

Chapter 405

ZONING REGULATIONS

Cross References-As to subdivision regulations, see ch. 410; as to manufactured/mobile homes, see ch. 415; as to non-conformities, see art. V of ch. 405.

ARTICLE I

General Provisions

Section 405.010. Title—Designation. [Ord. No. 227 §1(94.010), 10-4-1999]

- A. This Chapter shall be known and may be cited and referred to as the "Diamond Zoning Ordinance".
- B. Supplementary ordinances include subdivision regulations, set out in Chapter 410, and manufactured/ mobile home regulations, set out in Chapter 415 of this Title.

Section 405.020. Authority To Zone-Purpose. [Ord. No. 227 §1(94.050), 10-4-1999]

- A. The legislative body of all cities, towns and villages is empowered to zone "for the purpose of promoting health, safety, morals, or the general welfare of the community. . ." RSMo. 89.020.
- B. "Such regulations shall be . . . designed to lessen congestion in the streets; to secure safety from fire, panic or other dangers; to promote health and general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to preserve features of historical significance; to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements. Such regulations shall be made with . . . a view of conserving the values of buildings and encouraging the most appropriate use of land throughout such municipality." RSMo. 89.040.

Section 405.030. Definitions. [Ord. No. 227 §1(94.020), 10-4-1999; Ord. No. 271, 10-9-2006]

- A. The phrase "*used for*" also means "*designed for*" and vice versa; words used in the present tense include the future; words in the singular include the plural and vice versa; words indicating the masculine include the feminine and vice versa; and the word "*shall*" is mandatory.
- B. For the purpose of these regulations, certain terms and words are hereby defined as follows:

ACCESSORY BUILDING — A subordinate building having a use customarily incidental to and located on the same lot as the main building. A building housing an

accessory use is considered a part of the main building when it has any part of a wall in common with the main building or is under an extension of the main roof.

ACCESSORY USE — A use incidental to the principal use of a building. In buildings restricted for residential use, an office used for family occupations and workshops not conducted for compensation shall be deemed accessory uses.

ADJACENT — For purposes of this chapter means to touch or be separated only by a public street, alley or easement.

AGRICULTURAL USE — The growing of crops in the open and the raising of permissible stock and poultry as are incidental to the acreage farmed, provided however, that such land shall consist of at least two (2) acres in one (1) parcel or in contiguous parcels under common ownership or operation. Riding academies, livery or boarding stables, or dog kennels shall not be deemed an agricultural use.

ALLEY — A minor permanent public serviceway which is used primarily for vehicular service access to the back or the side of properties otherwise abutting on a street.

ALTERATION — Any addition, removal, extension or change in the structural parts of a building, whether by extending on a side or by increasing in height, or the moving from one (1) location or portion to another.

APARTMENT HOUSE — A building arranged, intended or designed to be occupied by three (3) or more families living independently of each other.

BASEMENT — A story partly or wholly underground. For purposes of height measurement, a basement shall be counted as a story where more than one-half (1/2) of its height is above the average level of the adjoining ground.

BILLBOARD, SIGN BOARD — Any sign or advertisements used as an outdoor display for the purpose of making anything known, the origin or point of sale of which is remote from said display.

BUILDING — The word "*building*" shall be construed to include any structure.

BUILDING AREA — The total of areas taken on a horizontal plane at the main grade level of the principal building and all accessory buildings exclusive of uncovered porches, terraces and steps.

BUILDING, FRONT LINE OF — The line of that face of the building nearest the front line of the lot. This face includes sun parlors and covered porches, whether enclosed or not, but does not include steps.

BUILDING, HEIGHT OF — The vertical distance measured from the average elevation of the proposed finished grade at the front of the building to the highest point of the roof for flat roofs, to the deck line of mansard roofs and to the mean height between eaves and ridge for gable, hip or gambrel roofs.

BUILDING LINE — A line across a lot establishing the minimum open space to be provided between the buildings and structures and the street property line.

BUILDING, PRINCIPAL — A building in which is conducted the main or principal use of the lot on which said building is situated.

CHILD CARE FACILITY — A house or other place conducted or maintained by any person who advertises or holds himself/herself out as providing care for more than four (4) children under the age of seventeen (17) during the daytime, for compensation or otherwise, except those operated by a school system or in connection with a business establishment as a convenience for its customers or employees; provided however, that this determination shall not apply to any person, firm or institution not required to be licensed under Missouri law.

1. *Day care home.* A family home, occupied as a permanent residence by the day care provider, in which family-like care is given to no more than ten (10) children, not related to the day care provider, for any part of the twenty-four (24) hour day.
2. *Day care center.* A facility other than the provider's permanent residence, or separate from the provider's permanent residence, or separate from the provider's living quarters, where care is provided for children for any part of the twenty-four (24) hour day.

CITY CLERK — The Diamond City Clerk or designated representative.

COMMUNICATION TOWER — A tower or "cell site" constructed for the purpose of providing a means for continuous communication. The tower could be for cellular telephone, cable television, microwave communication, or any medium of communication.

COMPREHENSIVE PLAN — A plan for the development of all or part of the territorial jurisdiction of the City, as adopted in accordance with this regulation and the laws of the State, including studies pertaining to land use, schools, parks, subdivisions, streets and public buildings.

COVERAGE — That percentage of the plot or lot area covered by the building area.

CUL-DE-SAC — A short street having one (1) end open to traffic and being permanently terminated within the plat by a vehicular turnaround.

DEVELOPMENT — Any manmade change to improved or unimproved real estate including, but not limited to, building or other structures, mining, dredging, filling, grading, paving, extraction or drilling operations.

DOG KENNEL — The keeping of more than three (3) dogs that are more than six (6) months old.

DUMP — A parcel of land used primarily for the disposal by abandonment, dumping, burial, burning or any other mean and for whatever purpose of garbage, sewage, trash, refuse, junk, discarded machinery, vehicles or parts thereof, or waste material of any kind.

DWELLING, RESIDENCE — A building or portion thereof designed exclusively for residence occupancy, including one (1) or more family residences, but not including hotels, boarding, and rooming houses.

1. *Dwelling, one-family.* A detached building designed exclusively for occupancy by one (1) family.
2. *Dwelling, two-family.* A building exclusively for occupancy by two (2) families living independently of each other.
3. *Dwelling, multiple-family.* A building or portion of a building designed for or occupied by three (3) or more families living independently of each other.

EASEMENT — A grant by the property owner of right of use of some, part of or all of the subject property for some specified purpose, said grant being to and for the use of the public, a corporation or persons.

FAMILY — One (1) or more persons related by blood or marriage, including adopted children, or a group of not to exceed five (5) persons not all related by blood or marriage, occupying premises and living as a single no-profit housekeeping unit, as distinguished from a group occupying a boarding or lodging house, hotel, club or similar dwelling for group use.

FILLING STATION — Any area of land, including any structure or structures thereon, used or designed to be used for the supply of gasoline or oil or other fuel (not including liquid petroleum gasses) for the propulsion of vehicles.

FRONTAGE — All the property fronting one (1) side of street between the two (2) nearest intersecting streets or other natural barrier.

GARAGE, PRIVATE — An enclosed space for the storage of one (1) or more motor vehicles, provided that no business, occupation or service is conducted for profit therein or more than one (1) car is leased to a non-resident of the premises.

GROUP HOME — Any home in which eight (8) or fewer unrelated mentally or physically handicapped persons reside, and may include two (2) additional persons acting as houseparents or guardians who need not be related to each other or to any of the mentally or physically handicapped persons residing in the home.

HABITABLE FLOOR — Any floor used for living which includes working, sleeping, eating, cooking or recreation or a combination thereof. A floor used only for storage purposes is not a "habitable floor".

HIGHEST ADJACENT GRADE — The highest natural elevation of the ground surface prior to the construction next to the proposed walls of a structure.

HOME OCCUPATION — Any occupation or profession carried on by the inhabitants which is clearly incidental and secondary to the use of the dwelling for dwelling purposes, which does not change the character thereof and which is conducted entirely within the main or accessory buildings, provided that incidental trading in merchandise is carried on and in connection with which there is no display of merchandise or sign other than one (1) non-illuminated nameplate not more than two (2) square feet in area, which

said sign is attached to the main or accessory building; and further provided, that no mechanical equipment is used, nor any activity conducted, that creates any noise, dust, odor, or electrical disturbances beyond the confines of the lot on which said occupation is conducted.

JUNK YARD — A lot, land or structure or part thereof used primarily for the collecting, storage and sale of waste paper, rags, scrap metal or discarded material or for the collecting, dismantling, storage and salvaging of machinery or vehicles not in running condition.

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

LOT — A unit of land defined as such for the purpose of development or the transfer of ownership occupied or to be occupied by a building, or unit group of buildings, and accessory buildings together with such yard or other area required by this regulation and having its principal frontage upon a street or as approved by the City.

1. *Lot, corner.* A lot, or portion thereof, not greater than one hundred (100) feet in width and situated at the intersection of two (2) or more streets having an angle of intersection of not more than one hundred thirty-five degrees (135°).
2. *Lot, interior.* A lot whose side lines do not abut upon any street.
3. *Lot, through.* A lot other than a corner lot abutting upon two (2) or more streets.

LOT DEPTH — The horizontal distance between the front and rear lot line measured along the median between the two (2) side lot lines.

LOT LINE — The line bounding a lot as defined herein.

LOT WIDTH — The horizontal distance between the side lot lines measured at right angles to the lot depth at the building line.

MOBILE HOME — A manufactured home constructed prior to June 15, 1976, and therefore not subject to HUD construction requirements. No mobile homes shall be permitted in the City of Diamond since they may create a safety hazard.

MOBILE HOME/MANUFACTURED HOME — A manufactured residential structure constructed according to the current standards established by the United States Department of Housing and Urban Development (HUD) for constructing such structures and shall bear a seal issued by the HUD as required by the Revised Statutes of Missouri, Chapter 700.

1. Class A manufactured home shall:
 - a. Be a new manufactured which has not been previously titled to a retail purchaser.

- b. Be comprised of at least two (2) enclosed parallel sections, each of not less than twelve (12) feet in width and not less than fifty (50) feet long.
 - c. Have exterior siding and roof similar in appearance to siding and roof materials used on conventional site-built single family residences.
 - d. Be oriented on the lot so the longest facade is parallel to the frontage or private street.
 - e. Have either an attached or detached garage or carport.
 - f. Have a finished porch or deck for each exterior door.
2. Class B manufactured home shall:
- a. Be comprised of at least two (2) enclosed parallel sections with a total living area of not less than nine hundred (900) square feet.
 - b. Shall have the same exterior siding and roofing, orientation, carport or garage, and porch or deck requirements as specified for Class A manufactured homes.
3. *Class C manufactured home.* All other manufactured homes not included in Class A or Class B above which shall have the same exterior siding and roofing requirements, orientation, carport or garage, and porch or deck for each exterior door, as specified for Class A manufactured homes.
4. *Manufactured/mobile home park.* A parcel, or contiguous parcels, or land which has been divided into two (2) or more lots for rent and the placement of manufactured homes.
5. *Manufactured/mobile home space.* A plot of ground within a manufactured/mobile home park which is designated for and designed as the location for only one (1) manufactured home and not used for any other purpose whatsoever, other than the customary accessory use thereof.
6. *Permit.* A written authorization of the City to allow location, establishment and/or maintenance of a manufactured/mobile home park within the City limits.

MODULAR HOME — A manufactured residential structure built to a nationally-recognized and accepted construction standard published by the Building Officials and Code Administrators International, Inc. (BOCA) or the International Conference of Building Officials (ICBO) and the unit is inspected and certified at the factory that it meets said standard. A modular home shall have exterior structure materials and appearance similar to the customary single-family structures in the neighborhood.

MOTOR VEHICLE REPAIR SHOP — A building, or portion of a building, arranged, used or intended to be used for making repairs to motor vehicles.

NON-CONFORMING USE — A building, structure or use of land which does not conform to the regulations of the district or zone in which it is situated.

OVERLAY DISTRICT — A district in which additional requirements act in conjunction with the underlying zoning district or districts. The original zoning district designation and requirements do not change.

PERMANENT FOUNDATION — All residential structures, including modular and manufactured homes not in a manufactured/mobile home park, shall be attached to a permanent foundation consisting of a concrete footing a minimum of eighteen (18) inches below ground and eighteen (18) inches in width, a concrete or concrete block foundation a minimum of eight (8) inches (or in the case of manufactured homes, four (4) inches) in width and of sufficient height to provide and permit access to a crawl space under the structure, the only exception to the crawl space requirement being a residential structure built on a concrete slab. Manufactured homes shall in addition be anchored to the ground in accordance with HUD specifications. (See Section 415.110)

PERSON — Any individual, firm, trust, entity, partnership, public or private association or corporation.

PLAT — A map, plan or chart of the City indicating the subdivision or resubdivision of land intended to be filed for record and showing the location and boundaries of individual properties.

1. *Plat, final.* A finished drawing showing completely and accurately all legal and engineering information and certification necessary for recording, including the bill of assurance.
2. *Plat, preliminary.* A drawing which shows the proposed layout of a subdivision in sufficient detail to indicate unquestionably its workability in all aspects but is not in final form for recording and the details are not completely computed.

SIGN — Any words, numerals, figures, devices, designs or trademarks, by which anything is made known, such as are used to designate an individual, a firm, profession, business or commodity and which are visible from any public street or air.

STORY — That portion of a building included between the surface of any floor and the surface of the next floor above it or, if there be no floor above it, then the space between such floor and ceiling next above it. A top story attic is a half-story when the main line of the eaves is not above the middle of the interior height of such story. The first (1st) story is a half-story when between fifty percent (50%) and seventy-five percent (75%) of the area of its exterior walls are exposed to outside light and air entirely above grade and which exterior walls contain windows or doors permitting the entrance of daylight and outside air.

STREET — Any public or private right-of-way which affords the primary means of access to abutting property.

STREET EASEMENT — All paved, unpaved and utility easements.

STREET LINE — The legal line between street right-of-way and abutting property.

STRUCTURE — Anything constructed or erected which requires location on the ground or attached to something having a location on the ground.

SUBDIVIDER — Any person, individual, firm, partnership, association, corporation, estate or trust, or any other group, entity or combination acting as a unit, dividing or proposing to divide land so as to constitute a subdivision as herein defined and including any agent of the subdivider.

SUBDIVISION — Any division of a lot, tract or parcel of land either by platting or other means into two (2) or more lots or parcels for purpose of transfer of ownership or development, including the combination or recombination of two (2) or more previously platted lots.

TERRITORIAL JURISDICTION — All land lying within the corporate limits of the City of Diamond.

USE — The purposes for which land or a building is arranged, designed or intended, or for which either land or a building is or may be occupied or maintained.

VARIANCE — A variation from a specific zoning requirement applied to a specific piece of property, as distinct from rezoning.

YARD — An open space at grade between a building and the adjoining lot lines unoccupied and unobstructed by any portion of a structure from the ground upward. In measuring a yard for the purpose of determining the width or depth of yard, the least distance between the lot line and the building shall be used.

Section 405.040. Interpretation, Purpose and Conflict. [Ord. No. 227 §1(94.110(E)), 10-4-1999]

In interpreting and applying the provisions of this Chapter the provisions shall be held to be the minimum requirement for the promotion of the public safety, health, convenience, comfort, morals, prosperity and general welfare. It is not the intent of this Chapter to interfere with or abrogate or annul any easements, covenants or other agreements between parties or any Statute, local ordinance or regulation except that if this Chapter imposes a greater restriction or high standard, this Chapter shall control.

ARTICLE II

Designation of Districts and District Provisions

Section 405.050. Establishment of Zoning Districts. [Ord. No. 227 §1(94.110(A)), 10-4-1999; Ord. No. 272, 10-9-2006]

- A. For the purposes of this Chapter, the City of Diamond, Missouri, is divided into the following districts:
1. Residential District, designated as "R-1", "R-1M", "R-2" or "R-3";
 2. Agricultural District, designated as "A";
 3. Commercial District, designated as "C-1" or "C-2"; and

4. Industrial District, designated as "I".

Section 405.060. Zoning Map. [Ord. No. 227 §1(94.110(B)), 10-4-1999]

Said districts are bounded and defined as shown on a map entitled "Zoning Map of the City of Diamond" adopted by the Board of Aldermen and certified by the City Clerk, which accompanies and which, with all explanatory matter thereon, is hereby made a part of the zoning law and regulation of the City. The Zoning Map shall be kept and maintained by the City Clerk and shall be available for inspection and examination by members of the public at all reasonable times as any other public record.

Section 405.070. Rules For Interpretation of District Boundaries. [Ord. No. 227 §1(94.110(C)), 10-4-1999]

- A. Where uncertainty exists with respect to the boundaries of any of the aforesaid districts, the following rules shall apply:
 1. Where district boundaries on the Zoning Map are indicated as approximately following the center lines of streets, streams, highways or railroad, such boundaries shall be deemed to be located at such midpoints;
 2. Where district boundaries are so indicated that they approximately follow lot lines or section lines, such lines shall be construed to be said boundaries.

Section 405.080. Application of Regulations. [Ord. No. 227 §1(94.120), 10-4-1999]

Except as hereafter provided, no building or land shall hereafter be used or occupied and no building or part hereof shall be erected, moved or altered unless in conformity with the regulations herein specified for the district in which it is located.

ARTICLE III
Zoning Districts—Use and Regulations

Section 405.090. Residential District "R-1", "R-2" and "R-3". [Ord. No. 227 §1(94.130), 10-4-1999; Ord. No. 273, 10-9-2006]

- A. *Uses Permitted.* In the "R" District, no building, structure, land or premises shall be used and no building or structure shall be hereafter erected, constructed, reconstructed, moved or altered except for one (1) or more of the following uses:
 1. For "R-1", a site-built dwelling for a single-family; for "R-1M", all uses permitted for R-1, and for single-family modular and Class A manufactured homes; for "R-2", all uses permitted in "R-1" and "R-1M", and two-family units (duplexes) and Class B manufactured homes; for "R-3", multi-family dwellings, apartments, rooming or boarding house, Class C manufactured homes, and mobile home parks.
 2. Public schools and institutions of higher learning, public libraries;
 3. Public parks and public playgrounds;

4. Municipal buildings and philanthropic or eleemosynary institutions subject to review and permit by the Planning and Zoning Commission to ensure conformity to the intent of this Section;
5. Customary home occupations, provided that there shall be no external evidence of such occupations except a small announcement of profession not over two (2) square feet in area attached to the main or accessory building;
6. Churches or similar places of worship, with accessory structures;
7. Temporary buildings for uses incidental to construction work or hardship situations, which buildings shall be immediately adjacent to said construction work or permanent dwelling and which buildings shall be removed upon completion or abandonment of the construction work or hardship case or a twelve (12) month period, whichever occurs first, and upon issuance of a special use permit; and
8. Other customary accessory uses and buildings, provided such uses are incidental to the principal use and do not include any activity commonly conducted as a business.
9. *Group homes.* No group home shall be located within two thousand five hundred (2,500) feet of another group home. The exterior appearance of the home and property shall be in reasonable conformance with the general neighborhood standards. Group homes shall be eleemosynary or not-for-profit in nature.

B. *Required Lot Area For "R-1" And "R-1M" Designation.*

1. Dwelling served by sanitary sewer systems, seven thousand five hundred (7,500) square feet.
2. Dwelling not served by sanitary sewer system, one (1) acre unless a County and/or State Health Officer approves a sanitary system that can be installed on a less-sized lot.

C. *Required Lot Area For "R-2" And "R-3" Designation.*

1. Single-family dwelling served by a sanitary sewer system, seven thousand five hundred (7,500) square feet; and for multi-family dwelling served by a sanitary sewer system, nine thousand (9,000) square feet.
2. Dwelling not served by sanitary sewer system, one (1) acre per family unit unless a County and/or State Health Officer approves a sanitary system than can be installed on a less-sized lot.

D. *Yard Required For "R" District.* Each lot shall have front, side and rear yards, not less than the depth and width following:

1. Front yard depth twenty (20) feet; however, a fifteen (15) foot yard depth on a corner lot may be permitted;

2. Each side yard width shall be no less than eight (8) feet; and
3. Rear yard depth twenty (20) feet; however, a fifteen (15) foot yard depth on a corner lot may be permitted.

E. *Height Limitations.*

1. No building shall be erected or enlarged in "R-1", "R-1M", or "R-2" Districts to exceed two and one-half (2 1/2) stories, excluding the basement, or thirty-five (35) feet.
2. No building shall be erected or enlarged in "R-3" Districts to exceed three (3) stories or forty (40) feet.

F. *Variance.* In the event that a required application for a building permit has been denied by the Building Official, variances to the requirement of this Section may be granted by the Board of Adjustment to ensure conformity with the intent of this Section.

Section 405.100. "A" Agricultural District. [Ord. No. 227 §1(94.140), 10-4-1999; Ord. No. 274, 10-9-2006]

A. *General Description.* This district is intended to provide a zoning area within the jurisdictional limits of the City that is used for agricultural purposes. The property may or may not be undergoing urbanization in the foreseeable future. It is not intended that this district provide a location for a lower standard of residential, commercial or industrial development than is authorized in other districts.

B. *Uses Permitted.* In District "A", no building, structure, land or premises shall be used and no building or structure shall be hereafter erected, constructed, reconstructed, moved or altered except for one (1) or more of the uses listed below:

1. Any use permitted in District "R-1" or "R-1M";
2. Private clubs, provided the site for such club shall be at least two (2) acres in size, and no building or structure shall be located less than fifty (50) feet from a property line;
3. Fish hatcheries, apiaries, aviaries;
4. Fishing lakes and picnic groves, provided no concession or retail sales shall be permitted;
5. Forests and wildlife reservations or similar conversion projects;
6. Hospitals, sanitariums, and homes for the aged;
7. Fur farming for the raising of fur-bearing animals;
8. Mushroom barns and caves;
9. Nurseries, greenhouses, and truck gardens;
10. Philanthropic or eleemosynary institutions;

11. The growing of crops in the open and the raising of permissible stock and poultry as are incidental to the acreage farmed; and
12. Accessory use, including repair shops, sheds, garages, barns, silos, irrigation wells and pumps, bunkhouses and other incidental dwellings, buildings and structures customarily required for farming purposes.

C. *Uses Permitted On Review In District "A"*.

1. Churches or similar places of worship, with accessory structures;
2. Public schools and institutions of higher learning;
3. Public parks, public playgrounds, and recreational areas;
4. Signs or displays, not exceeding two (2) in number advertising the residential, commercial or industrial development of the land on which the sign or display is situated; and
5. Athletic fields.

Section 405.110. "C-1" Neighborhood Commercial District. [Ord. No. 227 §1(94.150), 10-4-1999]

A. *General Descriptions.* The Commercial District is for the conduct of retail trade and to provide personal services to meet the regular needs and for the convenience of people of adjacent residential areas. Because these shops and stores may be an integral part of the neighborhood closely associated with residential, religious, recreational and educational elements, more restrictive requirements for air, light, open space and off-street parking are made than are provided in other Commercial Districts.

B. *Uses Permitted.* In this Commercial District, no building, structure, land or premises shall be used and no building or structure shall be hereafter erected, constructed, reconstructed, moved or altered except for one (1) or more of the uses detailed as follows:

1. Food retail stores;
2. Drug stores;
3. Personal service uses, including shoe repair, beauty parlor, barber shop, professional offices and clinics;
4. Laundromat and dry cleaning outlet;
5. Restaurants, lunch rooms and boarding houses;
6. Communication towers;
7. Accessory retail or service uses that are necessary for convenience of residential districts subject to the review by the Zoning and Planning Commission to ensure conformity to the intent of this Chapter.

- C. *Building Height.* No building shall exceed thirty-five (35) feet or two and one-half (2 1/2) stories in height.
- D. *Required Lot Area.* Served by a sanitary sewer system, seven thousand five hundred (7,500) square feet. All buildings, including accessory buildings, shall not cover more than forty percent (40%) of the lot.
- E. *Overlay District Requirements.* Overlay District requirements may apply to specific sites as specified by the Zoning and Planning Commission.

Section 405.120. "C-2" General Commercial District. [Ord. No. 227 §1(94.155), 10-4-1999]

- A. *General Description.* This Commercial District is intended for the conduct of personal business services and the general retail business of the community. Persons living in the community and in the surrounding trade territory require direct and frequent access. Traffic generated by the uses will be primarily passenger vehicles and only those trucks and commercial vehicles required for stocking and delivery of retail goods.
- B. *Uses Permitted.* In this Commercial District, no building, structure, land or premises shall be used and no building or structure shall be hereafter erected, constructed, reconstructed, moved or altered except for one (1) or more of the uses detailed as follows:
 - 1. All uses permitted in "C-1" Neighborhood Commercial District;
 - 2. Hardware and household appliances sales and repair stores;
 - 3. Clothing and accessory goods stores;
 - 4. Furniture and home furnishings stores;
 - 5. Gift and book stores;
 - 6. Jewelry and watch repair stores;
 - 7. Sporting goods and photo supply stores;
 - 8. Variety stores;
 - 9. Financial institutions;
 - 10. Public recreation and assembly halls, including clubs, lodges, bowling alleys, theaters, billiard or pool parlors;
 - 11. Hotels, motels, and tourist homes;
 - 12. Automobile service stations;
 - 13. Newspaper plants and printing shops;
 - 14. Accessory wholesale and service uses necessary to convenience of general public subject to conditions deemed appropriate by Board of Adjustment to ensure conformity to the intent of this Chapter; and

15. Any other store or shop for retail trade or for rendering personal, professional or business service which does not produce more noise, odor, dust, vibration, blast or traffic than those enumerated above.
- C. No building shall be erected or enlarged to exceed, excluding basement, thirty-five (35) feet. There are no specific lot sizes, front or side yard requirements.
- D. Overlay District requirements may apply to specific sites as determined by the Zoning and Planning Commission.

Section 405.130. "I" Industrial District. [Ord. No. 227 §1(94.160), 10-4-1999]

- A. *General Description.* The Industrial District is intended primarily for the conduct of manufacturing, assembling and fabrication and for warehousing, wholesale and service uses. Communication towers are allowed. These uses do not depend primarily on frequent personal visits of customers or clients but may require accessibility to transportation routes. Overlay District requirements may apply to specific sites as specified by the Zoning and Planning Commission.
- B. *Uses Prohibited.* Those uses are prohibited which may be obnoxious or offensive by reason of emission of odor, dust, smoke, gas, glare, noise or disposal of waste materials.
- C. *Uses Permitted Upon Review.* All uses within this district shall be upon written application filed with the Planning and Zoning Commission for approval of a contemplated use within said district, said application shall be accompanied by the following information:
 1. A plat plan indicating the location of present and proposed buildings, driveways, parking lots and other necessary uses;
 2. Preliminary architectural plans for the proposed building or buildings;
 3. An estimate of the maximum number of employees for the proposed development and the number of shifts during which they would work; and
 4. Any other information the Planning and Zoning Commission may need to adequately consider the effect that the proposed uses may have upon their environment and on the cost of providing municipal services to the area.

ARTICLE IV

Supplementary District Regulations

Section 405.140. Advertising Billboards or Signs. [Ord. No. 227 §1(94.170), 10-4-1999]

- A. In addition to the billboards and signs permitted by the zoning ordinance, when utilized to advertise the business conducted on the premises upon which such sign is located, other billboards and signs may be permitted in the agricultural, commercial and industrial districts subject to the following requirements:
 1. *Size of sign face:* not more than twelve (12) feet in height or thirty (30) feet in length, including trim;

2. *Height of sign:* not more than thirty-five (35) feet from top of sign to ground level;
 3. *Setback:* a minimum of ten (10) feet from street right-of-way;
 4. *Distance apart:* a minimum of five hundred (500) feet on each side of street; and
 5. *Permit fee:* fifty dollars (\$50.00), one-time permit fee required.
- B. Nothing contained in the zoning ordinance or this Section prohibiting the placement of advertising billboards and signs shall be construed to apply to any political party placing an advertising billboard or sign within the City limits in conjunction with an election, provided however, that the placement of any such billboard or sign shall not create a threat to the public health, safety and welfare.
- C. Any advertising billboard or sign placed within the City limits under the exemption created in Subsection (B) of this Section shall be removed within ten (10) days following the election.

Section 405.150. Accessory Buildings. [Ord. No. 227 §1(94.180), 10-4-1999]

- A. If not otherwise regulated by the zoning ordinance, accessory buildings shall be subject to the following requirements:
1. Shall not be located nearer the front lot line than the main building;
 2. Minimum distance from any property line shall be five (5) feet except within utility easements.

Section 405.160. Public Buildings and Utilities. [Ord. No. 227 §1(94.190), 10-4-1999]

Public buildings and utility uses may be permitted in any district subject to such protective restrictions deemed necessary by the Planning and Zoning Commission.

Section 405.170. Area. [Ord. No. 227 §1(94.200), 10-4-1999]

Unless otherwise regulated in the zoning ordinance, on corner lots no fence, wall, hedge, or other structure or planting more than three (3) feet in height shall be erected, placed or maintained within the triangular area formed by the intersecting street lines and a straight line joining said street lines at points which are sufficiently distant from the point of intersection to provide adequate sight distance for vehicles traveling at the design approach speed of the street.

Section 405.180. Annexed Territory. [Ord. No. 227 §1(94.210), 10-4-1999; Ord. No. 275, 10-9-2006]

All territory which may hereafter be annexed to the City shall be classified as agricultural (District "A") until the Planning and Zoning Commission shall appropriately reclassify such territory. There shall be no cost to the property owner for initial zoning upon annexation.

Section 405.190. Vacation of Public Easements. [Ord. No. 227 §1(94.220), 10-4-1999]

Whenever any street, alley or other public easement is vacated, the district classifications or property to which the vacated portions of land accrue shall become the classification of the vacated land.

Section 405.200. Child Care Facility. [Ord. No. 227 §1(94.230), 10-4-1999]

Child care facilities authorized under the zoning ordinance or upon review by the Planning and Zoning Commission shall meet the licensing requirements imposed by Section 210.201, et seq., RSMo., as amended; the rules and regulations propounded by the Division of Family Services under Section 210.221, RSMo.; and the other requirements of the zoning ordinance or approval of a special use permit.

Section 405.210. Public Officials To Provide Information—Authority To Enter Upon Land. [Ord. No. 227 §1(94.240), 10-4-1999]

All public officials shall, upon request, furnish to the Planning and Zoning Commission within a reasonable time all available information it requires for its work. The Commission, its members and employees, in the performance of its functions, may enter upon any land to make examinations and surveys. In general, the Planning and Zoning Commission shall have the power necessary to enable it to perform its functions and promote municipal planning and zoning.

Section 405.220. Park and Open Space Requirement For Dwelling Units Under Residential Zoning. [Ord. No. 227 §1(94.250), 10-4-1999]

Prior to issuance of a building permit, the developer of any residential dwelling units shall dedicate to the City open space and park land equivalent to one (1) acre per each two hundred (200) equivalent population. This equivalent population shall be based on 3.5 people per "R-1" and "R-2" dwelling units and 2.5 people per dwelling unit in "R-3". The park land and open space must be acceptable to the Planning and Zoning Commission and shall be compatible with the City Plan. In lieu of dedicating the open space and park ground to the City, the developer may elect to pay an additional forty dollars (\$40.00) per dwelling unit at the time of issuance of the building permit.

Section 405.230. Communication Tower "Cell Site" Requirements. [Ord. No. 227 §1(94.260), 10-4-1999]

Prior to the issuance of a building permit, a detailed sketch of the proposed tower must be presented to the Planning and Zoning Commission. City property may be used for tower sites, if appropriate. The tower cannot be more than forty-five (45) feet in height. Screening vegetation may be required by the Planning and Zoning Commission. The locations of all towers must be consistent with health, safety and welfare issues within the City limits.

ARTICLE V
Non-Conformities

Section 405.240. Non-Conforming Uses. [Ord. No. 227 §1(94.110(D), 10-4-1999]

- A. A structure or the use of a structure or premises which was lawful before the passage or amendment of this Chapter, October 4, 1999, but which is not in conformity with the provision of these regulations may be continued subject to the following conditions:
1. If such use is discontinued for six (6) consecutive months, any further use of the building premises shall conform to the zoning ordinance. A six (6) month extension may be granted upon review and approval by the Planning and Zoning Board.
 2. Uses or adjuncts thereof which are or become nuisances shall not be entitled to continue as non-conforming uses.

Section 405.250. Non-Conformitie—In General. [Ord. No. 227 §1(94.900), 10-4-1999]

- A. Non-conformities are of three (3) types: non-conforming lots of record, non-conforming structures and non-conforming uses. A definition of each type is as follows:
1. *Non-conforming lot of record.* An unimproved lot which is part of a recorded subdivision or a parcel of land, the deed to which was recorded prior to the adoption of these regulations, and neither said lot nor parcel complies with the lot width or area requirements for any permitted use in the district in which it is located.
 2. *Non-conforming structure.* An existing structure which does not comply with the height or yard requirements which are applicable to new structures in the zoning district in which it is located.
 3. *Non-conforming use.* An existing use of a structure or of land which does not comply with the use regulations applicable to new uses in the zoning district in which it is located.

Section 405.260. Non-Conforming Lots of Record. [Ord. No. 227 §1(94.910), 10-4-1999]

- A. The Planning and Zoning Commission shall issue a building permit for any non-conforming lot of record, provided that:
1. Said lot is shown by a recorded plat or deed to have been owned separately and individually from adjoining tracts of land at a time when the creation of a lot of such size and width at such location would not have been prohibited by any zoning regulations;
 2. Said lot has remained in separate and individual ownership from adjoining tracts of land continuously during the entire time that the creation of such lot has been prohibited by the applicable zoning regulations;
 3. Said lot can meet all yard regulations for the district in which it is located; and

4. Said lot can meet minimum standards for sewage treatment as required by County and State regulations for sewage treatment.

Section 405.270. Non-Conforming Structures. [Ord. No. 227 §1(94.920), 10-4-1999; Ord. No. 276, 10-9-2006]

- A. *Authority To Continue.* Any structure which is devoted to a use which is permitted in the zoning district in which it is located, but which is located on a lot which does not comply with the applicable yard and height regulations, may be continued, so long as it remains otherwise lawful.
- B. *Enlargement, Repair, Alterations.* Any non-conforming structure may be enlarged, maintained, repaired or remodeled; provided however, no such enlargement, maintenance, repair or remodeling shall either create any additional non-conformity or increase the degree of existing non-conformity of all or any part of such structure; provided further, existing mobile home parks not meeting the requirements of these regulations shall be declared non-conforming and shall not be permitted to add spaces or make any improvements inconsistent with the terms and conditions of these regulations.
- C. *Damage Or Destruction.* In the event that any non-conforming structure is damaged or destroyed by any means to the extent of more than fifty percent (50%) of its appraised value, such structure shall not be restored unless it shall thereafter conform to the regulations for the zoning district in which it is located. When a structure is damaged to the extent of fifty percent (50%) or less, no repairs or restorations shall be made unless a building permit is obtained and restoration is actually begun within six (6) months after the date of such partial destruction and is diligently pursued to completion. A manufactured home located in a district not zoned for manufactured homes that has been destroyed or damaged beyond fifty percent (50%) of its appraised value may be replaced. The replacement manufactured home would have to meet all site requirements of Chapter 410 and all relevant requirements of Chapter 405 and Chapter 415. The replacement manufactured home must be in place, with all requirements of Chapter 405 and Chapter 415 met, within ninety (90) days. The Planning and Zoning Commission may grant a ninety (90) day extension.
- D. *Moving.* No non-conforming structure shall be moved in whole or in part for any distance whatever to any other location on the same or any other lot unless the entire structure shall thereafter conform to the regulations of the zoning district in which it is located after being moved.

Section 405.280. Non-Conforming Uses. [Ord. No. 227 §1(94.930), 10-4-1999; Ord. No. 277, 10-9-2006]

- A. *Authority To Continue.* Any lawfully existing non-conforming use of part or all of a structure or any lawfully existing non-conforming use of land may be continued, so long as otherwise lawful and provided that ownership of the same does not change. Upon any transfer of ownership, such authority to continue shall terminate.

- B. *Ordinary Repair And Maintenance.*
1. Normal maintenance and incidental repair, or replacement, installation or relocation of non-bearing walls, non-bearing partitions, fixtures, wiring or plumbing, may be performed on any structure that is devoted in whole or in part to a non-conforming use.
 2. Nothing in these regulations shall be deemed to prevent the strengthening or restoring to a safe condition of a structure in accordance with an order of a public official who is charged with protecting the public safety and who declares such structure to be unsafe and orders its restoration to a safe condition.
- C. *Extension.* A non-conforming use shall not be extended, expanded, enlarged or increased in intensity. Such prohibited activity shall include, without being limited to:
1. Extension of such use to any structure or land area other than that occupied by such non-conforming use on the effective date of these regulations (or on the effective date of subsequent amendments hereto that cause such use to become non-conforming).
 2. Extension of such use within a structure to any portion of the floor area that was not occupied by such non-conforming use on the effective date of these regulations (or on the effective date of subsequent amendments hereto that cause such use to become non-conforming); provided however, that such use may be extended throughout any part of such structure that was lawfully and manifestly designed or arranged for such use on such effective date.
- D. *Enlargement.* No structure that is devoted in whole or in part to a non-conforming use shall be enlarged or added to in any manner unless such structure and the use thereof shall thereafter conform to the regulations of the district in which it is located.
- E. *Damage Or Destruction.* In the event that any structure that is devoted in whole or in part to a non-conforming use is damaged or destroyed by any means to the extent of more than fifty percent (50%) of its appraised value, such structure shall not be restored unless such structure and the use thereof shall thereafter conform to all regulations of the zoning district in which it is located. When such damage or destruction is fifty percent (50%) or less, no repairs or restoration shall be made unless a building permit is obtained and restoration is actually begun within six (6) months after the date of such partial destruction and is diligently pursued to completion.
- F. *Moving.* No structure that is devoted in whole or in part to a non-conforming use and no conforming use of land shall be moved in whole or in part for any distance whatever to any other location on the same or any other lot unless the entire structure and the use thereof or the use of land shall thereafter conform to all regulations of the zoning districts in which it is located after being so moved.

- G. *Change In Use.* If no structural alterations are made, any non-conforming use of a structure, or structure and premises, may as a special use be changed to another non-conforming use provided that the Planning and Zoning Commission, either by general rule or by making findings in the specific case, shall find that the proposed use is equally appropriate or more appropriate to the district than the existing non-conforming use. In permitting such change, the Planning and Zoning Commission may require appropriate conditions and safeguards to prevent said change in non-conforming use from adversely affecting the surrounding area. Once a change is made to a more appropriate use, the use shall not be returned to the original use or a less appropriate use.
- H. *Abandonment Or Discontinuance.* When a non-conforming use is discontinued or abandoned for a period of twelve (12) consecutive months, such use shall not thereafter be re-established or resumed, and any subsequent use or occupancy of such land shall comply with the regulations of the zoning district in which such land is located.
- I. *Non-Conforming Accessory Uses.* No use which is accessory to a principal non-conforming use shall continue after such principal use shall cease or terminate.
- J. *Non-Conforming Residential Use.* Any structure which is devoted to a residential use and which is located in a business or industrial district may be remodeled, extended, expanded and enlarged; provided, that after any such remodeling, expansion or enlargement, such structure shall not be used to accommodate a greater number of dwelling or lodging units than such structure accommodated prior to any such work.
- K. *Non-Conforming Uses.* All existing mobile home or manufactured home parks not meeting the requirements of these regulations shall be declared non-conforming and shall not be permitted to add spaces or make any improvements inconsistent with the terms and conditions of these regulations; except that any existing manufactured home park developed according to a valid special use permit or other approved development plan shall become a legal, conforming use under these regulations.

Section 405.290. Status of Special Uses. [Ord. No. 227 §1(94.940), 10-4-1999]

- A. *Status Of Existing Special Uses.* Where a use exists at the effective date of these regulations and is permitted by these regulations only as a special use in the zoning district in which it is located, such use shall not be deemed to be a non-conforming use but shall, without further action, be deemed a lawful conforming use in such zoning district. Such special use shall not be enlarged or expanded unless a special use application is approved as set out in Section 405.310 of these regulations.
- B. *Status Of Future Special Uses.* Any use for which a special use permit has been issued, as provided in these regulations, shall not be deemed to be a non-conforming use but shall, without further action, be deemed a lawful conforming use.

Administration—Special Uses, Amendments and Changes—Jurisdiction

Section 405.300. Special Uses—Permit. [Ord. No. 227 §1(94.090), 10-4-1999]

- A. *Special Use Permit.* Any of the uses listed below may be located in any district by special use permit of the Board of Aldermen, after public hearing and after recommendation of the Planning and Zoning Commission, under such conditions as to operation, site development, signs and time limit as may be deemed necessary in order that such use will not seriously injure the appropriate use of the neighboring property and will conform to the general intent and purpose of the regulations and shall comply with the height and area regulations of the district in which they may be located, unless otherwise granted, provided that any building or structure constructed thereon which is not otherwise permitted in the district in which such land is situated shall reconform to the district upon the date of expiration of the special use permit. Any such permit shall be valid for the length of time determined by the Planning and Zoning Commission with the approval of the Board of Aldermen.
- B. *Designation Of Permitted Uses With Permit.*
1. Privately owned amusement parks, baseball or athletic fields, racetracks, carnivals;
 2. Private clubs, including fraternal orders;
 3. Camping areas, picnic groves and fishing lakes, including minor and incidental concession facilities for patrons only;
 4. Kennels;
 5. Nursery sales office, building, greenhouses or area;
 6. Nursing and convalescent homes;
 7. Radio, television and microwave towers;
 8. Motels or inns;
 9. Buildings, structures and premises for public utility services or public service corporations;
 10. Assembly halls;
 11. Day nursery or preschool;
 12. Mortuaries;
 13. Temporary use of land for commercial or industrial purposes, provided that any building or structure constructed thereon which is not otherwise permitted in the district in which such land is situated shall reconform to the district upon the date of expiration of the special use permit. Any such permit shall be valid for the length of time determined by the Planning and Zoning Commission; and

14. In the event of a family hardship or during construction of the principal residential or commercial structure, a basement, garage, camper or manufactured home may be utilized for temporary housing for a period not to exceed twelve (12) months provided all health and sanitation codes of the City are complied with. Upon conclusion of the permitted time period or completion of the principal structure, whichever occurs first, the owner shall remove the temporary housing or make the necessary changes for the property to be in conformance with the regulations of the district in which the property is located.

Section 405.310. Procedure For Special Use Permits or Amendments To The Zoning District Map. [Ord. No. 227 §1(94.100), 10-4-1999]

- A. Application for amendment, revision or change of the Zoning District Map of the City may be made by any person, or his/her agent, who owns the land sought to be rezoned, or who is purchasing said land under written contract with the owner. If such application is made by the owner's agent, said agent shall enter upon the application the name and current mailing address of the owner. Such application shall be made in letter form describing the amendment, revision or change requested, along with map exhibits identifying the property, to the City Clerk.
- B. Applications for amendment, revision or change of any of the rules, regulations or provisions of the text of the zoning ordinance of the City, other than the Zoning District Map, or application for a special use permit may be made by any interested person, in letter form describing the amendment, revision or change, to the City Clerk.
- C. A fee of five dollars (\$5.00) shall accompany each application, and in addition to the filing fee, the applicant shall pay the cost of publication and certified mail, if any.
- D. All such applications shall be set down for hearing before the Planning and Zoning Commission not later than the second (2nd) regularly scheduled meeting of the Commission from the date of filing the same. Any such hearing, for good cause shown, at the request of the applicant or in the discretion of the Commission, may be continued. At least five (5) and not more than fifteen (15) days' notice of the time and place of such hearing shall be published in a newspaper of general circulation within the City. All owners within one hundred eighty-five (185) feet of the subject land shall be notified by certified mail stating the purpose of and date of the public hearing. In addition, the Building Official shall post notice of said hearing and the reason therefor by placing a sign on the subject premises.
- E. Upon the final hearing of such application, the Commission shall approve or deny the same and a report of such action, together with a recommendation for final approval or denial, shall be made by the Commission to the Board of Aldermen.
- F. The Planning and Zoning Commission shall not recommend for approval of any request unless it shall in each case make specific written findings of fact based

directly upon the particular evidence presented to it supporting the conclusion that the amendment or special use:

1. Complies with all applicable provisions of these regulations;
 2. At the specific location will contribute to and promote the community welfare or convenience;
 3. Will not cause substantial injury to the value of neighboring property;
 4. Complies with the overall subdivision plan and the intent of the existing zoning district provisions;
 5. Will provide, if applicable, off-street parking and loading areas in accordance with the standards continued in these regulations;
 6. Will not substantially increase traffic hazards;
 7. Will not substantially increase fire hazards; and
 8. Will not overtax public utilities.
- G. In determining whether the evidence presented supports the conclusions, the Planning and Zoning Commission shall consider the extent to which the evidence demonstrates the following:
1. The proposed use or amendment complies with the standards of these regulations in regard to:
 - a. Yard and setback;
 - b. Parking and loading areas;
 - c. Screening and buffering;
 - d. Refuse, storage and service areas; and
 - e. Signs.
 2. The impact of the projected vehicular ingress and egress of the use is determined with regard to the surrounding traffic flow, pedestrian safety and accessibility of fire-fighting equipment.
 3. The proposed use complies with the performance standards of these regulations.
 4. The proposed use is compatible with the surrounding area and its impact upon community facilities and services.
- H. The Planning and Zoning Commission shall render a written decision containing specific findings of fact without unreasonable delay in all cases within forty (40) days after the close of the public hearing.

- I. In approving such application, the Commission may recommend such conditions and restrictions which are in conformance with these regulations and may be necessary to assure that the general intent of these regulations is carried out.
- J. The Board of Aldermen in approving an application for amendment or special use permit:
 - 1. Shall impose such conditions or deletions to the conditions and restrictions as were recommended by the Planning and Zoning Commission;
 - 2. Shall impose amendments or deletions to the conditions and restrictions as were recommended by the Commission, only upon another public hearing conducted either by the Board of Aldermen or, upon rejection by the Board, by the Commission, and any such public hearing shall be conducted according to the same procedure and with the same notice as public hearings originally before the Commission;
 - 3. May specify that any use other than as specifically granted by the Board shall null and void the grant, and the property in question shall revert to its designation before such grant;
 - 4. Shall specify that any enlargement or alteration in the use of the structure or site must be approved by the Planning and Zoning Commission before a building permit may be issued; and
 - 5. Shall specify that failure to comply with any of these conditions or restrictions constitutes a violation of these regulations punishable herein.
- K. No amendment or use permit granted by the Board of Aldermen shall be valid for more than one hundred eighty (180) days, unless within such period a building permit is obtained and the erection or alteration of the structure is commencing or, where no building permit is necessary, the amendment or use is otherwise utilized by the entity originally requesting it.
- L. Recommendations for revision or amendments of the zoning ordinance, including addition to or change in classification of uses, and including the Zoning District Map, may also be made by the Commission upon its own motion for final determination by the Board; likewise, the Board may revise, modify or amend the zoning ordinance, including the Zoning District Map, upon its own motion; provided however, that such proposed changes shall first be submitted to the Commission for recommendations and report. In that case, final action thereon shall be taken only upon notice and hearing, as provided herein.
- M. In the event an applicant and/or his/her representative fails to appear before the Planning and Zoning Commission or the Board of Aldermen for hearings as provided in this Section at the time advertised for said hearing, said request will be stricken from the agenda. Before the Board or the Commission shall further hear the application, the applicant shall be required to pay an additional fee to the City in the amount of five dollars (\$5.00), plus the cost of publication. Upon payment, the request shall be republished as prescribed in this Section for a new public hearing

time and place. In the event that the applicant does not pay the additional fee within sixty (60) days from the date of the previous scheduled hearing, such request shall be considered as rejected and no further hearings may be had thereon without reapplication as new request.

- N. Denials by the Planning and Zoning Commission under this Section may be appealed only to the Board of Aldermen by written request filed with the City Clerk within thirty (30) days of the Commission's decision. The Board shall hear such appeal at the next practicable regularly scheduled Board meeting or in any case no later than sixty (60) days after such request. The Board may overrule the denial by the Planning and Zoning Commission.

Section 405.320. Jurisdiction Over Requests Involving Land Use Regulations. [Ord. No. 227 §1(94.040), 10-4-1999]

- A. *VariANCES.* In the event that a request for a building permit has been denied by the City through its designated representative, appeal of such denial may be made by application for a variance to the Board of Adjustment under the procedures as set forth in Section 405.350. Variances are permitted only as to certain site requirements in areas zoned residential and commercial.
- B. *Special Use Permits.* Applications for special use permits shall be made to the Planning and Zoning Commission under the procedures set forth in Section 405.310. Only those uses listed in Section 405.300 may be subject of any application for special use permit.
- C. *Amendments To Zoning District Map.* Application for amendments to the Zoning District Map, or so-called "rezoning" requests, shall be made to the Planning and Zoning Commission under the procedures as set forth in Section 405.310.
- D. *Amendments To Zoning Ordinance.* The application for amendments to rules, regulations and requirements contained in the text of the zoning ordinance, other than requests for specific site variance, shall be made to the Planning and Zoning Commission under the procedures set forth in Section 405.310.
- E. *Appeals Of Building Official Actions.* Application for appeal of Building Official actions shall be made to the Board of Adjustment under the procedures set forth in Section 405.350.

ARTICLE VII
Board of Adjustment

Section 405.330. Creation-Membership-Organization. [Ord. No. 227 §1(94.060), 10-4-1999]

- A. The Board of Adjustment is created in accordance with the provisions of Section 89.080, RSMo., as amended.
- B. Such local legislative body shall provide for the appointment of a Board of Adjustment, and in the regulations and restrictions adopted pursuant to the authority of Sections 89.010 to 89.140, RSMo., may provide that the Board of Adjustment

may determine and vary their application in harmony with their general purpose and intent and in accordance with general or specific rules therein contained.

- B. The Board of Adjustment shall consist of five (5) members, who shall be residents of the City. The membership of the first (1st) Board appointed shall serve respectively, one (1) for one (1) year, one (1) for two (2) years, one (1) for three (3) years, one (1) for four (4) years, and one (1) for five (5) years. Thereafter members shall be appointed for terms of five (5) years each. Three (3) alternate members may be appointed to serve in the absence of or the disqualification of the regular members. All members and alternates shall be removable for cause by the appointing authority upon written charges and after public hearing. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant. The Board shall elect its own Chairman who shall serve for one (1) year. The Board shall adopt rules in accordance with the provisions of any ordinance adopted pursuant to Sections 89.010 to 89.140, RSMo. Meetings of the Board shall be held at the call of the Chairman and at such other times as the Board may determine. Such Chairman, or in his/her absence the Acting Chairman, may administer oaths and compel the attendance of witnesses. All meetings of the Board shall be open to the public. The Board shall keep minutes of its proceedings, showing the vote of each member upon question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the Board and shall be a public record. All testimony, objections thereto and rulings thereon, shall be taken down by a reporter employed by the Board for that purpose.

Section 405.340. Board of Adjustment-Powers and Duties. [Ord. No. 227 §1(94.070), 10-4-1999]

- A. The Board shall not have the power to change the classifications of the property as shown on the official Zoning Map or to make any changes in the regulation of these regulations but shall interpret the regulations and authorize variations thereof pursuant to the following powers and duties:
1. To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by a Building Official in the enforcement of the regulations.
 2. To interpret and vary the application of site requirements imposed by the zoning ordinance where variances are permitted. Variances are currently permitted only in areas zoned residential and commercial.
 3. In passing upon appeals, where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the zoning ordinance, to vary or modify the application of any of the regulations or provisions of the zoning ordinance relating to the use, construction or alteration of buildings or structures or the use of land so that the spirit of the zoning ordinance shall be observed, public safety and welfare secured and substantial justice done.

- B. In exercising the above-mentioned powers, the Board may in conformity with provisions of Sections 89.010—89.140, RSMo., as amended, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appeals from and may make such order, requirement, decision or determination as ought to be made and to that end shall have all the powers of the Building Official from whom the appeal is taken. The concurring vote of four (4) members of the Board shall be necessary to reverse any order, requirement, decision or determination of the Building Inspector or official, or to decide in favor of the applicant on any matter upon which it is required to pass under any such ordinance, or to effect any variation in such ordinance.

Section 405.350. Board of Adjustment-Appeals and Procedures. [Ord. No. 227 §1(94.080), 10-4-1999]

- A. Appeals to the Board of Adjustment may be taken by any person aggrieved, by any neighborhood organization as defined in Section 32.105, RSMo., representing such person, or by any officer, department, board or bureau of the City affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time, as provided by the rules of the Board, by filing with the officer from whom the appeal is taken and with the Board of Adjustment a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken. An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the Board of Adjustment after the notice of appeal shall have been filed with him/her that by reason of facts stated in the certificate a stay would, in his/her opinion, cause immediate peril to life or property. In such case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Adjustment or by a court of record on application or notice to the officer from whom the appeal is taken and on due cause shown. The Board of Adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing any party may appear in person or by agent or by attorney.
- B. Any person or persons jointly or severally aggrieved by any decision of the Board of Adjustment, any neighborhood organization as defined in Section 32.105, RSMo., representing such person or persons or any officer, department, board or bureau of the City, may present to the Circuit Court of the County or City in which the property affected is located a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within thirty (30) days after the filing of the decision in the office of the Board. Upon the presentation of such petition the court may allow a writ of certiorari directed to the Board of Adjustment to review such decision of the Board of Adjustment and shall prescribe therein the time within which a return thereto must be made and served upon the relator's attorney, which shall not be less than ten (10) days and may be extended by the court. The

allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the Board and on due cause shown, grant a restraining order. The Board of Adjustment shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by such writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified. If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take additional evidence or appoint a referee to take such evidence as it may direct and report the same to the court with his/her findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which a determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review. Costs shall not be allowed against the Board unless it shall appear to the court that it acted with gross negligence, or in bad faith, or with malice in making the decision appealed from. All issues in any proceedings under Sections 89.080 to 89.110, RSMo., shall have preference over all other civil actions and proceedings.

ARTICLE VIII Violations

Section 405.360. Violations and Penalties. [Ord. No. 227 §1(94.030), 10-4-1999]

- A. In case any building or structure is erected, constructed, reconstructed, altered, converted or maintained, or any building, structure or land is used in violation of the zoning ordinance or other regulation made under authority conferred thereby, the City, through its designated representatives, in addition to other remedies, may institute any appropriate action or proceeding to prevent such unlawful erection, construction, reconstruction, alteration, conversion, maintenance or use, to restrain, correct or abate such violation, to prevent the occupancy of said building, structure or land or to prevent any illegal act, conduct, business or use in or about such premises. Such regulations shall be enforced by the City which is empowered to cause any building, structure, place or premises to be inspected and examined and to order in writing the remedying of any condition found to exist in violation of any provisions of this zoning ordinance.
- B. The owner or general agent of a building or premises where a violation of any provision of said regulations has been committed or shall exist, or the lessee or tenant of an entire building or entire premises where such violation has been committed or shall exist, or the owner, general agent, lessee or tenant of any part of the building or premises in which such violation has been committed or shall exist, or the general agent, architect, builder, constructor or any other person who commits, takes part or assists in any such violation, or who maintains any building or premises in which any such violation shall exist shall be guilty of a misdemeanor punishable pursuant to Section 100.220 of the Code of the City of Diamond for each and every day that such violation shall continue.

- C. Any such person who, having been served with an order to remove or to cease any such violation, shall fail to comply with said order within ten (10) days, or a time limit commiserate with the violation as determined by the City, after such service and shall continue to violate any provision of the zoning ordinance in the respect named in such order shall also be subject to a civil penalty of two hundred fifty dollars (\$250.00); and each day that such failure to obey the said order continues shall be a separate offense.
- D. No person shall permit, cause, keep, maintain or do any nuisance or contribute to the same as defined by the laws of this State, provisions of the Code of the City of Diamond, or the ordinances of the City of Diamond or cause or permit to be committed, caused or maintained any nuisance within the corporate limits of the City or within one (1) mile of the corporate limits of the City and, in the event of such, any violation of this Chapter shall constitute a nuisance as defined by Chapter 215 and all provisions of Chapter 215 of the Code of the City of Diamond shall apply herein.

ARTICLE IX
Validity

Section 405.370. Validity. [Ord. No. 227 §1(94.110(F)), 10-4-1999]

If any Section, Subsection, sentence, clause or phrase of this Chapter is for any reason held to be invalid by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Chapter.