

ARTICLE 5. GENERAL DEVELOPMENT STANDARDS

5.1 APPLICATION OF REGULATIONS

The various zoning district regulations established herein are declared to be the minimum requirements necessary to carry out the purpose of this Ordinance. These regulations apply to each class or kind of structure or land, and are the minimum standards for all site clearing, development, buildings, structures, or alterations to land or structures within the jurisdiction of this Ordinance.

No part of a yard, open space, or off-street parking required in connection with any building for the purpose of complying with the regulations of this Ordinance shall be included as part or all of the required yard, open space, or off-street parking for another building or structure, except as hereinafter provided.

5.2 EXCEPTIONS AND MODIFICATIONS

5.2.1. SETBACKS-CORNER LOTS

- (A) The setback from the street upon which the principal building will face shall be the minimum required front yard setback for the district in which the lot is located. The secondary front shall be not less than one-half the front yard distance required for the district, except as specifically stated in Article 4. In some cases minimum front yard will be the same.
- (B) The yards remaining after full and half-depth front yards have been established shall be considered the side yards. There will be no required rear yard.

5

Contents

5.1	Application of Regulations	5-1
5.2	Exceptions and Modifications.....	5-1
5.3	Measurements.....	5-5
5.4	Number of Principal Buildings/Uses on a Lot.....	5-5
5.5	Visibility at Intersections	5-5
5.6	Accessory Buildings and Uses	5-6
5.7	Access to Property.....	5-8
5.8	Conversion of Existing Residential Use.....	5-8
5.9	Infill Development Standards.....	5-8
5.10	General Commercial Standards.....	5-10

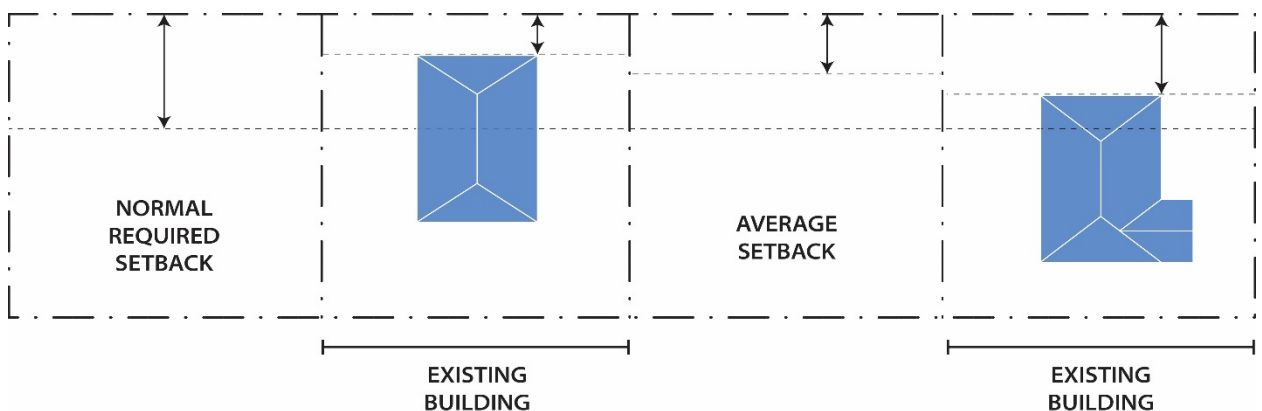
5.2.2. SETBACKS- THROUGH OR DOUBLE FRONTAGE LOTS

Front yard setbacks for double frontage lots shall be provided for both streets upon which the lot has frontage, and any accessory use(s) shall be prohibited from the required front yard setback of the street upon which the principal building fronts.

5.2.3. PARTIALLY DEVELOPED AREAS

Where the majority of lots in a block fronting on the same side of a street between two intersecting streets are lawfully occupied with buildings having greater or lesser front yard depth than required by these regulations, no building hereafter erected or altered shall vary in the front yard setback by more than five feet from the average depth of said existing front yard setbacks without written approval of the Planning Director.

Established Building Lines/Front Yard Reduction



5.2.4. ALTERNATIVE YARD ORIENTATION

The Planning Director may determine that the orientation of required front, side, or rear yards for a lot should differ from the orientation otherwise established by this Ordinance when necessary to apply the yard requirements in a manner consistent with the lot's actual frontage, access, building orientation, surrounding development pattern, and the purpose of the applicable zoning district.

In making this determination, the Planning Director shall consider the following objective criteria:

- (A) **Street frontage and access.** The location of all public or private street frontages, alleys, access easements, and primary vehicular and pedestrian access points serving the lot;

- (B) **Principal building orientation.** The location of the principal entrance, primary façade, driveway, parking area, and other site features that establish the functional front of the property;
- (C) **Corner, through, flag, irregular, or multiple-frontage lots.** Whether the lot's shape, frontage, or configuration makes the ordinary yard-orientation rules unclear, impractical, or inconsistent with the surrounding development pattern;
- (D) **Established block pattern.** The orientation of principal structures and required yards on lots within the same block face or, where there is no clear block face, on similarly situated nearby lots;
- (E) **Compatibility with adjacent property.** Whether the alternative orientation would avoid placing active building fronts, service areas, parking, loading areas, or accessory structures in a location that would be incompatible with adjacent residential uses or established neighborhood character;
- (F) **Consistency with district standards.** Whether the alternative orientation would maintain the dimensional standards, setback purposes, visibility requirements, access standards, and design intent of the applicable zoning district;
- (G) **Public safety and visibility.** Whether the alternative orientation would preserve required sight triangles, emergency access, pedestrian access, and safe driveway or street access; and
- (H) **No reduction except as authorized.** Whether the determination would merely identify the applicable front, side, and rear yards and would not reduce, waive, or vary any required setback, buffer, lot coverage, building separation, or other dimensional standard except as expressly authorized elsewhere in this Ordinance.

The Planning Director's determination shall be made in writing and shall identify the yard orientation approved, the reasons for the determination, and the criteria relied upon. A determination under this section shall not constitute a variance and shall not authorize any use, structure, encroachment, setback reduction, or other development standard that is otherwise prohibited by this Ordinance.

Any person aggrieved by the Planning Director's written determination under this section may appeal the determination to the Board of Zoning Appeals as an administrative appeal in accordance with Article 3 and S.C. Code § 6-29-800. The appeal shall be filed within the time period established for appeals of administrative decisions under this Ordinance.

5.2.5. HEIGHT

The height limitations of this Ordinance shall not apply to:

- Belfries
- Flag Poles
- Chimneys
- Ornamental towers and spires
- Church spires
- Public Monuments
- Conveyors
- Public utility poles
- Cooling Towers
- Cupolas
- Dome
- Smoke stacks
- Water tanks
- Fire Towers

Such features shall be erected only to such height as is necessary to accomplish the purpose they are intended to serve and no height extension shall serve as a place for human habitation.

Communication Towers, where permitted by Article 4, shall be exempt from height requirements of the District in they are to be located, but subject to the setbacks as described in Article 6.

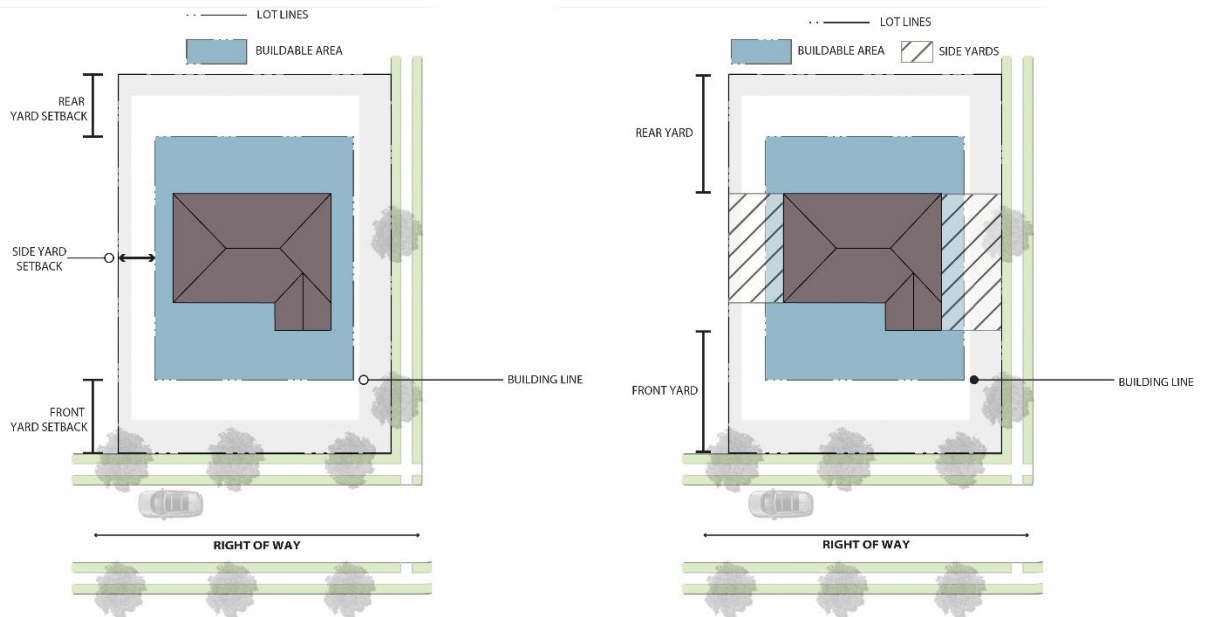
5.2.6. PROJECTIONS

The space in any required yard shall be open and unobstructed except for the ordinary projections of window sills, cornices, eaves, window air conditioning units, and other architectural features, provided that such features shall project no more than two feet into any required yard.

Steps and heating and cooling units may project into a required yard a distance not to exceed 5 feet but no closer than three feet of a property line.

Fences, walls, and hedges may be erected in any required yard or setback area or along the edge of a property line, provided that no such structure or hedge shall impede visibility at intersections.

Setbacks and Yards



5.3 MEASUREMENTS

(A) Yards, Setbacks, Buildable Area

- (1) The required front, side, and rear yards for an individual lot, as set forth by zoning district in Article 4, shall be measured inward toward the center of the lot from all points along the respective front, side, and rear property lines of the lot. Once the yard area of a given lot has been established, the remaining area of the lot which is not included in any required front, side, or rear lot shall be known as the "buildable area" within which the approved principal structure(s) shall be placed.

(B) Height

- (1) The height of a building or structure shall be measured from the grade elevation within one foot of the structure.

5.4 NUMBER OF PRINCIPAL BUILDINGS/USES ON A LOT

No more than one single-family dwelling, duplex, or patio home shall be located on a single lot of record.

There is no limit on the number of other principal uses, provided such uses meet all applicable requirements of this Ordinance.

5.5 VISIBILITY AT INTERSECTIONS

On any corner lot in any district, no planting shall be placed or maintained and no fence, building, wall, or other structure shall be constructed at any point between a

height of two and a half (2 ½) feet and ten (10) feet above the upper face of the nearest curb (or street pavement line if no curb exists) and within an triangular area beginning at the point of intersection and extending from the intersection 15 feet along both sides of the street right-of-way lines. However, poles and support structures less than 12" in diameter may be permitted in such areas.

5.6 ACCESSORY BUILDINGS AND USES

5.6.1. ACCESSORY USES TO OBSERVE REQUIRED SETBACKS

Unless specifically provided herein, all accessory uses and structures shall observe all required setbacks, yard, and other requirements applicable to the principal building or use for the district within which they are located.

5.6.2. GENERAL REQUIREMENTS

(A) Residential Districts

- (1) The number of accessory buildings shall not exceed two on any lot or parcel, with the exception of carports. One (1) carport is allowed per lot or parcel.
- (2) The combined gross floor area (GFA) of all accessory buildings, including carports, shall not exceed 75 percent of the footprint of the principal building.
 - a. Conditions for Accessory Dwelling Units (ADU's), as described in Article 6, prevail if in conflict with this section.
- (3) The height of accessory buildings, including carports, shall be no higher than the height of the principal building.
- (4) No mobile home or standard design manufactured home shall be used as an accessory building.

(B) All Other Districts

- (1) There is no limit to the number of accessory buildings, however such buildings shall occupy no more than 50 percent of the total lot area.
- (2) If located within the buildable area, accessory buildings shall observe the height limits for the district within which they are located.
- (3) Accessory uses may be allowed within 3 feet of a side or rear property line, except where contiguous to a residential zone, in which case the accessory use shall observe the setback requirement of the bufferyard requirements.

5.6.3. LOCATION

Without exception, no accessory use may be located in a required buffer yard. Accessory buildings and uses are permitted anywhere within the buildable area of a lot or parcel unless specifically regulated, and are permitted within required yards and setback areas under the following conditions (This section does not apply to parking of vehicles contrary to Section 7.12):

(A) Off-Street Parking and Loading Space

Off-street parking and loading spaces are permitted in required yards and setback areas.

(B) Free-Standing Signs

Free-standing signs are permitted in all required yards, but no closer than 5 feet of a property line.

(C) Buildings, Sheds, and Structures for Dry Storage; Greenhouses

Buildings, sheds, structures for dry storage, and greenhouses may be located in rear yard only, with a five (5) foot rear and side setback.

Carports may be allowed in either the rear yard or side yard if recessed five feet from the front façade.

(D) Domestic Animal Shelters and Pens

Domestic animal shelters and pens may be located in rear yard setback areas only, but no closer than five (5) feet from any side or rear residential property line.

(E) Swimming Pools, Tennis Courts, Recreational Uses

These uses may be located in required rear yard and rear setback areas only; provided said uses shall be no closer than 10 feet to the nearest property line, and shall have all lighting shielded or directed away from adjoining residences.

(F) Ground Supported Communication and Reception Antennas

These uses may be located in required rear and side yards only, but no closer than 3 feet to the property line, and if located in the buildable area shall not extend or be located in front of any principal building.

(G) Fences and Walls

May be located in all required yards and along any property line; provided

- (1) fences and walls to be located in the required front yard or in front of the principal use shall not exceed four feet in height and shall be transparent;
- (2) fences and walls located elsewhere on the property shall not exceed eight feet in height unless approved for a variance by the Board of Zoning Appeals; and
- (3) fences and walls along the secondary front of a corner lot:
 - a. shall not exceed four (4) feet in height between the primary structure and the street that the structure is facing;

- b. shall not exceed eight (8) feet in height along the secondary street from the front corner of the primary structure to the rear property line; and
- c. shall not impede visibility from intersections or an adjacent property's driveway.

(H) Uses Not Specified

Uses not specified above shall observe a three-foot setback from the nearest property line.

5.7 ACCESS TO PROPERTY

5.7.1. STREET ACCESS

Except as herein provided, no building shall hereafter be erected, constructed, moved, or relocated on a lot not located on a publicly dedicated, publicly accepted or maintained street, or private street. However, no private street or driveway shall be provided to commercial or industrial districts through any residential district established by this ordinance. Cross access is prohibited where it creates driveway access to residential areas through adjacent lots.

5.8 CONVERSION OF EXISTING RESIDENTIAL USE

When the conversion of an existing residential use (house) in a nonresidential zone to a commercial use is proposed, the house shall be made to meet all applicable codes for commercial buildings. Where a house will be used for a dwelling and a commercial use, that section of the house that will be open to the public shall meet all requirements for a commercial building.

All parking, landscaping, buffering, street encroachment and other requirements of this Ordinance for a commercial use shall be met.

5.9 INFILL DEVELOPMENT STANDARDS

5.9.1. PURPOSE.

The purpose of requiring design standards for infill development is to ensure new developments within existing residential neighborhoods retain the character of that neighborhood.

5.9.2. DEFINITIONS.

- (A) **Infill Development-** The development, reuse, or change of use of vacant, underdeveloped or proposed redeveloped land on an existing street that is surrounded on at least two (2) sides by existing development.

- (B) **Surrounding Development-** The single-family residential properties surrounding the property to be developed. Surrounding development includes each property whose front or side property lines falls within 500 feet, measuring from each corner of the property to be developed. The Planning Director has the discretion to reduce or enlarge the boundary when major separations (highways, railroads) are located within 500 feet of the property to be developed.

5.9.3. APPLICABILITY.

All building plans of the primary structure of an infill development are required to be reviewed and approved by a Planning and Development Department committee prior to the issuance of a building permit. For infill development property that will be subdivided into multiple properties, each building plan shall be considered infill development and subject to the provisions of this Section of the Ordinance.

5.9.4. REVIEW PROCESS

- (A) The review process is described in Article 3 Applications and Procedures.

5.9.5. DESIGN STANDARDS AND CRITERIA

- (A) Design standards shall include, but are not limited to,

- (1) front porches,
- (2) first floor at least two (2) feet above grade,
- (3) non-vinyl siding,
- (4) non-metal siding, and
- (5) columns.

- (B) Criteria

- (1) If 50% or more residential primary structures within the surrounding development have one of the design standards, that standard shall be required on the building plans of the infill development.
- (2) If over 75% of the residential primary structures in the surrounding development have a brick foundation wall above grade, then the infill development shall have a matching brick foundation wall, constructed with either solid brick or brick veneer, as defined in Article 12. A thin brick veneer, as defined in Article 12, is not permitted.
- (3) if over 75% of the residential primary structures in the surrounding development have a brick exterior wall covering, then the infill development shall have one of the following constructed of brick:, at least half the height of the columns, or at least 25% of the exterior wall covering of the side of the structure which serves as the primary front entrance or faces the street. For corner lots, the 25% requirement shall apply to each side facing the street.
 - a. Thin brick veneer is not a permitted material to meet this requirement.

5.10 GENERAL COMMERCIAL STANDARDS

In addition to Article 4 and Article 6 requirements for Commercial and Mixed Use and Multifamily Zoning Districts, the standards in this section apply to all Commercial, Mixed Use, and Multifamily Uses.

5.10.1. BUILDING DESIGN STANDARDS

(A) Exterior

- (1) Walls over 100 feet in length visible from the right-of-way shall incorporate three different patterned changes at an interval of no more than 30 feet, either horizontally or vertically. Each pattern change must be at least one foot wide. Patterned changes may include the following: color change, texture change, material change, and wall projections or recesses, at least two feet in depth. At least one of the changes must occur horizontally.
- (2) Each building on a site shall have clearly defined, highly visible customer entryways featuring no less than three of the following:
 - canopies or porticos,
 - overhangs,
 - recesses/projections,
 - arcades,
 - raised corniced parapets over the door,
 - peaked roof forms,
 - arches,
 - outdoor patios,
 - display windows,
 - planters,
 - wing walls; and
 - any other architectural detail or feature that accentuates the entryways for the public.

(B) Building materials.

- (1) Exterior finish materials shall be limited to brick, wood, sandstone, other native stone and tinted, textured, or split-faced masonry units.
- (2) High quality architectural metal (up to 50% of exterior)

(C) Roofs.

- (1) Rooflines shall be varied with a change in height every 100 linear feet in the building length.
- (2) Parapets, mansard roofs, gable roofs, hip roofs, or dormers shall be used to conceal flat roofs and roof top equipment from public view.

- (3) Alternating lengths and designs may be acceptable and can be addressed in the Site Plan review process (see Article 3).
- (D) Windows.
 - (1) Each commercial structure not exceeding 25,000 square feet shall incorporate windows into their design. Each exterior wall with a customer entrance or facing the public right-of-way shall have transparent windows or glass doors between the height of three feet and eight feet above the walkway grade for no less than 40 percent of the horizontal length of the exterior wall.

5.10.2. OUTDOOR STORAGE AND SCREENING.

- (A) Where outdoor storage area stores goods intended for sale or resale, such goods shall be limited to those sold on the premise in conjunction with the principal use of the lot.
- (B) Areas for outdoor storage not intended for sale or resale, truck parking, trash collection and compaction, loading, utility facilities or any other similar activities shall:
 - (1) Not be visible from any public or private right-of-way;
 - (2) Not be located within 20 feet of any public street, sidewalk, or primary internal pedestrian way; and
 - (3) Be enclosed with a wall made of masonry material consistent with that of the primary building(s) on the lot, a fence made of wood or vinyl, dense landscaping that provides an opaque screen at planting, or a combination of such a wall, fence, and landscaping. The height of the enclosure shall be sufficient to screen stored materials from view from public street rights-of-way, private streets, public sidewalks, and any adjoining residential development.

5.10.3. PEDESTRIAN FLOWS.

- (A) Sidewalks at least five feet in width shall be provided within the public or private right-of-way that abuts the property being developed, unless
 - (1) SCDOT or the County Engineer, in a written determination letter provided to the Planning Director prior to plan approval, states that it will not allow sidewalks within their respective right-of-way due to lack of connectivity; or
 - (2) the County Engineer, in conjunction with the Planning Director, determines that unusual existing site conditions would create a safety hazard for sidewalk users or that the sidewalk segment is impractical or infeasible due to the presence of topographic conditions or natural features, such as steep grades that do not allow connections to be made without stairs, or for other

good causes, particularly if the applicant proposes an alternative system that provides improved connectivity.

- (B) Sidewalks shall be provided to connect existing right-of-way to customer entrances, with crosswalks across parking lots and ADA ramps.
- (C) Sidewalks at least five feet in width shall be provided along the full length of the building along any exterior wall featuring a customer entrance, and along any exterior wall abutting public parking areas. Such pedestrian walkways or sidewalks shall be located adjacent to the building façade or at least six feet from the exterior wall of the building to provide planting beds for foundation landscaping except where features, such as arcades or entryways, are part of the exterior wall.
- (D) Customer entrances to all buildings shall be easily and safely accessible to pedestrians from the public sidewalk through internal sidewalks, pedestrian walkways, or painted crosswalks, no less than five feet in width. At a minimum, walkways shall connect focal points of pedestrian activity such as, but not limited to, transit stops, street crossings, building and store entry points, and shall feature adjoining landscaped areas that include trees, shrubs, benches, and flower beds where possible.

5.10.4. CURB CUTS

- (A) Street, driveway, or other access separation along state and federal highways shall be in accordance with the latest version of SCDOT Access and Roadside Management Standards (ARMS) manual.
- (B) When applicable, shared driveways shall be used to access rights-of-way.
- (C) Driveways shall provide connection between adjacent commercial lots to reduce traffic on right-of-way for short distances.
- (D) All driveway standards shall adhere to the SCDOT ARMS manual along all road rights-of-way.

5.10.5. LIGHTING

- (A) Standards for Outdoor Lighting.
 - (1) The maximum light level permissible at a residential property line shall not exceed 0.5 foot-candles where non-residential uses abut residential uses, and shall not exceed two foot-candles at the road right-of-way or at a non-residential property line.
- (B) Flood Lighting.
 - (1) All flood lights shall be installed with the fixture aimed downward at least 45 degrees below horizontal. Flood lights shall be orientated or shielded so that

the source of the light is not visible from the road right-of-way or from any residential use.

(C) Wall Packs and Ground Mounted Lighting, and Sign Lighting.

(1) All wall packs shall be cutoff type fixtures. All external lighting fixtures on a sign or ground mounted luminaries lighting building facades, steeples, trees, billboards, monument signs, flags, and other like items shall not exceed 175 watts. Such lighting fixtures shall be oriented or shielded so that the source of the light is not visible from the road right-of-way or from any residential use.

(2) The light output from an internally illuminated sign shall meet the requirements of Article 9 Signs.

(D) Parking Lots and Outdoor Merchandise Display Areas.

(1) All parking lot and merchandise display area lighting fixtures, other than floodlights permitted herein, shall be cutoff fixtures and shall be mounted at a height not greater than 32 feet above finished grade. Lighting levels in a parking lot shall not exceed 20 foot-candles, and merchandise display area lighting shall not exceed 30 foot-candles, initial level.

(E) Vehicular Canopy Lighting.

(1) Lighting fixtures under a vehicular canopy shall be cutoff fixtures or fixtures fully recessed into the canopy. Lighting levels under the canopy shall not exceed 30 foot-candles, and the source of the light shall not be visible from the road right-of-way or from any residential property.

(F) Outdoor Playing Field or Performance Area Lighting.

(1) All outdoor playing field or performance area lighting fixtures shall be equipped with louvers, shields, or other devices to control glare and to direct lighting at the playing field or performance area. Lighting fixtures shall be mounted at a height not greater than 80 feet above the playing field or performance area. Lighting of the playing field or performance area shall be extinguished no later than one hour after the event.

(G) Permits.

(1) A Lighting Plan shall be included with all building permit and site plan applications for new construction. Such plan shall include specifications of the lighting fixtures to be used, a detailed Site Plan which shows the location of all existing and proposed improvements, the location of the lighting fixtures, and a point-by-point foot-candle array. The Planning Director or duly authorized staff may waive any or all of the above permit requirements, and accept a certification by a qualified design professional that the Lighting Plan

complies with all of the requirements contained herein. These same plan requirements shall apply when new lighting fixtures are being erected on an existing developed property.

5.10.6. OTHER STRUCTURES AND ITEMS

- (A) Electro-Mechanical System Electro-mechanical systems that utilize state-of-the-art technology relative to control and passive solar heating and cooling are encouraged. Roof mounted equipment shall be enclosed or screened. On-grade equipment shall be screened by approved fencing and landscaping to required minimum heights. Exposed exterior mechanical, electrical and plumbing elements shall be screened.

5.11 RESIDENTIAL SUBDIVISION OPTIONS AND STANDARDS

5.11.1. INTENT, AUTHORITY TO MODIFY, AND MAINTENANCE

- (A) **Intent.** These regulations do not intend to freeze new residential subdivision developments into any single type of design, but to ensure that all new developments shall contribute to the building of economically sound and desirable living areas within the community with all necessary services and facilities.
- (B) **Authority to Modify Standards.** In order to provide the subdivider with maximum flexibility in the design and character of new residential developments, the Planning Commission is hereby authorized to modify the standards and requirements of these regulations in the case of a plan for an experimental subdivision or planned development, which in the judgment of the Planning Commission provides adequate public spaces for the circulation, recreation, light, air and service needs of the tract when fully developed and populated, and which also provides such covenants or other legal provisions as will assure conformity to and achievement of the plan.
- (C) **Maintenance of Spirit of Regulations.** Any Development or Subdivision approved under this section shall maintain the objectives, purposes and intent of these regulations and the comprehensive plan.

5.11.2. CONVENTIONAL SUBDIVISION

A conventional residential development is one in which all land area within the development is devoted to building lots that comply with the minimum lot size limits of the residential zoning district. Unless otherwise expressly declared and approved at the time of preliminary plat approval, all residential subdivisions shall be considered conventional developments.

5.11.3. CONSERVATION SUBDIVISION

A conservation subdivision is a residential subdivision in which dwellings are situated on the most developable portion of the site in exchange for the preservation of substantial amounts of open space for recreational, environmental, and ecological reasons.

5.11.4. PERMITTED USES

Permitted uses are defined as those uses permitted outright, with conditions or by special exception in Article 4.

5.11.5. DIMENSIONAL STANDARDS

The dimensional standards of each dwelling unit shall comply with the zoning district standards listed in Article 4 unless otherwise required by the South Carolina Department of Environmental Services (DES).

5.11.6. RIPARIAN BUFFERS

Riparian buffers shall meet the riparian buffer requirements of the County in which the subdivision is constructed.

5.11.7. LOTS

All lots, which shall hereafter be established in connection with the development of a subdivision, shall comply with the requirements set forth in the Zoning Ordinance of the City of Cayce, South Carolina or as shown below, whichever are more restrictive.

- (A) **Authority of the Development of Environmental Services (DES).** Nothing contained in these regulations shall be construed as preventing the Health Department, after study of the conditions existing in a proposed subdivision, from requiring that all or any portion of the area of such subdivision shall not be built upon or that the minimum lot sizes set forth in these regulations are inadequate and must be increased to insure the protection of the public health.
- (B) **Setback Lines.** Building setback lines shall be in accordance with the Zoning Ordinance. Minimum side and rear setback lines shall also be in accordance with the Zoning Ordinance. Driveways shall be at least 2 feet from the property line except at the point of entry and exit.
- (C) **Lot Lines and City Limit or County Lines.** Insofar as practical, lots should not be divided by City Limit or County boundary lines.
- (D) **Lot Lines.** Insofar as practical, side lot lines shall be at right angles to straight street lines and radial to curved street lines.
- (E) **Minimum Lot Dimensions and Area.** The minimum lot width at the front building line and minimum lot area shall be designated in the City of Cayce Zoning Ordinance. To insure the orderly development of the community, the subdivider shall be required to reserve and negotiate to sell needed spaces for

- parks, schools, fire stations and playgrounds, as required by local governmental units, for a period not to exceed thirty (30) days from the date of submission of the Sketch Plan. The reservation period may be extended for one (1) additional thirty (30) day period if a governmental unit files with the Administrative Official a written statement indicating a desire to negotiate. Corner lots shall be at least five (5) feet wider than interior lots.
- (F) **Double Frontage.** Double frontage lots (i.e., lots having street frontage both in front and rear) shall be avoided except in commercial zones, where it is essential to provide separation of residential development from railroad or major street right of way or from nonresidential uses or where necessary due to topography. Where a railroad or major thoroughfare right of way, as shown on the major thoroughfare plan, abuts or runs through any portion of the subdivision, the subdivision plat shall provide for either a minor street or lots backing onto said right of way having a minimum depth of two hundred (200) feet. Access from double frontage lots in commercial zones to residential subdivisions or minor streets shall not be granted from the lot itself or through cross access to adjacent lots.
- (G) **Street Access.** Every lot hereafter established shall front or abut on a street which conforms to the requirements of these regulations, unless specifically permitted in other sections of this ordinance.
- (H) **Flag Lots.** Flag lots are not permitted.
- (I) **Lots to be Contiguous.** Lots shall be arranged in a contiguous pattern within blocks or abutting a cul-de-sac. For minor subdivisions, all lots shall be contiguous, and any new lots subdivided from a tract that has been previously subdivided shall adjoin the existing lots.

5.11.8. EASEMENTS

- (A) **Utility Easements.** When it is found to be necessary and desirable to locate public utility lines in other than street right of way, easements shall be shown on the plat for such purposes. All above ground utilities shall be provided along rear property lines except where site conditions make this impractical. Such easements shall be not less than twenty (20) feet along rear property lines and fifteen (15) feet along the side property line and, where possible, shall be centered on rear and side lot lines.
- (B) **Water Course and Drainage Easements.** Where a proposed subdivision is traversed by a water course, drainage way, or stream, appropriate provisions shall be made to accommodate storm water and drainage through and from the proposed subdivision. The area so improved shall conform substantially to the

lines of said water course and be of sufficient width for construction, or both, as to be adequate for the purpose, provided however, such public easement shall be not less than twelve (12) feet in width.

5.11.9. RESERVATION OF PUBLIC SITES.

To insure the orderly development of the community, the subdivider shall be required to reserve and negotiate to sell needed spaces for parks, schools, fire stations and playgrounds, as required by local governmental units, for a period not to exceed thirty (30) days from the date of submission of the Sketch Plan. The reservation period may be extended for one (1) additional thirty (30) day period if a governmental unit files with the Administrative Official a written statement indicating a desire to negotiate.

5.11.10. FLOOD PROTECTION

Refer to Article 11 Flood Damage Prevention.

5.12 REQUIRED IMPROVEMENTS

5.12.1. MONUMENTS

All lot corners, street corners, and points of change of direction in exterior boundaries of the subdivision shall be marked with an iron pipe at least twenty-four (24) inches long and driven to within four (4) inches of the finishing grade or flush as conditions may require.

5.12.2. NATURAL GAS.

When gas lines are located in a street right of way, where possible, such lines shall be located outside the portion of the street to be surfaced to prevent cutting into the paved surface to serve abutting properties.

5.12.3. WATER SUPPLY.

A public water system shall be installed in all subdivisions. When a water system is installed in a subdivision, water mains, valves, and fire hydrants shall be installed according to plans and specifications approved by the City Project Engineer and the Health Department. When the water main is located in the street right of way and it will be necessary to cut into the street surface to serve abutting lots, a connection shall be stubbed out to the property line to serve each lot before the street is surfaced.

5.12.4. SANITARY SEWERAGE.

If a sanitary sewer system is installed in a subdivision, sanitary sewers shall be installed to the plans and specifications approved by the appropriate City Project Engineer and the South Carolina Department of Environmental Services (SCDES). When the sewer main is located in the street right of way, and it will be necessary to cut into the street surface to serve abutting lots, a connection shall be stubbed out to the property line to serve each lot before the street is surfaced.

5.12.5. CURBS AND GUTTERS.

Concrete curbs or paved valley type gutters shall be installed and shall be in accordance with plans and specifications of the South Carolina Department of Transportation and Lexington County Public Works.

5.12.6. STREET GRADING AND SURFACING.

Street grading, base preparation, and surfacing shall be carried out by the subdivider according to plans and specifications of the South Carolina Department of Transportation and Lexington County Public Works.

5.12.7. STORM DRAINAGE.

(A) An adequate drainage system, including necessary improved open channels, pipes, culverts, storm sewers, intersection drains, drop inlet, bridges, and other necessary appurtenances shall be installed by the subdivider and shall be according to plans and specifications approved by the Lexington County Public Works.

5.12.8. STREET NAME SIGNS.

Street name signs shall be installed at all intersections within a subdivision. The location and design of such signs shall be approved by the proper City authority.

5.12.9. SIDEWALKS.

- (A) A four (4) foot sidewalk shall be provided on at least one side of all minor streets. Five (5) foot sidewalks shall be provided on both sides of collector streets and major thoroughfares. A 3-foot landscaped strip should be provided between the sidewalk and the edge of the curb.
- (B) Sidewalks for county-maintained roads must meet County requirements, unless located in an easement held by a homeowner's association approved by the County.
- (C) For roads not maintained by Richland or Lexington County, sidewalks shall be installed and shall be constructed within the street right of way and approved by the County Public Works.

5.12.10. UNDERGROUND UTILITIES.

Utilities must be placed underground wherever practical.

5.12.11. TREES.

It is the intent of the City of Cayce to preserve trees within its corporate limits. In keeping with this intent, street trees should be planted at forty (40) foot intervals within ten (10) feet of the street right of way on both sides of the street but must be outside the right of way. Existing trees should be preserved whenever possible, and

the plans and specifications for tree planting and tree preservation should meet the approval of the Administrative Official.

5.13 OPEN SPACE AND COMMON AREAS

5.13.1. MINIMUM OPEN SPACE REQUIREMENTS

(A) All subdivision developments with over 10 lots and an overall density of greater than 1 dwelling unit per acre shall provide 15% of the total acreage to be developed set aside as permanent open space. The required open space may include both developable and undevelopable land, as defined in Article 12.

(B) Active Recreation Requirements.

(1) Developments of 10-50 lots.

a. For all residential subdivisions between 10 and 50 lots, required open space shall include at least one (1) active recreation feature.

(2) Development of 50+ lots.

a. For all residential subdivisions with over 50 lots, required open space shall include at least two (2) active recreation features.

(3) Qualifying active recreation features include:

a. Neighborhood Park

b. Playground

c. Community Pool or Amenity Center

d. Greenway or trail (Minimum length of ¼ mile per 50 lots or part thereof)

e. Recreation Fields or Courts

5.13.2. OPEN SPACE FEATURES

Required common open space shall be comprised of the following features:

Open Space Types



**Additional qualifying features may be approved by the Planning Director*

5.13.3. OPEN SPACE DESIGN STANDARDS

- (A) Where possible, a portion of the required open space should be located and designed to provide focal points for the development through prominent placement or visual accessibility from streets.
- (B) Not more than 50 percent of the required common open space may be used for active recreation, including uses such as playgrounds, golf courses, multi-use ball fields, pickleball courts, community swimming pools, clubhouses and similar uses.

- (C) Recreation areas (passive or active) used to meet the common open space requirements may not contain more than 10% impervious surfaces (e.g. paved walking paths, decks and recreational structures including shelters, concrete pads, etc.).
- (D) Land dedicated as open space shall be of meaningful proportions and dimensions to be consistent with the purpose and intent of this section. The following requirements apply:
 - (1) The open space shall be contiguous to the extent practicable.
 - (2) At least 50% of the required common open space shall be accessible and have at least 50 feet of frontage on at least one public street within the development. Secondary access points shall not be less than six feet in width.
 - (3) The primary and any secondary access points to the open space shall be shown as part of the open space and shall not be part of an individual lot nor shall it be an easement.
 - (4) The open space must be at least 15 feet in width and 2,000 square feet in area to count toward open space requirements.
 - (5) Recreational lakes or ponds used for stormwater management may be included in the land designated as open space. Fenced detention or retention areas used for stormwater management shall not be included in the calculation for required open space.
 - (6) Not more than 50 percent of the required open space may be composed of undevelopable lands.
- (E) Greenways and Trails
 - (1) Connections to City Trails
 - a. Connections to the City's trails shall be built in accordance with City specifications.
 - (2) Trails not connected to City trails
 - a. Paved trails not connected to the City's trails must be a minimum of ten (10) feet wide, have a paved (asphalt, concrete, porous concrete) surface or a compacted, durable material (like gravel or rubber) surface, and be built to City standards.
 - b. Nature trails must be a minimum of six (6) feet wide and have a surface that is fixed in place, installed in a manner that prevents washout. Only compacted dirt or other solid surfaces as approved by the Planning Director are permitted. Trails shall be maintained in accordance with these conditions in perpetuity and in accordance with Section 5.13.4F.

- (F) Overhead Utility Easements. Land that lies within an easement for an overhead utility shall not be included in the calculation for the open space that is required to meet open space regulations.

5.13.4. OPEN SPACE OWNERSHIP, DEDICATION, AND MANAGEMENT

- (A) The owner and developer, or subdivider, shall select land dedicated for open space purposes and type of ownership. Type of ownership may include, but is not necessarily limited to, the following:
 - (B) Other public jurisdictions or agencies, subject to their acceptance;
 - (C) Non-profit or quasi-public organizations committed to the protection and conservation of open space, subject to their acceptance;
 - (D) Homeowner or cooperative associations or organizations; or
 - (E) Shared, undivided interest by all property owners within the subdivision.
- (F) Maintenance of Open Space. The person(s) or entity identified above, as having the right to ownership or control over open space, shall be responsible for its continuing upkeep and proper maintenance.

5.13.5. CLUSTER MAILBOXES

- (A) Where required per the United States Postal Service (USPS) cluster mailboxes shall be co-located with Open Space Features specified in Section 5.11.2.
- (B) Cluster mailbox units shall be configured in accordance with all applicable USPS standards.
- (C) Cluster mailboxes must be located on a lot or area dedicated for open space or on a public access easement obtained by the developer to be maintained by the Homeowners Association or managing entity.
- (D) Shelter. Cluster mailboxes shall be covered to protect pedestrians from inclement weather while accessing their individual mailbox.
- (E) Lighting. Cluster mailboxes shall be served by exterior illumination to ensure safety during nighttime hours.
- (F) Parking. In addition to any requirements for parking specified in Article 7 or any accessible parking space requirements the following requirements must be met:
 - (1) 1-25 units: 1 parking space
 - (2) 30-50 units: 2 parking spaces
 - (3) 51-75 units: 3 parking spaces
 - (4) 76-100 units: 4 parking spaces
 - (5) > 100 units: 4 plus 1 per each additional 50 mailboxes
- (G) Cluster mailboxes shall be served by a sidewalk connected to the larger pedestrian network in the development or shall provide an additional parking space.

5.14 CONSERVATION SUBDIVISIONS

5.14.1. INTENT

A conservation subdivision is a residential subdivision in which dwellings are situated on the most developable portion of the site in exchange for the preservation of substantial amounts of open space for recreational, environmental, and ecological reasons. The purpose of open space development is to provide a method of land development that permits variation in lot sizes without an increase in the overall density of population or development. This allows the subdivision of land into lots of varying sizes which will provide home buyers with a choice of lot sizes according to their needs, while at the same time, preserving open space, tree cover, scenic vistas, natural drainage ways, and outstanding natural topography. Such measures prevent soil erosion and flooding by allowing development to occur according to the nature of the terrain; provide larger open areas with greater utility for rest and recreation; and encourage the development of more attractive and economical site design.

The developer is able to provide a more economical product to the consumer by reducing the overall cost of required sewer, roads, and other infrastructure. Open space development facilitates the economical and efficient provision of public services as well. The resultant subdivision benefits from the open, recreational space and by the placement of houses in a manner more conducive to social interaction among neighbors.

5.14.2. CONSERVATION SUBDIVISION GENERAL PROVISIONS

- (A) Minimum Lot Area. There is no required minimum lot area per dwelling unit unless otherwise required by DES.
- (B) Yard Requirements. There is no minimum lot width, except as required by DES and/or International Building Code.
- (C) In order to use the conservation subdivision option, developers must declare their intent to use the open space development provisions at the time that the sketch plan for the subdivision is submitted.

5.14.3. CONSERVATION SUBDIVISION REQUIREMENTS

- (A) Minimum areas. The minimum tract area for a conservation subdivision shall be five acres. The minimum area shall consist of contiguous parcels, not divided by an existing public or private road or a recreational or navigable body of water.
- (B) Setbacks. No structure shall be erected within 25 feet from any external lot line of any conservation subdivision. Front setbacks will be consistent with the requirements outlined in the appropriate zoning district and listed in Article 4.
- (C) Permitted Uses
 - (1) Single-family Detached Dwellings

- (2) Single-family-attached dwellings are permitted, as specified above, subject to the following requirements:
- a. A maximum of 20 percent of the total number of dwelling units may be single-family attached (duplex, triplex, quadraplex or townhomes) and shall not exceed more than four attached units per structure.
 - b. Attached units must be contained within the subdivision and not part of any exterior lot except in those areas where exterior lots are adjacent to land zoned for commercial, office or multifamily development.
 - c. Attached units shall not be located on preexisting platted lots within a subdivision.

(D) Permitted Density

- (1) The overall number of lots that would be permitted in a conventional subdivision are permitted in a conservation subdivision. To determine the number of lots, the developer shall submit a design with all conventional subdivision requirements, including all rights-of-way, landscape bufferyards, and minimum open space, and stormwater management areas.

(E) Priority Open Space Types

Within Open Space Developments required open space shall be comprised of one or more of three types of land: Primary Conservation Areas (PCA), Secondary Conservation Areas (SCA), or General Open Space (GOS).

Within Open Space Developments at least 50% of the required open space must be included in Primary or Secondary Conservation Areas, if present. The applicant may choose which types of features and the total area of each to be counted toward meeting this requirement.

In delineating the required open space, the applicant shall first delineate lands that are one or more of the PCA or SCA types. If all such PCA or SCA lands do not constitute the required percentage of the project site, lands that consist of one or more of the GOS types shall be delineated.

- (1) Primary Conservation Areas. Primary conservation areas shall be comprised of one or more of the following:
- a. Land within riparian areas, wetland buffers and floodplains
 - i. Riparian areas within 150ft of perennial streams (USGS blue-line streams).
 - ii. Riparian areas within 50ft of intermittent streams and drainage-ways that drain more than 10 acres.
 - iii. Wetlands and wetland buffers of up to 100ft of wetlands.
 - iv. Floodplain area (within the 100-year or 500-year floodplain).

- v. Note: A maximum of 50% of the required open space shall be in the floodplain.
 - b. Historical sites or structures.
 - c. Areas within planned greenway corridors.
 - d. Stands of mature trees located in riparian areas, on steep slopes or adjacent to existing, lower density development offsite.
- (2) Secondary Conservation Areas
- a. Stands of mature trees or successional habitat adjacent to existing public roadways.
 - b. Frontage meadows or agricultural fields.
 - c. Steep slopes (>8%)
 - d. Uplands within 100ft of floodplains.
 - e. Depressions that accommodate ephemeral pools.
 - f. Rock outcrops or other unique natural features.
- (3) General Open Space
- a. All features listed in Section 5.11.2 which are not listed above.

5.14.4. CONSERVATION SUBDIVISION REVIEW GUIDELINES

(A) Intent

This section is intended to serve as guidelines for the planning staff in their review of subdivisions requesting to be considered under the cluster development regulations. The planning director shall determine if the preliminary plat(s) is consistent with the purpose and intent of the cluster development and open space ordinance and these guidelines:

- (1) Home sites are clustered to preserve open space for recreational, environmental, or ecological reasons;
- (2) The development preserves open space, tree cover, scenic vistas, natural drainageways, and outstanding natural topography, and other Primary and Secondary Conservation Areas whenever possible; and
- (3) Within an existing subdivision, the proposed clustered lots should have the least impact on other properties within the same subdivision.

(B) OSRO Preliminary Plats.

In addition to the requirements for a Conventional Residential Subdivision, the following information must be provided at the time of submittal for preliminary approval:

- (1) Site Analysis Map. Each applicant shall submit a Site Analysis Map that identifies the existing natural and historical resources on site and all potential open space areas.
- (2) Open Space Delineation. All property designated for open space shall be delineated on the preliminary plat. A breakdown of open space in flood plain, steep slopes, areas of standing timber, and other Primary and Secondary Conservation Areas should be shown on the preliminary plat in total acres and percentages of gross acres or open space acres.
- (3) Density Table. A density table located on the preliminary plat, should include the number of gross acres, permitted density per acre, required open space (total and breakdown by type), and total number of dwelling units.

Table 5.2 Density Table Example

Site Details	Value
Gross acres	50 acres
Permitted density	2 units/acre
Total units	100 units (50 x 2.0 units/acre)
Required open space	20 acres (40%)
Total Primary Conservation Areas (PCA) on site	10 acres
Total Secondary Conservation Areas (SCA) on site	4 acres
Total Floodplain on site	2 acres
Buildable acres	48 acres
OPEN SPACE DETAILS	VALUE
PCA Preserved	8 acres
SCA Preserved	4 acres
General Open Space	10 acres
Total Open Space Proposed	20 acres

(C) Conservation Subdivision Final Plats.

In addition to the requirements in Article 3 of the City of Cayce Unified Development Ordinance, the following information must be provided with and noted on the final plat at the time of submittal:

- (1) Density table, located on the final plat, using the same format as on the preliminary plat;
- (2) Notations indicating the delineated open space;
- (3) Conservation easements or deed restriction. Upon the recording of a subdivision, a conservation easement or deed restriction shall be placed on

all lands and private waters used to satisfy the open space requirements of a Conservation Subdivision. The conservation easement or deed restriction shall run with the land, provide for protection in perpetuity, and be granted to the city, a city-approved non-profit land trust, the home owners association or other qualified organization approved by the city. The conservation easement or deed restriction shall be solely for the purpose of ensuring the land remains undeveloped and shall not, in any way, imply the right of public access or any other right or duty not expressly set forth by the terms of the easement. Conservation easements should include a complete metes and bounds of the property being designated as open space;

- (4) Buffer yard easements. If the required buffer yard(s) are not used in the calculation of required open space, appropriate easements shall be shown on the final plat. Buffer yard easements also shall be included within the subdivision covenants; and
- (5) Subdivision covenants. The covenants for the subdivision shall include provisions for the protection of trees and other natural amenities within the property designated for open space. The removal of trees and natural vegetation is permitted in the development phases for the purpose of utility easements, passive recreational uses and drainageways with the proper notations on the final plat. Neither the developer, property owners, or other subsequent contractors or builders shall be granted permission to remove or destroy any trees or natural vegetation from the open space area for passive recreational or any other purposes without the express written permission of the community board, or homeowners' association, or property owners, or trustees having jurisdiction over the implementation and enforcement of the subdivision covenants. Normal maintenance and the removal of dead or fallen trees are permitted and recommended.
- (6) Access to open space shall be shown on the final plat in conjunction with the requirements of Article 3 of the City of Cayce Unified Development Ordinance.

5.15 GROUP DEVELOPMENT STANDARDS

Due to the unique design, features and ownership structure of "Group Developments," the following design requirements may be utilized for all such projects:

5.15.1. DEFINITION AND DESCRIPTION

A “Group Development” shall be defined as a single building or multiple buildings housing industrial, commercial, residential or a mixture of uses that share a common parking area and/or are erected on a single lot.

- (1)
 - (A) For the purposes of site plan approval, including stormwater, parking, landscaping and common area/open space requirements, all associated properties will be treated as a single development.

5.15.2. ADDITIONAL REQUIREMENTS.

When a Group Development is subdivided into multiple parcels, the following documents, in detail satisfactory to the Planning Director or duly authorized staff, shall be required:

- (A) A plan or agreement detailing how the shared parking will be maintained and preserved.
- (B) A plan or agreement detailing how the landscaping for the development will be maintained.
- (C) A common signage plan detailing the allotted signage for each individual use (existing and future) and a plan or agreement detailing how common signage at entrances will be addressed.
- (D) A plan or agreement detailing how the stormwater system will be maintained and preserved.
- (E) A plan or agreement detailing how all landscaping and common space will be maintained and preserved.

5.15.3. DIMENSIONAL STANDARDS

- (A) Group development shall meet all uses and dimensional standards as required by this ordinance. However, the Planning Director or duly authorized staff may approve a reduction to the setback and bufferyard requirements to zero (0) feet and eliminate landscaping requirements on all internal property lines in the development.
- (B) At least 25% of the developed area of all group developments shall be landscaped and maintained in accordance with Article 8 Landscaping.

5.15.4. APPLICATION AND APPROVAL.

The full process for review and approval of group developments is described in Article 3, Applications and Procedures.

5.16 EXTRAORDINARY DEVELOPMENT

5.16.1. PURPOSE

With certain types of development, extraordinary safeguards may be necessary to protect the health, safety and general welfare of the citizens of the City of Cayce, developers are encouraged to work with the Planning Commission to avoid delays in project approvals.

5.16.2. ARTIFICIAL IMPOUNDMENTS

Although aesthetically pleasing, the creation of artificial lakes or impoundments can result in significant water quality problems and dam safety issues.

(A) Water Quality

(1) Framework

Altering the natural flow of water can lead to eutrophication - a process by which a standing body of water becomes enriched with excess plant nutrients such as phosphorus and nitrogen, which results in excess algal production. This condition leads to lower dissolved oxygen (DO) levels which can have a detrimental effect on fish species and water quality. Artificial impoundments also lead to higher water temperatures and excess sedimentation, also harmful to aquatic species. Artificial lakes in the City of Cayce should be planned carefully with a view towards ecological consequences.

(2) Recommendation

Developers should take appropriate steps to maintain good water quality in artificial lakes. Developing a long-term strategy for maintaining water quality is recommended. This strategy may include the use of greater setbacks for principal structures and associated buildings with impermeable surfaces from the normal high water mark of the water body, vegetative buffers along the edge of the water body, or the installation of an aeration system to maintain a healthy level of DO in the water body.

(B) Dams

(1) Framework

A dam breach can be a significant threat to the safety of homeowners, and motorists (in the event that a road is constructed on a dam). For this reason, all dams must meet either requirements of the South Carolina Department of Dam Safety, the U.S. Corps of Engineers or Section 10-2.B.2 of this ordinance, whichever is applicable.

(2) Requirements

Any dam construction not covered under the requirements of the South Carolina Department of Dam Safety and for the purpose of creating an artificial impoundment for the benefit of a residential subdivision, including subdivisions not yet proposed, shall conform to the following requirements:

- a. The developer must provide dam construction drawings and plans certified by a Professional Engineer to the Planning Commission prior to beginning any site work.
- b. Upon concurrence by the Planning Commission and Lexington County Public Works that the proposed dam construction will not cause unreasonable harm to the health, safety, and general welfare of the residents of the City, the developer may proceed with construction.
- c. Dam construction shall be periodically inspected by the developer's engineer to ensure conformance with the approved drawings and plans. The developer shall be responsible for notifying the Planning Commission and Lexington County Public Works during a minimum of three (3) phases of dam construction (see below). Lexington County Public Works may inspect the construction at their discretion.

Phase 1 - Coring, backfilling and setting of invert.

Phase 2 - Mid-construction of fill.

Phase 3 - Top fill and grading.

- d. Dams existing prior to the adoption of this ordinance must meet the requirements of this ordinance before a road is constructed on the dam.

5.17 EXISTING MANUFACTURED HOME PARKS

The operation of a manufactured home park shall comply with the following design and development standards:

- (A) The park shall be served by public water and sewer systems or other systems approved by DES, a system of storm drainage, and refuse disposal facilities, plans of which shall be approved by local DES officials.
- (B) All dwelling spaces shall abut upon an interior all weather roadway of crushed stone, asphalt, concrete slag or other all-weather material of not less than twenty (20) feet in width which shall have unobstructed access to a public street.
- (C) All on-site roadway intersections shall be provided with a street light.

- (D) Each individual home site shall be at least 25 feet from any other site and at least 25 feet from the right-of-way of any street or drive providing common circulation.
- (E) All homes shall be installed in accord with the installation requirements of Section 19-425.39 of the most current version of the South Carolina Manufactured Housing Board Regulations.
- (F) Not less than 10 percent of the park site shall be set aside and developed for common open space and recreation usage.
- (G) Space Numbers: Permanent space numbers shall be provided on each manufactured home space and shall be located so as to be visible from the street or driveway. Signs identifying space locations shall be provided at each street or driveway intersection.
- (H) No manufactured home space shall have direct access to a public street, but shall instead access an internal driveway system.
- (I) The maximum number of manufactured home spaces shall not exceed eight (8) per acre.
- (J) Two parking spaces shall be provided for each designated manufactured home space. Parking may be provided at the designated space or in community parking areas.
- (K) Existing trees and other natural site features shall be preserved to the extent feasible.
- (L) Any existing bufferyards along the perimeter of the park shall be maintained in perpetuity.
- (M) License Required, Revocation: A license shall be requisite to the operation of a manufactured home park and shall be subject to annual renewal.
- (N) Said license may be revoked by the Planning Director for a violation of this Ordinance or other applicable ordinances and regulations governing the operation of such uses.

5.18 SMALL WIRELESS FACILITIES

5.18.1. DEFINITIONS

The definitions contained in this section can be found in Article 12 under the term Small Wireless Facilities.

5.18.2. PURPOSE AND SCOPE; GENERAL PROVISIONS.

- (A) **Purpose.** The purpose of this Ordinance is to provide policies and procedures for the placement of Small Wireless Facilities in ROWs within the jurisdiction of the Municipality.
- (B) **Scope and Intent.** It is the intent of this Ordinance to establish uniform standards applicable to the application for and deployment of Small Wireless Facilities in a manner that serves the interests of the Municipality, its citizens, and the general public by advancing the following purposes:
- (1) Prevention of interference with the use of streets, sidewalks, alleys, parkways, traffic light poles or other light poles, and other public ways and places;
 - (2) Prevention of visual and physical obstructions and other conditions that are hazardous to vehicular and pedestrian traffic;
 - (3) Prevention of interference with other facilities and operations of facilities lawfully located in the ROWs or public property;
 - (4) Preservation of the character of neighborhoods where facilities are installed;
 - (5) Preservation of the character of and applicable land use requirements within Design Districts, Historic Districts, and Underground Districts; and
- (C) Facilitation of the rapid deployment of Small Wireless Facilities to provide the citizens with the benefits of advanced Wireless Services.
- (D) **Applicable only to Small Wireless Facilities.** Nothing in this Ordinance limits the Municipality's powers with respect to wireless facilities that are not Small Wireless Facilities in the ROW, or Poles that are used for purposes other than installation of Small Wireless Facilities in the ROW.
- (E) **Right to Prevent Interference.** The Municipality retains the right to require that all Small Wireless Facilities shall be operated and maintained in a manner that does not interfere with public safety (police, traffic control, fire, and emergency services) equipment.
- (F) **Imminent Risk to Public Safety.** If the Municipality determines that a Wireless Provider's activity in the ROW pursuant to this Ordinance creates an imminent risk to public safety, the Municipality may provide written notice to the Wireless Provider and demand that the Wireless Provider address such risk. If the Wireless Provider fails to reasonably address the risk within twenty-four hours of the written notice, the Municipality may take or cause to be taken action to reasonably address such risk and charge the Wireless Provider the reasonable documented cost of such actions.

5.18.3. PERMITTED USE; APPLICATION PROCESS AND FEES.

- (A) Permitted Use and Consent. A Wireless Provider shall have the right, as a permitted use subject to review and conditions as set forth herein, to Collocate Small Wireless Facilities and install, maintain, modify, operate, and replace Poles in the ROW. These structures and facilities must be installed and maintained so as not to create a safety hazard; obstruct or hinder the usual travel in or the public's safe use of the ROW; or obstruct the legal use of the ROW by utilities. In accordance with Article VIII, Section 15 of the State Constitution and related municipal code and ordinance provisions, the Municipality consents to the use of the ROW by Permit holders acting in compliance with this Ordinance.
- (B) Permit Required.
- (1) No Person shall Collocate a Small Wireless Facility or install a new, modified, or replacement Pole or Support Structure associated with a Small Wireless Facility without first filing a Small Wireless Facility Application and obtaining a Permit as set forth herein. The Municipality may require an Applicant to obtain additional permits for such activity, provided that such additional permits are of general applicability and do not apply exclusively to Small Wireless Facilities. An Applicant shall not be required to obtain or pay any fees for a building permit, as the Permit issued pursuant to this Ordinance serves as a building permit for the applicable Poles and Small Wireless Facilities. Any applications for any such additional permits, once submitted, must be acted upon within the same number of days as an Application for a Permit under this Ordinance. The Municipality shall publish and keep current a list of each additional permit that is required for the Collocation of a Small Wireless Facility or the installation of a new, modified, or replacement Pole. Any failure to comply with this subsection by a Wireless Provider shall allow the Municipality, in its sole discretion, to restore the ROW to its condition prior to the unpermitted Collocation or installation and to charge the responsible Wireless Provider its reasonable, documented cost of restoration, plus a penalty not to exceed one thousand dollars (\$1,000). The Municipality may suspend the ability of the Wireless Provider to receive any new Permits from the Municipality until the Wireless Provider has paid the amount assessed for such restoration costs; provided, however, that the Municipality shall not suspend such ability of any Applicant that has deposited the amount in controversy in escrow pending an adjudication of the merits.

(2) For deployments in ROWs under the ownership or control of the South Carolina Department of Transportation (“SCDOT”), a Wireless Provider may, in lieu of filing a formal Application hereunder, request that the Municipality evidence its approval of the proposed deployment by consenting in writing to the Wireless Provider’s application for a SCDOT encroachment permit. If the Municipality consents in writing to the issuance of an SCDOT encroachment permit, it shall concurrently therewith issue a Permit consistent with such consent. In all cases, the Municipality’s consent may be conditioned on compliance with the Municipality’s lawful and applicable design, aesthetic, stealth, and concealment standards, and subject to the foregoing, the Municipality will not unreasonably withhold or delay its written consent. Notwithstanding the foregoing, the Wireless Provider shall retain the right to file a formal Application for a Permit hereunder, in which case the terms, conditions, and requirements of this Ordinance shall apply in full to such Application.

(C) Permit Applications.

(1) All Applications filed pursuant to this Ordinance shall be on a form, paper or electronic, as required by the Municipality. The Applicant may designate portions of its Application materials that it reasonably believes contain proprietary or confidential information as “proprietary” or “confidential” by clearly marking each page of such materials accordingly, and the Municipality shall endeavor to protect materials so designated from public disclosure to the fullest extent permitted by State law.

(D) Application Requirements. The Application shall be made by the Applicant, or its duly authorized representative as noted in a notarized statement from the Applicant, and shall contain the following:

- (1) the Applicant’s name, address, telephone number, and email address, including emergency contact information for the Applicant;
- (2) the names, addresses, telephone numbers, and email addresses of all consultants, if any, acting on behalf of the Applicant with respect to the filing of the Application;
- (3) a general description of the proposed work and the purposes and intent of the proposed facility. The scope and detail of such description shall be appropriate to the nature and character of the physical work to be performed, with special emphasis on those matters likely to be affected or impacted by the physical work proposed;
- (4) detailed construction drawings regarding the proposed use of the ROW;

- (5) to the extent the proposed facility involves Collocation on a Pole, Decorative Pole, or Support Structure, a structural report performed by a duly licensed engineer in South Carolina evidencing that the Pole, Decorative Pole, or Support Structure will structurally support the Collocation, or that the Pole, Decorative Pole, or Support Structure may and will be modified to meet structural requirements, in accordance with Applicable Codes;
- (6) for any new aboveground facilities, visual depictions or representations if such are not included in the construction drawings;
- (7) information indicating the approximate horizontal and vertical locations, relative to the boundaries of the ROW, of the Small Wireless Facility for which the Application is being submitted;
- (8) if the Application is for the installation of a new Pole or replacement of a Decorative Pole, a certification that the Wireless Provider has determined after diligent investigation that it cannot meet the service objectives of the Application by Collocating on an existing Pole or Support Structure on which:
 - a. the Wireless Provider has the right to Collocate subject to reasonable terms and conditions; and
 - b. such Collocation would be Technically Feasible and would not impose significant additional costs. The Wireless Provider shall certify that it has made such a determination in good faith, based on the assessment of an engineer licensed in South Carolina, and shall provide a written summary of the basis for such determination;
- (9) if the Small Wireless Facility will be Collocated on a Pole or Support Structure owned by a third party, other than a Municipality Pole, a certification that the Wireless Provider has permission from the owner to Collocate on the Pole or Support Structure;
- (10) an affirmation that the Applicant is, on the same date, submitting applications for the permits identified in the list the Municipality maintains pursuant to Section 3(b) of this Ordinance;
- (11) any additional information reasonably necessary to demonstrate compliance with the criteria set forth in Section 4(f) of this Ordinance; and
- (12) for any Applicant that is not a Wireless Services Provider, an attestation that a Wireless Services Provider has requested in writing that the Applicant Collocate the Small Wireless Facilities or install, modify, or replace the Pole at the requested location.
- (13) ***Routine Maintenance and Replacement.*** An Application shall not be required for: (1) routine maintenance; (2) the replacement of Small Wireless

Facilities with Small Wireless Facilities that are substantially similar or the same size or smaller; or (3) the installation, placement, maintenance, operation, or replacement of Micro Wireless Facilities that are suspended on cables that are suspended between Poles or Support Structures in compliance with Applicable Codes by a Wireless Provider that is authorized to occupy the ROW and that is remitting a consent, franchise, or administrative fee pursuant to S.C. Code Ann. § 58-9-2230. Notwithstanding the foregoing, the Municipality may require that prior to performing any activity described above, an Applicant must apply for and receive a permit for work that requires excavation or closure of sidewalks or vehicular lanes within the ROW for such activity. Such a permit must be issued to the Applicant on a nondiscriminatory basis upon terms and conditions that are consistent with Applicable Codes and that apply to the activities of any other Person in the ROW that require excavation or the closing of sidewalks or vehicular lanes.

- (14) **Information Updates.** Any amendment to information contained in an Application shall be submitted in writing to the Municipality within ten (10) business days after the change necessitating the amendment.
 - (15) **Consolidated Application.** An Applicant seeking to Collocate Small Wireless Facilities may submit a single consolidated Application, provided that such a consolidated Application shall be for a geographic area no more than two miles in diameter and for no more than thirty Small Wireless Facilities. In such case, the Applicant may receive a single Permit for the Collocation of multiple Small Wireless Facilities. The denial of one or more Small Wireless Facilities in a consolidated Application must not delay processing of any other Small Wireless Facilities in the same consolidated Application. Solely for purposes of calculating the number of Small Wireless Facilities in a consolidated Application, a Small Wireless Facility includes any Pole on which such Small Wireless Facility will be Collocated.
- (E) **Interference with Public Safety Equipment.** A Small Wireless Facility shall be operated and maintained in a manner that does not interfere with public safety (police, traffic control, fire and emergency services) equipment.

5.18.4. ACTION ON PERMIT APPLICATION

- (A) Review of Small Wireless Facility Applications. The City shall review the Application for a Small Wireless Facility permit for conformity with applicable requirements of this Ordinance, and shall issue a permit on nondiscriminatory terms and conditions subject to the following requirements:

Notice. Within ninety (90) days following written notice from the City, a Wireless Services Provider or a Wireless Infrastructure Provider shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change or alter the position of any Wireless Facilities or Wireless Support Structures within the Rights-of-Way whenever the City, in its reasonable discretion, has determined that such removal, relocation, change or alteration, is reasonably necessary for the construction, repair, maintenance, or installation of any City improvement in or upon, or the operations of the City in or upon, the Rights-of-Way.

(b) **Emergency Removal or Relocation of Facilities.** The City retains the right to cut or move any Wireless Facility or Wireless Support Structure located within its Rights-of-Way as the City, in its reasonable discretion, may determine to be necessary, appropriate, or useful in response to any public health or safety emergency. If circumstances permit, the City shall notify the Wireless Services Provider or the Wireless Infrastructure Provider and provide opportunity to move its own Wireless Facilities or Wireless Support Structure prior to the City cutting or removing a Wireless Facility or Wireless Support Structure and the City shall notify the Wireless Services Provider or the Wireless Infrastructure Provider after cutting or removing a Wireless Facility.

(c) **Abandonment of Facilities.** Upon abandonment of a Wireless Facility or Wireless Support Structure within the City Rights-of-Way, the Wireless Services Provider or the Wireless Infrastructure Provider shall notify the City within ninety (90) days of such abandonment. Following receipt of such notice the City may direct the Wireless Services Provider or the Wireless Infrastructure Provider to remove all or any portion of the Wireless Facility or Wireless Support Structure if the City, in its sole discretion, determines that such removal will be in the best interests of the public health, safety, and welfare.

(d) **Abandonment by Inaction.** At any point when a Wireless Services Provider or a Wireless Infrastructure Provider fails to pay any required Fee, or annual payment to the City, and fails to respond within sixty (60) days to a written inquiry from the City as to whether the Wireless Services Provider or the Wireless Infrastructure Provider intends to continue to operate a Wireless Facility or Wireless Support Structure, for whatever reason, the Wireless Facility shall be deemed abandoned and the City may, at its sole option, remove all or any portion of the Wireless Facility or Wireless Support Structure, or take other action as authorized by law, including recovery of actual costs incurred in removing the Wireless Facility or Wireless Support Structure.

5.18.5. SECTION 12.8 ATTACHMENT TO CITY-OWNED UTILITY POLES IN THE COVERED AREAS.

(a) **Annual Rate.** The rate to place a Small Wireless Facility on a City-Owned Pole in Covered Areas shall be fifty (\$50.00) dollars per year per wooden pole or two hundred (\$200.00) dollars per year for all other City-Owned Poles. This rate is in addition to reimbursement to the City for any expenses for make-ready work. The City reserves the right to require a pole attachment agreement to further define the terms and conditions of attachments to City-Owned Poles. The rates specified in this section shall not apply to poles owned, or operated and accounted for as an asset of, a municipal electric utility.

(b) **Cease Payment.** A Wireless Services Provider or a Wireless Infrastructure Provider is authorized to remove its facilities at any time from a City-Owned Pole in Covered Areas and cease paying the annual rate to the City as of the next due date for payment following the removal.

(c) **Make-Ready.** For City-owned Utility Poles in Covered Areas, the Applicant shall reimburse the City for expenses for any reasonable make-ready work. The City shall provide a good faith estimate for any make-ready work necessary to enable the pole to support the requested Small Wireless Facility, including pole replacement if necessary, within sixty (60) days after receipt of a completed request. Make-ready work including any pole replacement shall be completed within sixty (60) days of written acceptance of the good faith estimate by the Wireless Services Provider or the Wireless Infrastructure Provider.

(d) **Municipal Utilities Excluded.** Nothing in this section shall be construed to affect the authority of a municipal electric utility to deny, limit, restrict, or determine the rates, Fees, terms, and conditions for the use of or attachment to a Utility Pole owned, or operated and accounted for as an asset of, a municipal electric utility.

Section 12.9 Severability.

In the event any title, subtitle, section, subsection, subdivision, paragraph, subparagraph, item, sentence, clause, phrase, or work of this Ordinance is declared or adjudged to be invalid or unconstitutional, such declaration or adjudication shall not affect the remaining portions of the Ordinance which shall remain in full force and effect as if the portion so declared or adjudged invalid or unconstitutional was not originally a part of this Ordinance.

- (A) Review Deadline. If the City fails to act on an Application within the sixty (60) day review period (or within the thirty (30) day review period for an amended Application), the Applicant may provide notice that the time period for acting has lapsed and the Application is then deemed approved.
- (B) Review of Eligible Facilities Requests. Notwithstanding any other provisions of this Ordinance, the City shall approve and may not deny Applications that constitute eligible facilities requests for modification of an eligible support structure that does not substantially change the physical dimensions of such structure as provided in 47 CFR 1.40001, within sixty (60) days according to the procedures established under 47 CFR 1.40001(c).
- (C) Compensation. Subject to the limitations set forth in Section 3(h) herein, every permit shall include as a condition the Applicant's agreement to pay such lawful franchise Fees, business license taxes, administrative Fees and consent Fees as are permitted under applicable South Carolina and federal law. The Applicant shall also pay all applicable ad valorem taxes, service Fees, sales taxes, or other taxes and Fees as may now or hereafter be lawfully imposed on other businesses within the City.

5.18.6. REQUIREMENTS FOR SMALL WIRELESS FACILITIES IN COVERED AREAS

- (A) Administrative Review. The City shall perform an administrative review of permit Applications including the location or installation of new, modified, or replacement Utility Poles and/or Wireless Support Structures and the attachment of Wireless Facilities and equipment on Utility Poles or Wireless Support Structures. Review factors, in addition to location, shall include the size, shape, color, texture, and materials of the structures and attachments.
 - (1) Wireless Facilities shall be designed to not be significantly more readily apparent or plainly visible (to a reasonable person of ordinary sensibilities) from Covered Areas than existing utility structures, poles and equipment located within five hundred (500) linear feet on the same Covered Area as the subject Utility Pole or Wireless Support Structure.
 - (2) Where Small Wireless Facilities are determined to be appropriate, the use of reasonable stealth and concealment treatments, low profile equipment and control boxes, and screening shall be required to avoid significant negative impacts on the character and visual aesthetics of the area. However, such requirements may be waived by the City upon a showing that the particular location of a Small Wireless Facility does not warrant stealth or concealment treatments or imposes an excessive expense. The waiver shall be granted or denied within forty-five (45) days after the date of the request.

- (3) Supplemental review districts identified in Section 5(c) and listed in Appendix A may be subject to a higher level of review.
- (B) Maximum Height of Permitted Use
- (1) Wireless Facilities shall be designed to not be significantly more readily apparent or plainly visible (to a reasonable person of ordinary sensibilities) from Covered Areas than existing utility structures, poles and equipment located within five hundred (500) linear feet on the same Covered Area as the subject Utility Pole or Wireless Support Structure.
 - (2) Where Small Wireless Facilities are determined to be appropriate, the use of reasonable stealth and concealment treatments, low profile equipment and control boxes, and screening shall be required to avoid significant negative impacts on the character and visual aesthetics of the area. However, such requirements may be waived by the City upon a showing that the particular location of a Small Wireless Facility does not warrant stealth or concealment treatments or imposes an excessive expense. The waiver shall be granted or denied within forty-five (45) days after the date of the request.
 - (3) Supplemental review districts identified in Section 5(c) and listed in Appendix A may be subject to a higher level of review.
- (C) Supplemental Review Districts. Collocated Small Wireless Facilities and new or modified Utility Poles or Wireless Support Structures located in supplemental review districts shall be a conditional use and subject to the design and aesthetic requirements and review processes for structures specified in Zoning Ordinance Section 6.10-2 establishing the supplemental review district(s) in addition to the requirement of this Article, provided that the City will work in good faith with the Applicant to accommodate the installation of Collocated Small Wireless Facilities and new or modified Utility Poles or Wireless Support Structures in supplemental review districts to the fullest extent practicable. The City reserves its right to maintain and implement the following types of supplemental review districts.
- (1) Underground Districts. A Wireless Services Provider or a Wireless Infrastructure Provider shall comply with nondiscriminatory requirements that prohibit electric utilities, telecommunications or cable providers from installing above-ground structures in the Covered Area in these districts. Nothing in this section shall prohibit the use or replacement of existing Utility Poles or Wireless Support Structures in Underground Districts for the Collocation of Small Wireless Facilities subject to administrative review by the

zoning administrator, appropriate design and concealment and a finding that such use does not increase the height by more than three (3) feet.

- (2) Historic and Design Districts. As a condition for approval of new Small Wireless Facilities or new Wireless Support Structure in a Historic District or a Design District, the City requires that a Wireless Services Provider or a Wireless Infrastructure Provider comply with the design and aesthetic standards of the Historic District or Design District to minimize the impact to the aesthetics in a Historic District or on a Design District's Decorative Poles. If design and concealment treatments are determined on review by the City to be insufficient to mitigate harm to the Historic District or Design District, the Application may be denied.

This section may not be construed to limit a municipality's authority to enforce historic preservation zoning regulations consistent with the preservation of local zoning authority under 47 U.S.C. Section 332(c)(7), the requirements for facility modifications under 47 U.S.C. Section 1455(a), or the National Historic Preservation Act of 1966 (54 U.S.C. Section 300101 et seq.), and the regulations adopted to implement those laws.

- (D) Appeals, Special Exceptions and Variance Requirements. Appeals of administrative decisions and requests for special exceptions and variances from the provisions of this Ordinance, when strict application would result in an unnecessary hardship or in the inability to deploy needed Small Wireless Facilities, shall be heard and decided by the Board of Zoning Appeals or equivalent board for architectural, design or historical district reviews. An applicant seeking a Special Exception to construct a new Decorative Pole, Utility Pole or other Wireless Support Structure to Collocate a Small Wireless Facility in an Underground District shall demonstrate, including certification through an engineer, that it has diligently attempted to locate the proposed Decorative Pole, Utility Pole, Wireless Support Structure, or Small Wireless Facility outside of the Underground District and that placement of the Decorative Pole, Utility Pole, Wireless Support Structure, or Small Wireless Facility within the Underground District is necessary to provide the needed wireless coverage or capacity, and one or more of the following conditions exist supporting a Special Exception:
 - (1) No existing Utility Pole or Wireless Support Structure is located within the location search radius or to the extent a Utility Pole or Wireless Support Structure is located within the search radius, such Utility Pole or Wireless Support Structure:

- a. Is not available for Collocation under commercially reasonable rates, terms, and conditions;
 - b. Cannot accommodate the Collocation of the Small Wireless Facility and meet the technical requirements necessary to deliver adequate wireless service coverage or capacity; or
 - c. Would require modifications exceeding the three (3) feet height limitation imposed in section 5(c)(i).
- (2) The only available option to deliver adequate wireless service coverage or capacity in the search radius requires modifications to an existing Utility Pole or Wireless Support Structure exceeding the three (3) feet height limitation imposed in section 5(c)(i) or the installation of a new Utility Pole or Wireless Support Structure for Collocation of a Small Wireless Facility, or
- (3) The applicant has demonstrated other circumstances that, in the reasonable discretion of the [board, etc.], warrant a special exception or variance.

The Applicant shall abide by the design, stealth and concealment treatments imposed as conditions of the special exception.

- (E) Existing Supplemental Review Districts. Supplemental review districts approved by the City as of the effective date of this Ordinance are listed in Appendix A. The Code provisions authorizing the district, applicable design guidelines or manual, review authority and appeal jurisdiction are specified in Appendix A. Nothing in this Ordinance shall prohibit or otherwise limit the City from establishing additional supplemental review districts, provided however, that facilities and structures for which a permit was approved or deemed approved pursuant to this Ordinance prior to the establishment of the additional supplemental review district remain subject to the provisions of this Ordinance, including routine maintenance and replacement of those facilities and structures as set out in Section 3(e)(i) and (ii) of this Ordinance, and not to any provisions otherwise applicable to the additional supplemental review district. If a Wireless Services Provider or a Wireless Infrastructure Provider voluntarily replaces such facilities in a manner that does not comply with Section 3(e)(ii) of this Ordinance, or if a Wireless Services Provider or a Wireless Infrastructure Provider voluntarily relocates such facilities, such replacement or relocation is subject to the then-existing provisions and requirements of the additional supplemental review district.
- (F) Repair of Damage. A Wireless Services Provider or a Wireless Infrastructure Provider shall repair all damage to a City Right-of-Way directly caused by the activities of the Wireless Services Provider or the Wireless Infrastructure

- Provider, while occupying, installing, repairing, or maintaining Wireless Facilities, Wireless Support Structures, City Utility Poles, or Utility Poles and to return the Right-of-Way to its functional equivalence before the damage. If the Wireless Services Provider or the Wireless Infrastructure Provider fails to make the repairs required by the City within forty-five (45) days after written notice, unless the City and the Wireless Services Provider or the Wireless Infrastructure Provider agree in writing to a longer time period, the City may undertake those repairs and charge the applicable party the reasonable and documented cost of the repairs. The City may maintain an action to recover the costs of the repairs.
- (G) Design Standards. The purpose of the design standards is to promote cleanly organized and streamlined facilities using the smallest and least intrusive means available to provide wireless services to the community. All Wireless Facilities in the covered area shall comply with all applicable provisions in this Article. In the event that any other law, regulation, or code requires any more restrictive structural design and/or construction requirements, the most restrictive requirement will control. All Small Wireless Facilities (“SWF’s”) shall
- (1) emulate an architectural or landscape feature typical of, or appropriate to, the surrounding area;
 - (2) complement the style, height, bulk mass, material and color of existing buildings, structures, vegetation, or uses within the surrounding area;
 - (3) preserve existing vegetation and scenic view sheds;
 - (4) respect existing topography, including minimizing the extent to which the proposed SWF’s would be a dominant feature upon a hill, crest, ridgeline, or other topographical high point;
 - (5) conceal internally all wiring and antenna equipment
 - (6) match color of SWF equipment with existing poles, buildings, and background; and
 - (7) use decorative metal or fiberglass supports consistent with redevelopment or aesthetic efforts in the area.

5.18.7. EFFECT OF PERMIT

- (A) Authority Granted: No Property Right or Other Interest Created. A permit from the City authorizes an Applicant to undertake only certain activities in accordance with the Ordinance, and does not create a property right or grant any authority whatsoever to the Applicant to impinge upon the rights of others who may already have an interest in the Covered Area.
- (B) Duration. Unless construction has actually begun and is diligently pursued to completion at that point, no permit for construction issued under this Ordinance

shall be valid for a period longer than twelve (12) months unless both City and Applicant agree to a reasonable extension and all required Fees are paid for the term regardless of construction. The inability of the Applicant to obtain electrical power or backhaul transport services to serve the Wireless Facility such that it is operational within the twelve (12) months due to the action or inaction of third-party utility providers shall not result in the invalidity of the permit.

5.18.8. REMOVAL, RELOCATION OR MODIFICATION OF A SMALL WIRELESS FACILITY IN THE ROW.

- (A) Notice. Within ninety (90) days following written notice from the City, a Wireless Services Provider or a Wireless Infrastructure Provider shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change or alter the position of any Wireless Facilities or Wireless Support Structures within the Rights-of-Way whenever the City, in its reasonable discretion, has determined that such removal, relocation, change or alteration, is reasonably necessary for the construction, repair, maintenance, or installation of any City improvement in or upon, or the operations of the City in or upon, the Rights-of-Way.
- (B) Emergency Removal or Relocation of Facilities. The City retains the right to cut or move any Wireless Facility or Wireless Support Structure located within its Rights-of-Way as the City, in its reasonable discretion, may determine to be necessary, appropriate, or useful in response to any public health or safety emergency. If circumstances permit, the City shall notify the Wireless Services Provider or the Wireless Infrastructure Provider and provide opportunity to move its own Wireless Facilities or Wireless Support Structure prior to the City cutting or removing a Wireless Facility or Wireless Support Structure and the City shall notify the Wireless Services Provider or the Wireless Infrastructure Provider after cutting or removing a Wireless Facility.
- (C) Abandonment of Facilities. Upon abandonment of a Wireless Facility or Wireless Support Structure within the City Rights-of-Way, the Wireless Services Provider or the Wireless Infrastructure Provider shall notify the City within ninety (90) days of such abandonment. Following receipt of such notice the City may direct the Wireless Services Provider or the Wireless Infrastructure Provider to remove all or any portion of the Wireless Facility or Wireless Support Structure if the City, in its sole discretion, determines that such removal will be in the best interests of the public health, safety, and welfare.
- (D) Abandonment by Inaction. At any point when a Wireless Services Provider or a Wireless Infrastructure Provider fails to pay any required Fee, or annual payment to the City, and fails to respond within sixty (60) days to a written inquiry from

the City as to whether the Wireless Services Provider or the Wireless Infrastructure Provider intends to continue to operate a Wireless Facility or Wireless Support Structure, for whatever reason, the Wireless Facility shall be deemed abandoned and the City may, at its sole option, remove all or any portion of the Wireless Facility or Wireless Support Structure, or take other action as authorized by law, including recovery of actual costs incurred in removing the Wireless Facility or Wireless Support Structure.

5.18.9. ATTACHMENT TO CITY-OWNED UTILITY POLES IN THE COVERED AREAS.

- (A) Annual Rate. The rate to place a Small Wireless Facility on a City-Owned Pole in Covered Areas is found in the City's fee schedule. This rate is in addition to reimbursement to the City for any expenses for make-ready work. The City reserves the right to require a pole attachment agreement to further define the terms and conditions of attachments to City-Owned Poles.
- (B) Cease Payment. A Wireless Services Provider or a Wireless Infrastructure Provider is authorized to remove its facilities at any time from a City-Owned Pole in Covered Areas and cease paying the annual rate to the City as of the next due date for payment following the removal.
- (C) Make-Ready. For City-owned Utility Poles in Covered Areas, the Applicant shall reimburse the City for expenses for any reasonable make-ready work. The City shall provide a good faith estimate for any make-ready work necessary to enable the pole to support the requested Small Wireless Facility, including pole replacement if necessary, within sixty (60) days after receipt of a completed request. Make-ready work including any pole replacement shall be completed within sixty (60) days of written acceptance of the good faith estimate by the Wireless Services Provider or the Wireless Infrastructure Provider.
- (D) Municipal Utilities Excluded. Nothing in this section shall be construed to affect the authority of a municipal electric utility to deny, limit, restrict, or determine the rates, Fees, terms, and conditions for the use of or attachment to a Utility Pole owned, or operated and accounted for as an asset of, a municipal electric utility.

5.18.10. SEVERABILITY.

In the event any title, subtitle, section, subsection, subdivision, paragraph, subparagraph, item, sentence, clause, phrase, or work of this Ordinance is declared or adjudged to be invalid or unconstitutional, such declaration or adjudication shall not affect the remaining portions of the Ordinance which shall remain in full force and effect as if the portion so declared or adjudged invalid or unconstitutional was not originally a part of this Ordinance.

