying wages paid to a nonresident individual for personal services performed in the City on not more than twenty (20) days in a taxable year.

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- (ii) The exemption provided in Subsection (c)(12)(Q)(ii) herein does not apply under either of the following circumstances:
 - (a) The individual's base of operation is located in the municipal corporation.
 - (b) The individual is a professional athlete, professional entertainer, or public figure, and the compensation is paid for the performance of services in the individual's capacity as a professional athlete, professional entertainer, or public figure. For purposes of Subsection (c)(12)(Q)(ii)(b) herein, "professional athlete," "professional entertainer," and "public figure" have the same meanings as in Section 158.04(c).
- (iii) Compensation to which Subsection (c)(12)(Q) herein applies shall be treated as earned or received at the individual's base of operation. If the individual does not have a base of operation, the compensation shall be treated as earned or received where the individual is domiciled.
- (iv) For purposes of Subsection (c)(12)(Q) herein, "base of operation" means the location where an individual owns or rents an office, storefront, or similar facility to which the individual regularly reports and at which the individual regularly performs personal services for compensation.
- (R) Compensation paid to a person for personal services performed for a political subdivision on property owned by the political subdivision, regardless of whether the compensation is received by an employee of the subdivision or another person performing services for the subdivision under a contract with the subdivision, if the property on which services are performed is annexed to a municipal corporation pursuant to Section 709.023 of the O.R.C. on or after March 27, 2013, unless the person is subject to such taxation because of residence. If the compensation is subject to taxation because of residence, municipal income tax shall be payable only to the municipal corporation of residence.
- (S) Income the taxation of which is prohibited by the constitution or laws of the United States.

Any item of income that is exempt income of a pass-through entity under Subsection (c) herein is exempt income of each owner of the pass-through entity to the extent of that owner's distributive or proportionate share of that item of the entity's income.
- (13) **"Form 2106"** means internal revenue service form 2106 filed by a taxpayer pursuant to the Internal Revenue Code.

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- (14) **“Generic form”** means an electronic or paper form that is not prescribed by a particular municipal corporation and that is designed for reporting taxes withheld by an employer, agent of an employer, or other payer, estimated municipal income taxes, or annual municipal income tax liability or for filing a refund claim.
- (15) **“Gross receipts”** means the total revenue derived from sales, work done, or service rendered.
- (16) **“Income”** means the following:
- (A)
- (i) For residents, all income, salaries, qualifying wages, commissions, and other compensation from whatever source earned or received by the resident, including the resident's distributive share of the net profit of pass-through entities owned directly or indirectly by the resident and any net profit of the resident, except as provided in Subsection (c)(24)(E) herein.
- (ii) For the purposes of Subsection (c)(16)(A)(i) herein:
- (a) Any net operating loss of the resident incurred in the taxable year and the resident's distributive share of any net operating loss generated in the same taxable year and attributable to the resident's ownership interest in a pass-through entity shall be allowed as a deduction, for that taxable year and the following five taxable years, against any other net profit of the resident or the resident's distributive share of any net profit attributable to the resident's ownership interest in a pass-through entity until fully utilized, subject to Subsection (c)(16)(A)(iv) herein;
- (b) The resident's distributive share of the net profit of each pass-through entity owned directly or indirectly by the resident shall be calculated without regard to any net operating loss that is carried forward by that entity from a prior taxable year and applied to reduce the entity's net profit for the current taxable year.
- (iii) Subsection (c)(16)(A)(ii) herein does not apply with respect to any net profit or net operating loss attributable to an ownership interest in an S corporation unless shareholders' shares of net profits from S corporations are subject to tax in the municipal corporation as provided in Subsection (c)(12)(N) or (c)(16)(E) herein.
- (iv) Any amount of a net operating loss used to reduce a taxpayer's net profit for a taxable year shall reduce the amount of net

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operating loss that may be carried forward to any subsequent year for use by that taxpayer. In no event shall the cumulative deductions for all taxable years with respect to a taxpayer's net operating loss exceed the original amount of that net operating loss available to that taxpayer.

- (B) In the case of nonresidents, all income, salaries, qualifying wages, commissions, and other compensation from whatever source earned or received by the nonresident for work done, services performed or rendered, or activities conducted in the municipal corporation, including any net profit of the nonresident, but excluding the nonresident's distributive share of the net profit or loss of only pass-through entities owned directly or indirectly by the nonresident.
 - (C) For taxpayers that are not individuals, net profit of the taxpayer;
 - (D) Lottery, sweepstakes, gambling and sports winnings, winnings from games of chance, and prizes and awards. If the taxpayer is a professional gambler for federal income tax purposes, the taxpayer may deduct related wagering losses and expenses to the extent authorized under the Internal Revenue Code and claimed against such winnings.
 - (E) In accordance with a ballot issue, regarding S corporation language, approved by the voters in the election on November 2, 2004, a shareholder's share of net profits of an S corporation are taxable to the City to the extent such shares would be so allocated or apportioned to this state.
- (17) **“Intangible income”** means income of any of the following types: income yield, interest, capital gains, dividends, or other income arising from the ownership, sale, exchange, or other disposition of intangible property including, but not limited to, investments, deposits, money, or credits as those terms are defined in Chapter 5701 of the O.R.C., and patents, copyrights, trademarks, trade names, investments in real estate investment trusts, investments in regulated investment companies, and appreciation on deferred compensation. "Intangible income" does not include prizes, awards, or other income associated with any lottery winnings, gambling winnings, or other similar games of chance.
- (18) **“Internal Revenue Code”** has the same meaning as in Section 5747.01 of the O.R.C.
- (19) **“Limited liability company”** means a limited liability company formed under Chapter 1705 of the O.R.C. or under the laws of another state.
- (20) **“Municipal corporation”** includes a joint economic development district or joint economic development zone that levies an income tax under Section 715.691 , 715.70 , 715.71 , or 715.74 of the O.R.C.
- (21) (A) **“Municipal taxable income”** means the following:

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- (i) For a person other than an individual, income apportioned or situated to the City under Section 158.03, as applicable reduced by any pre-2017 net operating loss carryforward available to the person for the City.
- (ii)
 - (a) For an individual who is a resident of the City income reduced by exempt income to the extent otherwise included in income, then reduced as provided in Subsection (c)(21)(B) herein, and further reduced by any pre-2017 net operating loss carryforward available to the individual for the municipal corporation.
 - (b) For an individual who is a nonresident of the City income reduced by exempt income to the extent otherwise included in income and then, as applicable, apportioned or situated to the municipal corporation under Section 3, then reduced as provided in Subsection (c)(21)(B) herein, and further reduced by any pre-2017 net operating loss carryforward available to the individual for the City.
- (B) In computing the municipal taxable income of a taxpayer who is an individual, the taxpayer may subtract, as provided in Subsections (c)(21)(A)(ii)(a) or (c)(21)(B) herein, the amount of the individual's employee business expenses reported on the individual's form 2106 that the individual deducted for federal income tax purposes for the taxable year, subject to the limitation imposed by Section 67 of the Internal Revenue Code. For the municipal corporation in which the taxpayer is a resident, the taxpayer may deduct all such expenses allowed for federal income tax purposes, but to the extent the expenses do not relate to exempt income. For a municipal corporation in which the taxpayer is not a resident, the taxpayer may deduct such expenses only to the extent the expenses are related to the taxpayer's performance of personal services in that nonresident municipal corporation and are not related to exempt income.
- (22) **“Municipality”** means the same as the City of Cleveland Heights. If the terms are capitalized in the ordinance they are referring to Cleveland Heights. If not capitalized they refer to a municipal corporation other than Cleveland Heights.
- (23) **“Net operating loss”** means a loss incurred by a person in the operation of a trade or business. “Net operating loss” does not include unutilized losses resulting from basis limitations, at-risk limitations, or passive activity loss limitations.
- (24)

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- (A) “Net profit” for a person who is an individual means the individual's net profit required to be reported on schedule C, schedule E, or schedule F reduced by any net operating loss carried forward. For the purposes of Subsection (c)(24)(A) herein, the net operating loss carried forward shall be calculated and deducted in the same manner as provided in Subsection (c)(1)(C) herein.

(c)(i) The amount of such operating loss shall be deducted from net profit to the extent necessary to reduce municipal taxable income to zero, with any remaining unused portion of the net operating loss carried forward to not more than five (5) consecutive taxable years following the taxable year in which the loss was incurred, but in no case for more years than necessary for the deduction to be fully utilized.

(ii) No person shall use the deduction allowed by division (C)(24)(c) of this section to offset qualifying wages.

(iii)(a) For taxable years beginning in 2018, 2019, 2020, 2021, or 2022, a person may not deduct more than fifty percent (50%) of the amount of the deduction otherwise allowed by division (C)(24)(c) of this section.

(b) For taxable years beginning in 2023 or thereafter, a person may deduct the full amount allowed by (C)(24)(c) of this section without regard to the limitation of division (C)(24)(c)(iii)(a) of this section.

(iv) Any pre-2017 net operating loss carryforward deduction that is available may be utilized before a taxpayer may deduct any amount pursuant to (C)(24)(c) of this section.

(v) Nothing in division (C)(24)(c)(iii)(a) of this section precludes a person from carrying forward, for use with respect to any return filed for a taxable year beginning after 2018, any amount of net operating loss that was not fully utilized by operation of division (C)(24)(c)(iii)(a) of this section. To the extent that an amount of net operating loss that was not fully utilized in one or more taxable years by operation of division (C)(1)(h)(iii)(a) of this section is carried forward for use with respect to a return filed for a taxable year beginning in 2019, 2020, 2021, or 2022, the limitation described in division (C)(24)(c)(iii)(a) of this section shall apply to the amount carried forward.

- (D) For the purposes of this Chapter and notwithstanding Subsection (c)(24)(B) herein, net profit of a disregarded entity shall not be taxable as

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against that disregarded entity, but shall instead be included in the net profit of the owner of the disregarded entity.

(E) A publicly traded partnership that is treated as a partnership for federal income tax purposes, and that is subject to tax on its net profits by the City may elect to be treated as a C corporation for the City. The election shall be made on the annual return for the City. The City will treat the publicly traded partnership as a C corporation if the election is so made.

(25) **“Nonresident”** means an individual that is not a resident.

(26) **“Ohio Business Gateway”** means the online computer network system, created under Section 125.30 of the O.R.C., that allows persons to electronically file business reply forms with state agencies and includes any successor electronic filing and payment system.

(27) **“Other payer”** means any person, other than an individual's employer or the employer's agent, that pays an individual any amount included in the federal gross income of the individual. “Other payer” includes casino operators and video lottery terminal sales agents.

(28) **“Pass-through entity”** means a partnership not treated as an association taxable as a C corporation for federal income tax purposes, a limited liability company not treated as an association taxable as a C corporation for federal income tax purposes, an S corporation, or any other class of entity from which the income or profits of the entity are given pass-through treatment for federal income tax purposes. “Pass-through entity” does not include a trust, estate, grantor of a grantor trust, or disregarded entity.

(29) **“Pension”** means any amount paid to an employee or former employee that is reported to the recipient on an IRS form 1099-R, or successor form. Pension does not include deferred compensation, or amounts attributable to nonqualified deferred compensation plans, reported as FICA/Medicare wages on an IRS form W-2, Wage and Tax Statement, or successor form.

(30) **“Person”** includes individuals, firms, companies, joint stock companies, business trusts, estates, trusts, partnerships, limited liability partnerships, limited liability companies, associations, C corporations, S corporations, governmental entities, and any other entity.

(31) **“Postal service”** means the United States Postal Service.

(32) **“Postmark date,” “date of postmark,”** and similar terms include the date recorded and marked in the manner described in division (B)(3) of Section 5703.056 of the O.R.C.

(33)

(A) **“Pre-2017 net operating loss carryforward”** means any net operating loss incurred in a taxable year beginning before January 1, 2017, to the

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extent such loss was permitted, by a resolution or ordinance of the City that was adopted by the City before January 1, 2016, to be carried forward and utilized to offset income or net profit generated in such City in future taxable years.

- (B) For the purpose of calculating municipal taxable income, any pre-2017 net operating loss carryforward may be carried forward to any taxable year, including taxable years beginning in 2017 or thereafter, for the number of taxable years provided in the resolution or ordinance or until fully utilized, whichever is earlier.
- (34) **“Publicly traded partnership”** means any partnership, an interest in which is regularly traded on an established securities market. A “publicly traded partnership” may have any number of partners.
- (35) **“Qualifying wages”** means wages, as defined in Section 3121(a) of the Internal Revenue Code, without regard to any wage limitations, adjusted as follows:
- (A) Deduct the following amounts:
 - (i) Any amount included in wages if the amount constitutes compensation attributable to a plan or program described in Section 125 of the Internal Revenue Code.
 - (ii) Any amount included in wages if the amount constitutes payment on account of a disability related to sickness or an accident paid by a party unrelated to the employer, agent of an employer, or other payer.
 - (iii) Intentionally left blank.
 - (iv) Intentionally left blank.
 - (v) Any amount included in wages that is exempt income.
 - (B) Add the following amounts:
 - (i) Any amount not included in wages solely because the employee was employed by the employer before April 1, 1986.
 - (ii) Any amount not included in wages because the amount arises from the sale, exchange, or other disposition of a stock option, the exercise of a stock option, or the sale, exchange, or other disposition of stock purchased under a stock option. Subsection (c)(35)(B)(ii) herein applies only to those amounts constituting ordinary income.
 - (iii) Any amount not included in wages if the amount is an amount described in section 401(k), 403(b), or 457 of the Internal

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Revenue Code. Subsection (c)(35)(B)(iii) herein applies only to employee contributions and employee deferrals.

- (iv) Any amount that is supplemental unemployment compensation benefits described in Section 3402(o)(2) of the Internal Revenue Code and not included in wages.
 - (v) Any amount received that is treated as self-employment income for federal tax purposes in accordance with Section 1402(a)(8) of the Internal Revenue Code.
 - (vi) Any amount not included in wages if all of the following apply:
 - (a) For the taxable year the amount is employee compensation that is earned outside the United States and that either is included in the taxpayer's gross income for federal income tax purposes or would have been included in the taxpayer's gross income for such purposes if the taxpayer did not elect to exclude the income under Section 911 of the Internal Revenue Code;
 - (b) For no preceding taxable year did the amount constitute wages as defined in Section 3121(a) of the Internal Revenue Code;
 - (c) For no succeeding taxable year will the amount constitute wages; and
 - (d) For any taxable year the amount has not otherwise been added to wages pursuant to either Subsection (c)(35)(B) herein or O.R.C. Section 718.03, as that section existed before the effective date of H.B. 5 of the 130th General Assembly, March 23, 2015.
- (36) **“Related entity”** means any of the following:
- (A) An individual stockholder, or a member of the stockholder's family enumerated in Section 318 of the Internal Revenue Code, if the stockholder and the members of the stockholder's family own directly, indirectly, beneficially, or constructively, in the aggregate, at least fifty percent (50%) of the value of the taxpayer's outstanding stock;
 - (B) A stockholder, or a stockholder's partnership, estate, trust, or corporation, if the stockholder and the stockholder's partnerships, estates, trusts, or corporations own directly, indirectly, beneficially, or constructively, in the aggregate, at least fifty percent (50%) of the value of the taxpayer's outstanding stock;
 - (C) A corporation, or a party related to the corporation in a manner that would require an attribution of stock from the corporation to the party or

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from the party to the corporation under Subsection (c)(36)(D) herein, provided the taxpayer owns directly, indirectly, beneficially, or constructively, at least fifty percent of the value of the corporation's outstanding stock;

- (D) The attribution rules described in Section 318 of the Internal Revenue Code apply for the purpose of determining whether the ownership requirements in Subsections (c)(36)(A) to (C) herein have been met.
- (37) **“Related member”** means a person that, with respect to the taxpayer during all or any portion of the taxable year, is either a related entity, a component member as defined in Section 1563(b) of the Internal Revenue Code, or a person to or from whom there is attribution of stock ownership in accordance with Section 1563(e) of the Internal Revenue Code except, for purposes of determining whether a person is a related member under this Section, “twenty percent (20%)” shall be substituted for “five percent (5%)” wherever “five percent (5%)” appears in Section 1563(e) of the Internal Revenue Code.
- (38) **“Resident”** means an individual who is domiciled in the municipal corporation as determined under Section 158.03(e).
- (39) **“S corporation”** means a person that has made an election under subchapter/ordinance S of Chapter 1 of Subtitle A of the Internal Revenue Code for its taxable year.
- (40) **“Schedule C”** means internal revenue service schedule C (form 1040) filed by a taxpayer pursuant to the Internal Revenue Code.
- (41) **“Schedule E”** means internal revenue service schedule E (form 1040) filed by a taxpayer pursuant to the Internal Revenue Code.
- (42) **“Schedule F”** means internal revenue service schedule F (form 1040) filed by a taxpayer pursuant to the Internal Revenue Code.
- (43) **“Single member limited liability company”** means a limited liability company that has one direct member.
- (44) **“Small employer”** means any employer that had total revenue of less than \$500,000 during the preceding taxable year. For purposes of this Section, “total revenue” means receipts of any type or kind, including, but not limited to, sales receipts; payments; rents; profits; gains, dividends, and other investment income; compensation; commissions; premiums; money; property; grants; contributions; donations; gifts; program service revenue; patient service revenue; premiums; fees, including premium fees and service fees; tuition payments; unrelated business revenue; reimbursements; any type of payment from a governmental unit, including grants and other allocations; and any other similar receipts reported for federal income tax purposes or under generally accepted accounting principles. “Small employer” does not include the federal government; any state government, including any state agency or instrumentality; any political

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subdivision; or any entity treated as a government for financial accounting and reporting purposes.

- (45) (A) **Tax Administrator**” means the individual charged with direct responsibility for administration of an income tax levied by the City in accordance with this Chapter. *Tax Administrator does not include the state tax commissioner.*
- (B) **“Tax commissioner”** means the tax commissioner appointed under section 121.03 of the Revised Code. (46) **“Tax return preparer”** means any individual described in Section 7701(a)(36) of the Internal Revenue Code and 26 C.F.R. 301.7701-15.
- (47) **“Taxable year”** means the corresponding tax reporting period as prescribed for the taxpayer under the Internal Revenue Code.
- (48) (A) **“Taxpayer”** means a person subject to a tax levied on income by a municipal corporation in accordance with this Chapter. “Taxpayer” does not include a grantor trust or, except as provided in Subsection (c)(48)(B)(i) herein, a disregarded entity.
- (B) (i) A single member limited liability company that is a disregarded entity for federal tax purposes may be a separate taxpayer from its single member in all Ohio municipal corporations in which it either filed as a separate taxpayer or did not file for its taxable year ending in 2003, if all of the following conditions are met:
- (a) The limited liability company’s single member is also a limited liability company.
 - (b) The limited liability company and its single member were formed and doing business in one or more Ohio municipal corporations for at least five years before January 1, 2004.
 - (c) Not later than December 31, 2004, the limited liability company and its single member each made an election to be treated as a separate taxpayer under division (L) of O.R.C. 718.01 as that section existed on December 31, 2004.
 - (d) The limited liability company was not formed for the purpose of evading or reducing Ohio municipal corporation income tax liability of the limited liability company or its single member.
 - (e) The Ohio municipal corporation that was the primary place of business of the sole member of the limited liability company consented to the election.

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- (ii) For purposes of Subsection (c)(48)(B)(ii) herein, a municipal corporation was the primary place of business of a limited liability company if, for the limited liability company's taxable year ending in 2003, its income tax liability was greater in that municipal corporation than in any other municipal corporation in Ohio, and that tax liability to that municipal corporation for its taxable year ending in 2003 was at least \$400,000.
- (49) **"Taxpayers' rights and responsibilities"** means the rights provided to taxpayers in Sections 158.09, 158.12, 158.13, 15819(b), 158.20, 158.21, and Sections 5717.011 and 5717.03 of the O.R.C, and the responsibilities of taxpayers to file, report, withhold, remit, and pay municipal income tax and otherwise comply with Chapter 718 of the O.R.C. and resolutions, ordinances, and rules and regulations adopted by the City for the imposition and administration of a municipal income tax.
- (50) **"Video lottery terminal"** has the same meaning as in Section 3770.21 of the O.R.C.
- (51) **"Video lottery terminal sales agent"** means a lottery sales agent licensed under Chapter 3770. of the O.R.C. to conduct video lottery terminals on behalf of the state pursuant to Section 3770.21 of the O.R.C.

SECTION 158.03 IMPOSITION OF TAX.

The income tax levied by the City at a rate of two and one quarter percent (2.25%) is levied on the Municipal Taxable Income of every person residing in and/or earning and/or receiving income in the City.

Individuals.

(a) For residents of the City the income tax levied herein shall be on all income, salaries, qualifying wages, commissions, and other compensation from whatever source earned or received by the resident, including the resident's distributive share of the net profit of pass-through entities owned directly or indirectly by the resident and any net profit of the resident. This is further detailed in the definition of income in Section 158.02(c)(16).

(b) For nonresidents, all income, salaries, qualifying wages, commissions, and other compensation from whatever source earned or received by the nonresident for work done, services performed or rendered, or activities conducted in the municipal corporation, including any net profit of the nonresident, but excluding the nonresident's distributive share of the net profit or loss of only pass-through entities owned directly or indirectly by the nonresident.

(c) For residents and nonresidents, income can be reduced to "Municipal Taxable Income" as defined in Subsection 158.02(c)(21). Exemptions which may apply are specified in Section 158.02 (c)(12).

Refundable credit for Nonqualified Deferred Compensation Plan.

- (d) (1) As used in this Section:

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- (A) “Nonqualified deferred compensation plan” means a compensation plan described in Section 3121(v)(2)(C) of the Internal Revenue Code.
 - (B) “Qualifying loss” means the amount of compensation attributable to a taxpayer’s nonqualified deferred compensation plan, less the receipt of money and property attributable to distributions from the nonqualified deferred compensation plan. Full loss is sustained if no distribution of money and property is made by the nonqualified deferred compensation plan. The taxpayer sustains a qualifying loss only in the taxable year in which the taxpayer receives the final distribution of money and property pursuant to that nonqualified deferred compensation plan.
 - (C)
 - (i) “Qualifying tax rate” means the applicable tax rate for the taxable year for the which the taxpayer paid income tax to the City with respect to any portion of the total amount of compensation the payment of which is deferred pursuant to a nonqualified deferred compensation plan.
 - (ii) If different tax rates applied for different taxable years, then the "qualifying tax rate" is a weighted average of those different tax rates. The weighted average shall be based upon the tax paid to the City each year with respect to the nonqualified deferred compensation plan.
 - (D) “Refundable credit” means the amount of the City income tax that was paid on the non-distributed portion, if any, of a nonqualified deferred compensation plan.
- (2) If, in addition to the City, a taxpayer has paid tax to other municipal corporations with respect to the nonqualified deferred compensation plan, the amount of the credit that a taxpayer may claim from each municipal corporation shall be calculated on the basis of each municipal corporation's proportionate share of the total municipal corporation income tax paid by the taxpayer to all municipal corporations with respect to the nonqualified deferred compensation plan.
 - (3) In no case shall the amount of the credit allowed under this section exceed the cumulative income tax that a taxpayer has paid to the City for all taxable years with respect to the nonqualified deferred compensation plan.
 - (4) The credit allowed under this Section is allowed only to the extent the taxpayers qualifying loss is attributable to:
 - (A) The insolvency or bankruptcy of the employer who had established the nonqualified deferred compensation plan; or
 - (B) The employee's failure or inability to satisfy all of the employer's terms and conditions necessary to receive the nonqualified deferred compensation.

Domicile.

- (e) (1)
 - (A) An individual is presumed to be domiciled in the City for all or part of a taxable year if the individual was domiciled in the City on the last day of the immediately preceding taxable year or if the Tax Administrator reasonably concludes that the individual is domiciled in the City for all or part of the taxable year.
 - (B) An individual may rebut the presumption of domicile described in Subsection (e)(1)(A) herein if the individual establishes by a preponderance of the evidence that the individual was not domiciled in the City for all or part of the taxable year.
- (2) For the purpose of determining whether an individual is domiciled in the City for all or part of a taxable year, factors that may be considered include, but are not limited to, the following:
 - (A) The individual's domicile in other taxable years;
 - (B) The location at which the individual is registered to vote;
 - (C) The address on the individual's driver's license;
 - (D) The location of real estate for which the individual claimed a property tax exemption or reduction allowed on the basis of the individual's residence or domicile;
 - (E) The location and value of abodes owned or leased by the individual;
 - (F) Declarations, written or oral, made by the individual regarding the individual's residency;
 - (G) The primary location at which the individual is employed.
 - (H) The location of educational institutions attended by the individual's dependents as defined in Section 152 of the Internal Revenue Code, to the extent that tuition paid to such educational institution is based on the residency of the individual or the individual's spouse in the municipal corporation where the educational institution is located;
 - (I) The number of contact periods the individual has with the City. For the purposes of this section, an individual has one "contact period" with the City if the individual is away overnight from the individual's abode located outside of the City and while away overnight from that abode spends at least some portion, however minimal, of each of two consecutive days in the City.

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- (3) All additional applicable factors are provided in the Rules and Regulations.

Businesses.

(f) This Subsection applies to any taxpayer engaged in a business or profession in the City, unless the taxpayer is an individual who resides in the City or the taxpayer is an electric company, combined company, or telephone company that is subject to and required to file reports under Chapter 5745 of the O.R.C.

- (1) Except as otherwise provided in Subsection (f)(2) herein, net profit from a business or profession conducted both within and without the boundaries of the City shall be considered as having a taxable situs in the City for purposes of municipal income taxation in the same proportion as the average ratio of the following:

- (A) The average original cost of the real property and tangible personal property owned or used by the taxpayer in the business or profession in the City during the taxable period to the average original cost of all of the real and tangible personal property owned or used by the taxpayer in the business or profession during the same period, wherever situated.

As used in the preceding paragraph, tangible personal or real property shall include property rented or leased by the taxpayer and the value of such property shall be determined by multiplying the annual rental thereon by eight;

- (B) Wages, salaries, and other compensation paid during the taxable period to individuals employed in the business or profession for services performed in the City to wages, salaries, and other compensation paid during the same period to individuals employed in the business or profession, wherever the individual's services are performed, excluding compensation from which taxes are not required to be withheld under Section 158.04(c);
- (C) Total gross receipts of the business or profession from sales and rentals made and services performed during the taxable period in the City to total gross receipts of the business or profession during the same period from sales, rentals, and services, wherever made or performed.

- (2)

- (A) If the apportionment factors described in Subsection (f)(1) herein do not fairly represent the extent of a taxpayer's business activity in the City the taxpayer may request, or the Tax Administrator of the City may require, that the taxpayer use, with respect to all or any portion of the income of the taxpayer, an alternative apportionment method involving one or more of the following:

- (i) Separate accounting;

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- (ii) The exclusion of one or more of the factors;
 - (iii) The inclusion of one or more additional factors that would provide for a more fair apportionment of the income of the taxpayer to the municipal corporation;
 - (iv) A modification of one or more of the factors.
 - (B) A taxpayer request to use an alternative apportionment method shall be in writing and shall accompany a tax return, timely filed appeal of an assessment, or timely filed amended tax return. The taxpayer may use the requested alternative method unless the Tax Administrator denies the request in an assessment issued within the period prescribed by Section 158.12(a).
 - (C) The Tax Administrator may require a taxpayer to use an alternative apportionment method as described in Subsection (f)(2)(A) herein, but only by issuing an assessment to the taxpayer within the period prescribed by Section 158.12(a).
 - (D) Nothing in Subsection (f)(2) herein nullifies or otherwise affects any alternative apportionment arrangement approved by the Tax Administrator or otherwise agreed upon by both the Tax Administrator and taxpayer before January 1, 2016.
- (3) As used in Subsection (f)(1)(B) herein, “wages, salaries, and other compensation” includes only wages, salaries, or other compensation paid to an employee for services performed at any of the following locations:
- (A) A location that is owned, controlled, or used by, rented to, or under the possession of one of the following:
 - (i) The employer;
 - (ii) A vendor, customer, client, or patient of the employer, or a related member of such a vendor, customer, client, or patient;
 - (iii) A vendor, customer, client, or patient of a person described in Subsection (f)(3)(A)(ii) herein, or a related member of such a vendor, customer, client, or patient.
 - (B) Any location at which a trial, appeal, hearing, investigation, inquiry, review, court-martial, or similar administrative, judicial, or legislative matter or proceeding is being conducted, provided that the compensation is paid for services performed for, or on behalf of, the employer or that the employee's presence at the location directly or indirectly benefits the employer;

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- (C) Any other location, if the Tax Administrator determines that the employer directed the employee to perform the services at the other location in lieu of a location described in Subsections (f)(3)(A) or (B) herein solely in order to avoid or reduce the employer's municipal income tax liability. If the Tax Administrator makes such a determination, the employer may dispute the determination by establishing, by a preponderance of the evidence, that the Tax Administrator's determination was unreasonable.
- (4) For the purposes of Subsection (f)(1)(C) herein, receipts from sales and rentals made and services performed shall be situated to a municipal corporation as follows:
 - (A) Gross receipts from the sale of tangible personal property shall be situated to the municipal corporation in which the sale originated. For the purposes of this Section, a sale of property originates in the City if, regardless of where title passes, the property meets any of the following criteria:
 - (i) The property is shipped to or delivered within the City from a stock of goods located within the City of Cleveland Heights.
 - (ii) The property is delivered within the City from a location outside the City provided the taxpayer is regularly engaged through its own employees in the solicitation or promotion of sales within the City and the sales result from such solicitation or promotion.
 - (iii) The property is shipped from a place within the City to purchasers outside the City, provided that the taxpayer is not, through its own employees, regularly engaged in the solicitation or promotion of sales at the place where delivery is made.
 - (B) Gross receipts from the sale of services shall be situated to the City to the extent that such services are performed in the City.
 - (C) To the extent included in income, gross receipts from the sale of real property located in the City shall be situated to the City.
 - (D) To the extent included in income, gross receipts from rents and royalties from real property located in the City shall be situated to the City.
 - (E) Gross receipts from rents and royalties from tangible personal property shall be situated to the City based upon the extent to which the tangible personal property is used in the City.
- (5) The net profit received by an individual taxpayer from the rental of real estate owned directly by the individual, or by a disregarded entity owned by the individual, shall be subject to the City tax only if the property generating the net profit is located in the City or if the individual taxpayer that receives the net profit is a resident of the City. The City shall allow such taxpayers to elect to use

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separate accounting for the purpose of calculating net profit situated under this Section to the municipal corporation in which the property is located.

- (6) (A) Commissions received by a real estate agent or broker relating to the sale, purchase, or lease of real estate shall be situated to the municipal corporation in which the real estate is located. Net profit reported by the real estate agent or broker shall be allocated to the City, if applicable, based upon the ratio of the commissions the agent or broker received from the sale, purchase, or lease of real estate located in the City to the commissions received from the sale, purchase, or lease of real estate everywhere in the taxable year.
- (B) An individual who is a resident of the City shall report the individual's net profit from all real estate activity on the individual's annual tax return for the City. The individual may claim a credit for taxes the individual paid on such net profit to another municipal corporation to the extent that such a credit is allowed under the City income tax ordinance.
- (7) When calculating the ratios described in Subsection (f)(1) herein for the purposes of that subsection, the owner of a disregarded entity shall include in the owner's ratios the property, payroll, and gross receipts of such disregarded entity.
- (8) Left intentionally blank.
- (9) Intentionally left blank.

SECTION 158.04 COLLECTION AT SOURCE.

Withholding provisions.

(a) Each employer, agent of an employer, or other payer located or doing business in the City shall withhold an income tax from the qualifying wages earned and/or received by each employee in the City. Except for qualifying wages for which withholding is not required under Section 158.03 or Subsection (b)(4) or (6) herein, the tax shall be withheld at the rate, specified in Section 158.03 of this Chapter of 2.25%. An employer, agent of an employer, or other payer shall deduct and withhold the tax from qualifying wages on the date that the employer, agent, or other payer directly, indirectly, or constructively pays the qualifying wages to, or credits the qualifying wages to the benefit of, the employee.

- (b) (1) Except as provided in Subsection (b)(2) herein, an employer, agent of an employer, or other payer shall remit to the Tax Administrator of the City the greater of the income taxes deducted and withheld or the income taxes required to be deducted and withheld by the employer, agent, or other payer according to the following schedule:
 - (A) Taxes required to be deducted and withheld shall be remitted monthly to the Tax Administrator if the total taxes deducted and withheld or required to be deducted and withheld by the employer, agent, or other

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payer on behalf of the City in the preceding calendar year exceeded \$2,399, or if the total amount of taxes deducted and withheld or required to be deducted and withheld on behalf of the City in any month of the preceding calendar quarter exceeded \$200.

Payments under Subsection (b)(1)(A) herein shall be made to the Tax Administrator not later than 15 days after the last day of each month for which the tax was withheld.

- (B) Any employer, agent of an employer, or other payer not required to make payments under Subsection (b)(1)(A) herein of taxes required to be deducted and withheld shall make quarterly payments to the Tax Administrator not later than the last day of the month following the last day of each calendar quarter.
- (C) Intentionally left blank.
- (2) If the employer, agent of an employer, or other payer is required to make payments electronically for the purpose of paying federal taxes withheld on payments to employees under Section 6302 of the Internal Revenue Code, 26 C.F.R. 31.6302-1, or any other federal statute or regulation, the payment shall be made by electronic funds transfer to the Tax Administrator of all taxes deducted and withheld on behalf of the City. The payment of tax by electronic funds transfer under this Section does not affect an employer's, agent's, or other payer's obligation to file any return as required under this section.
- (3) An employer, agent of an employer, or other payer shall make and file a return showing the amount of tax withheld by the employer, agent, or other payer from the qualifying wages of each employee and remitted to the Tax Administrator. A return filed by an employer, agent, or other payer under this Section shall be accepted by Tax Administrator and the City as the return required of a non-resident employee whose sole income subject to the tax under this Chapter is the qualifying wages reported by the employee's employer, agent of an employer, or other payer.
- (4) An employer, agent of an employer, or other payer is not required to withhold the City income tax with respect to an individual's disqualifying disposition of an incentive stock option if, at the time of the disqualifying disposition, the individual is not an employee of either the corporation with respect to whose stock the option has been issued or of such corporation's successor entity.
- (5) (A) An employee is not relieved from liability for a tax by the failure of the employer, agent of an employer, or other payer to withhold the tax as required under this Chapter or by the employer's, agent's, or other payer's exemption from the requirement to withhold the tax.
 - (B) The failure of an employer, agent of an employer, or other payer to remit to the City the tax withheld relieves the employee from liability for that tax unless the employee colluded with the employer, agent, or other payer in connection with the failure to remit the tax withheld.

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- (6) Compensation deferred before June 26, 2003, is not subject to the City income tax or income tax withholding requirement to the extent the deferred compensation does not constitute qualifying wages at the time the deferred compensation is paid or distributed.
- (7) Each employer, agent of an employer, or other payer required to withhold taxes is liable for the payment of that amount required to be withheld, whether or not such taxes have been withheld, and such amount shall be deemed to be held in trust for the City until such time as the withheld amount is remitted to the Tax Administrator.
- (8) On or before the last day of February of each year, an employer shall file a withholding reconciliation return with the Tax Administrator listing:
 - (A) The names, addresses, and social security numbers of all employees from whose qualifying wages tax was withheld or should have been withheld for the City during the preceding calendar year;
 - (B) The amount of tax withheld, if any, from each such employee, the total amount of qualifying wages paid to such employee during the preceding calendar year;
 - (C) The name of every other municipal corporation for which tax was withheld or should have been withheld from such employee during the preceding calendar year;
 - (D) Any other information required for federal income tax reporting purposes on Internal Revenue Service form W-2 or its equivalent form with respect to such employee;
 - (E) Other information as may be required by the Tax Administrator.
- (9) The officer or the employee of the employer, agent of an employer, or other payer with control or direct supervision of or charged with the responsibility for withholding the tax or filing the reports and making payments as required by this section, shall be personally liable for a failure to file a report or pay the tax due as required by this section. The dissolution of an employer, agent of an employer, or other payer does not discharge the officer's or employee's liability for a failure of the employer, agent of an employer, or other payer to file returns or pay any tax due.
- (10) An employer is required to deduct and withhold the City income tax on tips and gratuities received by the employer's employees and constituting qualifying wages, but only to the extent that the tips and gratuities are under the employer's control. For the purposes of this Section, a tip or gratuity is under the employer's control if the tip or gratuity is paid by the customer to the employer for subsequent remittance to the employee, or if the customer pays the tip or gratuity by credit card, debit card, or other electronic means.

- (11) The Tax Administrator shall consider any tax withheld by an employer at the request of an employee, when such tax is not otherwise required to be withheld by this Chapter, to be tax required to be withheld and remitted for the purposes of this section

Occasional Entrant - Withholding.

- (c) (1) As used in this Section:
- (A) “Employer” includes a person that is a related member to or of an employer.
 - (B) “Fixed location” means a permanent place of doing business in this state, such as an office, warehouse, storefront, or similar location owned or controlled by an employer.
 - (C) “Principal place of work” means the fixed location to which an employee is required to report for employment duties on a regular and ordinary basis. If the employee is not required to report for employment duties on a regular and ordinary basis to a fixed location, “principal place of work” means the worksite location in this state to which the employee is required to report for employment duties on a regular and ordinary basis. If the employee is not required to report for employment duties on a regular and ordinary basis to a fixed location or worksite location, “principal place of work” means the location in this state at which the employee spends the greatest number of days in a calendar year performing services for or on behalf of the employee’s employer.

If there is not a single municipal corporation in which the employee spent the “greatest number of days in a calendar year” performing services for or on behalf of the employer, but instead there are two or more municipal corporations in which the employee spent an identical number of days that is greater than the number of days the employee spent in any other municipal corporation, the employer shall allocate any of the employee's qualifying wages subject to Subsection (c)(2)(A)(i) herein among those two or more municipal corporations. The allocation shall be made using any fair and reasonable method, including, but not limited to, an equal allocation among such municipal corporations or an allocation based upon the time spent or sales made by the employee in each such municipal corporation. A municipal corporation to which qualifying wages are allocated under this Section shall be the employee's “principal place of work” with respect to those qualifying wages for the purposes of this Section.

For the purposes of this Section, the location at which an employee spends a particular day shall be determined in accordance with Subsection (c)(2)(B) herein, except that “location” shall be substituted for “municipal corporation” wherever “municipal corporation” appears in that section.

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- (D) “Professional athlete” means an athlete who performs services in a professional athletic event for wages or other remuneration.
 - (E) “Professional entertainer” means a person who performs services in the professional performing arts for wages or other remuneration on a per-event basis.
 - (F) “Public figure” means a person of prominence who performs services at discrete events, such as speeches, public appearances, or similar events, for wages or other remuneration on a per-event basis.
 - (G) “Worksite location” means a construction site or other temporary worksite in this state at which the employer provides services for more than 20 days during the calendar year. “Worksite location” does not include the home of an employee.
- (2) (A) Subject to Subsections (c)(3), (5), (6), and (7) herein, an employer is not required to withhold the City income tax on qualifying wages paid to an employee for the performance of personal services in the City if the employee performed such services in the City on 20 or fewer days in a calendar year, unless one of the following conditions applies:
- (i) The employee’s principal place of work is located in the City.
 - (ii) The employee performed services at one or more presumed worksite locations in the City. For the purposes of this Section, “presumed worksite location” means a construction site or other temporary worksite in the City at which the employer provides or provided services that can reasonably be, or would have been, expected by the employer to last more than twenty (20) days in a calendar year. Services can “reasonably be expected by the employer to last more than twenty (20) days” if either of the following applies at the time the services commence:
 - (a) The nature of the services are such that it will require more than twenty (20) days of the services to complete the services;
 - (b) The agreement between the employer and its customer to perform services at a location requires the employer to perform the services at the location for more than twenty (20) days.
 - (iii) The employee is a resident of the City and has requested that the employer withhold tax from the employee's qualifying wages as provided in Section 158.04.
 - (iv) The employee is a professional athlete, professional entertainer, or public figure, and the qualifying wages are paid for the

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performance of services in the employee's capacity as a professional athlete, professional entertainer, or public figure.

- (B) For the purposes of Subsection (c)(2)(A) herein, an employee shall be considered to have spent a day performing services in the City only if the employee spent more time performing services for or on behalf of the employer in the City than in any other municipal corporation on that day. For the purposes of determining the amount of time an employee spent in a particular location, the time spent performing one or more of the following activities shall be considered to have been spent at the employee's principal place of work:
- (i) Traveling to the location at which the employee will first perform services for the employer for the day;
 - (ii) Traveling from a location at which the employee was performing services for the employer to any other location;
 - (iii) Traveling from any location to another location in order to pick up or load, for the purpose of transportation or delivery, property that has been purchased, sold, assembled, fabricated, repaired, refurbished, processed, remanufactured, or improved by the employee's employer;
 - (iv) Transporting or delivering property described in Subsection (c)(2)(B)(iii) herein, provided that, upon delivery of the property, the employee does not temporarily or permanently affix the property to real estate owned, used, or controlled by a person other than the employee's employer;
 - (v) Traveling from the location at which the employee makes the employee's final delivery or pick-up for the day to either the employee's principal place of work or a location at which the employee will not perform services for the employer.
- (3) If the principal place of work of an employee is located in another Ohio municipal corporation that imposes an income tax, the exception from withholding requirements described in Subsection (c)(2)(A) herein shall apply only if, with respect to the employee's qualifying wages described in that section, the employer withholds and remits tax on such qualifying wages to that municipal corporation.
- (4) (A) Except as provided in Subsection (c)(4)(B) herein, if, during a calendar year, the number of days an employee spends performing personal services in the City exceeds the 20-day threshold, the employer shall withhold and remit tax to the City for any subsequent days in that calendar year on which the employer pays qualifying wages to the employee for personal services performed in the City.

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(B) An employer required to begin withholding tax for the City under Subsection (c)(4)(A) herein may elect to withhold tax for the City for the first twenty (20) days on which the employer paid qualifying wages to the employee for personal services performed in the City.

(5) If an employer's fixed location is the City and the employer qualifies as a small employer as defined in Section 158.02, the employer shall withhold municipal income tax on all of the employee's qualifying wages for a taxable year and remit that tax only to the City, regardless of the number of days which the employee worked outside the corporate boundaries of the City.

To determine whether an employer qualifies as a small employer for a taxable year, the employer will be required to provide the Tax Administrator with the employer's federal income tax return for the preceding taxable year.

(6) Subsections (c)(2)(A) and (4) herein shall not apply to the extent that a Tax Administrator and an employer enter into an agreement regarding the manner in which the employer shall comply with the requirements of Section 158.04.

SECTION 158.05 ANNUAL RETURN; FILING.

(a) An annual City income tax return shall be completed and filed by every individual taxpayer eighteen (18) years of age or older and any taxpayer that is not an individual for each taxable year for which the taxpayer is subject to the tax, whether or not a tax is due thereon.

(1) The Tax Administrator may accept on behalf of all nonresident individual taxpayers a return filed by an employer, agent of an employer, or other payer under Section 158.04 of this Chapter when the nonresident individual taxpayer's sole income subject to the tax is the qualifying wages reported by the employer, agent of an employer, or other payer, and no additional tax is due City.

(2) Retirees having no Municipal Taxable Income for City income tax purposes may file with the Tax Administrator a written exemption from these filing requirements on a form prescribed by the Tax Administrator. The written exemption shall indicate the date of retirement and the entity from which retired. The exemption shall be in effect until such time as the retiree receives Municipal Taxable Income taxable to the City at which time the retiree shall be required to comply with all applicable provisions of this ordinance/chapter.

(b) If an individual is deceased, any return or notice required of that individual shall be completed and filed by that decedent's executor, administrator, or other person charged with the property of that decedent.

(c) If an individual is unable to complete and file a return or notice required by the City the return or notice required of that individual shall be completed and filed by the individual's duly authorized agent, guardian, conservator, fiduciary, or other person charged with the care of the person or property of that individual.

(d) Returns or notices required of an estate or a trust shall be completed and filed by the fiduciary of the estate or trust.

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- (e) The City shall permit spouses to file a joint return.
- (f)
 - (1) Each return required to be filed under this Section shall contain the signature of the taxpayer or the taxpayer's duly authorized agent and of the person who prepared the return for the taxpayer. The return shall include the taxpayer's social security number or taxpayer identification number. Each return shall be verified by a declaration under penalty of perjury.
 - (2) The Tax Administrator shall require a taxpayer who is an individual to include, with each annual return; and amended return, copies of the following documents: all of the taxpayer's Internal Revenue Service form W-2, "Wage and Tax Statements," including all information reported on the taxpayer's federal W-2, as well as taxable wages reported or withheld for any municipal corporation; the taxpayer's Internal Revenue Service form 1040 or, in the case of a return or request required by a qualified municipal corporation, Ohio form IT-1040; and, with respect to an amended tax return, any other documentation necessary to support the adjustments made in the amended return. An individual taxpayer who files the annual return required by this section electronically is not required to provide paper copies of any of the foregoing to the Tax Administrator unless the Tax Administrator requests such copies after the return has been filed.
 - (3) The Tax Administrator may require a taxpayer that is not an individual to include, with each annual net profit return, amended net profit return, or request for refund required under this section, copies of only the following documents: the taxpayer's Internal Revenue Service form 1041, form 1065, form 1120, form 1120-REIT, form 1120F, or form 1120S, and, with respect to an amended tax return or refund request, any other documentation necessary to support the refund request or the adjustments made in the amended return.

A taxpayer that is not an individual and that files an annual net profit return electronically through the Ohio Business Gateway or in some other manner shall either mail the documents required under this Section n to the Tax Administrator at the time of filing or, if electronic submission is available, submit the documents electronically through the Ohio Business Gateway.

- (4) After a taxpayer files a tax return, the Tax Administrator may request, and the taxpayer shall provide, any information, statements, or documents required by the City to determine and verify the taxpayer's municipal income tax liability. The requirements imposed under Subsection (f) herein apply regardless of whether the taxpayer files on a generic form or on a form prescribed by the Tax Administrator.
- (g)
 - (1) (A) Except as otherwise provided in this Chapter, each individual income tax return required to be filed under this Section shall be completed and filed as required by the Tax Administrator on or before the date prescribed for the filing of state individual income tax returns under division (G) of Section 5747.08 of the O.R.C. The taxpayer shall complete and file the return or notice on forms prescribed by the Tax Administrator or on generic forms, together with remittance made payable to the City. No remittance is required if the net amount due is ten dollars (\$10) or less.

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- (B) Except as otherwise provided in this chapter/ordinance, each annual net profit return required to be filed under this section by a taxpayer that is not an individual shall be completed and filed as required by the Tax Administrator on or before the fifteenth day (15th) of the fourth month following the end of the taxpayer's taxable year. The taxpayer shall complete and file the return or notice on forms prescribed by the Tax Administrator or on generic forms, together with remittance made payable to the City. No remittance is required if the net amount due is ten dollars or less.
- (2) Any taxpayer that has duly requested an automatic six-month extension for filing the taxpayer's federal income tax return shall automatically receive an extension for the filing of the City income tax return. The extended due date of the City's income tax return shall be the 15th day of the tenth month after the last day of the taxable year to which the return relates. An extension of time to file under this Section is not an extension of the time to pay any tax due unless the Tax Administrator grants an extension of that date.
 - (A) A copy of the federal extension request shall be included with the filing of the City income tax return.
 - (B) A taxpayer that has not requested or received a six-month extension for filing the taxpayer's federal income tax return may request that the Tax Administrator grant the taxpayer a six-month extension of the date for filing the taxpayer's City income tax return. If the request is received by the Tax Administrator on or before the date the City income tax return is due, the Tax Administrator shall grant the taxpayer's requested extension.
- (3) If the tax commissioner extends for all taxpayers the date for filing state income tax returns under division (G) of Section 5747.08 of the O.R.C., a taxpayer shall automatically receive an extension for the filing of the City's income tax return. The extended due date of the City's income tax return shall be the same as the extended due date of the state income tax return.
- (4) If the Tax Administrator considers it necessary in order to ensure the payment of the tax imposed by the City, the Tax Administrator may require taxpayers to file returns and make payments otherwise than as provided in this Section, including taxpayers not otherwise required to file annual returns.
- (5) To the extent that any provision in Subsection (g) herein conflicts with any provision in Subsections (n), (o), (p), or (q) herein, the provisions in Subsections (n), (o), (p), or (q) prevail.
- (h) (1) For taxable years beginning after 2015, the City shall not require a taxpayer to remit tax with respect to net profits if the net amount due is ten dollars (\$10) or less.

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- (2) Any taxpayer not required to remit tax to the City for a taxable year pursuant to Subsection (h)(1) herein shall file with the City an annual net profit return under Subsection (f)(3) herein, unless the provisions of division (H)(3) apply

(3)(a) A person may notify the Tax Administrator that the person does not expect to be a taxpayer subject to [Municipality/City/Village] income tax ordinance for a taxable year if both the following apply:

(i) The person was required to file a tax return with [Municipality/City/Village] for the immediately preceding taxable year because the person performed services at a worksite location (as defined in Section 4(C)(1)(g)) within [Municipality/City/Village].

(ii) The person no longer provides services in [Municipality/City/Village] and does not expect to be subject to [Municipality/City/Village] income tax for the taxable year.

(b) The person shall provide the notice in a signed affidavit that briefly explains the person's circumstances, including the location of the previous worksite location and the last date on which the person performed services or made any sales within [Municipality/City/Village]. The affidavit shall also include the following statement: "The affiant has no plans to perform any services within [Municipality/City/Village], make any sales in [Municipality/City/Village], or otherwise become subject to the tax levied by [Municipality/City/Village] during the taxable year. If the affiant does become subject to the tax levied by [Municipality/City/Village] for the taxable year, the affiant agrees to be considered a taxpayer and to properly comply as a taxpayer with [Municipality/City/Village] income tax ordinance and rules and regulations." The person shall sign the affidavit under penalty of perjury.

(c) If a person submits an affidavit described in division (H)(3)(b) the Tax Administrator shall not require the person to file and tax return for the taxable year unless the Tax Administrator possesses information that conflicts with the affidavit or if the circumstances described in the affidavit change.

(d) Nothing in division (H)(3) of this section prohibits the Tax Administrator from performing an audit of the person.

(i) If a payment is required to be made by electronic funds transfer, the payment shall be considered to be made on the date of the timestamp assigned by the first electronic system receiving the payment.

(j) Taxes withheld for the City by an employer, the agent of an employer, or other payer as described in Section 158.04 shall be allowed to the taxpayer as credits against payment of the tax imposed on the taxpayer by the City unless the amounts withheld were not remitted to the City and the recipient colluded with the employer, agent, or other payer in connection with the failure to remit the amounts withheld.

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(k) Each return required by the City to be filed in accordance with this Section shall include a box that the taxpayer may check to authorize another person, including a tax return preparer who prepared the return, to communicate with the Tax Administrator about matters pertaining to the return.

(l) The Tax Administrator shall accept for filing a generic form of any income tax return, report, or document required by the City provided that the generic form, once completed and filed, contains all of the information required by ordinance, resolution, or rules and regulations adopted by the City or the Tax Administrator, and provided that the taxpayer or tax return preparer filing the generic form otherwise complies with the provisions of this Chapter and of the City's ordinance, resolution, or rules and regulations governing the filing of returns, reports, or documents.

Filing via Ohio Business Gateway.

- (m) (1) Any taxpayer subject to municipal income taxation with respect to the taxpayer's net profit from a business or profession may file the City income tax return, estimated municipal income tax return, or extension for filing a municipal income tax return, and may make payment of amounts shown to be due on such returns, by using the Ohio Business Gateway.
- (2) Any employer, agent of an employer, or other payer may report the amount of municipal income tax withheld from qualifying wages, and may make remittance of such amounts, by using the Ohio Business Gateway.
- (3) Nothing in this section affects the due dates for filing employer withholding tax returns.

Extension for service in or for the armed forces.

(n) Each member of the national guard of any state and each member of a reserve component of the armed forces of the United States called to active duty pursuant to an executive order issued by the president of the United States or an act of the congress of the United States, and each civilian serving as support personnel in a combat zone or contingency operation in support of the armed forces, may apply to the Tax Administrator of the City for both an extension of time for filing of the return and an extension of time for payment of taxes required by the City during the period of the member's or civilian's duty service, and for 180 days thereafter. The application shall be filed on or before the one hundred eightieth day after the member's or civilian's duty terminates. An applicant shall provide such evidence as the Tax Administrator considers necessary to demonstrate eligibility for the extension.

- (o) (1) If the Tax Administrator ascertains that an applicant is qualified for an extension under this section, the Tax Administrator shall enter into a contract with the applicant for the payment of the tax in installments that begin on the 181st day after the applicant's active duty or service terminates. The Tax Administrator may prescribe such contract terms as the Tax Administrator considers appropriate. However, taxes pursuant to a contract entered into under this Section are not delinquent, and the Tax Administrator shall not require any payments of penalties or interest in connection with those taxes for the extension period.
- (2) If the Tax Administrator determines that an applicant is qualified for an extension under this section, the applicant shall neither be required to file any return, report,

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or other tax document nor be required to pay any tax otherwise due to the municipal corporation before the 181st day after the applicant's active duty or service terminates.

- (3) Taxes paid pursuant to a contract entered into under Subsection (o)(1) herein are not delinquent. The Tax Administrator shall not require any payments of penalties or interest in connection with those taxes for the extension period.
- (p) (1) Nothing in this Section denies to any person described in this Section the application of Subsections (n) and (o) herein.
- (2)
- (A) A qualifying taxpayer who is eligible for an extension under the Internal Revenue Code shall receive both an extension of time in which to file any return, report, or other tax document and an extension of time in which to make any payment of taxes required by a municipal corporation in accordance with this Chapter. The length of any extension granted under Subsection (p)(2)(A) herein shall be equal to the length of the corresponding extension that the taxpayer receives under the Internal Revenue Code. As used in this Section, "qualifying taxpayer" means a member of the national guard or a member of a reserve component of the armed forces of the United States called to active duty pursuant to either an executive order issued by the president of the United States or an act of the congress of the United States, or a civilian serving as support personnel in a combat zone or contingency operation in support of the armed forces.
- (B) Taxes whose payment is extended in accordance with Subsection (p)(2)(A) herein are not delinquent during the extension period. Such taxes become delinquent on the first day after the expiration of the extension period if the taxes are not paid prior to that date. The Tax Administrator shall not require any payment of penalties or interest in connection with those taxes for the extension period. The Tax Administrator shall not include any period of extension granted under Subsection (c)(2)(A) herein calculating the penalty or interest due on any unpaid tax.

(q) For each taxable year to which Subsections (n), (o), or (p) herein applies to a taxpayer, the provisions of Subsections (o)(2) and (3) herein, as applicable, apply to the spouse of that taxpayer if the filing status of the spouse and the taxpayer is married filing jointly for that year.

Consolidated municipal income tax return.

- (r) As used in this Section:
 - (1) "Affiliated group of corporations" means an affiliated group as defined in Section 1504 of the Internal Revenue Code, except that, if such a group includes at least one incumbent local exchange carrier that is primarily engaged in the business of providing local exchange telephone service in this state, the affiliated

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group shall not include any incumbent local exchange carrier that would otherwise be included in the group.

- (2) “Consolidated federal income tax return” means a consolidated return filed for federal income tax purposes pursuant to Section 1501 of the Internal Revenue Code.
 - (3) “Consolidated federal taxable income” means the consolidated taxable income of an affiliated group of corporations, as computed for the purposes of filing a consolidated federal income tax return, before consideration of net operating losses or special deductions. “Consolidated federal taxable income” does not include income or loss of an incumbent local exchange carrier that is excluded from the affiliated group under Subsection (r)(1) herein.
 - (4) “Incumbent local exchange carrier” has the same meaning as in Section 4927.01 of the O.R.C.
 - (5) “Local exchange telephone service” has the same meaning as in Section 5727.01 of the O.R.C.
- (s) (1) For taxable years beginning on or after January 1, 2016, a taxpayer that is a member of an affiliated group of corporations may elect to file a consolidated municipal income tax return for a taxable year if at least one member of the affiliated group of corporations is subject to the City’s income tax in that taxable year, and if the affiliated group of corporations filed a consolidated federal income tax return with respect to that taxable year. The election is binding for a five-year period beginning with the first taxable year of the initial election unless a change in the reporting method is required under federal law. The election continues to be binding for each subsequent five-year period unless the taxpayer elects to discontinue filing consolidated municipal income tax returns under Subsection (s)(2) herein or a taxpayer receives permission from the Tax Administrator. The Tax Administrator shall approve such a request for good cause shown.
- (2) An election to discontinue filing consolidated municipal income tax returns under this section must be made in the first year following the last year of a five-year consolidated municipal income tax return election period in effect under Subsection (s)(1) herein. The election to discontinue filing a consolidated municipal income tax return is binding for a five-year period beginning with the first taxable year of the election.
- (3) An election made under Subsection (s)(1) or (2) herein is binding on all members of the affiliated group of corporations subject to a municipal income tax.

(t) A taxpayer that is a member of an affiliated group of corporations that filed a consolidated federal income tax return for a taxable year shall file a consolidated City income tax return for that taxable year if the Tax Administrator determines, by a preponderance of the evidence, that intercompany transactions have not been conducted at arm’s length and that there has been a distortive shifting of income or expenses with regard to allocation of net profits to the City. A taxpayer that is required to file a consolidated City income tax return for a taxable year shall file a consolidated City

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income tax return for all subsequent taxable years, unless the taxpayer requests and receives written permission from the Tax Administrator to file a separate return or a taxpayer has experienced a change in circumstances.

(u) A taxpayer shall prepare a consolidated City income tax return in the same manner as is required under the United States department of treasury regulations that prescribe procedures for the preparation of the consolidated federal income tax return required to be filed by the common parent of the affiliated group of which the taxpayer is a member.

- (v) (1) Except as otherwise provided in Subsections (v)(2), (3), and (4) herein, corporations that file a consolidated municipal income tax return shall compute adjusted federal taxable income, as defined in Section 158.02, by substituting “consolidated federal taxable income” for “federal taxable income” wherever “federal taxable income” appears in that section and by substituting “an affiliated group of corporation’s” for “a C corporation’s” wherever “a C corporation’s” appears in that section.
- (2) No corporation filing a consolidated City income tax return shall make any adjustment otherwise required under Section (2)(C)(1) to the extent that the item of income or deduction otherwise subject to the adjustment has been eliminated or consolidated in the computation of consolidated federal taxable income.
- (3) If the net profit or loss of a pass-through entity having at least eighty percent (80%) of the value of its ownership interest owned or controlled, directly or indirectly, by an affiliated group of corporations is included in that affiliated group's consolidated federal taxable income for a taxable year, the corporation filing a consolidated City income tax return shall do one of the following with respect to that pass-through entity's net profit or loss for that taxable year:
- (A) Exclude the pass-through entity's net profit or loss from the consolidated federal taxable income of the affiliated group and, for the purpose of making the computations required in Subsections (r) through (y) of Section 159.05, exclude the property, payroll, and gross receipts of the pass-through entity in the computation of the affiliated group's net profit sitused to the City. If the entity's net profit or loss is so excluded, the entity shall be subject to taxation as a separate taxpayer on the basis of the entity's net profits that would otherwise be included in the consolidated federal taxable income of the affiliated group.
- (B) Include the pass-through entity's net profit or loss in the consolidated federal taxable income of the affiliated group and, for the purpose of making the computations required in Subsections (r) through (y) of Section 158.05, include the property, payroll, and gross receipts of the pass-through entity in the computation of the affiliated group's net profit sitused to the City. If the entity's net profit or loss is so included, the entity shall not be subject to taxation as a separate taxpayer on the basis of the entity's net profits that are included in the consolidated federal taxable income of the affiliated group.

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(4) If the net profit or loss of a pass-through entity having less than eighty percent of the value of its ownership interest owned or controlled, directly or indirectly, by an affiliated group of corporations is included in that affiliated group's consolidated federal taxable income for a taxable year, all of the following shall apply:

(A) The corporation filing the consolidated municipal income tax return shall exclude the pass-through entity's net profit or loss from the consolidated federal taxable income of the affiliated group and, for the purposes of making the computations required in Subsection (r) through (y) of Section 158.05, exclude the property, payroll, and gross receipts of the pass-through entity in the computation of the affiliated group's net profit situated to the City;

(B) The pass-through entity shall be subject to City income taxation as a separate taxpayer in accordance with this Chapter on the basis of the entity's net profits that would otherwise be included in the consolidated federal taxable income of the affiliated group.

(w) Corporations filing a consolidated City income tax return shall make the computations required under Subsections (r) through (y) of Section 158.05 by substituting "consolidated federal taxable income attributable to" for "net profit from" wherever "net profit from" appears in that section and by substituting "affiliated group of corporations" for "taxpayer" wherever "taxpayer" appears in that section.

(x) Each corporation filing a consolidated City income tax return is jointly and severally liable for any tax, interest, penalties, fines, charges, or other amounts imposed by the City in accordance with this Chapter on the corporation, an affiliated group of which the corporation is a member for any portion of the taxable year, or any one or more members of such an affiliated group.

(y) Corporations and their affiliates that made an election or entered into an agreement with the City before January 1, 2016, to file a consolidated or combined tax return with the City may continue to file consolidated or combined tax returns in accordance with such election or agreement for taxable years beginning on and after January 1, 2016.

SECTION 158.06 CREDIT FOR TAX PAID TO OTHER MUNICIPALITIES.

(a) Every individual taxpayer domiciled in the City who is required to and does pay, or has acknowledged liability for, a municipal tax to another municipality on or measured by the same income, qualifying wages, commissions, net profits or other compensation taxable under this Chapter, may claim a nonrefundable credit against the tax imposed by this Chapter upon satisfactory evidence that tax has been paid to another municipality. Subject to Subsection (c) herein, the credit shall not exceed fifty percent (50%) of the amount obtained by multiplying the income, qualifying wages, commissions, net profits or other compensation subject to tax in the other municipality by the lower the tax rate in such other municipality or the rate of one percent (1%).

(b) The City shall grant a credit against its tax on income to a resident of the City who works in a joint economic development zone created under Section 715.691 or a joint economic development

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district created under Section 715.70, 715.71, or 715.72 of the O.R.C. to the same extent that it grants a credit against its tax on income to its residents who are employed in another municipal corporation.

(c) If the amount of tax withheld or paid to the other municipality is less than the amount of tax required to be withheld or paid to the other municipality, then for purposes of Subsection (a) herein, “the income, qualifying wages, commissions, net profits or other compensation” subject to tax in the other municipality shall be limited to the amount computed by dividing the tax withheld or paid to the other municipality by the tax rate for that municipality.

(d) Intentionally left blank.

SECTION 158.07 ESTIMATED TAXES.

(a) As used in this Section:

- (1) “Estimated taxes” means the amount that the taxpayer reasonably estimates to be the taxpayer’s tax liability for City’s income tax for the current taxable year.
- (2) “Tax liability” means the total taxes due to the City for the taxable year, after allowing any credit to which the taxpayer is entitled, and after applying any estimated tax payment, withholding payment, or credit from another taxable year.

(b)

- (1) Every taxpayer shall make a declaration of estimated taxes for the current taxable year, on the form prescribed by the Tax Administrator, if the amount payable as estimated taxes is at least two hundred dollars (\$200). For the purposes of this Section:
 - (A) Taxes withheld for the City from qualifying wages shall be considered as paid to the City in equal amounts on each payment date unless the taxpayer establishes the dates on which all amounts were actually withheld, in which case they shall be considered as paid on the dates on which the amounts were actually withheld.
 - (B) An overpayment of tax applied as a credit to a subsequent taxable year is deemed to be paid on the date of the postmark stamped on the cover in which the payment is mailed or, if the payment is made by electronic funds transfer, the date the payment is submitted. As used in this Section “date of the postmark” means, in the event there is more than one date on the cover, the earliest date imprinted on the cover by the postal service.
- (2) Taxpayers filing joint returns shall file joint declarations of estimated taxes. A taxpayer may amend a declaration under rules prescribed by the Tax Administrator. A taxpayer having a taxable year of less than twelve (12) months shall make a declaration under rules prescribed by the Tax Administrator.
- (3) The declaration of estimated taxes shall be filed on or before the date prescribed for the filing of municipal income tax returns under Subsection (g) of Section

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158.05 or on or before the fifteenth (15th) day of the fourth (4th) month after the taxpayer becomes subject to tax for the first time.

- (4) Taxpayers reporting on a fiscal year basis shall file a declaration on or before the fifteenth (15th) day of the fourth month after the beginning of each fiscal year or period.
 - (5) The original declaration or any subsequent amendment may be increased or decreased on or before any subsequent quarterly payment day as provided in this section.
- (c) (1) The required portion of the tax liability for the taxable year that shall be paid through estimated taxes made payable to the City including the application of tax refunds to estimated taxes and withholding on or before the applicable payment date, shall be as follows:
- (A) On or before the fifteenth (15th) day of the fourth month after the beginning of the taxable year, twenty-two and one-half percent (22.5%) of the tax liability for the taxable year;
 - (B) On or before the fifteenth (15th) day of the sixth month after the beginning of the taxable year, forty-five percent (45%) of the tax liability for the taxable year;
 - (C) On or before the fifteenth (15th) day of the ninth month after the beginning of the taxable year, sixty-seven and one-half percent (67.5%) of the tax liability for the taxable year;
 - (D) For an individual, on or before the fifteenth (15th) day of the first month of the following taxable year, ninety percent (90%) of the taxable liability for the taxable year. For a person other than an individual, on or before the fifteenth (15th) day of the twelfth month of the taxable year, ninety percent (90%) of the tax liability for the taxable year.
- (2) When an amended declaration has been filed, the unpaid balance shown due on the amended declaration shall be paid in equal installments on or before the remaining payment dates.
 - (3) On or before the fifteenth (15th) day of the fourth month of the year following that for which the declaration or amended declaration was filed, an annual return shall be filed and any balance which may be due shall be paid with the return in accordance with Section 158.05.
- (d) (1) In the case of any underpayment of any portion of a tax liability, penalty and interest may be imposed pursuant to Section 158.18 upon the amount of underpayment for the period of underpayment, unless the underpayment is due to reasonable cause as described in Subsection (e) herein. The amount of the underpayment shall be determined as follows:

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- (A) For the first payment of estimated taxes each year, twenty-two and one-half percent (22.5%) of the tax liability, less the amount of taxes paid by the date prescribed for that payment;
- (B) For the second payment of estimated taxes each year, forty-five percent (45%) of the tax liability, less the amount of taxes paid by the date prescribed for that payment;
- (C) For the third payment of estimated taxes each year, sixty-seven and one-half percent (67.5%) of the tax liability, less the amount of taxes paid by the date prescribed for that payment;
- (D) For the fourth payment of estimated taxes each year, ninety percent (90%) of the tax liability, less the amount of taxes paid by the date prescribed for that payment.

- (2) The period of the underpayment shall run from the day the estimated payment was required to be made to the date on which the payment is made. For purposes of this section, a payment of estimated taxes on or before any payment date shall be considered a payment of any previous underpayment only to the extent the payment of estimated taxes exceeds the amount of the payment presently required to be paid to avoid any penalty.

(e) An underpayment of any portion of tax liability determined under Subsection (d) herein shall be due to reasonable cause and the penalty imposed by this section shall not be added to the taxes for the taxable year if any of the following apply:

- (1) The amount of estimated taxes that were paid equals at least ninety percent (90%) of the tax liability for the current taxable year, determined by annualizing the income received during the year up to the end of the month immediately preceding the month in which the payment is due.
- (2) The amount of estimated taxes that were paid equals at least one hundred percent of the tax liability shown on the return of the taxpayer for the preceding taxable year, provided that the immediately preceding taxable year reflected a period of twelve months and the taxpayer filed a return with the City under Section 158.05 for that year.
- (3) The taxpayer is an individual who resides in the City but was not domiciled there on the first day of January of the calendar year that includes the first day of the taxable year.

SECTION 158.08 ROUNDING OF AMOUNTS.

A person may round to the nearest whole dollar all amounts the person is required to enter on any return, report, voucher, or other document required under this Chapter. Any fractional part of a dollar that equals or exceeds fifty cents shall be rounded to the next whole dollar, and any fractional part of a dollar that is less than fifty cents shall be dropped. If a person chooses to round amounts entered on a document, the person shall round all amounts entered on the document.

SECTION 158.09 REQUESTS FOR REFUNDS.

- (a) As used in this Section, “withholding tax” has the same meaning as in Section 158.18.
- (b) Upon receipt of a request for a refund, the Tax Administrator, in accordance with this section, shall refund to employers, agents of employers, other payers, or taxpayers, with respect to any income or withholding tax levied by the municipal corporation:
 - (1) Overpayments of ten dollars (\$10) or more;
 - (2) Amounts paid erroneously if the refund requested is ten dollars (\$10) or more.
- (c)
 - (1) Except as otherwise provided in this Chapter, requests for refund shall be filed with the Tax Administrator, on the form prescribed by the Tax Administrator within three (3) years after the tax was due or paid, whichever is later. The Tax Administrator may require the requestor to file with the request any documentation that substantiates the requestor's claim for a refund.
 - (2) On filing of the refund request, the Tax Administrator shall determine the amount of refund due and certify such amount to the appropriate municipal corporation official for payment. Except as provided in Subsection (c)(3) herein, the administrator shall issue an assessment to any taxpayer whose request for refund is fully or partially denied. The assessment shall state the amount of the refund that was denied, the reasons for the denial, and instructions for appealing the assessment.
 - (3) If a Tax Administrator denies in whole or in part a refund request included within the taxpayer’s originally filed annual income tax return, the Tax Administrator shall notify the taxpayer, in writing, of the amount of the refund that was denied, the reasons for the denial, and instructions for requesting an assessment that may be appealed under Section 158.21.
- (d) A request for a refund that is received after the last day for filing specified in Subsection (c) herein shall be considered to have been filed in a timely manner if any of the following situations exist:
 - (1) The request is delivered by the postal service, and the earliest postal service postmark on the cover in which the request is enclosed is not later than the last day for filing the request.
 - (2) The request is delivered by the postal service, the only postmark on the cover in which the request is enclosed was affixed by a private postal meter, the date of that postmark is not later than the last day for filing the request, and the request is received within seven days of such last day.
 - (3) The request is delivered by the postal service, no postmark date was affixed to the cover in which the request is enclosed or the date of the postmark so affixed is not legible, and the request is received within seven days of the last day for making the request.

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(e) Interest shall be allowed and paid on any overpayment by a taxpayer of any municipal income tax obligation from the date of the overpayment until the date of the refund of the overpayment, except that if any overpayment is refunded within 90 days after the final filing date of the annual return or 90 days after the completed return is filed, whichever is later, no interest shall be allowed on the refund. For the purpose of computing the payment of interest on amounts overpaid, no amount of tax for any taxable year shall be considered to have been paid before the date on which the return on which the tax is reported is due, without regard to any extension of time for filing that return. Interest shall be paid at the interest rate described in Subsection 158.18 (a)(4).

SECTION 158.10 SECOND MUNICIPALITY IMPOSING TAX AFTER TIME PERIOD ALLOWED FOR REFUND.

(a) Income tax that has been deposited with the City but should have been deposited with another municipality, is allowable by the City as a refund but is subject to the three-year limitation on refunds.

(b) Income tax that was deposited with another municipality but should have been deposited with the City is subject to recovery by the City. If the City's tax on that income is imposed after the time period allowed for a refund of the tax or withholding paid to the other municipality, the City shall allow a nonrefundable credit against the tax or withholding the City claims is due with respect to such income or wages, equal to the tax or withholding paid to the first municipality with respect to such income or wages.

(c) If the City's tax rate is less than the tax rate in the other municipality, then the nonrefundable credit shall be calculated using the City's tax rate. However, if the City's tax rate is greater than the tax rate in the other municipality, the tax due in excess of the nonrefundable credit is to be paid to the City, along with any penalty and interest that accrued during the period of nonpayment.

(d) Nothing in this Section permits any credit carryforward.

SECTION 1589.11 AMENDED RETURNS.

(a) (1) If a taxpayer's tax liability shown on the annual tax return for the City changes as a result of an adjustment to the taxpayer's federal or state income tax return, the taxpayer shall file an amended return with the City. The amended return shall be filed on a form required by the Tax Administrator.

(2) If a taxpayer intends to file an amended consolidated municipal income tax return, or to amend its type of return from a separate return to a consolidated return, based on the taxpayer's consolidated federal income tax return, the taxpayer shall notify the Tax Administrator before filing the amended return.

(b) (1) In the case of an underpayment, the amended return shall be accompanied by payment of any combined additional tax due, together with any penalty and interest thereon. If the combined tax shown to be due is ten dollars or less, no payment need be made. The amended return shall reopen those facts, figures, computations, or attachments from a previously filed return that are not affected, either directly or indirectly, by the adjustment to the taxpayer's federal or state income tax return only:

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- (A) to determine the amount of tax that would be due if all facts, figures, computations, and attachments were reopened; or,
 - (B) if the applicable statute of limitations for civil actions or prosecutions under Section 158.12 has not expired for a previously filed return.
- (2) The additional tax to be paid shall not exceed the amount of tax that would be due if all facts, figures, computations, and attachments were reopened; i.e., the payment shall be the lesser of the two amounts.
- (c) (1) In the case of an overpayment, a request for refund may be filed under this Section within the period prescribed by Subsection (c) herein for filing the amended return, even if it is filed beyond the period prescribed in that section if it otherwise conforms to the requirements of that section. If the amount of the refund is less than ten dollars, no refund need be paid by the City. A request filed under this Section shall claim refund of overpayments resulting from alterations only to those facts, figures, computations, or attachments required in the taxpayer's annual return that are affected, either directly or indirectly, by the adjustment to the taxpayer's federal or state income tax return, unless it is also filed within the time prescribed in Section 158.09.
- (2) The amount to be refunded shall not exceed the amount of refund that would be due if all facts, figures, computations, and attachments were reopened. All facts, figures, computations, and attachments may be reopened to determine the refund amount due by inclusion of all facts, figures, computations, and attachments.

(d) Within 60 days after the final determination of any federal or state tax liability affecting the taxpayer's City's tax liability, that taxpayer shall make and file an amended City return showing income subject to City income tax based upon such final determination of federal or state tax liability. The taxpayer shall pay any additional City income tax shown due thereon or make a claim for refund of any overpayment, unless the tax or overpayment is less than ten dollars (\$10).

SECTION 158.12 LIMITATIONS.

- (a) (1) (A) Civil actions to recover municipal income taxes and penalties and interest on municipal income taxes shall be brought within the later of:
- (i) Three years after the tax was due or the return was filed, whichever is later; or
 - (ii) One year after the conclusion of the qualifying deferral period, if any.
- (B) The time limit described in Subsection (a)(1)(A) herein may be extended at any time if both the Tax Administrator and the employer, agent of the employer, other payer, or taxpayer consent in writing to the extension. Any extension shall also extend for the same period of time the time limit described in Subsection (c) herein.

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(2) As used in this Section, “qualifying deferral period” means a period of time beginning and ending as follows:

(A) Beginning on the date a person who is aggrieved by an assessment files with the Board of Tax Review the request described in Section 158.21. That date shall not be affected by any subsequent decision, finding, or holding by any administrative body or court that the Board of Tax Review did not have jurisdiction to affirm, reverse, or modify the assessment or any part of that assessment.

(B) Ending the later of the sixtieth (60th) day after the date on which the final determination of the Board of Tax Review becomes final or, if any party appeals from the determination of the Board of Tax Review, the sixtieth day after the date on which the final determination of the Board of Tax Review is either ultimately affirmed in whole or in part or ultimately reversed and no further appeal of either that affirmation, in whole or in part, or that reversal is available or taken.

(b) Prosecutions for an offense made punishable under a resolution or ordinance imposing an income tax shall be commenced within three years after the commission of the offense, provided that in the case of fraud, failure to file a return, or the omission of twenty-five percent (25%) or more of income required to be reported, prosecutions may be commenced within six years after the commission of the offense.

(c) A claim for a refund of municipal income taxes shall be brought within the time limitation provided in Section 158.09.

(d) (1) Notwithstanding the fact that an appeal is pending, the petitioner may pay all or a portion of the assessment that is the subject of the appeal. The acceptance of a payment by the City does not prejudice any claim for refund upon final determination of the appeal.

(2) If upon final determination of the appeal an error in the assessment is corrected by the Tax Administrator, upon an appeal so filed or pursuant to a final determination of the Board of Tax Review, of the Ohio board of tax appeals, or any court to which the decision of the Ohio board of tax appeals has been appealed, so that the resultant amount due is less than the amount paid, a refund will be paid in the amount of the overpayment as provided by Section 9, with interest on that amount as provided by Subsection (e) of Section 158.09.

(e) No civil action to recover City income tax or related penalties or interest shall be brought during either of the following time periods:

(1) The period during which a taxpayer has a right to appeal the imposition of that tax or interest or those penalties;

(2) The period during which an appeal related to the imposition of that tax or interest or those penalties is pending.

SECTION 158.13 AUDITS.

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(a) At or before the commencement of an audit, the Tax Administrator shall provide to the taxpayer a written description of the roles of the Tax Administrator and of the taxpayer during the audit and a statement of the taxpayer's rights, including any right to obtain a refund of an overpayment of a tax. At or before the commencement of an audit, the Tax Administrator shall inform the taxpayer when the audit is considered to have commenced.

(b) Except in cases involving suspected criminal activity, the Tax Administrator shall conduct an audit of a taxpayer during regular business hours and after providing reasonable notice to the taxpayer. A taxpayer who is unable to comply with a proposed time for an audit on the grounds that the proposed time would cause inconvenience or hardship must offer reasonable alternative dates for the audit.

(c) At all stages of an audit by the Tax Administrator, a taxpayer is entitled to be assisted or represented by an attorney, accountant, bookkeeper, or other tax practitioner. The Tax Administrator shall prescribe a form by which a taxpayer may designate such a person to assist or represent the taxpayer in the conduct of any proceedings resulting from actions by the Tax Administrator. If a taxpayer has not submitted such a form, the Tax Administrator may accept other evidence, as the Tax Administrator considers appropriate, that a person is the authorized representative of a taxpayer.

A taxpayer may refuse to answer any questions asked by the person conducting an audit until the taxpayer has an opportunity to consult with the taxpayer's attorney, accountant, bookkeeper, or other tax practitioner.

This Section does not authorize the practice of law by a person who is not an attorney.

(d) A taxpayer may record, electronically or otherwise, the audit examination.

(e) The failure of the Tax Administrator to comply with a provision of this section shall neither excuse a taxpayer from payment of any taxes owed by the taxpayer nor cure any procedural defect in a taxpayer's case.

(f) If the Tax Administrator fails to substantially comply with the provisions of this Section, the Tax Administrator, upon application by the taxpayer, shall excuse the taxpayer from penalties and interest

SECTION 158.14 SERVICE OF ASSESSMENT.

(a) As used in this Section:

(1) "Last known address" means the address the Tax Administrator has at the time a document is originally sent by certified mail, or any address the Tax Administrator can ascertain using reasonable means such as the use of a change of address service offered by the postal service or an authorized delivery service under Section 5703.056 of the O.R.C.

(2) "Undeliverable address" means an address to which the postal service or an authorized delivery service under Section 5703.056 of the O.R.C is not able to deliver an assessment of the Tax Administrator, except when the reason for non-delivery is because the addressee fails to acknowledge or accept the assessment.

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(b) Subject to Subsection (c) herein, a copy of each assessment shall be served upon the person affected thereby either by personal service, by certified mail, or by a delivery service authorized under Section 5703.056 of the O.R.C. With the permission of the person affected by an assessment, the Tax Administrator may deliver the assessment through alternative means as provided in this section, including, but not limited to, delivery by secure electronic mail.

(c) (1) (A) If certified mail is returned because of an undeliverable address, a Tax Administrator shall utilize reasonable means to ascertain a new last known address, including the use of a change of address service offered by the postal service or an authorized delivery service under Section 5703.056 of the O.R.C. If the Tax Administrator is unable to ascertain a new last known address, the assessment shall be sent by ordinary mail and considered served. If the ordinary mail is subsequently returned because of an undeliverable address, the assessment remains appealable within sixty (60) days after the assessment's postmark.

(B) Once the Tax Administrator or other City official, or the designee of either, serves an assessment on the person to whom the assessment is directed, the person may protest the ruling of that assessment by filing an appeal with the local board of tax review within sixty (60) days after the receipt of service. The delivery of an assessment of the Tax Administrator under Subsection (c)(1)(A) herein is prima facie evidence that delivery is complete and that the assessment is served.

(2) If mailing of an assessment by a Tax Administrator by certified mail is returned for some cause other than an undeliverable address, the Tax Administrator shall resend the assessment by ordinary mail. The assessment shall show the date the Tax Administrator sends the assessment and include the following statement:

“This assessment is deemed to be served on the addressee under applicable law ten days from the date this assessment was mailed by the Tax Administrator as shown on the assessment, and all periods within which an appeal may be filed apply from and after that date.”

Unless the mailing is returned because of an undeliverable address, the mailing of that information is prima facie evidence that delivery of the assessment was completed ten (10) days after the Tax Administrator sent the assessment by ordinary mail and that the assessment was served.

If the ordinary mail is subsequently returned because of an undeliverable address, the Tax Administrator shall proceed under Subsection (c)(1)(A) herein. A person may challenge the presumption of delivery and service under this Section in accordance with Subsection (d) herein.

(d) (1) A person disputing the presumption of delivery and service under Subsection (c) herein bears the burden of proving by a preponderance of the evidence that the address to which the assessment was sent by certified mail was not an address with which the person was associated at the time the Tax Administrator originally mailed the assessment. For the purposes of this Section, a person is associated with an address at the time the Tax Administrator originally mailed

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the assessment if, at that time, the person was residing, receiving legal documents, or conducting business at the address; or if, before that time, the person had conducted business at the address and, when the assessment was mailed, the person's agent or the person's affiliate was conducting business at the address. For the purposes of this Section, a person's affiliate is any other person that, at the time the assessment was mailed, owned or controlled at least 20 percent (20%), as determined by voting rights, of the addressee's business.

- (2) If a person elects to appeal an assessment on the basis described in Subsection (d)(1) herein, and if that assessment is subject to collection and is not otherwise appealable, the person must do so within sixty (60) days after the initial contact by the Tax Administrator or other City official, or the designee of either, with the person. Nothing in this Section prevents the Tax Administrator or other official from entering into a compromise with the person if the person does not actually file such an appeal with the local board of tax review.

(e) Nothing in this Section prohibits the Tax Administrator or the Tax Administrator's designee from delivering an assessment by a Tax Administrator by personal service.

(f) Collection actions taken upon any assessment being appealed under Subsection (c)(1)(B) herein, including those on which a claim has been delivered for collection, shall be stayed upon the pendency of an appeal under this section.

(g) Additional regulations as detailed in the Rules and Regulations shall apply.

SECTION 158.15 ADMINISTRATION OF CLAIMS.

(a) As used in this Section, "claim" means a claim for an amount payable to the City that arises pursuant to City's income tax imposed in accordance with this Chapter.

(b) Nothing in this Chapter prohibits a Tax Administrator from doing either of the following if such action is in the best interests of the municipal corporation:

- (1) Compromise a claim;
- (2) Extend for a reasonable period the time for payment of a claim by agreeing to accept monthly or other periodic payments.

(c) The Tax Administrator's rejection of a compromise or payment-over-time agreement proposed by a person with respect to a claim shall not be appealable.

(d) A compromise or payment-over-time agreement with respect to a claim shall be binding upon and shall be to the benefit of only the parties to the compromise or agreement, and shall not eliminate or otherwise affect the liability of any other person.

(e) A compromise or payment-over-time agreement with respect to a claim shall be void if the taxpayer defaults under the compromise or agreement or if the compromise or agreement was obtained by fraud or by misrepresentation of a material fact. Any amount that was due before the

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compromise or agreement and that is unpaid shall remain due, and any penalties or interest that would have accrued in the absence of the compromise or agreement shall continue to accrue and be due.

SECTION .158.16 TAX INFORMATION CONFIDENTIAL.

(a) Any information gained as a result of returns, investigations, hearings, or verifications required or authorized by this Chapter is confidential, and no person shall access or disclose such information except in accordance with a proper judicial order or in connection with the performance of that person's official duties or the official business of the City as authorized by this Chapter. The Tax Administrator or a designee thereof may furnish copies of returns filed or otherwise received under this Chapter and other related tax information to the internal revenue service, the tax commissioner, and tax administrators of other municipal corporations.

(b) This Section does not prohibit the City from publishing or disclosing statistics in a form that does not disclose information with respect to particular taxpayers.

SECTION 158.17 FRAUD.

No person shall knowingly make, present, aid, or assist in the preparation or presentation of a false or fraudulent report, return, schedule, statement, claim, or document authorized or required by City ordinance or state law to be filed with a the Tax Administrator, or knowingly procure, counsel, or advise the preparation or presentation of such report, return, schedule, statement, claim, or document, or knowingly change, alter, or amend, or knowingly procure, counsel or advise such change, alteration, or amendment of the records upon which such report, return, schedule, statement, claim, or document is based with intent to defraud the City or the Tax Administrator.

SECTION 158.18 INTEREST AND PENALTIES.

(a) As used in this Section:

- (1) "Applicable law" means this Chapter, the resolutions, ordinances, codes, directives, instructions, and rules adopted by the City provided they impose or directly or indirectly address the levy, payment, remittance, or filing requirements of the City.
- (2) "Federal short-term rate" means the rate of the average market yield on outstanding marketable obligations of the United States with remaining periods to maturity of three years or less, as determined under Section 1274 of the Internal Revenue Code, for July of the current year.
- (3) "Income tax," "estimated income tax," and "withholding tax" means any income tax, estimated income tax, and withholding tax imposed by the City pursuant to applicable law, including at any time before January 1, 2016.
- (4) "Interest rate as described in Subsection (a) herein" means the federal short-term rate, rounded to the nearest whole number percent, plus five percent. The rate shall apply for the calendar year next following the July of the year in which the federal short-term rate is determined in accordance with Subsection (a)(2) herein.

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- (5) “Return” includes any tax return, report, reconciliation, schedule, and other document required to be filed with a the Tax Administrator or City by a taxpayer, employer, any agent of the employer, or any other payer pursuant to applicable law, including at any time before January 1, 2016.
 - (6) “Unpaid estimated income tax” means estimated income tax due but not paid by the date the tax is required to be paid under applicable law.
 - (7) “Unpaid income tax” means income tax due but not paid by the date the income tax is required to be paid under applicable law.
 - (8) “Unpaid withholding tax” means withholding tax due but not paid by the date the withholding tax is required to be paid under applicable law.
 - (9) “Withholding tax” includes amounts an employer, any agent of an employer, or any other payer did not withhold in whole or in part from an employee’s qualifying wages, but that, under applicable law, the employer, agent, or other payer is required to withhold from an employee’s qualifying wages.
- (b) (1) This Section applies to the following:
- (A) Any return required to be filed under applicable law for taxable years beginning on or after January 1, 2016;
 - (B) Income tax, estimated income tax, and withholding tax required to be paid or remitted to the City on or after January 1, 2016.
- (2) This Section does not apply to returns required to be filed or payments required to be made before January 1, 2016, regardless of the filing or payment date. Returns required to be filed or payments required to be made before January 1, 2016, but filed or paid after that date shall be subject to the ordinances or rules and regulations, as adopted before January 1, 2016, of the City to which the return is to be filed or the payment is to be made.
- (c) Should any taxpayer, employer, agent of the employer, or other payer for any reason fails, in whole or in part, to make timely and full payment or remittance of income tax, estimated income tax, or withholding tax or to file timely with the City any return required to be filed, the following penalties and interest shall apply:
- (1) Interest shall be imposed at the rate described in Subsection (a) herein, per annum, on all unpaid income tax, unpaid estimated income tax, and unpaid withholding tax.
 - (2) (A) With respect to unpaid income tax and unpaid estimated income tax, the City may impose a penalty equal to fifteen percent (15%) of the amount not timely paid.
 - (B) With respect to any unpaid withholding tax, the City may impose a penalty not exceeding fifty percent (50%) of the amount not timely paid.

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- (3) With respect to returns other than estimated income tax returns, the City may impose a penalty of \$25 for each failure to timely file each return, regardless of the liability shown thereon for each month, or any fraction thereof, during which the return remains unfiled regardless of the liability shown thereon. The penalty shall not exceed \$150 for each failure.

(d) Nothing in this section requires the City to refund or credit any penalty, amount of interest, charges, or additional fees that the City has properly imposed or collected before January 1, 2016.

(e) Nothing in this section limits the authority of the City to abate or partially abate penalties or interest imposed under this section when the Tax Administrator determines, in the Tax Administrator's sole discretion, that such abatement is appropriate.

(f) By the 31st day of October of each year the City shall publish the rate described in Subsection (a) herein applicable to the next succeeding calendar year.

(g) The City may impose on the taxpayer, employer, any agent of the employer, or any other payer City's post-judgment collection costs and fees, including attorney's fees.

SECTION 158.19 AUTHORITY OF TAX ADMINISTRATOR; VERIFICATION OF INFORMATION.

Authority.

(a) Nothing in this Chapter shall limit the authority of the Tax Administrator to perform any of the following duties or functions, unless the performance of such duties or functions is expressly limited by a provision of the O.R.C:

- (1) (A) Exercise all powers whatsoever of an query nature as provided by law, including, the right to inspect books, accounts, records, memorandums, and federal and state income tax returns, to examine persons under oath, to issue orders or subpoenas for the production of books, accounts, papers, records, documents, and testimony, to take depositions, to apply to a court for attachment proceedings as for contempt, to approve vouchers for the fees of officers and witnesses, and to administer oaths.
- (B) The powers referred to in this Subsection herein shall be exercised by the Tax Administrator only in connection with the performance of the duties respectively assigned to the Tax Administrator under the City's income tax ordinance;
- (2) Appoint agents and prescribe their powers and duties;
- (3) Confer and meet with officers of other municipal corporations and states and officers of the United States on any matters pertaining to their respective official duties as provided by law;
- (4) Exercise the authority provided by law, including orders from bankruptcy courts, relative to remitting or refunding taxes, including penalties and interest thereon,

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for any reason overpaid. In addition, the Tax Administrator may investigate any claim of overpayment and, if the Tax Administrator finds that there has been an overpayment, make a written statement of the Tax Administrator's findings, and approve and issue a refund payable to the taxpayer, the taxpayer's assigns, or legal representative as provided in this Chapter;

- (5) Exercise the authority provided by law relative to consenting to the compromise and settlement of tax claims;
- (6) Exercise the authority provided by law relative to the use of alternative apportionment methods by taxpayers in accordance with Section 158.03;
- (7)
 - (A) Make all tax findings, determinations, computations, and orders the Tax Administrator is by law authorized and required to make and, pursuant to time limitations provided by law, on the Tax Administrator's own motion, review, re-determine, or correct any tax findings, determinations, computations, or orders the Tax Administrator has made.
 - (B) If an appeal has been filed with the Board of Tax Review or other appropriate tribunal, the Tax Administrator shall not review, re-determine, or correct any tax finding, determination, computation, or order which the Tax Administrator has made, unless such appeal or application is withdrawn by the appellant or applicant, is dismissed, or is otherwise final;
- (8) Destroy any or all returns or other tax documents in the manner authorized by law;
- (9) Enter into an agreement with a taxpayer to simplify the withholding obligations described in Section 158.04.

Verification of accuracy of returns and determination of liability.

- (b)
 - (1) A Tax Administrator, or any authorized agent or employee thereof may examine the books, papers, records, and federal and state income tax returns of any employer, taxpayer, or other person that is subject to, or that the Tax Administrator believes is subject to, the provisions of this Chapter for the purpose of verifying the accuracy of any return made or, if no return was filed, to ascertain the tax due under this Chapter. Upon written request by the Tax Administrator or a duly authorized agent or employee thereof, every employer, taxpayer, or other person subject to this section is required to furnish the opportunity for the Tax Administrator, authorized agent, or employee to investigate and examine such books, papers, records, and federal and state income tax returns at a reasonable time and place designated in the request.
 - (2) The records and other documents of any taxpayer, employer, or other person that is subject to, or that a Tax Administrator believes is subject to, the provisions of this Chapter shall be open to the Tax Administrator's inspection during business hours and shall be preserved for a period of six years following the end of the

taxable year to which the records or documents relate, unless the Tax Administrator, in writing, consents to their destruction within that period, or by order requires that they be kept longer. The Tax Administrator may require any person, by notice served on that person, to keep such records as the Tax Administrator determines necessary to show whether or not that person is liable, and the extent of such liability, for the income tax levied by the City or for the withholding of such tax.

- (3) The Tax Administrator may examine under oath any person that the Tax Administrator reasonably believes has knowledge concerning any income that was or would have been returned for taxation or any transaction tending to affect such income. The Tax Administrator may, for this purpose, compel any such person to attend a hearing or examination and to produce any books, papers, records, and federal and state income tax returns in such person's possession or control. The person may be assisted or represented by an attorney, accountant, bookkeeper, or other tax practitioner at any such hearing or examination. This Section does not authorize the practice of law by a person who is not an attorney.
- (4) No person issued written notice by the Tax Administrator compelling attendance at a hearing or examination or the production of books, papers, records, or federal or state income tax returns under this section shall fail to comply.

Identification information.

- (c) (1) Nothing in this Chapter prohibits the Tax Administrator from requiring any person filing a tax document with the Tax Administrator to provide identifying information, which may include the person's social security number, federal employer identification number, or other identification number requested by the Tax Administrator. A person required by the Tax Administrator to provide identifying information that has experienced any change with respect to that information shall notify the Tax Administrator of the change before, or upon, filing the next tax document requiring the identifying information.
 - (2) (A) If the Tax Administrator makes a request for identifying information and the Tax Administrator does not receive valid identifying information within thirty (30) days of making the request, nothing in this Chapter prohibits the Tax Administrator from imposing a penalty upon the person to whom the request was directed pursuant to Section 158.18, in addition to any applicable penalty described in Section 158.99.
 - (B) If a person required by the Tax Administrator to provide identifying information does not notify the Tax Administrator of a change with respect to that information as required under Subsection (c) of Section 158.19 within thirty (30) days after filing the next tax document requiring such identifying information, nothing in this Chapter prohibits the Tax Administrator from imposing a penalty pursuant to Section 158.18.
 - (C) The penalties provided for under Subsection (c)(2)(A) and (B) herein may be billed and imposed in the same manner as the tax or fee with

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respect to which the identifying information is sought and are in addition to any applicable criminal penalties described in Section 158.99 for a violation of Section 158.17 and any other penalties that may be imposed by the Tax Administrator by law.

SECTION 158.20 REQUEST FOR OPINION OF THE TAX ADMINISTRATOR.

(a) An “opinion of the Tax Administrator” means an opinion issued under this section with respect to prospective municipal income tax liability. It does not include ordinary correspondence of the Tax Administrator.

(b) A taxpayer may submit a written request for an opinion of the Tax Administrator in accordance with the Rules and Regulations.

(c) A taxpayer is not relieved of tax liability for any activity or transaction related to a request for an opinion that contained any misrepresentation or omission of one or more material facts.

(d) A Tax Administrator may refuse to offer an opinion on any request received under this section. Such refusal is not subject to appeal.

(e) An opinion of the Tax Administrator binds the Tax Administrator only with respect to the taxpayer for whom the opinion was prepared and does not bind the Tax Administrator of any other municipal corporation.

(f) An opinion of the Tax Administrator issued under this section is not subject to appeal.

SECTION 158.21 BOARD OF TAX REVIEW.

(a) (1) The Board of Tax Review shall consist of three (3) members. Two (2) members shall be appointed by City Council, but such appointees may not be employees, elected officials, or contractors with the City at any time during their term or in the five (5) years immediately preceding the date of appointment. One (1) member shall be appointed by the City Manager of the City. This member may be an employee of the City, but may not be the Director of Finance or equivalent officer, or the Tax Administrator or other similar official or an employee directly involved in municipal tax matters, or any direct subordinate thereof.

(2) The term for members of the Board of Tax Review City shall be two (2) years. There is no limit on the number of terms that a member may serve if the member is reappointed by the legislative authority. The board member appointed by the City Manager of the City shall serve at the discretion of the administrative official.

(3) Members of the Board of Tax Review appointed by the legislative authority may be removed by the legislative authority by majority vote for malfeasance, misfeasance, or nonfeasance in office. To remove such a member, the legislative authority must give the member a copy of the charges against the member and afford the member an opportunity to be publicly heard in person or by counsel in

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the member's own defense upon not less than ten days' notice. The decision by the legislative authority on the charges is final and not appealable.

- (4) A member of the Board of Tax Review who, for any reason, ceases to meet the qualifications for the position prescribed by this section shall resign immediately by operation of law.
- (5) A vacancy in an unexpired term shall be filled in the same manner as the original appointment within sixty (60) days of when the vacancy was created. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which the member's predecessor was appointed shall hold office for the remainder of such term. No vacancy on the Board of Tax Review shall impair the power and authority of the remaining members to exercise all the powers of the Board of Tax Review.
- (6) If a member is temporarily unable to serve on the Board of Tax Review due to a conflict of interest, illness, absence, or similar reason, the legislative authority or top administrative official that appointed the member shall appoint another individual to temporarily serve on the Board of Tax Review in the member's place. The appointment of such an individual shall be subject to the same requirements and limitations as are applicable to the appointment of the member temporarily unable to serve.

(b) Whenever a Tax Administrator issues an assessment, the Tax Administrator shall notify the taxpayer in writing at the same time of the taxpayer's right to appeal the assessment, the manner in which the taxpayer may appeal the assessment, and the address to which the appeal should be directed.

(c) Any person who has been issued an assessment may appeal the assessment to the Board of Tax Review by filing a request with the Board of Tax Review. The request shall be in writing, shall specify the reason or reasons why the assessment should be deemed incorrect or unlawful, and shall be filed within sixty (60) days after the taxpayer receives the assessment.

(d) The Board of Tax Review shall schedule a hearing to be held within sixty (60) days after receiving an appeal of an assessment under Subsection (c) herein, unless the taxpayer requests additional time to prepare or waives a hearing. If the taxpayer does not waive the hearing, the taxpayer may appear before the Board of Tax Review and may be represented by an attorney at law, certified public accountant, or other representative. The Board of Tax Review may allow a hearing to be continued as jointly agreed to by the parties. In such a case, the hearing must be completed within one hundred twenty (120) days after the first day of the hearing unless the parties agree otherwise.

(e) The Board of Tax Review may affirm, reverse, or modify the Tax Administrator's assessment or any part of that assessment. The Board of Tax Review shall issue a final determination on the appeal within ninety (90) days after the Board of Tax Review's final hearing on the appeal, and send a copy of its final determination by ordinary mail to all of the parties to the appeal within fifteen (15) days after issuing the final determination. The taxpayer or the Tax Administrator may appeal the Board of Tax Review's final determination as provided in Section 5717.011 of the O.R.C.

(f) The Board of Tax Review created pursuant to this section shall adopt rules governing its procedures and shall keep a record of its transactions. Such records are not public records available for inspection under Section 149.43 of the O.R.C. Hearings requested by a taxpayer before a Board of Tax

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Review created pursuant to this Section are not meetings of a public body subject to Section 121.22 of the O.R.C. or the provisions of Chapter 107 of the Codified Ordinances.

SECTION 158.22 AUTHORITY TO CREATE RULES AND REGULATIONS.

The Tax Administrator may adopt rules and regulations to administer this Chapter. Nothing in this Chapter prohibits the legislative authority of the City, or a Tax Administrator pursuant to authority granted to the administrator by resolution or ordinance, to adopt rules to administer an income tax imposed by the City in accordance with this Chapter. Such rules shall not conflict with or be inconsistent with any provision of this Chapter. Taxpayers are hereby required to comply not only with the requirements of this Chapter, but also to comply with the Rules and Regulations.

All rules adopted under this Section shall be published and posted on the Internet.

SECTION 158.23 RENTAL AND LEASED PROPERTY.

(a) All property owners of real property located in the City, who rent or otherwise lease the same, or any part thereof, to any person for residential dwelling purposes, including apartments, rooms and other rental accommodations, during any calendar year, or part thereof, commencing with the effective date of this section, shall file with the Tax Administrator on or before the January 31 first following such calendar year a written report disclosing the name, address and also telephone number, if available, of each tenant known to have occupied on December 31 during such calendar year such apartment, room or other residential dwelling rental property.

(b) The Tax Administrator may order the appearance before him, or his duly authorized agent, of any person whom he believes to have any knowledge of the name, address and telephone number of any tenant of residential rental real property in the City. The Tax Administrator, or his duly authorized agent, is authorized to examine any person, under oath, concerning the name, address and telephone number of any tenant of residential real property located in the City. The Tax Administrator, or his duly authorized agent, may compel the production of papers and records and the attendance of all personal before him, whether as parties or witnesses, whenever he believes such person has knowledge of the name, address and telephone number of any tenant of residential real property in the City.

(c) Any property owner or person that violates one or more of the following shall be subject to Section 158.99 of this Chapter:

- (1) Fails, refuses or neglects to timely file a written report required by Subsection (a) herein; or
- (2) Makes an incomplete or intentionally false written report required by Subsection (a) herein; or
- (3) Fails to appear before the Tax Administrator or any duly authorized agent and to produce and disclose any tenant information pursuant to any order or subpoena of the Tax Administrator as authorized in this section; or
- (4) Fails to comply with the provisions of this section or any order or subpoena of the Tax Administrator.

SECTION 158.24 SAVINGS CLAUSE.

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This Chapter shall not apply to any person, firm or corporation, or to any property as to whom or which it is beyond the power of Council to impose the tax herein provided for. Any sentence, clause, section or part of this Chapter or any tax against or exception granted any individual or any of the several groups of persons, or forms of income specified herein if found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall affect only such clause, sentence, section or part of this Chapter and shall not affect or impair any of the remaining provisions, sentences, clauses, sections or other parts of this Chapter. It is hereby declared to be the intention of Council that this Chapter would have been adopted had such unconstitutional, illegal or invalid sentence, or part hereof, not been included therein.

SECTION 158.25 COLLECTION OF TAX AFTER TERMINATION OF ORDINANCE.

(a) This Chapter shall continue effective insofar as the levy of taxes is concerned until repealed, and insofar as the collection of taxes levied hereunder and actions or proceedings for collecting any tax so levied or enforcing any provisions of this Chapter are concerned, it shall continue effective until all of said taxes levied hereunder in the aforesaid periods are fully paid and any and all suits and prosecutions for the collection of said taxes or for the punishment of violations of this Chapter shall have been fully terminated, subject to the limitations contained in Section 158.12 and Section 158.99 herein.

(b) Annual returns due for all or any part of the last effective year of this Chapter shall be due on the date provided in Sections 158.05 and Section 158.04 of this Chapter as though the same were continuing.

SECTION 158.26 ADOPTION OF RITA RULES AND REGULATIONS.

(a) Pursuant to the City's membership in a Regional Council of Governments, which Council has organized a municipal tax collection agency known as "Regional Income Tax Agency," the Board of Trustees of the Regional Income Tax Agency ("RITA") is authorized to administer and enforce the provisions of this Chapter as the agent of the City, and the duties and authority of the Tax Administrator may be performed by RITA as overseen by the City's Tax Administrator. RITA shall have no authority to abate penalties or interest provided for in this Chapter.

(b) The City hereby adopts the RITA Rules and Regulations, including amendments that may be made from time to time, for use as the City's Income Tax Rules and Regulations. In the event of a conflict with any provision(s) of this Chapter, the provisions of this Chapter will supersede the Rules and Regulations.

SECTION 99 VIOLATIONS; PENALTIES.

(a) Whoever violates Section 158.17, Subsection (a) of Section 158.16, or Section 158.04 by failing to remit City income taxes deducted and withheld from an employee, shall be guilty of a misdemeanor of the first degree and shall be subject to a fine of not more than \$1,000 or imprisonment for a term of up to six (6) months, or both. If the individual that commits the violation is an employee, or official, of the City, the individual is subject to discharge from employment or dismissal from office.

(b) Any person who discloses information received from the Internal Revenue Service in violation of Subsection (a) of Section 158.16 shall be guilty of a felony of the fifth degree and shall be subject to a fine of not more than \$5,000 plus the costs of prosecution, or imprisonment for a term not

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exceeding five years, or both. If the individual that commits the violation is an employee, or official, of the City, the individual is subject to discharge from employment or dismissal from office.

(c) Each instance of access or disclosure in violation of Subsection (a) of Section 158.16 constitutes a separate offense.

(d) If not otherwise specified herein, no person shall:

- (1) Fail, neglect or refuse to make any return or declaration required by this Chapter;
- (2) File any incomplete or false return;
- (3) Fail, neglect or refuse to pay the tax, penalties or interest imposed by this Chapter;
- (4) Refuse to permit the Tax Administrator or any duly authorized agent or employee to examine his or her books, records, papers and federal and state income tax returns relating to the income or net profits of a taxpayer;
- (5) Fail to appear before the Tax Administrator and to produce his books, records, papers or federal and state income tax returns relating to the income or net profits of a taxpayer upon order or subpoena of the Tax Administrator;
- (6) Refuse to disclose to the Tax Administrator any information with respect to the income or net profits of a taxpayer;
- (7) Fail to comply with the provisions of this ordinance or any order or subpoena of the Tax Administrator authorized hereby;
- (8) Give to an employer false information as to his or her true name, correct social security number, and residence address, or fail to promptly notify an employer of any change in residence address and date thereof;
- (9) Attempt to do anything whatsoever to avoid the payment of the whole or any part of the tax, penalties or interest imposed by this Chapter.

(e) Any person who violates any of the provisions in Subsection 158.99(d) shall be subject to the penalties provided for in Subsection 158.99(a) of this Chapter.