

ARTICLE 3.

GENERAL PROVISIONS

SECTION 301. CONFORMANCE MANDATORY

Except as otherwise provided elsewhere in this Ordinance, no building shall hereafter be used, erected, constructed, reconstructed, moved or altered, nor shall any land be used except in conformity with these regulations for the zoning district in which the land or building is located.

SECTION 302. RESOLUTION OF DISPUTES

In any dispute concerning the application of any provision of these Zoning Regulations, that solution will be favored which is most reasonable with regard to the general purpose of these regulations and the established and accepted principles of planning and zoning law.

SECTION 303. RIGHT TO PETITION

Every person affected by the application of these Zoning Regulations shall always have the right to petition and be heard.

SECTION 304. FUNDAMENTAL RIGHTS OF OWNERS

The application of these Zoning Regulations shall be governed by all the particular facts of each case, and no individual owner shall be prejudiced by reason of his being in a minority, either in number or amount of land owned, and he shall be entitled to a balancing of the equities of all interests concerned.

SECTION 305. SPECIAL PRIVILEGES FORBIDDEN

No special favors or privileges shall be granted to any person under the terms of these Zoning Regulations.

SECTION 306. MINIMUM REQUIREMENTS

The provisions of These Zoning Regulations are minimum requirements. Where these regulations impose a greater restriction that is imposed or required by other provisions, these Zoning Regulations shall control.

SECTION 307. PRIVATE AGREEMENTS

The provisions of these Zoning Regulations shall apply independently of any easement, covenant or other agreement between private parties.

SECTION 308. CONTINUING EXISTING USES

Nothing contained in these Zoning Regulations shall affect existing uses of property or the right to its continued use or the reasonable repair or alteration thereof for the purpose for which used at the time these Zoning Regulations take effect.

SECTION 309. PERMITTED USES

Uses designated as permitted by any zoning district regulation shall be permitted upon approval as provided in Article 10. No such approval shall be granted except upon compliance with all of the regulations specified for the zoning district in which the use is sought to be maintained.

SECTION 310. CONDITIONAL USES

Section 310.1 Purpose

Each district in the City contains designated permitted uses. In addition to the designated permitted uses in each district, there are conditional uses, neither absolutely permitted as a right nor prohibited by law, which may be compatible within the district. These are privileges, in a sense, which must be applied for and approved by the Board.

It is the intent of this Article to provide a set of procedures and standards for conditional uses of land or structures which, because of their unique characteristics relative to locational features, design, size, operation, circulation, and public interest or service, require special consideration in relation to the welfare of adjacent properties and the community as a whole. It is the purpose of the regulations and standards set forth below to:

- (a) Allow, on one hand, practical latitude for utilization of land and structures, but at the same time maintain adequate provision for the protection of the health, safety, convenience and general welfare of the community and adjacent properties; and
- (b) Provide a mechanism for periodic review of conditional use permits to provide for further conditions to more adequately assure conformity of such uses to the public welfare.

Section 310.2 Permitted Conditional Uses

The following are conditional uses which may be permitted in certain districts subject to the standards detailed herein.

- (a) Utility structures, including, but not limited to, substations, telephone switching stations, electrical generation facilities and other facilities required for the transmission of power or communications.

- (b) Sewage facilities, including but not limited to, pump stations, or sewage or storm water treatment plants.
 - (c) Water systems, including, but not limited to, treatment plants, storage reservoirs, pump stations or other major facilities associated with the supply or distribution of water.
 - (d) Emergency service facilities or other public service facilities needing locations in the area to permit effective service within the area.
 - (e) Private clubs, fraternities, sororities and lodges.
 - (f) Elementary and high schools (public/secular).
 - (g) Institutional buildings such as hospitals, colleges, churches and synagogues.
 - (h) Cemeteries.
 - (i) Nursing, retirement or convalescent homes.
 - (j) Child care facilities.
 - (k) Solid waste transfer stations and solid waste landfills.
 - (l) Recycling centers.
 - (m) Transit facilities, including equipment storage centers.
 - (n) Medical offices when developed in conjunction with a planned hospital development.
 - (o) Accessory dwelling units.
 - (p) Recreational Vehicle Park.*
- *Recreational Vehicle Parks shall adhere to the conditions set forth in Article 8.
- (q) Amusement Parks, Fair Grounds, Theme Parks.
 - (r) Veterinary Hospitals providing all animals are maintained within enclosed structures.

The Board of Adjustment may approve, approve with conditions, or deny the application for a conditional use permit. In permitting a new conditional use or the alteration of an existing conditional use, the Board may impose, in addition to those standards and requirements expressly specified by this Code, additional conditions which it finds necessary to avoid a detrimental environmental impact and to otherwise protect the best interest of the surrounding area or the community as a whole. These conditions may include, but are not limited to, the following:

- (a) Limiting the manner in which the use is conducted including restricting the time a certain activity may take place and restraints to minimize such environmental effects as noise, vibration, air pollution, glare and odor.
- (b) Establishing special yard, open space, lot area or dimensional requirements.
- (c) Limiting the height, size, number, and location and nature of vehicle access points.
- (d) Designating the size, location, screening, drainage, surfacing or other improvements of a parking or loading area.
- (e) Limiting or otherwise designating the number, size, location, height and lighting of signs.
- (f) Limiting the intensity of outdoor lighting and require its shielding.
- (g) Requiring diking, screening, landscaping or another facility to protect adjacent or nearby property and designates standards for its installation and maintenance.
- (h) Designating the size, height, location, of screening and materials for a fence.
- (i) Protecting and preserving existing trees, vegetation, water resources, wildlife habitat or another significant natural resource.

Section 310.4 Location Criteria

- (a) The provisions of this section are designed to provide citing criteria for the conditional uses specified herein and guidelines for the imposition of additional conditions not specifically provided for herein, to the end that such uses will:
 - 1. Be consistent with the intent and purpose of the district in which it is proposed to locate such use, meet requirements of the general plan with regard to providing benefit to the general welfare of the public, and fill a probable need of the public which can best be met by a conditional use at this time and in this place.

2. Comply with the requirement of the district within which the conditional use is proposed and in accordance with conditions attached to such use under the authority of this article.
- (b) Conditional Uses shall be located subject to the following specific standards:
1. Buffering, screening or other means shall be used where necessary to protect the privacy and safety of neighboring properties.
 2. Solid waste landfills, transfer stations, natural gas storage, sewage treatment plants, electrical generating facilities and recreational vehicle parks shall not be in or adjacent to established residential areas.
 3. Solid waste landfills, transfer stations, natural gas storage, sewage treatment plants, recreational vehicle parks* and electrical generating facilities shall not be directly accessible from local residential or collector streets. Recycling centers, water reservoirs, telephone communication and switching facilities, runoff detention facilities and City or County maintenance facilities shall not be directly accessible from local residential streets.
 4. The site layout promotes energy conservation and user convenience, as well as operational efficiency.
 5. The site layout conforms to the established street and circulation pattern.
 6. Noise levels and lights from the facility will not interfere with adjacent land uses.
 7. Recreational Vehicle Parks shall adhere to the conditions set forth in Article 8.

Section 310.5 Application for Conditional Use Permit

- (a) A request for a conditional use permit, modification of an existing conditional use permit, or a review of an existing conditional use permit shall be initiated by a property owner or his authorized agent by filing an application with the Building Inspector. Such application shall include full information regarding the proposed locations, area, height, bulk and placement of such use and shall be accompanied by a site plan prepared in accordance with the provisions of Article 9.
- (b) An application filed pursuant to this section shall be accompanied by the required fee. Such fee shall be determined according to a schedule established by resolution of the Council and posted in the office of the City Clerk.

- (c) The Building Inspector shall review each application for technical compliance with established requirements and shall formally accept or reject the application within three (3) working days.
- (d) The Board of Adjustment shall consider each application for a condition use in accordance with Section 1103.2.

SECTION 311. TEMPORARY USES

Section 311.1 Authorization

Temporary uses are permitted only as expressly provided for in this section.

Section 311.2 Temporary Use Permit Required

No temporary use shall be established unless a permit, evidencing the compliance of such use with the provisions of this section and other applicable provisions of this Code shall have first been issued.

Section 311.3 Application and Procedures

- (a) Application. A written application for a temporary use shall be filed with the Community Development Department on a form supplied by the City and shall contain the required information. Unless rejected within three (3) working days of the date of receipt, and application shall be deemed to have been accepted.
- (b) Notice. Upon acceptance of an application, posting of the required bond and payment of the required fee, the Building Inspector shall post the site with a sign indicating the proposed temporary use, the fifteen (15) working day deadline date for filing comment thereon, and any other pertinent information.
- (c) Action by Building Inspector. No later than fifteen (15) working days after acceptance of an application, the Building Inspector shall make a finding and grant or deny the requested temporary use and indicate the conditions thereon, if any. If denied, the reasons therefore shall be stated. If the temporary use is permitted, a zoning compliance certificate shall be issued. Notice of Building Inspector's action shall be mailed to applicant, adjacent lot owners, and others who have requested notice.
- (d) The certificate for a temporary use not otherwise permitted in the applicable zoning classification applies to the applicant only and not to the property. It will be unlawful to conduct any such temporary uses, and to install, place or maintain any such temporary structures without first obtaining a zoning compliance certificate therefore.

- (e) Appeal to Board of Adjustment. Any person may appeal the Building Inspector's action to the Board of Adjustment within fifteen (15) working days following his action which shall stay the effective date of the certificate.

Upon appeal all materials on the matter shall be filed by the Building Inspector with the Board of Adjustment which is authorized to review the case, and based on the record certified to it, either uphold the action of the Building Inspector, or remand the matter back to him with such instructions as the Board deems proper. If the Board deems that it needs additional information or evidence, it may hold a public hearing and proceed in accordance with its standard procedures.

Section 311.4 Permitted Temporary Uses

The following are temporary uses which are subject to the following specific regulations and standards, in addition to the other requirements specified in this Code.

- (a) Carnival or Circus.
 - 1. Permitted in any district.
 - 2. Maximum length of permit shall be fifteen (15) days.
 - 3. No structure or equipment shall be located within five hundred (500) feet of any residential property line.

- (b) Christmas Tree Sales.
 - 1. Permitted in any district.
 - 2. Maximum length of permit for display and open-lot sales shall be forty-five (45) days.

- (c) Contractor's Office and Construction Equipment Sheds.
 - 1. Permitted in any district where used is incidental to a construction project. Office or shed shall not contain sleeping or cooking accommodations.
 - 2. Maximum length of permit shall be one (1) year. This may be renewed as construction on some projects may be longer than one year.
 - 3. Office or shed shall be removed upon completion of construction project.

- (d) Events of Public Interest.
 - 1. Permitted in any district.

2. Events may include but are not limited to outdoor concerts, auctions, or similar activities.
3. Maximum length of permit shall be 72 hours.

(e) Real Estate Sales Office.

1. Permitted in any district for any new subdivision approved in accordance with City of Douglas subdivision regulations. The office may not contain sleeping or cooking accommodations. A model home may be used as a temporary sales office.
2. Office shall be removed upon completion of the sale of all units in the subdivision.

(f) Religious Tent Meeting.

1. Permitted in any district.
2. Maximum length of permit shall be fourteen (14) days.

(g) Horse Show or Exhibition.

Permitted for any commercial or private stable for special events, including but not limited to shows, exhibitions, and contests.

(h) Temporary Shelter.

When fire or natural disaster has rendered a single-family residence unfit for human habitation, the temporary use of a mobile home located on the single-family lot during rehabilitation of the original residence or construction of a new residence is permitted subject to the following additional regulations:

1. Required water and sanitary facilities must be provided.
2. Maximum length of permit shall be six (6) months, but the Building Inspector may extend the permit for a period or periods not to exceed sixty (60) days in the event of circumstances beyond the control of the owner. Application for the extension shall be made at least fifteen (15) days prior to expiration of the original permit.
3. The mobile home shall be removed from the property upon issuance of any occupancy permit for the new or rehabilitated residence.

(i) Tent Theater.

1. Permitted in any district.
 2. Maximum length of permit shall be five (5) months per calendar year.
- (j) Additional Regulations. A carnival or circus, religious tent meeting, tent theater, horse show or exhibition, and events of public interest shall be subject to the following:
1. Documentation must be provided from the County Health Department that adequate arrangement for temporary sanitary facilities has been insured.
 2. No permanent or temporary lighting shall be installed without an electrical permit and inspection.
 3. All uses shall be confined to the date specified in the permit.
 4. Hours of operation shall be confined to those specified in the permit.
 5. The site shall be cleared of all debris at the end of the special event and cleared of all temporary structures within thirty (30) days after the closing event. A cash bond for a minimum of twenty-five (\$25.00) dollars and not to exceed five thousand (\$5,000) dollars shall be posted or a signed contract with a disposal firm shall be required as a part of the application to insure that the premises will be cleared of all debris during and after the event.
 6. Public parking for the exclusive use of the facility shall be provided, and a stabilized drive to the parking area shall be maintained. It shall be the responsibility of the applicant to guide traffic to these areas and to prevent patrons from unlawful parking.
 7. Traffic control arrangements required by the Public Works Director in the vicinity of major intersections shall be arranged for by the applicant.
 8. A cash bond for a minimum of twenty-five (\$25.00) dollars and not to exceed five thousand (\$5,000) dollars shall be posted to insure the repair of any damage resulting to any public right-of-way as a result of the event.
 9. Serving of alcoholic beverages shall require the approval of the City council and other appropriate agencies.
- (k) Revocation of Temporary Permits. The failure of any applicant to fulfill the requirements of any temporary permit issued under the provisions of this article shall result in the revocation of the permit and the denial of future permits.

The Building Inspector may revoke a permit for temporary use after written notice upon violation of any provision of this Code or to protect the public health, safety and general welfare.

SECTION 312. USES PROHIBITED

Any use not specifically permitted in a district, either as a permitted use or a conditional use granted by the Board of Adjustment, is specifically prohibited from that zoning district.

SECTION 313. EXEMPT USES

The following uses shall be permitted in any zoning district and exempted from the provisions and requirements of these Zoning Regulations, unless otherwise specified:

- (a) Public rights-of-way for streets, alleys, drainage-ways, and other public rights-of-way; and
- (b) Essential services of public utilities duly authorized to furnish to the public under state or federal regulations services such as electricity, gas, steam, communications, water, water drainage, flood control, irrigation, solid waste disposal, and sewage disposal, together with equipment and accessories in connection therewith which are reasonably necessary for the furnishing of adequate service by such utilities for the public health, safety convenience or general welfare.

SECTION 314. SPLITTING OF LOTS

No use permit shall be issued for a lot or parcel that has been reduced in size below the minimum lot area or lot width required by these Zoning regulations when such reduction takes place after the effective date of these Zoning Regulations.

SECTION 315. BUILDING UNDER CONSTRUCTION

Nothing in this Ordinance shall be deemed to require a change in the plans, construction, or designated use of any building on which actual construction was lawfully begun prior to the effective date of this Ordinance, and upon which actual building construction has been diligently carried forth.

SECTION 316. MOVING OF BUILDINGS

No building or structure which has been wholly or partially erected on any premises located either within or outside the City of Douglas, shall be moved to or be placed upon any other premises within the City until a permit for such removal, and a Zoning Compliance Certificate for such relocation, shall have been issued by the Building Inspector. Any such building or structure shall conform to all provisions of this

Ordinance in the same manner as a new building or structure shall be used or occupied until an Occupancy Permit shall be issued, as provided in Article 10 of this Ordinance.

SECTION 317. DUMPING, DISPOSAL OR STORAGE OF RUBBISH

Section 317.1 Prohibition of Rubbish Dumping, Disposal or Storage

The use of land for the dumping, disposal, or storage of scrap iron, junk, garbage, rubbish, or other refuse, or of ashes, slag, or other industrial wastes or by-products, shall be prohibited in every district except an Industrial District where such use may be permitted by the Board of Adjustment in accordance with regulations of that Zoning District.

Section 317.2 Dumping of Excavation Material

The dumping of dirt, sand, rock or other material excavated from the earth shall be permitted in any zoning district, provided that the surface of such material is graded within a reasonable time, leaving the ground surface in a condition suitable for other uses permitted in the district, and provided that such fill does not so increase the elevation of the site as to prevent its development or use for other purposes.

SECTION 318. EXCEPTIONS TO HEIGHT LIMITATIONS

Height regulations established elsewhere in this Ordinance shall not apply:

- (a) In any district, to church spires, belfries, cupolas and domes, not for human occupancy; monuments; water towers; flagpoles; non-commercial radio or television antennas; recreational fields or playground lighting poles;
- (b) In commercial or industrial districts, to parapet walls extended not more than four (4) feet above the height of the building upon which they rest; elevator housing;
- (c) In industrial districts, to chimneys, smokestacks, derricks and conveyors; grain elevators, or similar structures wherein the industrial processes involved customarily require a height greater than otherwise permitted.

SECTION 319. PROJECTIONS INTO REQUIRED YARDS, RESIDENTIAL DISTRICTS

The following building projections shall be permitted in residential districts:

- (a) Awnings, open fire balconies, fire escape stairs, window-type refrigeration units not exceeding one and one-half tons or one and one-half horsepower rating, suspended or roof evaporative coolers, and forced air furnaces may project not more than five feet into any required yard, provided that they are no closer than (2) feet to any interior lot line.

- (b) Cornices and eaves may project not more than three (3) feet over any required yard, provided that they are no closer than two (2) feet to any lot line.
- (c) Sills, leaders, belt courses and similar ornamental features, any project not more than six (6) inches over or into any required yard; a chimney or pilaster may project not more than eighteen (18) inches into any required yard, provided that it is not more than eight (8) feet in dimension paralleling the nearest lot line.
- (d) Unroofed terraces, patios, steps or similar features not over three (3) feet in height above grade, may project into any required yard.

SECTION 320. YARDS AND SETBACKS, GENERAL

The following yard and set back requirements shall apply in all zoning districts:

Section 320.1 Compressor, Condenser, Cooler Location

Except as provided elsewhere in this Ordinance, no compressor unit, condensing unit, cooling tower, evaporative condenser, or similar device, shall be located closer to any interior lot line than the minimum setback required for the main building. All such devices shall discharge air in a direction other than toward any lot line which is within twenty-five (25) feet of such device.

Section 320.2 Future Street Lines

Where future street lines have been officially established by the City Council, all required setbacks shall be measured from such street lines.

Section 320.3 Service Station Gasoline Pump

In any district, no service station gasoline pump shall be located closer than twelve (12) feet to any street line, or closer than fifty (50) feet to any residential district. A gasoline pump shall be considered a building for purposes of determining setback requirements.

Section 320.4 Required Parking and Loading Space Not a Part of Yard

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

Section 320.5 Minimum Requirements of Existing Yards, Lots or Parcels

No yard, lot or parcel existing at the effective date of this Ordinance shall be reduced in dimension or area below the minimum requirement set forth herein. Yards, lots or

parcels created after the effective date of this Ordinance shall meet at least the minimum requirements herein established.

SECTION 321. SIGHT DISTANCES AT INTERSECTIONS

On corner lots in any residential district, nothing shall be erected, placed, planted, or allowed to remain, which materially impedes vision above a height of two and a half (2 ½) feet.

SECTION 322. FENCES, WALLS AND HEDGES

The following restriction on fence, wall and hedge height, location and construction shall apply in the indicated zoning district:

Section 322.1 Height and Location

No fence, wall, or hedge exceeding three (3) feet in height above the average grade of the lot shall be erected, placed, planted along the side of any required front yard; nor, in the case of a corner lot that abuts on a key lot, closer to the exterior side lot line than the minimum required front setback for the key lot. No other fence in any residential district shall exceed six (6) feet in height above grade.

Section 322.2 Prohibited Fence Construction

No fence shall contain razor ribbon wire, barbed wire, electrical current or charge of electricity, broken glass, or similar hazardous materials or devices. Fences in commercial and industrial zoning districts which enclose storage areas may have barbed wire so long as said barbed wire is located more than six (6) feet in height above grade and be erected in such a manner that the barbed wire does not project in any way over a property line into neighboring private property or any public area. Standard barbed wire ranch fencing is permitted to be erected in areas where the keeping of horses, cattle, and other large livestock is lawfully permitted for the containment or to provide a barrier from such animals. (Ord. 05-881 § 1, 2005)

SECTION 323. ACCESSORY USES

No accessory building shall be used prior to the occupancy or use of the main building, except as construction facility for such a main building.

SECTION 324. HOME OCCUPATIONS

Section 324.1 General Provisions

- (a) The intent of this section is to allow home occupations to exist only as long as they are not in violation of the terms of this section and do not alter the residential

character of the neighborhood nor infringe upon the right of neighboring residents to the peaceful enjoyment of their neighborhood and homes.

- (b) No person shall carry on a home occupation, or permit such use to occur on property which he/she owns or is in lawful control, without first obtaining or insuring that there has been obtained a home occupancy permit for such use in the manner provided by this section.
- (c) Application for the permit shall be made jointly by the person wishing to conduct the use and the owner of the property, or his agent, on forms provided by the City. The required fee must be paid along with the application.
- (d) After approval and prior to the issuance of the home occupancy permit, the applicant shall provide proof that he has paid the City Business License.

Section 324.2 Standards

- (a) The Building Inspector shall review the application and shall approve the permit if he finds that the proposed use does not violate the purpose of Section 324 and that all of the following conditions are met:
 - 1. Signage according to the requirements for Article 7.
 - 2. There is no display that will indicate from the exterior that the building is used in whole or in part for any purpose other than a dwelling
 - 3. The building retains the characteristics of a residence and no more than twenty-five (25%) percent of the gross floor area is used for the business activity.
 - 4. There is not outside storage of materials other than plant materials intended as landscaping.
 - 5. There are no employees other than family members who reside at the dwelling.
 - 6. The use will not tend to destroy the residential character of the neighborhood.
 - 7. The generation of noise, vibrations, odors, heat or glare detectable beyond any property line is prohibited.
 - 8. No traffic shall be generated by such home occupation on greater volumes than would normally be expected in a residential neighborhood, and any need for parking generated by the conduct of such home occupation shall be met off the street and other than in a required front yard.

Section 324.3 Renewal and Permit Revocation

The home occupation permit shall be valid for a period of two (2) years. Renewal of the permit shall be accomplished in the same manner as an application for a new permit under this section. This permit may be revoked at any time for:

- (a) A violation of any provision of this section.
- (b) A violation of any term of or condition of the permit.
- (c) Failure to pay the City Business License in a timely manner.

Section 324.4 Short Term Sales Exempt

A permit shall not be required to conduct short term sales from a residence. Such sales shall not exceed three (3) days in duration or ten (10) days total in calendar year.

Section 324.5 Validity of Permits

The provisions of this Code shall apply to all home occupations in the City including those in operation on the effective date of this Code. A permit in effect on the effective date of this Code shall be treated as if it was issued pursuant to this Code and the two (2) year term of validity shall run from the date of issuance.