

**SECOND COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 981270, AS AMENDED**

**Amending Chapter 80, Code of Ordinances, by repealing Sections 80-20, Definitions, 80-111, Uses permitted in CP district, 80-130, District C-1 (neighborhood retail business), 80-140, District C-2 (local retail business), 80-151, District C-3a1 (intermediate business, low buildings), 80-156, District C-X (adult entertainment), and 80-230, Legal nonconformance, and enacting in lieu thereof seven new sections of like numbers and subject matters relating to the location of certain adult businesses and other businesses with adult materials.**

WHEREAS, the Mayor and City Council of the City of Kansas City, Missouri, find that a substantial need exists to revise significantly the ordinances regarding adult businesses within the City of Kansas City; and

WHEREAS, the Mayor and Council retained two nationally-known planners, Eric Damian Kelly and Connie Cooper, to conduct a study of certain adult businesses in Kansas City; and

WHEREAS, Kelly and Cooper have completed that study, including the following parts:

- Part 1: Analysis of Ordinances of Twenty Other Local Governments
- Part 2: Analysis of Businesses in Kansas City
- Part 3: Survey of Residents and Business Managers
- Part 4: Recommendations and Conclusions
- Part 5: Policy Recommendations; and

WHEREAS, as part of that study, Kelly and Cooper examined the regulatory practices of other communities and examined the studies of adult businesses from those cities, incorporating those as part of their study for Kansas City:

- Appendix A Ordinances and Related Statutes from Twenty Other Local Governments
- Appendix B1 Fort Worth, Texas, Adult Use Study
- Appendix B2 Indianapolis, Indiana, Adult Use Study
- Appendix B3 Newport News, Virginia, Adult Use Study
- Appendix B4 St. Paul, Minnesota, Adult Use Study
- Appendix B5 Adult Use Studies from Phoenix, Arizona; Tucson, Arizona; and Seattle, Washington
- Appendix B6 Whittier, California, Adult Use Study and Adult Use Manual of Massachusetts Chapter, APA & City Solicitors & Town Counsel Assoc.
- Appendix B7 Austin, Texas, Adult Use Study
- Appendix B8 Denver, Colorado, Adult Use Study; and

WHEREAS, the United States Supreme Court in *City of Renton v. Playtime Theater, Inc.*, 475 U.S. 41 (1986) held that local governments may rely upon the experiences of other cities as well as on its own studies in enacting local legislation to regulate adult businesses; and

WHEREAS, the United States Supreme Court in *Renton* and other cases has held that the city may regulate such uses through content-neutral, time, place, and manner restrictions, so long as said regulations are designed to serve the government interest and do not unreasonably omit avenues of communication, and are aimed not at the content of protected speech within said establishments but rather at the secondary effects of said establishments on the surrounding communities; and

WHEREAS, Kelly and Cooper, in their studies for Kansas City, found several distinct types of land uses involving the presentation of similar adult material in different places and manners, most specifically in different land use contexts; and

WHEREAS, Kelly and Cooper in their studies further found that some businesses offering adult materials create undesirable secondary effects and are disruptive to the established land-use patterns of the City, while other businesses, offering essentially similar material in different places and manners, are consistent with the City's land-use patterns and regulations and do not have such undesirable secondary effects; and

WHEREAS, the Mayor and City Council of the City of Kansas City have considered said secondary effects of these adult businesses in the past when regulating said businesses and thereby reiterate their grave concern over secondary effects from said adult businesses as one of the bases for regulating these businesses; and

WHEREAS, the Mayor and City Council have, in the course of adopting earlier regulations on this topic, obtained copies of studies regarding secondary effects of adult businesses on surrounding communities from the cities of Phoenix, Arizona; Tucson, Arizona; Garden Grove, California; Los Angeles, California; Whittier, California; Indianapolis, Indiana; Minneapolis, Minnesota; St. Paul, Minnesota; Cleveland, Ohio; Oklahoma City, Oklahoma; Amarillo, Texas; Austin, Texas; Beaumont, Texas; Houston, Texas; Newport News, Virginia; and Seattle, Washington; and

WHEREAS, the Mayor and City Council find that these studies are of direct relevance to the problems confronting the citizens of the City of Kansas City regarding the secondary effects on the surrounding communities of said adult business uses and believe that the regulations which currently exist and which follow are aimed at reducing these pernicious secondary effects; and

WHEREAS, the Mayor and City Council have provided a forum for testimony and comments from the public and from affected businesses regarding these proposed regulations and have reviewed the evidence presented at public hearing from the public, and other interested parties which evidence further establishes a direct link between adult businesses and secondary effects upon surrounding communities that are deleterious to said community and establish further need for regulations of these adult business establishments; and

WHEREAS, some existing businesses are in locations that are inconsistent with the findings and recommendations of the City's recent study. It is desirable to provide opportunities for them to relocate to locations consistent with the findings and recommendations of the City's study, even to the extent that such relocation may deviate from the City's normal policy

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regarding changes in nonconforming uses; and

WHEREAS, the Mayor and City Council have determined that it is essential to the public health, safety and welfare and to the implementation of the City's comprehensive and land use plans that it adopt revised licensing and zoning ordinances for adult businesses and for other businesses carrying adult materials; NOW, THEREFORE,

BE IT ORDAINED BY THE COUNCIL OF KANSAS CITY:

Section A. Findings. The City Council finds the following:

- (1) The City has historically used zoning and land use controls to address issues with adult businesses;
- (2) The City's current zoning ordinance allows adult businesses only in the C-X Overlay zoning district, subject to approval by the City Council;
- (3) The City's current zoning ordinance does not include under the special provisions applicable to adult businesses certain shops that carry large numbers of sex toys and novelties and that are clearly, by nature of their operation and by public perception, adult businesses;
- (4) A recent study for the City found that there are several different types of adult businesses and several different types of other businesses that also include a significant amount of adult material;
- (5) The authors of that study have recommended treating these different types of businesses differently, based on their land-use character and secondary impacts;
- (6) The authors of that study have also recommended bringing under the scope of such regulations certain "sex shops" that carry significant quantities of adult toys and novelties but that are not now treated as adult businesses under the Zoning Ordinance;
- (7) The authors of that study have not recommended any change in the treatment of adult businesses involving live entertainment, which will remain a permitted use in the C-X Overlay district only;
- (8) The authors of that study have, however, recommended that other adult businesses be made permitted uses in appropriate commercial and manufacturing zones in the City, based on the compatibility of different types of uses with the designated zoning districts;
- (9) The authors of that study have also recommended that the City address separately the operating issues involved in the most intensive adult businesses through a separate licensing ordinance, which has been drafted to be coordinated

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with these zoning amendments as part of a comprehensive scheme for the regulation of adult businesses;

- (10) The authors of that study have recommended that the City provide opportunities for the relocation of some existing businesses that are located too close to residential neighborhoods; it is thus desirable to provide the opportunity for the relocation of certain motion picture arcade booth establishments as legal nonconforming uses, although the licensing ordinance (Committee Substitute for Ordinance No. 981345) and this ordinance will otherwise prohibit the construction or installation of new motion picture arcade booths in the City; and

- (11) The requirements of this ordinance advance the public health, safety and welfare by providing neutral regulations governing the conduct of adult businesses within Kansas City.

Section B. That Chapter 80, Code of Ordinances of the City of Kansas City, Missouri, is hereby amended by repealing Sections 80-20, Definitions, 80-111, Uses permitted in CP district, 80-130, District C-1 (neighborhood retail business), 80-140, District C-2 (local retail business), 80-151, District C-3a1 (intermediate business, low buildings), 80-156, District C-X (adult entertainment), and 80-230, Legal nonconformance, and by enacting in lieu thereof seven new sections of like numbers and subject matters, to read as follows:

**Sec. 80-20. Definitions.**

- (a) The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Accessory use or building* means a use or building customarily incident and subordinate to the then actual use or building and located on the same lot with the actual principal use or building.

*Adult business* is an inclusive term used to describe collectively: adult cabaret; adult motion picture theatre; adult media store; bathhouse; massage shop; modeling studio; and/or sex shop. This collective term does not describe a specific land use and shall not be considered a single use category for purposes of Section 80-230 or other provisions of the zoning code or other applicable ordinances.

*Adult cabaret* means an adult live entertainment facility, or that part of an adult live entertainment facility, which regularly features or otherwise offers to the public, customers or members in a viewing area, any live exhibition, performance or dance by persons whose exhibition, performance or dance is characterized by the exposure of any specified anatomical area, or by specified sexual activities, or who otherwise appear unclothed or in such attire, costume or clothing so as to expose to view specified anatomical areas.

*Adult media* means magazines, books, videotapes, movies, slides, cd-roms, digital video discs, other devices used to record computer images, or other media which are distinguished or

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characterized by their emphasis on matter depicting, describing or relating to “specified sexual activities” or “specified anatomical areas”.

*Adult media store* means an establishment that rents and/or sells adult media and that meets any of the following tests:

- (a) More than forty percent (40%) of the gross public floor area is devoted to adult media; or
- (b) More than forty percent (40%) of the stock in trade consists of adult media; or
- (c) A media store which advertises or holds itself out in any forum as “XXX”, “adult”, “sex” or otherwise as an adult business.

*Adult motion picture theater* means a building or portion of a building (including any portion of a building which contains more than 150 square feet) used for presenting motion pictures, movies, videos or other projected images if such building or portion of a building as a prevailing practice excludes minors by virtue of age, or if, as a prevailing practice, the movies, videos or other material presented are distinguished or characterized by an emphasis on the depiction or description of “specified sexual activities” or “specified anatomical areas” for observation by patrons therein.

*Alley* means a public way which affords only secondary access to abutting property.

*Amusement park, children's* means a group of not more than 12 amusement devices for children only, including pony rings, and their necessary accessory uses, located on a plot of ground with an area of not over three acres, which area shall include provisions for off-street parking.

*Apartment hotel* means an apartment house which furnishes services for the use of its tenants which are not primarily available to the public.

*Apartment house* means a building arranged, intended or designed at the time of original construction to be occupied by three or more families.

*Attached accessory building* means a building which has at least 25 percent of any of its walls common with a wall of the principal building or is built as an integral part of the principal building.

*Auto wrecking* means the collecting and dismantling or wrecking of used motor vehicles or trailers, or the storage, sale or dumping of dismantled, partially dismantled, obsolete or wrecked motor vehicles or their parts.

*Bathhouse* means an establishment or business which provides the services of baths of all kinds, including all forms and methods of hydrotherapy, unless operated by a medical practitioner or professional physical therapist, licensed by the state.

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*Block* means a piece or parcel of land entirely surrounded by public highways, streets, streams, railway rights-of-way or parks, or a combination thereof. The director of codes administration shall decide any question regarding the limits or extent of a block.

*Board* means the board of zoning adjustment.

*Boarder* means any person who, in exchange for valuable consideration, receives the use of a sleeping room and meals.

*Boardinghouse* means a building other than a hotel, where room and meals are provided as part of a prearranged agreement.

*Book store* is defined as an exclusive term, identifying a category of business that may include adult media but that is not regulated as an adult media store. In this context, *book store* means a retail store offering for sale or rent books, magazines or other printed material for consumption or enjoyment off the premises, provided that any store in which material falling within the definition of “adult media” constitutes more than forty percent (40%) of the stock in trade and/or occupies more than forty percent (40%) of the gross public floor area shall be considered an “adult media store”. See special conditions in applicable zoning districts for book stores in which adult media constitutes more than ten percent (10%) but not more than forty percent (40%) of the stock in trade or occupies more than ten percent (10%) but not more than forty percent (40%) of the gross public floor area.

*Building* means any structure having a roof supported by columns or walls for the housing or enclosure of persons, animals or chattels.

*Building coverage* means the percentage of the lot area covered by the building area.

*Building line* means a line parallel to the front street line, between which line and the front street line no part of a building shall project, except as otherwise provided in this chapter. A building line established by a recorded plat shall govern.

*Chapter* means the zoning ordinance, chapter 80, Code of Ordinances of the City of Kansas City, Missouri.

*Collector street* means a street which carries traffic from minor streets to the major system of arterial streets and highways and includes the principal entrance streets to residential developments.

*Community unit project* means a residential building project of unlimited number of buildings on any size tract of land.

*Converted dwelling* means any residential building which was originally designed and constructed as a one-, two- or three-family dwelling, but which has been changed or altered by the construction of additional dwelling units to provide for three or more families.

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*Curb level* means the mean level of the curb in front of the lot, or, in case of a corner lot, along the abutting street where the mean curb is the highest.

*Day care facility* means an establishment or business, licensed or registered with any applicable regulatory agency, which provides supervision or facilities for preschool children or provides before or after or summer care for school-age children.

*Director of codes administration* means the chief building official. The director is also occasionally referred to in this chapter as the commissioner of buildings and inspections.

*Duplex* means a building designed or used exclusively for residential purposes and containing two dwelling units separated by a common party wall or otherwise structurally attached.

*Dwelling* means a building or portion thereof designed exclusively for residential occupancy, but not including hotels or motels.

*Dwelling, multiple* means a building or portion thereof designed for three or more dwelling units.

*Dwelling unit* means a building or portion thereof designed exclusively for residential occupancy by one family and provided with sanitation and cooking facilities.

*Family* means an individual; or two or more persons related by blood, marriage or adoption; or a group of not more than five persons, excluding servants, who need not be related by blood or marriage, living together and subsisting in common as a separate nonprofit housekeeping unit which provides one kitchen; or a group of eight or fewer unrelated mentally retarded or physically handicapped persons, including two additional persons acting as houseparents or guardians who need not be related to each other or to any of the mentally retarded or physically handicapped persons in residence.

*Floor area* means the sum of the areas of the several floors of a building or structure, including areas used for human occupancy or required for the conduct of the business or use, and basements, attics and penthouses, as measured from the exterior faces of the wall. It does not include an area for the parking of motor vehicles.

*Floor area ratio (FAR)* means the ratio of the floor area to the lot area, as determined by dividing the floor area by the lot area.

*Garage, community* means a building or portion thereof, other than a public or private garage, providing storage for motor vehicles with facilities for washing, but not other services, such garage to be in lieu of private garages within a block or portion of a block.

*Garage, private* means an accessory building for the storage only of motor vehicles.

*Garage, public* means a building or premises which is operated for commercial purposes and used for the storage, care or repair of motor vehicles.

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*Gross public floor area* means the total area of the building accessible or visible to the public, including showrooms, motion picture theatres, motion picture arcades, service areas, behind-counter areas, storage areas visible from such other areas, restrooms (whether or not labeled “public”), areas used for cabaret or similar shows (including stage areas), plus aisles, hallways and entryways serving such areas.

*Group housing project* means a residential building project consisting of four or fewer buildings on a tract or lot consisting of three or less acres.

*Halfway house* means a facility for rehabilitation of drug addicts; rehabilitation of alcoholics; and rehabilitation of prisoners or juvenile delinquents who are considered to be substance abusers; or for the rehabilitation of ex-offenders in a controlled environment with supervision and treatment or counseling provided on-site on an interim basis after referral from a public agency or institutional facility.

*Height of buildings* means the vertical distance measured from the highest of the following three levels:

- (1) From the curb level;
- (2) From the established or mean street grade in case the curb has not been constructed; or
- (3) From the average finished ground level adjoining the building if it sits back from the street line;

to the level of the highest point of the roof beams of flat roofs or roofs inclining not more than one inch to the foot and to the mean height level of the top of the main plate and highest ridge for other roofs.

*Home occupation* means any occupation of a service character, customarily conducted within a dwelling, and clearly incidental and secondary to the primary use of a dwelling, which does not change the character thereof and does not have any exterior evidence of such secondary use. A home occupation shall be carried on only by members of a family actually residing in the dwelling, and in connection therewith no stock-in-trade or no commodity for sale shall be kept on the premises.

*Homeless shelter* means a charitable facility operated by either a not-for-profit corporation or a church to provide temporary housing for individuals without any apparent means of support.

*Hotel* means a building occupied or used generally as a temporary place of residence by individuals or groups of individuals who are lodged, with or without meals, and in which there are more than 15 sleeping rooms, and no provision is made for cooking in any individual guestroom.

*Incinerator* means a solid waste processing facility consisting of any device or structure

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resulting in weight or volume reduction of solid waste by combustion.

*Junk handling yard* means a place where waste, discarded or salvaged metals, used plumbing fixtures and other materials are bought, sold, exchanged, stored, baled or cleaned; and a place for the storage of salvaged materials and equipment from house wrecking and salvaged structural steel; but excluding pawnshops and establishments for the sale, purchase or storage of used cars in operable condition, salvaged machinery, or used furniture and household equipment, and the processing of used, discarded or salvaged materials as part of manufacturing operations.

*Lodger* means any person who, in exchange for valuable consideration, receives the use of a sleeping room without meals or cooking privileges.

*Lodginghouse* means a building, other than a hotel, where a room without meals or cooking privileges for five or more persons is provided for compensation.

*Lot* means a plot, parcel or tract of land with frontage on a street occupied or proposed to be occupied by one building or uses customarily incident to it.

*Lot area* means the area contained within the property lines of individual parcels of land shown on a subdivision plat or required by this chapter, excluding any existing or designated future street right-of-way.

*Lot, corner* means a lot abutting upon two or more streets at their intersection.

*Lot depth* means the mean horizontal distance from the front street line to the rear line of a lot.

*Lot, interior* means a lot whose side lines do not abut a street.

*Lot, through* means an interior lot having frontage on two streets and distinguished from a corner lot.

*Lot width* means the mean horizontal distance between the side lines of the lot measured at right angles to the depth.

*Major thoroughfare (street)* means streets having, as their primary purpose, to provide for through traffic movement between areas and across the city, and having, as their secondary purpose, direct access to abutting property, subject to necessary control of entrances, exits and curb use and as further defined in the major street plan as primary or secondary arterials.

*Marquee* means any hood of noncombustible construction projecting more than 12 inches from the wall of a building above an entranceway and having a roof area greater than 12 square feet.

*Massage shop* means an establishment which has a fixed place of business having a source of income or compensation derived from the practice of any method of pressure on or friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating or stimulation of,

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external parts of the human body with the hands or with the aid of any mechanical, electric apparatus or appliances with or without such supplementary aids as rubbing alcohol, liniments, antiseptics, oils, powders, creams, lotion, ointment or other similar preparations commonly used in the practice of massage, under such circumstances that it is reasonably expected that the person to whom the treatment is provided or some third person on his or her behalf will pay money or give any other consideration or gratuity provided that this term shall not include any establishment operated by a medical practitioner, professional physical therapist, or massage therapist licensed by the state.

*Materials recovery facility* means a facility where source-separated materials are separated and processed, but such operations shall not include auto wrecking and junk handling.

*Media* means anything printed or written, or any picture, drawing, photograph, motion picture, film, videotape or videotape production, or pictorial representation, or any electrical or electronic reproduction of anything which is or may be used as a means of communication. Media includes but shall not necessarily be limited to books, newspapers, magazines, movies, videos, sound recordings, cd-roms, digital video discs, other magnetic media, and undeveloped pictures.

*Media store* is defined here as an exclusive term, identifying a category of business that may include adult media but that is not regulated as an adult media store. In that context, *media store* means a retail store offering media for sale or rent for consumption or enjoyment off the premises; provided that any store in which adult media constitutes more than forty percent (40%) of the stock in trade and/or occupies more than forty percent (40%) of the gross public floor area shall be considered an “adult media store”. See special conditions in applicable zoning districts for media stores in which adult media constitutes more than ten percent (10%) but not more than forty percent (40%) of the stock in trade or occupies more than ten percent (10%) but not more than forty percent (40%) of the gross public floor area. This definition intentionally includes and is intentionally broader than the definition of “book store” and “video store”.

*Mobile home* means a factory-built structure more than eight feet in width and 32 body feet or more in length, equipped with the necessary service connections and made so as to be readily movable as a unit on its own running gear and designed to be used as a dwelling unit with or without a permanent foundation.

*Mobile home development* means any development, site, parcel or tract of land designed, maintained or intended to be used for the purpose of providing longterm accommodation of more than 30 days for placement of two or more mobile homes, and includes all buildings used or maintained for the use of the residents of the development. This term shall not be used in conjunction with any mobile home or trailer sales lots which contain unoccupied units that are intended solely for inspection and sale.

*Modeling studio* means an establishment or business which provides the services of modeling for the purposes of reproducing the human body, wholly or partially in the nude, by means of photography, painting, sketching, drawing or otherwise.

*Motel* means a motorist's hotel where no portion of the building exceeds two stories in

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height and where at least 50 percent or more of the guestrooms are on the ground floor level and open directly on a private roadway or court.

*Motion picture arcade booth* means any booth, cubicle, stall or compartment which is designed, constructed or used to hold or seat patrons and is used for presenting or viewing motion pictures or viewing publications which are distinguished or characterized by an emphasis on the depiction or description of “specified sexual activities” or “specified anatomical areas” by any photographic, electronic, magnetic tape, digital or other medium (including, but not limited to, film, video, magnetic tape, laser disc, digital video disc, cd rom, books, magazines or periodicals) for observation by patrons therein. The terms “booth”, “arcade booth”, “preview booth”, “video arcade booth”, and “media room” shall be synonymous with the term “motion picture arcade booth”. A motion picture arcade booth shall not mean a theater, moviehouse, playhouse or a room or enclosure or portion thereof which contains more than 150 square feet. No part of this definition shall be construed to permit more than one person to occupy a motion picture arcade booth at any time. Note: This definition relates to certain nonconforming uses which lawfully exist on the date of adoption of this definition; the Zoning Ordinance specifically does not list this as a permitted use in any zoning district.

*Motion picture arcade booth establishment* is any business wherein one or more motion picture arcade booths are located. The terms “establishment” and “video arcade” shall be synonymous with “motion picture arcade booth establishment”. Note: This definition relates to certain nonconforming uses which lawfully exist on the date of adoption of this definition; the Zoning Ordinance specifically does not list this as a permitted use in any zoning district.

*Museum* means any government or non-profit institution devoted to the procurement, care and display of objects of lasting interest or value which is open to the general public.

*Nonconforming use, yard or building* means a use, yard or building that does not comply with the regulations of the district in which it is situated.

*Off-street parking space* means a paved area to which an automobile has direct access from a paved aisle of sufficient width.

*Operator* means any person operating, conducting or maintaining an adult business.

*Primary live entertainment* means that entertainment which characterizes the business, as determined (if necessary) from a pattern of advertising as well as actual performances.

*Private club* means a building and necessary grounds used for and operated by a nonprofit organization, membership to which is by invitation and election according to qualifications in the club's charter and bylaws.

*Public display* describes the act of exposing, placing, posting, exhibiting, or in any fashion displaying in any location, whether public or private, an item in such a manner that it may be readily seen and its content or character distinguished by normal unaided vision viewing it from a street, highway or public sidewalk, or from the property of others, or from any portion of the person's store or property where items and material other than adult media are offered for

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sale or rent to the public.

*Public park* means any city, county, state or federal public park.

*Row house* means a row of three or more attached dwelling units, also known as a townhouse.

*Sadomasochistic practices* means flagellation or torture by or upon a person clothed or naked, or the condition of being fettered, bound, or otherwise physically restrained on the part of one so clothed or naked.

*Sex shop* means a business offering goods for sale or rent and that meets any of the following tests:

- (a) it offers for sale items from any two (2) of the following categories: adult media; sexually-oriented toys or novelties; lingerie; leather goods marketed or presented in a context to suggest their use for sadomasochistic practices; and the combination of such items constitutes more than ten percent (10%) of the stock in trade of the business or occupies more than ten percent (10%) of the gross public floor area of the business; or
- (b) More than five percent (5%) of the stock in trade of the business consists of sexually-oriented toys or novelties; or
- (c) More than five percent (5%) of the gross public floor area of the business is devoted to the display of sexually oriented adult toys or novelties.

*Sexually-oriented toys or novelties* means instruments, devices or paraphernalia either designed as representations of human genital organs or female breasts, or designed or marketed primarily for use to stimulate human genital organs.

*Sign* means any advertisement, announcement, direction or communication produced in whole or in part by the construction, erection, affixing or placing of a structure on any land or on any other structure, or produced by painting on or posting or placing any printed, lettered, pictured, figured or colored material on any building, structure or surface.

*Sign, advertising copy.* The term "advertising copy," as used in this chapter, means all letters, numbers and symbols constituting an advertising message.

*Sign, animated* means any sign with moving, rotating (other than on a vertical axis) or other mechanical parts, including banners, pennants or other advertising devices strung across a building or premises, which relies upon wind currents to create movement or the illusion of movement.

*Sign, business advertising* means an on-premises sign, other than an outdoor advertising, incidental or temporary sign as defined by this chapter, which directs attention to a business, commodity, service, activity or product sold, conducted or offered on the premises where such

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sign is located.

*Sign, changeable copy panel* means any panel which is characterized by changeable copy, illuminated or unilluminated, regardless of method of attachment.

*Sign, flat wall or fascia* means a sign which is either painted on or affixed in some way to an exterior wall of a building or structure and which projects not more than 12 inches from the wall and presents only one face with advertising copy to the public.

*Sign, freestanding* means a sign which is supported by one or more columns, uprights or braces in or upon the ground or supported directly upon the ground.

*Sign, gross area of* means the smallest square, rectangle, triangle, circle or combination thereof necessary to encompass the entire perimeter enclosing the extreme limit of all elements composing such sign but not including any structural elements lying outside the limits of such sign and not forming an integral part of the display. Except as otherwise provided in this chapter, each face of a double-faced sign shall be computed and added to determine the gross area. This calculation may be applied separately to each separate outlined letter, number or symbol of a sign which has no other sign face.

*Sign, incidental* means a sign which guides or directs pedestrian or vehicular traffic.

*Sign, outdoor advertising* means an off-premises sign which directs attention to a business, commodity, service, activity or product sold, conducted or offered off the premises where such sign is located.

*Sign, roof* means a sign, any part of which extends above the low point of a roof or parapet wall of a building and which is wholly or partially supported by the building.

*Sign structure* means a structure which ordinarily serves no other purpose than to support a sign. Structures or symbols such as statuary or similar devices which are used for advertising purposes shall be construed as a business advertising sign or as an outdoor advertising sign, as the case may be.

*Sign, temporary* means a sign, directing attention to a temporary condition, including "for sale," "for rent," "for lease" or similar temporary real estate signs, but not including other business or outdoor advertising signs; signs identifying construction projects, including names of persons or firms engaged in the project; and signs for temporary uses of land such as carnivals, circuses or fairs, wherever such temporary uses are permitted. Temporary signs shall also include banners, pennants and unofficial flags, except those mounted upon permanent staffs, commemorating or drawing attention to a temporary activity, and signs of a political nature pertaining to public elections, including voting places.

*Sign, tri-vision* means a sign which, by the intermittent, simultaneous revolving of portions of its surface area, exhibits different messages in succession on the surface area, but with only one message viewable at any one time.

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*Sign, under-marquee* means a lighted or unlighted display attached to the underside of a marquee or canopy and protruding over private sidewalks or rights-of-way.

*Solid waste separation facility* means a facility where mixed municipal solid waste is separated into recovered materials and other components either manually or mechanically and further processed for transporting to other facilities, including a solid waste disposal area.

*Specified anatomical areas* means and includes: (1) less than completely and opaquely covered: human genitals, pubic region, buttock and female breast below a point immediately above the top of the areola; and (2) human male genitals in a discernibly turgid state, even if completely and opaquely covered.

*Specified sexual activities* means sexual conduct, being actual or simulated, normal or perverted acts of human masturbation; deviate sexual intercourse; sexual intercourse; or physical contact, in an act of apparent sexual simulation or gratification, with a person's clothed or unclothed genitals, pubic area or buttocks, or the breast of a female; or any sadomasochistic abuse or acts including animals or any latent objects in an act of apparent sexual stimulation or gratification, as such terms are defined in the pornography and related offenses chapter of the state's criminal code (RSMo ch. 573).

*Stable, private* means a detached accessory building for the housing of horses, ponies or mules owned by the occupants of the premises and not kept for remuneration, exhibition, hire or sale.

*Stable, riding* means a structure in which horses, mules or ponies used exclusively for pleasure riding or driving are housed, boarded or kept for hire, including riding tracks or academies.

*Story* means that part of a building included between the surface of any floor and the surface of the floor next above, or, if there is no floor above, then the space between such floor and the ceiling next above it. A top story attic is a half-story when at least two of its opposite sides are situated in a sloping roof and the floor area of the attic does not exceed two-thirds of the floor area immediately below it. An unoccupied basement shall not be considered a story.

*Street* means a thoroughfare available to the public which affords the principal means of access to abutting property.

*Street line* means the dividing line between the street and the lot.

*Structural alterations* means any change in the supporting members of a building, such as bearing walls or partitions, columns, beams or girders, or any structural change in the roof, but not including extension or enlargement.

*Structure* means anything constructed or erected, which requires location on the ground, or attached to something having a location on the ground, including but not limited to advertising signs, billboards and poster panels, but exclusive of customary fences or boundary or retaining walls.

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*Transfer station* means a solid waste facility utilized as a central collection point at which solid waste from collection trucks or from a centralized location is placed in long haul carriers for transfer to a solid waste separation facility or to a solid waste disposal area.

*Travel trailer* means a portable vehicular unit mounted on wheels designed to provide temporary living quarters for recreational, camping or travel use and of such size or weight as not to require special highway movement permits when drawn by a motorized vehicle. Such units commonly described as travel trailers, campers, motor homes, converted buses or other similar units, whether they are self-propelled or pulled, or can be hauled without a special permit, would be considered examples of travel trailers.

*Travel trailer camp* means any development site, parcel or tract of land designed, maintained or intended to be used for the purpose of providing short term accommodation, up to and including 30 days or less, for placement of two or more travel trailer units, and shall include all buildings used or maintained for the use of the occupants in the trailer camp.

*Truck* includes tractor and trailer trucks, or any motor vehicle which carries a truck license.

*Used tire facility* means a site where waste tires are collected or processed prior to being offered for recycling or further processing or transferred for disposal.

*Video store* is defined here as an exclusive term, identifying a category of business that may include adult media but that is not regulated as an “adult media store”. In this context, *video store* means a retail store offering video cassettes, disks or other video recordings for sale or rent, provided that any store in which adult media constitutes more than forty percent (40%) of the stock in trade and/or occupies more than forty percent (40%) of the gross public floor area shall be considered an “adult media store”. See special conditions in applicable zoning districts for video stores in which adult media constitutes more than ten percent (10%) but not more than forty percent (40%) of the stock in trade or occupies more than ten percent (10%) but not more than forty percent (40%) of the gross public floor area.

*Yard, front* means an open space, unoccupied except as provided in this chapter, on the same lot with a building or structure, between the wall of the building or structure nearest the street on which the lot fronts and the line of that wall extended, the side lines of the lot and the front street line of the lot. The minimum depth of the front yard shall be the distance between the nearest point of the street wall of the building and front line of the lot, or that line produced, measured at right angles to the front line of the lot. The front yard of a corner lot shall be as follows:

- (1) The front yard of a corner lot consisting of one platted lot shall be adjacent to that street on which the lot has its least dimension, unless there is a question as to which is the least dimension. When this question arises, the director of codes administration shall make the determination.
- (2) If a corner lot consists of all or more than two platted parcels of land, each

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of whose least dimension is on the same street as the other lots in the block, then the location of the front yard of this lot shall be on the same street as the other lots.

(3) If a corner lot consists entirely of unplatted land or a combination of platted land, the front yard shall be on that street on which there front the greater number of lots, either platted or unplatted.

Any question as to the requirements for a corner lot set out in this definition shall be determined by the director of codes administration.

*Yard, least dimension* means the least of the horizontal dimensions at any level of such yard at such level.

*Yard, rear* means an open space, unoccupied except as provided in this chapter, on the same lot with a building, between the rear line of a building and that line extended, the side lines of the lot and the rear line of the lot. Where no rear line exists, a line parallel to the front street line and distant as far as possible therefrom entirely on such lot and no less than ten feet long shall be deemed the rear line. The depth of the rear yard shall be the distance between the nearest point of the rear wall of the building and the rear line of the lot, or that line produced, measured at a right angle to the rear line of the lot.

*Yard, side* means an open space, unoccupied except as provided in this chapter, on the same lot with a building, situated between the building and the side line of the lot and extending through from the front yard to the rear yard. Any line not a rear line or a front line shall be deemed a side line.

*Yard waste compost facility* means a facility that processes grass, leaves, brush and other organic landscape wastes from more than one household, institution or business establishment.

(b) Words not otherwise defined in this section shall have their common meanings. Words used in the present tense include the future; and the singular number includes the plural and the plural the singular, unless the context clearly implies otherwise.

**Sec. 80-111. Uses permitted in CP district.**

In district CP, which is further divided into districts CP-1, CP-2 and CP-3, no building or land shall be used and no building shall be erected, altered or enlarged, which is arranged, intended or designed for other than one of the following uses:

(1) *Principal uses.*

a. *District CP-1 (neighborhood planned business center).*

1. Artists' studios.

2. Bakery or pastry shops, retail only,

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employing not more than five persons on the premises.

3. Banks.
4. Barbershops or beauty shops.
5. Bicycle repair shop.
6. Book or stationery stores.
7. Candy stores.
8. Children's day nurseries and day care centers.
9. Churches.
10. Clinics, for people only.
11. Clothing or ready-to-wear stores.
12. Commercial radio and television broadcasting stations and transmitting stations and towers.
13. Dancing schools.
14. Drugstores.
15. Dry goods or notion stores.
16. Dyeing, dry cleaning or laundry collection offices.
17. Electrical shops.
18. Fix-it radio or television repair shops.
19. Florists' or gift shops.
20. Furniture homes or stores.
21. Garages (storage) for motor vehicles (no body or fender work).
22. Grocery, fruit or vegetable stores.
23. Hardware stores.

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24. Jewelry stores.
  25. Libraries.
  26. Media stores.
  27. Meat markets or delicatessens.
  28. Music studios.
  29. Offices, including ticket offices for railroad, steamship, bus and aviation lines.
  30. Package liquor stores, if they comply with chapter 10.
  31. Photographic studios or shops.
  32. Plumbing shops, no tinwork or outside storage permitted.
  33. Public parking lots or stations for passenger cars or taxicabs.
  34. Restaurants, excluding drive-ins. The service of alcoholic beverages as an incidental accessory use is subject to the definition for restaurants serving substantial quantities of food as contained in chapter 10.
  35. Service stations, gasoline and oil, not including motor, body or fender repair work, and complying with the restrictions for such as given in chapter 18.
  36. Shoe stores or shoe repair shops.
  37. Stationary stores.
  38. Tailor shops.
  39. Video stores.
  40. Other retail business activities of the character enumerated above not included in any other classifications.
- b. *District CP-2 local planned business center.*

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1. Any use permitted in district CP-1.
2. Adult media stores.
  3. Auto laundries.
  4. Automobile or trailer sales rooms.
  5. Bakery or pastry shops, retail only.
  6. Barbecue stands.
  7. Bars and cocktail lounges, if they comply with chapter 10.
  8. Billiard or pool halls and bowling alleys, if the nearest point of the property is more than 200 feet from the boundary of an R-1 to R-3 district, inclusive, unless the building is soundproofed and air conditioned.
  9. Bus stations.
  10. Business or commercial schools.
  11. Cat and dog hospitals, when in a soundproof and air conditioned building without outside pens. No smoke or odor caused by the operation of this facility shall be perceptible at the boundaries of the premises. Performance of activities of the cat and dog hospital shall not create noise outside the soundproofed building in excess of that of normal daily traffic measured at the lot line.
  12. Commercial photography.
  13. Country club houses or private clubs subject to meeting all of the conditions and restrictions as provided in district R-1.
  14. Drive-in restaurants, where persons are served in automobiles, when the nearest point of the property is more than 200 feet from the boundary of an R-1 to R-3 district, inclusive.
  15. Dyeing and dry cleaning plants and shirt laundry services employing not over a total of ten production employees on the premises in any 24-hour period, exclusive of

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office and retail service personnel and delivery motor vehicle operators. Dry cleaning machinery having not more than a total capacity of 50 pounds may be used. Laundry washing equipment for shirt laundry service having not more than a total capacity of 100 pounds may be used. No dust, lint, noise, vibration or odor generated by the plant operation shall be perceptible from any adjoining premises. Only nonflammable, nonexplosive synthetic solvents shall be used.

16. Frozen food lockers for individual or family use.

17. Garages (public) for general motor or body repair work, provided the nearest point of the structure is more than 200 feet from the boundary of an R-1 to R-3 district, inclusive, and provided all work is done within the building. The city plan commission may recommend and the city council may permit garages for general motor or body repair work where shown on preliminary plans presented within less than 200 feet of the boundary of an R-1 to R-3 district, inclusive, provided the minimum yard requirements of this district are met and where topographic conditions are such that the garage is below the established grade of the nearest streets and no wall facing the periphery of the CP district other than a parapet wall extending not more than three feet above the finished grade or roof of the building shall be exposed above the ground level. All access to the garage shall be from within the interior of the CP district.

18. Ice cream stores.

19. Job printing, newspapers, lithographing and publishing, less than a total of five horsepower.

20. Laundrettes, washaterias, or self-service laundries.

21. Loan and finance companies.

22. Nightclubs or taverns, if they comply with chapter 10.

23. Office buildings.

24. Package liquor stores, if they comply with chapter 10.

25. Pet shops, if entirely within a building.

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26. Pony rings, provided the animals are stabled outside of the development, and when in connection with a day nursery.

27. Public parking stations for commercial delivery cars not exceeding three-quarter ton.

28. Service stations, gasoline and oil.

29. Telephone exchanges.

30. Theaters and picture shows, other than drive-in.

31. Tire and battery shops.

32. Tourist courts and motels.

33. Wholesale sales offices and sample rooms.

c. *District CP-3 (regional planned business center):*

1. Any use permitted in district CP-2.

2. Adult motion picture theaters.

3. Battery stations.

4. Diaper service.

5. Drive-in businesses where persons are served in automobiles, such as refreshment stands, restaurants, food stores and the like, provided the nearest point of the property is more than 100 feet from the boundary of a residentially zoned (R-1 to R-3, inclusive) property.

6. Dyeing and dry cleaning plants and shirt laundry services employing not over a total of 15 production employees on the premises in any 24-hour period, exclusive of office and retail service personnel and delivery motor vehicle operators and when conforming otherwise to all other conditions and restrictions as provided for such used in district CP-2.

7. Garages, public, for general motor or body repair work, provided the nearest point of the structure is more than 100 feet from the boundary of an R-1 to R-3 district,

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inclusive, and provided all work is done within the building. The city plan commission may recommend and the city council may permit garages for general motor or body repair work where shown on preliminary plans presented within less than 100 feet of the boundary of an R-1 to R-3 district, inclusive, under the same conditions and restrictions as provided for such uses in district CP-2.

8. Hotels, when located to complement and serve a dominant regional activity or focal point, including but not limited to airports, sports complex and similar activities. Such focal points shall be oriented to the traveling public.

9. Manufacture of articles sold only at retail on the premises.

10. Miniature golf courses.

11. Newspapers, job printing, lithographing and publishing.

12. Parking stations for trucks and buses.

13. Photograph printing shops.

14. Plumbing or sheet metal shops, allowing punching of material of one-eighth inch or less in thickness.

15. Roller skating rinks.

16. Sign painting and sign shops.

17. Taxidermy.

18. Transfer and storage offices.

(2) *Separation of adult businesses from other adult businesses.* Not more than two adult businesses shall be located within 1,500 feet of each other (regardless of whether such uses are located in the same facility, separate facilities or different zoning districts) as measured in a straight line along street rights-of-way between the property lines of the two properties.

(3) *Separation of adult businesses from certain other uses.*

(a) Types of adult businesses to which applicable. The adult businesses which shall be subject to the separation requirements of this subsection (3) are adult motion picture theaters and adult media stores.

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(b) Types of other uses to which applicable. The separation requirements of this subsection (3) shall apply to the relationship between the adult businesses specified in subparagraph (a) of this subsection (3), property zoned R-1, RA, R-2, R-3, R-4, R-4-O, R-5, R-5-O, R-6, GP-7, GP-6, GP-5, GP-4, GPA, GPR-1, or GPR-2 for residential use; property containing a house of worship; property containing a public or licensed educational institution that serves persons younger than 18; property containing a day-care facility; a public park; property containing a community center; property containing a children's amusement park; a library or museum; a recreation area or playground.

(c) General location requirements. No adult business specified in subsection (3)(a) shall be located on the same block with any of the types of property or uses specified in subparagraph (b) of this subsection (3).

(d) Distance requirements. The adult businesses listed in subsection (3)(a) shall be subject to the following distance separation requirements from the uses and types of property listed in subsection (3)(b): for an adult media store, 600 feet; and for an adult motion picture theatre, 1,000 feet.

(e) Measurement. Separation requirements shall be measured from property-line to property-line, following the route of property lines along public rights-of-way (to approximate pedestrian distances). For leased spaces in multi-tenant properties, the measurements shall be from the outer boundaries of the leased space (projected to ground level, if applicable); for leased space in single-tenant properties, the measurements shall be from the property lines.

(4) *Conditions applicable to certain businesses carrying adult media.*

a. Applicability. This section shall apply to any book store, media store or video store, in which adult media constitutes more than ten percent (10%) but not more than forty percent (40%) of the stock in trade, or where adult media occupies more than ten percent (10%) but not more than forty percent (40%) of the gross public floor area.

b. Prohibition of public display. The owner or operator of a store to which this section is applicable shall have the affirmative duty to prevent the public display of adult media at or within the portions of the business open to the general public.

c. Display of adult media. Adult media in a store to which this section is applicable shall be kept in a separate room or section of the store, which room or section shall:

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(i) Not be open to any person under the age of 18;

(ii) Be physically and visually separated from the rest of the store by an opaque wall of durable material, reaching at least eight feet high or to the ceiling, whichever is less;

(iii) Be located so that the entrance to it is as far as reasonably practicable from media or other inventory in the store likely to be of particular interest to children; and

(iv) Have access controlled by electronic or other means to provide assurance that persons under age 18 will not gain admission and that the general public will not accidentally enter such room or section.

(5) *Accessory uses.*

a. Any use which is accessory and incidental to any enumerated principal use within the district shall be permitted.

b. Air conditioning plants and ice refrigeration plants purely accessory and incidental to the principal use shall be permitted.

c. Any accessory use shall be limited to a maximum of one horsepower employed in the operation of any one machine, or a total of three horsepower for the manufacture of articles to be sold at retail on the premises and shall be limited to 115 volts.

d. Motion picture arcade booths are not permitted as an accessory use in any CP district nor in any other zoning district in the Zoning Ordinance.

**Sec. 80-130. District C-1 (neighborhood retail business).**

(a) *Purpose.* District C-1 is intended to permit development and continuance of small-scale commercial areas, designed to serve either adjacent residential neighborhoods; or larger trade areas with small-size specialty shops and services such as antique shops, boutiques, travel services and other related activities. Major commercial or service establishments with large floor areas (over 5,000 square feet) or large parking lots for drive-up services are better located in more intensive commercial districts.

(b) *Use regulations.* In district C-1, no building or land shall be used, and no building shall be erected, altered or enlarged, which is arranged, intended or designed for other than one or a combination of the following uses. Only flat wall signs or signs on the face of a marquee are permitted, which shall advertise or indicate only services, articles or products which are offered for sale within the building to which the sign is attached, and shall conform to all requirements of the sign ordinance of the city.

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(1) *Principal uses.*

- a. Any use permitted in district R-5.
- b. Professional services:
  - 1. Artists' studios.
  - 2. Clinics, for people only.
  - 3. Office buildings.
  - 4. Photographic studios.
- c. Retail and personal services:
  - 1. Banks, savings and loan associations and other financial institutions, including automatic tellers and accessory drive-up services, provided that there are five on-site reservoir spaces per drive-up window or automatic teller in addition to the required parking.
  - 2. Barbershops or beauty shops.
  - 3. Bicycle repair shops.
  - 4. Dancing schools.
  - 5. Dyeing and dry cleaning shops and shirt laundry services having minimal operations. No dust, lint, noise, vibration or odor generated by the plant operation shall be perceptible from any adjoining premises. Only nonflammable, nonexplosive synthetic solvents shall be used.
  - 6. Electrical appliance, fix-it, radio or television repair shops.
  - 7. Eleemosynary uses, including shelters for the homeless. Such uses shall be considered nonresidential for purposes of subsection (c) of this section.
  - 8. Grooming for small pets, provided that no animals are kept overnight, that there are no kennels on the premises and that the entire operation is carried on within a building.
  - 9. Laundromats, coin-operated, or self-service

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laundries or self-service dry cleaning shops. All equipment shall be so installed and anchored as to eliminate vibration. No dust, lint, noise or odor generated by this operation shall be perceptible at the boundaries of the premises.

10. Music studios.
11. Printing and reproduction services.
12. Shoe repair shops.
13. Tailor shops.
14. Travel agencies.

d. Transportation services:

1. Public parking facilities for passenger vehicles not exceeding 20 feet in length.

2. Service stations for the sale and dispensing of gasoline and oil only, but not including motor, body or fender repair work. One pole or column emblem or trademark sign, in addition to the other signs allowed in this district, shall be allowed on each street side upon which the station abuts, provided that the pole is placed back from the property line a distance equal to the setback or yard requirement of this chapter for this district or a building line established by a plat, whichever is the greater. No other advertising shall be attached to the pole.

e. Retail commercial:

1. Bakery or pastry shops (retail only).
2. Book stores.
3. Clothing or ready-to-wear stores.
4. Confectionery stores.
5. Drugstores.
6. Dry goods or notions stores.
7. Florists or gift shops.
8. Furniture homes or stores.

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9. Grocery, fruit or vegetable stores.
10. Hardware stores.
11. Jewelry stores.
12. Meat markets or delicatessens.
13. Media stores.
14. Package liquor stores, if they comply with chapter 10.
15. Photographic shops.
16. Restaurants, excluding drive-ins. The serving of alcoholic beverages as an incidental accessory use is subject to the definition for restaurants serving substantial quantities of food as contained in chapter 10.
17. Shoe stores.
18. Stationary stores.
19. Video stores
- f. Other business or service activities of the character enumerated in this subsection but not included in any other classification.

(2) *Conditions applicable to certain businesses carrying adult media.*

a. **Applicability.** This section shall apply to any book store, media store or video store, in which adult media constitutes more than ten percent (10%) but not more than forty percent (40%) of the stock in trade, or where adult media occupies more than ten percent (10%) but not more than forty percent (40%) of the gross public floor area.

b. **Prohibition of public display.** The owner or operator of a store to which this section is applicable shall have the affirmative duty to prevent the public display of adult media at or within the portions of the business open to the general public.

c. **Display of adult media.** Adult media in a store to which this section is applicable shall be kept in a separate room or section of the store, which room or section shall:

- (i) Not be open to any person under the age of

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(ii) Be physically and visually separated from the rest of the store by an opaque wall of durable material, reaching at least eight feet high or to the ceiling, whichever is less;

(iii) Be located so that the entrance to it is as far as reasonably practicable from media or other inventory in the store likely to be of particular interest to children; and

(iv) Have access controlled by electronic or other means to provide assurance that person under age 18 will not gain admission and that the general public will not accidentally enter such room or section.

(3) *Accessory uses.* Accessory uses customarily incident to a neighborhood retail business, including air conditioning plants and ice refrigeration plants purely incidental to a main activity permitted on the premises, are permitted. A maximum of one horsepower employed in the operation of any one machine, or a total of three horsepower for the manufacture of articles to be sold at retail on the premises, shall be permitted as an accessory use. No more than 115 volts shall be used.

(c) *Height, yard and area regulations.* In district C-1, the height of the buildings or structures, the minimum dimensions of lots and yards and the minimum lot area per family permitted on any lot shall be as follows, provided that buildings erected exclusively for dwelling purposes shall comply with the front, side and rear yard requirements of district R-4:

(1) *Height.* Buildings or structures shall not exceed 2 1/2 stories and shall not exceed 35 feet in height unless adjacent to and in the same block with district R-4 or C-2, in which case the height shall not exceed three stories and shall not exceed 45 feet.

(2) *Front yards.*

a. *Residential dwelling structure.* Same as in district R-4.

b. *Nonresidential structure.*

1. There need be no front yard in this district, except when the district abuts or adjoins a district R-1, R-2, R-3, R-4 or R-5 within the same block and on the same side of the street. Where this situation occurs, the front yard requirement for this district shall be the same as that for the abutting or adjoining residential districts (R-1 to R-5, inclusive) when the residence or lots front on the same street, but need not be more than 20 feet. Parking shall be set back a minimum of ten feet, regardless of

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adjacency to residential districts.

2. When the rear line or a portion of the rear line of residentially zoned property is adjacent to or abuts the business district, there shall be a setback for buildings on a street, the property line of which forms a street side line of the residentially zoned property, equal in depth to the depth of the existing or required side yard in the residentially zoned district, whichever is the greater, but such setback need not be more than ten feet.

3. On a corner lot, platted or unplatted, the rear line of which abuts or adjoins a side line or portion of a side line of a lot, there shall be a front yard for any building or buildings on the corner lot which lot fronts the same street as the residentially zoned property in the block, equal to one-half of the front yard requirement for the residentially zoned property given in subsection (c)(2)a of this section under the height, yard and area regulations for that district.

(3) *Side yards.*

a. *Residential dwelling structure.* Same as in district R-4.

b. *Nonresidential structure.*

1. No side yard is required in this district except where the district abuts or adjoins a district R-1, R-2, R-3, R-4 or R-5 within the same block and on the same side of the street. When this occurs, there shall be a side yard along the side line of any lot in the business district where that side line abuts, adjoins or is adjacent to a residential district, and on the street side of a corner lot. On any lot, the side line of which abuts or adjoins a residential district, the required side yard shall conform to the requirements for a side yard in the abutting or adjoining residential district.

2. On a corner lot, platted or unplatted, the street side line of which is a continuation of a side line of a lot or lots to its rear in the same block which are zoned for residential purposes, there shall be a side yard on the street side of the corner lot in the business district equal in depth to the depth of the existing or required side yard in the residentially zoned district, whichever is the greater, but such side yard need not be more than ten feet.

3. On a corner lot, platted or unplatted, the

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street side line of which is a continuation of the front street line of a lot or lots to its rear, there shall be a setback from the street side line of the corner lot equal to one-half of the front yard requirement in subsection (c)(2)a of this section under the height, yard and area regulations for the residentially zoned district fronting on the street.

(4) *Rear yards.*

a. *Residential dwelling structure.* Same as district R-4.

b. *Nonresidential structure.* No rear yard is required in this district except where the rear yard abuts or adjoins a district R-1, R-2, R-3, R-4 or R-5. When this occurs, there shall be a rear yard at least ten feet in depth. Where there is an alley, the rear yard shall be measured to the center of the alley.

(5) *Accessory building setback.* An accessory building shall be set back the same distance required of any principal building.

(6) *Lot width.*

a. *Residential dwelling structure.* The minimum mean width of a lot used exclusively for residence purposes shall be 50 feet, except that, where a lot has a mean width of less than 50 feet and is in separate ownership on or before January 1, 1954, this subsection will not prohibit the erection of a one-family dwelling. Duplexes and multiple dwellings hereafter erected require a minimum mean lot width of 50 feet.

b. *Nonresidential structure.* There shall be no limitation of lot width for buildings used wholly or partially for business purposes.

(7) *Lot area.*

a. *Residential dwelling structures and hotels.*

1. For one- and two-family dwellings, 4,000 square feet.

2. For three-family dwellings, including conversions, 5,000 square feet.

3. For dwellings with more than three families, other than row houses, apartment houses, apartment hotels and hotels, 5,000 square feet, with 1,000 square feet additional for each family over three.

4. For row houses, 1,000 square feet per

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family.

b. *Joint use structures.* For apartment houses, apartment hotels, hotels and buildings used jointly for hotel and apartment house uses or for business and residence purposes, 1,000 square feet per family, except where the business district abuts or adjoins only an R-5 district within the block, when it shall be 350 square feet per family. For further limitations on buildings used jointly for hotel and apartment house uses or for business and residence purposes, see section 80-250(6)a and b.

c. *Nonresidential structures.* There shall be no lot area requirement for nonresidential structures, excluding hotels.

(d) *Parking and loading regulations.* Parking and loading regulations shall be as provided in sections 80-444 and 80-445.

**Sec. 80-140. District C-2 (local retail business).**

(a) *Purpose.* District C-2, local retail business district, is intended to permit development and continuance of offices, retail trades and commercial services at specific locations along major streets, such as intersections. Automobile-related uses, such as drive-ins, dealerships, garages and other related uses, are first permitted in this district.

(b) *Use regulations.* In district C-2, no building or land shall be used, and no building shall be erected, altered or enlarged, which is arranged, intended or designed for other than one or a combination of the following uses:

(1) *Principal uses.*

a. Any use permitted in district C-1.

b. Retail/commercial:

1. Feed stores (no grinding).

2. Pet shops, if entirely within a building.

3. Commercial greenhouses.

c. Retail services:

1. Adult media stores.

2. Aluminum or other similar metal collection centers, provided the center is self-enclosed and no compaction or processing occurs on the site.

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3. Bars or cocktail lounges, when in conformance with chapter 10.

4. Business and commercial schools.

5. Commercial photography and processing.

6. Frozen food lockers for individual or family use.

7. Funeral homes or undertaking establishments, when located on a major thoroughfare.

8. Ice delivery stations.

9. Job printing, newspapers, lithography and publishing.

10. Motels.

11. Nightclubs or taverns, when in compliance with chapter 10.

12. Package liquor stores, when in compliance with chapter 10.

13. Recreation centers and activities, including but not limited to arcades, skating rinks, trampoline centers, batting cages, dancehalls, pool halls, pony tracks or rings for children only, miniature golf courses and miniature trains, and theaters or movies (other than drive-ins).

14. Sign painting or sign shops if fronting on a major thoroughfare and provided there is no open storage of trucks or goods.

d. Automobile-related and automobile-oriented uses:

1. Automobile or trailer sales agencies and trailer or used car sales lots, provided that all repair services shall be within a building and access thereto shall be only from a major thoroughfare. When service facilities are provided for motor vehicles or trailer repair work, the nearest point of the property shall be 200 feet or more from the boundary of an R-1 to R-3 district, inclusive, unless such use creates no noise in excess of that of normal daily traffic measured at the boundaries of the premises, and no vibration or odor generated by such use shall be perceptible

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at the boundaries of the premises. No dismantling of cars or trailers, repair services or sale of used parts shall be allowed on any trailer or used car sales lot. Any lights used to illuminate a trailer or used car sales lot shall be so arranged as to reflect the light away from any adjoining premises in a residential use. The use of floodlights, except those used for protection of the property, shall be permitted only until 10:00 at night. Such lighting used for protection shall not exceed in intensity two lux, measured at any property line.

2. Brake lining, only installation and repair.
  3. Bus stations for passenger pickup and discharge only.
  4. Carwashes, provided sufficient space is provided on the site for stacking a minimum of five cars per bay.
  5. Drive-in restaurants or other businesses where food or refreshments are served or consumed on the premises outside of a building. When the premises occupied by such use abut or are separated by an alley from a residentially zoned district, a solid wall or fence at least six feet in height shall be provided along all side and rear lot lines of the property. When the premises are within 1,000 feet of district C-4, the use shall be permitted only by a special use permit issued by the city council, after recommendation by the city plan commission, giving due consideration to the traffic generated thereby and compatibility with existing development.
  6. Garages for the parking of passenger vehicles and for motor repair of passenger vehicles.
  7. Public parking stations for commercial delivery cars not to exceed three-quarter ton.
  8. Taxicab businesses, including garage, servicing and parking facilities.
  9. Tire and battery stores.
  10. Wheel aligning only.
- e. Miscellaneous:
1. Cabinet shops or carpenter shops.
  2. Commercial radio and television

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broadcasting stations or transmitting stations and towers, provided that any tower shall maintain a setback of two-thirds the tower height from the nearest property line to the center of the tower.

3. Wireless communication facilities.

(a) *Purpose.*

(1) *Colocation as city policy.* Wireless communications providers are encouraged to colocate at single sites unless technically and economically impossible. This goal recognizes that the reduction in the number of facilities may result in an increase in the height of facilities that are permitted.

(2) *Industry cooperation.* Wireless communications providers should work together to develop a network of wireless communications facilities and sites that all providers can share to minimize the number of facilities.

(b) *Building permit required.* The construction of a wireless communications facility requires a building permit. In addition to the requirements of the building code, an applicant for a building permit must meet the requirements of this section. In this section, the term "applicant" means the entity wishing to place a wireless communications facility in the city.

(c) *Site plan.* When seeking a building permit, an applicant must submit a site plan showing the conditions required by this section, and other applicable regulations, including Chapter 25 "Communications Transmissions Systems," Code of Ordinances, and Chapter 2, Article VI, Division 8 "Landmarks Commission," Code of Ordinances.

(d) *Location.*

(1) *Technical data.* An applicant for a wireless communications facility shall provide engineering or other appropriate technical data establishing the need for a facility at the requested location.

(2) *Colocation.* An applicant shall describe efforts made to colocate

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the required equipment on existing wireless communications facilities and on other existing structures. An applicant shall describe why colocation is not possible, thus requiring the construction of a new wireless communications facility. All new facilities shall be constructed to permit the colocation of no less than two additional broadband providers.

(3) *Public safety facilities.* Operators of facilities shall, by obtaining a permit to construct a facility, agree to permit the colocation of public safety communications facilities owned or operated by the city or the Kansas City Police Department on terms and conditions mutually agreeable to each party.

(4) *Consideration of public property.* An applicant shall indicate whether public property, particularly property of the City of Kansas City, Missouri, is appropriate for placement of wireless communications facilities. Efforts to locate the required equipment on public property shall be described. If the use of public property is not possible, the applicant shall explain why a wireless communications facility cannot be placed on public property.

(5) *Separation of facilities.*

(a)

*One mile separation.* Monopoles or other towers constructed as part of a wireless communications facility shall not be located closer than within a one mile radius of the center of the base of another monopole or other tower constructed as part of a wireless communications facility. This requirement does not apply to antennas or other equipment located on existing buildings or to be collocated on existing monopoles or towers.

(b)

*Exception.* A facility may be located within the one mile radius of another facility

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if an engineering or other appropriate technical study establishes that there are no suitable sites available that meet the one mile separation requirement. A lack of suitable sites means that there are no existing wireless communications facilities available for colocation, no existing buildings or other structures available for placement of equipment, or, for engineering or other appropriate technical reasons, equipment must be located closer than one mile apart to operate the wireless communications system.

(6) *Exception to height limitations.* To encourage the use of existing structures, a wireless communications provider may place an antenna on an existing building even though the resulting height of the existing building exceeds that allowable for the zoning district in which the building is located by up to 25 feet. All other requirements of the zoning district will apply to any structure required to hold and protect equipment.

(7) *Not second principal use.* The construction of a wireless communications facility shall not be considered a second principal use of property.

(e) *Setback.*

(1) *Property line.*

(a)  
*Front property lines.* A setback of at least 50 feet shall apply to the front property line, unless a larger setback applies.

(b)  
*All other property lines.* Setback requirements, unless specifically addressed in this subsection, shall comply with the requirements applicable to all structures located in a C-2 district.

(2)  
*Residential district.* A wireless

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communications facility shall be located no less than 200 feet from any residential structure located within a residential district. If a wireless communications facility is taller than 200 feet, the separation from the center of the facility to a residential structure located within a residential district shall equal the height of the facility.

(f) *Type of facility.*

(1) *Monopole.* A wireless communications facility shall be a freestanding monopole and a structure no larger than necessary to protect the required equipment.

(a)

*Exception - least intrusive alternative.* If an applicant establishes that an alternative design, without guy wires, is less intrusive to a neighborhood than a monopole, an alternative design may be considered. To determine whether an alternative design is less intrusive, factors such as, but not limited to, the following may be considered: size, color, location, attempts to disguise the facility.

(b)

*Exception - disguised facilities.* An applicant may use disguised facilities, such as poles or towers designed to appear like trees.

(c)

*Exception - colocation.* If an applicant establishes that by use of an alternative design, without guy wires, that colocation of facilities will occur, and that any intrusion to a neighborhood is mitigated by colocation, an alternative design may be considered.

(g) *Screening.*

(1) *General.*

Unless located in an undeveloped area, adjacent

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property shall be screened from the equipment and ground-level portion of the facility. Screening may be accomplished by a visual barrier fence or landscaping, or both. Landscaping shall provide screening throughout all seasons.

(2) *Undeveloped areas.* Facilities located in undeveloped areas need not be screened when constructed if the bottom 25 feet of the facility is not visible, based upon a six foot line of sight, from public rights-of-way or adjacent property. Once the area around the wireless communications facility begins to develop, and the bottom 25 feet of the facility will become visible to public rights-of-way or adjacent property, the wireless communications facility shall be screened from adjacent property or rights-of-way. Screening may be accomplished by a visual barrier fence or landscaping, or both. Once construction begins on a project or segment of a project that will result in the wireless communications facility becoming visible from public rights-of-way or adjacent property, the wireless communications facility shall be screened within three months of commencement of the project or segment of the project causing the required screening. The city shall endeavor to provide notice of the commencement of the project or segment of the project, but the failure to give such notice shall not be a justification for failing to screen the facility.

(h) *Lighting.* Only basic security lighting shall be permitted. Lighting shall not result in glare on the adjacent properties. A lighting ring chart shall be provided as part of the plan submitted for approval of any facility. This requirement does not preclude the use of light poles, athletic field light structures or other sources of light from being used to disguise or to support wireless communications facilities. Lighting required by federal authorities, including the Federal Communications Commission or the Federal Aviation Administration are recognized as superseding local requirements for lighting when the requirements are inconsistent.

(i) *Signs.* A wireless communications facility may not have signage for business identification or advertising attached or incorporated into

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the facility, except for a sign no larger than 12 inches by 18 inches which contains the name of the operator and an emergency telephone number. This prohibition does not preclude the use of existing signs or billboards from being used to disguise or to support wireless communications facilities. This prohibition is not intended to supersede any requirement by the Federal Communications Commission or other appropriate agency for identification signs.

4. Public utility stations or substations or terminals.

5. Small animal hospitals if in a soundproofed and air conditioned building without outside pens. The boarding of well animals is permitted as an accessory use; provided that the operation is enclosed within a building, is soundproofed, and is adequately ventilated; provided, further, that such animals may be exercised outside the building as long as noise levels created do not exceed 80 decibels at property lines.

6. Telephone exchanges.

f. Other business or service activities of the character enumerated in this subsection, not included in any other category.

(2) *Separation of adult businesses from other adult businesses.* Not more than two adult businesses shall be located within 1,500 feet of each other (regardless of whether such uses are located in the same facility, separate facilities or different zoning districts) as measured in a straight line along street rights-of-way between the property lines of the two properties.

(3) *Separation of adult businesses from certain other uses.*

(a) Types of adult businesses to which applicable. The adult businesses which shall be subject to the separation requirements of this subsection (3) are adult media stores.

(b) Types of other uses to which applicable. The separation requirements of this subsection (3) shall apply to the relationship between the adult businesses specified in subparagraph (a) of this subsection (3), property zoned R-1, RA, R-2, R-3, R-4, R-4-O, R-5, R-5-O, R-6, GP-7, GP-6, GP-5, GP-4, GPA, GPR-1, or GPR-2; property containing a house of worship; property containing a public or licensed educational institution that serves persons younger than 18; property containing a day-care facility; a public park, property containing a community center, property containing a children's amusement park; a library or museum, a recreation area or playground.

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(c) General location requirements. No adult business specified in subsection (3)(a) shall be located on the same block with any of the types of property or uses specified in subparagraph (b) of this subsection (3).

(d) Distance requirements. The adult businesses listed in subsection (3)(a) shall be subject to the following distance separation requirements from the uses and types of property listed in subparagraph (b) of this subsection (3): for an adult media store, 600 feet.

(e) Measurement. Separation requirements shall be measured from property-line to property-line, following the route of property lines along public rights-of-way (to approximate pedestrian distances). For leased spaces in multi-tenant properties, the measurements shall be from the outer boundaries of the leased space (projected to ground level, if applicable); for leased space in single-tenant properties, the measurements shall be from the property lines.

(4) *Conditions applicable to certain businesses carrying adult media.*

a. Applicability. This section shall apply to any book store, media store or video store, in which adult media constitutes more than ten percent (10%) but not more than forty percent (40%) of the stock in trade, or where adult media occupies more than ten percent (10%) but not more than forty percent (40%) of the gross public floor area.

b. Prohibition of public display. The owner or operator of a store to which this section is applicable shall have the affirmative duty to prevent the public display of adult media at or within the portions of the business open to the general public.

c. Display of adult media. Adult media in a store to which this section is applicable shall be kept in a separate room or section of the store, which room or section shall:

(i) Not be open to any person under the age of 18;

(ii) Be physically and visually separated from the rest of the store by an opaque wall of durable material, reaching at least eight feet high or to the ceiling, whichever is less;

(iii) Be located so that the entrance to it is as far as reasonably practicable from media or other inventory in the store likely to be of particular interest to children; and

(iv) Have access controlled by electronic or

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other means to provide assurance that persons under age 18 will not gain admission and that the general public will not accidentally enter such room or section.

(5) *Accessory uses.*

a. Accessory uses customarily incidental to a local retail activity.

b. Drive-in, drive-up or drive-through facilities, provided that such accessory facilities within 1,000 feet of district C-4 shall not be permitted except by special permit issued by the city council after recommendation by the city plan commission, giving due consideration to the traffic generated thereby and compatibility with existing development.

c. Motion picture arcade booths are not permitted as an accessory use in this zoning district nor in any other zoning district in the Zoning Ordinance.

(c) *Height, yard and area regulations.* In district C-2, the height of the buildings or structures, the minimum dimensions of lots and yards and the minimum lot area per family permitted on any lot shall be as follows, provided that buildings erected exclusively for dwelling purposes shall comply with the front, side and rear yard requirements in district R-4:

(1) *Height.* Buildings or structures shall not exceed 45 feet in height. This height restriction shall not apply to wireless communications facilities, which may be erected up to 200 feet in height.

(2) *Front yards.*

a. *Residential dwelling structure.* Same as in district R-4.

b. *Nonresidential structure, including hotels and motels.* There need be no front yard in this district except where the district abuts or adjoins a district R-1, R-2, R-3, R-4 or R-5, within the same block and on the same side of a street. If the district abuts or adjoins such residential districts, there shall be a setback from the street for any building in the business district equal to one-half of the front yard requirement for the abutting or adjoining residential district under the height, yard and area regulations for the district. When the side property line of the residential property forms the greater portion (at least 70 percent) of the street property line in the residential district, there shall be a setback in the business district equal to the yard requirement for the residential district given in paragraph 3 under the height, yard and area regulations for that district, but such setback need not be more than eight feet.

(3) *Side yards.*

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a. *Residential dwelling structure.* Same as in district R-4.

b. *Nonresidential structure, including hotel and motel.* There shall be a side yard along the side line of a property in the business district, which line abuts, adjoins or is within eight feet of a boundary of a residential district, districts R-1, R-2, R-3, R-4 and R-5, equal to eight feet, measured from the residential district boundary line. Otherwise no side yard is required.

(4) *Rear yards.*

a. *Residential dwelling structure.* Same as in district R-4.

b. *Nonresidential structure, including hotel and motel.* Same as for district C-1.

(5) *Lot area per family.* Same as for district C-1.

(d) *Performance standards.*

(1) No use enumerated in this section shall create any noise in excess of that of normal daily traffic measured at the boundaries of the premises, and no vibration or odor generated by such uses shall be perceptible at the boundaries of the premises.

(2) Floodlights or lights which illuminate open areas in connection with any of the uses listed in this section shall be so arranged as to reflect the light away from any adjoining residential property, and the intensity shall not exceed two lux measured at any property line.

(e) *Parking and loading regulations.* Parking and loading regulations shall be as provided for in sections 80-444 and 80-445.

(f) *Signs.* Sign regulations shall be as provided in this chapter.

**Sec. 80-151. District C-3a1 (intermediate business, low buildings).**

(a) *Purpose.* District C-3a1 is intended to serve regional trade areas by permitting large-scale commercial development of more intensive uses than allowed in the C-2 district. Such areas should be adjacent to major thoroughfares carrying regional traffic. Certain distribution and wholesale uses are first permitted in this district.

(b) *Use regulations.* In district C-3a1, no building or land shall be used, and no building shall be erected, altered or enlarged, which is arranged, intended or designed for other than one of the following uses:

(1) *Principal uses.*

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- a. Any use permitted in district C-2.
- b. Retail services:
  - 1. Adult media stores.
  - 2. Adult motion picture theaters.
    - 3. Bookbinding.
    - 4. Diaper services.
    - 5. Dyeing and dry cleaning plants.
    - 6. Film exchanges.
    - 7. Meat processing; provided that there is no slaughtering or rendering on premises, that all waste is stored within a building, that all loading and unloading shall be done in a recessed loading area on the premises with all truck ingress and egress to be from a major thoroughfare, that employee parking shall be provided in accordance with requirements for industrial buildings, and that no noxious odors are created on the premises.
    - 8. Newspapers, job printing, lithographing and publishing.
    - 9. Photograph printing shops.
    - 10. Plumbing or sheetmetal shops (allowing punching of material one-eighth inch or less in thickness).
  - 11. Sex shops.
    - 12. Shooting galleries.
    - 13. Sign painting and sign shops.
    - 14. Taxidermy.
    - 15. Trade schools.
- c. Automobile-related and automobile-oriented uses:
  - 1. Auto body shops, provided that:

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i. All work shall be done within the building.

ii. All inoperable or wrecked vehicles shall be stored inside the building.

iii. No salvage operations shall take place on the site.

iv. All access shall be from a major thoroughfare.

v. The property must have a frontage of at least 50 feet along a major thoroughfare unless the property fronts on a street and all of the property fronting on such street within the same block and on both sides of the street is zoned district C-2 or greater intensity.

vi. The yard requirements listed in subsection (c) of this section shall apply unless the property abuts district R-1, R-2, R-3, R-4, R-4-O, R-5, R-5-O or R-6, in which case any building shall be set back at least 15 feet from the rear property line and 40 feet from any side property line. Parking is permitted in side or rear yards.

vii. Parking spaces must be provided at the rate of one space for every 300 square feet of gross floor area.

viii. The property must be screened from surrounding nonresidential property and from any property adjacent to the rear by a solid fence at least six feet in height, provided that the height of the fence may be reduced to four feet to provide adequate sight distance at any street or driveway intersection. Property must be screened from any residential property and from the public street as follows:

(a) From the public street, deciduous shade trees spaced 30 feet on center shall be used, if at least 20 feet exists between curb and building.

(b) From the public street and from residential property, smaller ornamental trees in groupings at 15 feet on center shall be used if there is not adequate space between the curb and building for shade

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trees. These trees should also be used, where there are adjacent residential properties, in the side yards.

(c) Fences at least six feet in height will be used as detailed in this subsection c.1 in all rear yards.

2. Drive-in theaters, upon approval of specific plans by the board of zoning adjustment, after a public hearing, and subject to the following conditions:

i. The property shall consist of not less than ten acres of land in a single tract or parcel not intersected or divided by any street, alley or by property belonging to any other owner.

ii. The plans for the screen tower, buildings and other structures shall have received the approval of the director of codes administration.

iii. The screen shall be obscured from main thoroughfares. Any lights used to illuminate the theater site shall be so arranged as to reflect the light away from adjoining property and streets.

iv. The plans shall have been approved by the director of city development, indicating undue traffic congestion due to the location and arrangement of the theater, including the car rows and aisles, and minimizing the danger of fire and panic.

v. Acceleration and deceleration lanes shall be provided along the public thoroughfare adjacent to the entrance and exit of the theater. Parking space for patrons awaiting admission shall be provided on the side in an amount equal to not less than 30 percent of the vehicular capacity of the theater.

vi. Vehicular circulation shall be so designed and constructed as to permit only one-way traffic within the boundaries of the tract on which the theater is located. Emergency exits shall be provided and shall meet the approval of the fire department.

vii. The plans shall be approved by the fire department.

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viii. Definite plans for shrubbery and landscaping shall be presented to the board and made a part of the permit. The board shall also approve the design of the fence surrounding the site.

ix. The nearest point of theater property, including driveways and parkway areas, shall be at least 750 feet from the boundary of a district zoned for residential use. This condition may be modified by the board where topographical considerations make the requirement excessive. The board may require any other condition that will safeguard the public health or welfare of the community.

3. Drive-in businesses.
4. Parking stations for trucks and buses.
5. Public garages, with the same conditions listed in this section for auto body shops.
6. Streetcar and bus barns.
7. Used car sales lots or trailer sales garages.

d. Distribution and wholesale uses:

1. Bakeries, wholesale, provided that the property adjoins or abuts an industrial district and all loading and unloading operations adjoin such industrial district, and subject to approval of the board of zoning adjustment after public hearing and notice and after due consideration as to the effect upon the present and future character of surrounding properties.

2. Bottling works for soft drinks only, provided that the building is soundproofed and air conditioned and recessed loading and unloading space is provided and that the property is more than 100 feet from any property zoned for districts R-1, R-2, R-3, R-4, R-4-O, R-5, R-5-O and R-6.

3. General distribution and wholesaling.
4. Manufacture of articles to be sold at retail on the premises only.
5. Storage, in bulk, within a building, or warehouses for automobiles, clothing, drugs, dry goods, furniture,

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hardware, household goods, glass, groceries, lubricating oil, millinery, paints and paint materials, pipes, rubber, shop supplies, tobacco, turpentine and varnish; also, office and warehouse structures of general building contractors for the storage of other than heavy construction equipment, provided all storage is within the building, and sufficient space is provided for truck loading, unloading and parking to be entirely on private property.

6. Transfer and storage offices or warehouses.

7. Wholesale uses as follows: Any use listed for districts C-1, C-2 and C-3a1, except where a wholesale use is specifically listed, and not including uses listed in district C-4 and in industrial districts, is permitted in this district as a wholesale use. Manufacture of products is permitted in connection with such wholesale uses, providing the area devoted to such manufacturing is limited to less than 50 percent of the floor area when the entire use is on one floor, or, in a multistoried building, not over the equivalent of the area of one floor, where the entire use occupies more than one floor.

e. Miscellaneous:

1. Armories.

2. Battery stations.

3. Cabinet and carpenter shops.

4. Fiestas and street fairs.

5. Tourist camps and motels.

6. Laundries.

7. Heating and cooling plants may be allowed as a special use permit by the city council after public hearing and recommendation of the city plan commission subject to the following conditions:

a. Submittal of a site plan and elevations depicting the type, size and height of all structures and equipment including provisions for adequate containment and screening.

b. The city council may impose such conditions as to operation, site development, signs,

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times of operation or any other matter as may be deemed necessary in order that such use shall not materially injure or curtail the appropriate use of neighboring property; shall not jeopardize the public health, safety, and welfare; and does not violate the general spirit or intent of this chapter or this section. The special use permit may be revoked at any time by the city council upon notice to the permit holder and after a hearing before the city council when violations of any provision of the Code of Ordinances has occurred. This provision shall not limit the city council from pursuing any other remedies available under the law.

8. Wireless communication facilities. Wireless communication facilities may be located as provided for in district C-2 with the following exceptions:

(a) Setback.

(1) Property line - freestanding monopole.

(A) Front property lines. A setback of at least 50 feet shall apply to the front property line, unless a larger setback applies.

(B) All other property lines. Setback requirements, unless specifically addressed in this subsection, shall comply with the

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(2) Property line - lattice tower. A setback equal to a distance of at least two-thirds the height of the tower or other structure shall apply from all property lines unless a larger setback applies.

(3) Residential district. A wireless communications facility shall be located no less than 200 feet from any residential structure located within a residential district. If a wireless communications facility is taller than 200 feet, the separation from the center of the facility to a residential structure located within a residential district shall equal the height of the facility.

(b) Type of facility. A wireless communications facility may be a freestanding monopole or a lattice tower with or without guy wires, and a structure no larger than necessary to protect the required equipment.

(2) *Separation of adult businesses from other adult businesses.* Not more than two adult businesses shall be located within 1,500 feet of each other (regardless of whether such uses are located in the same facility, separate facilities or different zoning districts) as measured in a straight line along street rights-of-way between the property lines of the two properties.

(3) *Separation of adult businesses from certain other uses.*

(a) Types of adult businesses to which applicable. The adult businesses which shall be subject to the separation requirements of this subsection (3) are adult motion picture theaters, sex shops, and adult media stores.

(b) Types of other uses to which applicable. The separation requirements of this subsection (3) shall apply to the relationship between

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the adult businesses specified in subparagraph (a) of this subsection (3), property zoned R-1, RA, R-2, R-3, R-4, R-4-O, R-5, R-5-O, R-6, GP-7, GP-6, GP-5, GP-4, GPA, GPR-1, or GPR-2; property containing a house of worship; property containing a public or licensed educational institution that serves persons younger than 18; property containing a day-care facility; a public park, property containing a community center, property containing a children's amusement park; a library or museum, a recreation area or playground.

(c) General location requirements. No adult business specified in subsection (3)(a) shall be located on the same block with any of the types of property or uses specified in subparagraph (b) of this subsection (3).

(d) Distance requirements. The adult businesses listed in subparagraph (a) of this subsection (3) shall be subject to the following distance separation requirements from the uses and types of property listed in subparagraph (b) of this subsection (3): for an adult media store, 600 feet; for a sex shop, 800 feet; for an adult motion picture theater, 1,000 feet.

(e) Measurement. Separation requirements shall be measured from property-line to property-line, following the route of property lines along public rights-of-way (to approximate pedestrian distances). For leased spaces in multi-tenant properties, the measurements shall be from the outer boundaries of the leased space (projected to ground level, if applicable); for leased space in single-tenant properties, the measurements shall be from the property lines.

(4) *Conditions applicable to certain businesses carrying adult media.*

a. Applicability. This section shall apply to any book store, media store or video store, in which adult media constitutes more than ten percent (10%) but not more than forty percent (40%) of the stock in trade, or where adult media occupies more than ten percent (10%) but not more than forty percent (40%) of the gross public floor area.

b. Prohibition of public display. The owner or operator of a store to which this section is applicable shall have the affirmative duty to prevent the public display of adult media at or within the portions of the business open to the general public.

c. Display of adult media. Adult media in a store to which this section is applicable shall be kept in a separate room or section of the store, which room or section shall:

(i) Not be open to any person under the age of

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(ii) Be physically and visually separated from the rest of the store by an opaque wall of durable material, reaching at least eight feet high or to the ceiling, whichever is less;

(iii) Be located so that the entrance to it is as far as reasonably practicable from media or other inventory in the store likely to be of particular interest to children; and

(iv) Have access controlled by electronic or other means to provide assurance that persons under age 18 will not gain admission and that the general public will not accidentally enter such room or section.

(5) *Accessory uses.* Accessory uses customarily incident to the uses listed in subsection (b)(1) of this section. Motion picture arcade booths are not permitted as an accessory use in this zoning district nor in any other zoning district in the Zoning Ordinance.

(c) *Height, yard and area regulations.* In district C-3a1, the height of the buildings, the minimum dimensions of lots and yards and the minimum lot area per family permitted on any lot shall be as follows, provided that buildings erected exclusively for dwelling purposes shall comply with the front, side and rear yard requirements in district R-4:

(1) *Height.* Buildings or structures shall not exceed three stories and shall not exceed 45 feet in height.

(2) *Front yards.*

a. *Residential dwelling structure.* Same as district R-4.

b. *Nonresidential structure, including hotel and motel.* There need be no front yard in this district.

(3) *Side yards.*

a. *Residential dwelling structure.* Same as district R-4.

b. *Nonresidential structure, including hotel and motel.* There need be no side yard in this district.

(4) *Rear yards.*

a. *Residential dwelling structure.* Same as district R-4.

b. *Nonresidential structure, including hotel and motel.* Same

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as for district C-1.

(5) *Lot area.* Same as for district C-1, except that for apartment houses, apartment hotels, hotels and buildings used jointly for hotel and apartment house uses or for business and residence purposes, the minimum shall be 350 square feet.

(d) *Parking and loading regulations.* Parking and loading regulations shall be as provided for in sections 80-444 and 80-445.

(e) *Signs.* Sign regulations shall be as provided in section 80-220.

**Sec. 80-156. District C-X (adult entertainment).**

(a) *Purpose.* The purpose of district C-X is to identify and prescribe specific requirements and conditions for the location of certain defined adult entertainment activities. The district is designed as an overlay district in certain zoning districts based on the regional character of the activities. Adult entertainment uses do not occur on a frequent basis and require separate and specifically designed regulations for their development. Such adult entertainment uses are recognized as having serious objectionable operational characteristics, particularly if several of such uses are concentrated, thereby having a deleterious effect upon adjacent areas. The location of such uses has an additional deleterious effect upon adjacent areas and could contribute to the blighting and downgrading of the surrounding neighborhood. The special regulation of adult entertainment uses is necessary to ensure that the adverse effect of such uses will not contribute to the blighting or downgrading of surrounding neighborhoods, whether residential or nonresidential, by location or concentration, and to ensure the stability of such neighborhoods.

(b) *Establishment of overlay district.* An overlay district C-X shall be established as follows:

(1) District C-X shall be established only by amendment of the zoning maps in accordance with section 80-360, and in accordance with the provisions of sections 80-330, 80-335 and 80-355, provided that the city plan commission shall recommend and the city council shall find that the proposed district C-X meets all of the requirements without exception described in subsections (c), (d) and (e) of this section, and further that the proposed use to be constructed or operated will neither negatively impact nor materially injure property within 1,000 feet of the proposed district boundaries.

(2) No district C-X shall be established without the submission and approval of a site development plan. Failure to comply with the plan so approved and established as part of the district C-X shall be deemed to be a violation of this chapter and enforceable under sections 80-400, 80-410 and 80-420.

(3) A district C-X shall be established as an overlay district and only in districts C-3, C-4, M-1, M-2 and M-3.

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(4) A district C-X shall be established only if the boundaries of the district are a minimum of 1,000 feet from any church or place of worship, day care facility, public park, educational institution, library, museum, community center, residential district zoned R-1, RA, R-2, R-3, R-4, R-4-O, R-5, R-5-O, R-6, GP-7, GP-6, GP-5, GP-4, GPA, GPR-1, or GPR-2, children's amusement park or residential building.

(c) *Location and site requirements for permitted uses.* Any adult cabaret, bathhouse, massage shop or modeling studio shall meet the following location and site requirements:

(1) Not more than two adult businesses shall be located within 1,500 feet of each other (regardless of whether such uses are located in different zoning districts) as measured in a straight line from the lot line of the affected properties; provided, however, that the development plan which is approved with the establishment of a district C-X may provide for multiple adult businesses within the same facility.

(2) All access shall be provided from a major thoroughfare.

(3) The property on which such use is located shall have a minimum of 50 feet of street frontage.

(4) The property on which the use is located shall be screened by a solid masonry wall at least six feet in height along the side and rear property lines provided that the parking lot devoted to said use may be screened by decorative fencing such as wrought iron or brick and need not be screened by a solid masonry wall.

(5) The facility on which the use is located and the parking for such facility shall have a front yard setback of 20 feet, a side yard setback of ten feet, and a rear yard setback of ten feet provided that where the use is proposed in an existing building and parking lot, the setback requirements need not be met.

(6) The parking requirements as provided in section 80-444 shall be met, as well as the loading requirements of section 80-445 provided that the council may approve a development plan without the required section 80-444 parking where the parking provided is consistent with solid planning principles in consideration of anticipated use, mass transit accessibility and off-site parking availability. The parking provided on the development plan shall remain available and shall be the basis of a violation if not provided.

(7) If the parking and maneuvering space of any parking lot exceeds 7,500 square feet, at least five percent of the lot area shall be maintained as landscaped area; provided that a credit toward the overall required landscaped area may be provided if the landscaping provides for trees either at least 15 feet in height or at least three inches in diameter for each 2,000 square feet of required landscaped parking area. Additionally, 15 percent of the entire lot area, including parking

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area, shall be maintained as an open landscaped area with a 20-foot landscape buffer along all street frontage. Provided that the council may approve development plan where an appropriate alternative is proposed for an existing building and parking lot such as decorative wrought iron or brick fencing.

(8) The facility in which the use is located shall be designed in such a fashion that all openings, entries and windows prevent view into such facilities from any pedestrian sidewalk, walkway, street or other public area provided that the development plan may provide for openings into such facility where needed for security reasons provided no merchandise or pictures can be viewed from the sidewalk in front of the building.

(9) The facility in which such use is located shall be limited to one wall-mounted sign no greater than one square foot of sign area per linear foot of wall length, not to exceed a total of 50 square feet provided that the council may approve the location of up to three signs which collectively shall not exceed a total of 50 square feet in area. The signs(s) shall not flash, blink or move by mechanical means and shall not extend above the roofline of the building. Further, no merchandise or pictures of products or entertainment on the premises shall be displayed in window areas or any area where such merchandise or pictures can be viewed from the sidewalk in front of the building. No flashing lights or lighting which leaves the impression of motion or movement shall be permitted.

(d) *Site plan.* The site plan accompanying the application for approval of an overlay district C-X shall include the following information:

- (1) The site plan shall be drawn at a scale of one inch equals 100 feet or larger.
- (2) The site plan shall delineate the property lines of the proposed project.
- (3) The site plan shall delineate existing rights-of-way and easements.
- (4) The site plan shall delineate the general location and width of all proposed streets and public rights-of-way, such as alleys, pedestrian ways and easements.
- (5) The site plan shall delineate the solid masonry screening as provided in subsection (d) of this section.
- (6) The site plan shall delineate the proposed building layout with the front, side and rear building setbacks as required in subsection (c) of this section.
- (7) The site plan shall characterize the proposed usage of the building and description of the proposed use by type, character and intensity.
- (8) The site plan shall delineate the location and number of parking spaces, and the proposed parking and loading ratio and its location requirements in

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accordance with subsection (c) of this section.

(9) The site plan shall delineate all points of access and egress in accordance with subsection (c) of this section.

(10) The site plan shall present, in tabular form, the proposed net density of the use, providing the number of seats, employees or other applicable unit of measure.

(11) The site plan shall delineate the gross floor area of the building or structure.

(12) The site plan shall detail the proposed stages of construction for all land in development and improvements with the proposed district.

(13) The site plan shall describe the landscaping to be provided.

(14) The site plan shall delineate the proposed exterior lighting in accordance with subsection (c) of this section.

(15) The site plan shall delineate the proposed architectural details of the facility in accordance with subsection (c) of this section.

(16) The site plan shall indicate the signage in accordance with subsection (c) of this section.

(17) The site plan shall set forth any other information necessary for determination of the suitability of the proposed use for the site.

(e) *Location of uses outside C-X district.* No adult cabaret, bathhouse, massage shop or modeling studio shall be permitted except within district C-X, subject to the provisions of section 80-230. NOTE: Motion picture arcade booths and motion picture arcade booth establishments are specifically not a permitted use in either overlay district C-X or in any other zoning district in the Zoning Ordinance and further motion picture arcade booths are not permitted as an accessory use in any zoning district in the Zoning Ordinance.

**Sec. 80-230. Legal nonconformance.**

By virtue of the passage of Ordinance No. 45608, passed June 4, 1923, which created various district classifications and divided the city into such districts, certain nonconformities were created. Additional nonconformities have been created by amendments to the zoning ordinance. Therefore, the following procedures are hereby established to determine those uses which were lawful prior to the passage of the zoning ordinance, or any amendment thereto, and to provide for the conversion of legal nonconformities to comply with current provisions:

(1) *Definitions.*

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a. *Effective date of this chapter.* For purposes of this section only, the effective date of this chapter shall be presumed to be June 4, 1923, or the date of annexation of the subject property, whichever is later.

b. *Legal nonconformance* means any legal nonconforming use, legal nonconforming use in a conforming structure or building, conforming use in a legal nonconforming structure, legal nonconforming structure or building or legal nonconforming sign.

c. *Legal nonconforming use* means a structure, building or use of land that is in existence and lawful on the date when a zoning ordinance or any amendment thereto becomes effective prohibiting such use, but which, nevertheless, continues unaffected by such an ordinance or amendment thereto.

d. *Legal nonconforming use in a conforming structure or building* means a use or activity which is legal when commenced but made nonconforming by a subsequently enacted zoning ordinance, while the building in which the use or activity takes place, or the structure utilized, conforms to the ordinance. The most obvious example of such a use would be a small-scale commercial activity or use (e.g., operation of a restaurant in a building designed for single-family residential use and located in a residential district).

e. *Conforming use in a legal nonconforming structure* means a use or activity complying with the zoning ordinance or any amendment thereto, but which is conducted in a building or utilizes a structure that, because of some design characteristic, fails to conform to an ordinance passed after the building or structure has been constructed.

f. *Legal nonconforming structure or building* means a lawfully existing structure which becomes nonconforming because of an ordinance enacted subsequent to its erection. The nonconformance may be attributed to size, nature of construction, location of the structure or building on the land, or its proximity to another structure or building.

g. *Legal nonconforming sign* means a physical method of identifying a name, symbol or token, including the sign structure (including framework and supports), which was lawful when constructed but has become nonconforming as a result of any amendment to this chapter.

h. *Certificate of legal nonconformance* means a determination that a legal nonconformance has been established. A certificate of occupancy for a legal nonconforming use, as previously required, shall be deemed to be a certificate of legal nonconformance.

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(2) *Continuance of legal nonconformities.*

a. *Nonconforming uses authorized.* A legal nonconforming use existing prior to the passage of this chapter or amendment thereto may be continued, except as otherwise provided in this section.

b. *Amortization of legal nonconforming uses of land.* Legal nonconforming use of land shall be discontinued within one year from the effective date of this chapter or amendment thereto which makes the use of land nonconforming unless, in either case, such land is wholly or partially occupied with a permanent, enclosed building, the design or use of which is nonconforming.

c. *Legal nonconforming structures or buildings.* The lawful use of a structure or building, prior to the effective date of this chapter or amendment thereto, which is nonconforming as to design, shall be permitted to continue for the usable life of the structure or building as provided in this section.

d. *Nonconforming distance from a residential district.* When a building in a zoning district is occupied by or designed for a use which is classified in that district, but does not conform to the distance requirements from a residential district, then any subsequent change in use shall be to a use that conforms to the distance requirements specified for the district.

e. *Legal nonconforming signs.* All legal nonconforming signs shall be permitted to continue during the usable life thereof.

f. *Construction of nonconforming use provisions regarding adult businesses.* The following provisions shall apply to the application of the nonconforming use provisions of this Section 80-230 to adult businesses:

i. Each of the following shall be considered a unique and separate adult business: adult cabaret, adult media store (which will be considered a single use even if it also includes adult books and other printed matter); massage shop, modeling studio, bathhouse, adult motion picture theater and/or sex shop.

ii. An adult media store is a less intensive use than a sex shop. Any nonconforming use as a sex shop may be converted to a nonconforming use as an adult media store at any time with written notice provided to the director of codes administration without any further approvals or actions required by the City. If a nonconforming use as a sex shop is converted to a nonconforming use as an adult media store, it may not thereafter be

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converted.

iii. Except as provided in subparagraph ii of this subsection (2)f, where a certificate of legal nonconformance establishes a right to operate one or more adult businesses at a particular location, only the business or businesses specifically identified in the certificate of legal nonconformance shall be allowed and no other adult business shall be allowed as a nonconforming use at that particular location. The provisions of subsection (4) of this Section 80-230 shall not apply to adult businesses established as nonconforming uses and the director of codes administration has no authority to authorize a change to a certificate of legal nonconformance for an adult business except as provided in this subsection (2) of this Section 80-230.

iv. Certificates of legal nonconformance issued for an adult business shall apply to all aspects of the nonconformance of the adult business with the Zoning Ordinance, including the separation requirements established specifically for adult businesses in this Zoning Ordinance.

v. Notwithstanding other provisions of Section 80-230, an adult business which includes one or more motion picture arcade booths for which there is a certificate of legal nonconformance shall be allowed to relocate the motion picture arcade booths incident to a relocation of the business, subject to the following terms and locations: (1) the motion picture arcade booths may be relocated only if the relocation involves all adult businesses or all aspects of the adult businesses on the premises which do not conform to the Zoning Ordinance in that location; (2) not more than the number of motion picture arcade booths shown on the certificate of legal nonconformance or proven by the applicant to be subject to the certificate of legal nonconformance may be relocated; (3) not more than the number of motion picture arcade booths actually in operation on the date of application for relocation may be relocated; (4) the motion picture arcade booths may be relocated only in conjunction with the relocation of all adult businesses or all aspects of the adult businesses on the premises which do not conform to the Zoning Ordinance; (5) the location to which the motion picture arcade booths are relocated must conform in all respects to the Zoning Ordinance as to all other aspects of the adult business, including separation and other requirements specifically applicable to the adult business which is relocating; (6) the relocated motion picture arcade booths shall conform fully with the requirements of Section 12-67 of the Code of Ordinances, including the design requirements; (7) after such relocation, the motion picture arcade booths shall be the subject of a certificate of

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legal nonconformance as though they had always been at the new location, except that the certificate of legal nonconformance shall, on its face, reflect the fact of the relocation and the actual history of the booths involved. Any relocation of an adult business, including motion picture arcade booths, shall be approved by the director of codes administration upon receipt of a written request and such other information that the director may request provided that the standards applied to the determination of approval or denial shall be the conditions set forth in this subparagraph (v). Upon approval of the relocation of the adult business with the motion picture arcade booths, the certificate of legal nonconformance at the previous location shall be void.

(vi) No building arranged or designed for or devoted to a legal nonconforming use may be extended or enlarged or structurally altered; provided however that establishments with "media rooms", "preview rooms" or other spaces created as exempt from Second Committee Substitute for Ordinance No. 970827, As Amended, hereinafter referred to as "Ordinance 970827" as codified at section 12-275 through section 12-283, because they were nominally designed to seat ten (10) or more people, shall have until May 1, 1999, to remove the doors from those rooms and to take other actions to bring those spaces into compliance with section 12-67(a)(1), (2) and (3). As an alternative, the establishment may replace those rooms with no more than the number of motion picture arcade booths existing in the same space prior to the passage of Ordinance No. 970827, on July 3, 1997, provided that each and every replacement motion picture arcade booth shall fully conform to the requirements of this section, and particularly with section 12-67(a)(1), (2) and (3); any booths created by conversion under this section shall be treated as legal nonconforming uses, as though they had existed continuously from the date of passage of Ordinance No. 970827 until passage of Second Committee Substitute for Ordinance No. 981270.

(3) *Extension, expansion or repair of legal nonconforming uses.*

a. The extension of legal nonconforming use to any portion of a building, which portion constructed expressly for such nonconforming use prior to the effective date of this chapter or amendment thereto, shall be permitted, provided no structural alterations are made.

b. No building arranged or designed for or devoted to a legal nonconforming use may be extended or enlarged or structurally altered unless the use of such building is changed to a conforming use or unless a special permit shall be granted by the board of zoning adjustment in the

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case of evident hardship. The special permit shall not authorize an extension in excess of 25 percent of the ground area of the original building; and, further, an extension of the original building shall in no case authorize the construction of a new and separate structure.

c. No legal nonconforming use of the land may be extended to cover additional land area unless the use of the land is changed to a conforming use or unless a special permit shall be granted by the board of zoning adjustment in the case of evident hardship. The special permit shall not authorize an extension in excess of ten percent of the land covered by the original nonconforming use or authorize the construction of any structure or building.

d. No legal nonconforming sign shall be extended, enlarged or structurally altered except as provided in subsection (7)b of this section; provided that, notwithstanding anything in this chapter to the contrary, nonstructural alterations or modifications designed to improve the appearance of a legal nonconforming outdoor advertising sign without increasing its usable life may be made upon the prior approval of the director of codes administration.

e. Normal repairs and alterations may be made to a legal nonconforming building, provided that no structural alterations shall be made, except those required by law or ordinance.

(4) *Restrictions on changing legal nonconforming uses.*

a. No legal nonconformance shall be changed to another use unless the director of codes administration determines that the use is an equal or higher (more restricted) use and that all other applicable regulations, including but not limited to parking, setbacks and density, are met, and authorizes the requested change based upon such determination.

b. If a nonconforming use is changed to a higher (more restricted) nonconforming use, it may not thereafter be changed unless to an equal or to a still higher nonconforming use or to a conforming use.

c. For the purpose of this chapter, a nonconforming use shall be deemed to be changed to an equal or a higher (more restricted) use when the use to which such nonconforming use is changed is a use included in the same district classification or in a district classification preceding the district in question in the arrangement of districts in this chapter.

d. A nonconforming use, if changed to a conforming use, may not thereafter be changed back to a nonconforming use.

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(5) *Abandonment of legal nonconformance.*

a. A legal nonconformance which has been established as such by issuance of a certificate for legal nonconformance shall not be resumed if discontinued or abandoned. Discontinuance or abandonment shall be defined as follows:

1. When unimproved land used in a nonconforming manner shall cease to be used as such for 90 consecutive days.

2. When a structure or building designed or arranged for a nonconforming use or for a conforming use shall cease to be used in a nonconforming manner for a period of 12 consecutive calendar months.

3. When a legal nonconforming sign ceases to display a message, name, symbol or token for a period of 90 days.

4. When a legal nonconforming on-premises sign ceases to identify an activity on the same site for a period of 90 days.

5. When a legal nonconforming sign is changed, modified or otherwise altered in any manner without prior approval of the director of codes administration pursuant to subsection (4)a of this section or prior approval of the board of zoning adjustment pursuant to subsection (7)b of this section, provided that the message on a legal nonconforming outdoor advertising sign, including any changeable copy panels or any copy cutouts, copy extensions or other sign embellishments, may be changed without seeking approval by the board.

Upon evidence of hardship, the board of zoning adjustment shall have the authority to extend the time limits set out in this subsection for a period not to exceed three months; provided that the application for extension is filed prior to the expiration dates set out in this subsection.

b. An existing structure, building, use or sign which becomes nonconforming as to bulk or use by virtue of any amendment to this chapter adopted after March 31, 1975, and for which a certificate of legal nonconformance has not been secured within the time permitted by subsection (6)d of this section, shall be deemed abandoned.

c. Notice of abandonment shall be as follows:

1. Upon receipt of evidence that a legal

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nonconformance has been abandoned, the director of codes administration shall promptly notify the owner that an order will be issued revoking the certificate of legal nonconformance, absent proof that such nonconformance has not been so abandoned.

2. The owner of the legal nonconformance shall be given a period of 30 days from the date of receipt of notice from the director of codes administration to submit evidence that the legal nonconformance has not been abandoned or discontinued.

3. At the expiration of 30 days or as soon thereafter as possible, the director of codes administration shall issue his order revoking or refusing to revoke the legal nonconformance. The decision of the director of codes administration shall be final unless appealed to the board of zoning adjustment within ten days of the order of the director of codes administration.

(6) *Establishment of legal nonconformance.*

a. A certificate of legal nonconformance shall be issued by the director of codes administration for all nonconformities lawfully established under the provisions of this chapter.

b. Any existing nonconformance established as such, prior to and existing continuously from the effective date of this chapter, shall be presumed to be a legal nonconforming use.

c. The owner of any existing structure, building, use or sign made nonconforming as to bulk or use by any amendment to this chapter after the effective date of this chapter but before March 31, 1975, may apply to the director of codes administration for a certificate of legal nonconformance pursuant to subsection (6)g of this section.

d. The owner of any existing structure, building, use or sign made nonconforming as to bulk or use by any amendment to this chapter after March 31, 1975, shall have a period of one year from the date the structure, building, use or sign is made nonconforming to obtain a certificate of legal nonconformance from the director of codes administration as provided in subsection (6)a of this section. The new nonconforming use shall be made a part of the record during the adoption of any such amendment, and the owner of record of the property shall be notified of this requirement.

e. Within 30 days after the effective date of any amendment to this chapter adopted after March 31, 1975, which shall render any

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existing structure, building, use or sign nonconforming as to bulk or use, the director of the city development department shall cause to be published a public notice in a daily paper, twice, on two successive weeks, notifying all property owners and persons affected by such amendment, known or unknown, of the provisions of this section and the requirement that an application for a certificate of legal nonconformance must be filed within the one-year period set forth in this section. The director of the city development department shall also send by certified mail, return receipt requested, a copy of such public notice, to the property owners or persons affected, of every structure, building, use or sign actually known by the director to be affected by the amendment to the ordinance resulting in nonconformity as to use or bulk, and shall post a copy of the public notice at two conspicuous places on the structure, building or land.

f. Each property owner or person affected shall make application for the certificate of legal nonconformance upon such forms as the director of codes administration shall provide. A certificate of legal nonconformance shall then be issued by the director of codes administration to the applicant if the nonconformity was established and exists as provided for in this section.

g. For those nonconformities which became nonconforming prior to March 31, 1975, a certificate of legal nonconformance shall be issued by the director of codes administration upon satisfactory proof being submitted by the applicant that the nonconformity as to bulk or use was legally established prior to the effective date of this chapter or any amendment thereto which created the nonconformity as to bulk or use. Satisfactory proof shall also be submitted to establish that such nonconformity has not previously been adversely ruled upon by the director of codes administration, the board of zoning adjustment or a court of competent jurisdiction. The director of codes administration or his designee shall receive all competent evidence submitted, shall have inspected the structure, building, use or sign which is the subject of the application, and shall render his decision in writing either granting or denying the certificate.

h. An appeal from the decision of the director of codes administration may be taken by the applicant or any aggrieved party in accordance with the provisions of section 80-310.

i. If no appeal is taken within ten days from the date the decision of the director of codes administration is issued, the decision shall become final and any certificate of legal nonconformance issued or not issued shall establish the legality of the nonconforming structure, building, use or sign.

j. Any structure, building, use or sign made nonconforming

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by any amendment to this chapter or after the effective date of this chapter for which the owner fails to obtain the required certificate of legal nonconformance as provided in this section shall be an illegal nonconforming structure, building, use or sign and as such shall be in violation of this section and shall be prohibited.

k. The board of zoning adjustment is hereby authorized to adopt rules and regulations to establish a procedure for administration of this section by the director of codes administration, and specifically to establish the procedure of determination of satisfactory proof as required by subsection (6)g of this section.

(7) *Restoration of destroyed legal nonconformance.*

a. Nothing in this chapter shall prevent, within a period of six months from the date of the destruction, the securing of a permit for the restoration of a legal nonconformance not more than 50 percent, as measured by the fair market value of the structure or building, destroyed by fire, explosion, act of God or act of the public enemy.

b. If a legal nonconforming outdoor advertising sign structure is lawfully or unlawfully destroyed, dismantled, removed or damaged by a property owner's lessee or his representative, or a trespasser, nothing in this chapter shall prevent such owner from applying to the board of zoning adjustment for a special permit for the restoration of such legal nonconforming sign within six months of the date of the nonconforming sign's destruction or removal. The board shall issue such permit upon a showing by the owner that:

1. A legal nonconforming outdoor advertising sign existed on property owned by the applicant within the six-month period immediately preceding the date of his application to the board.

2. The sign structure was destroyed, dismantled, removed or damaged by a lessee or his representative or a trespasser without the consent of the property owner.

3. The new sign structure does not permit an enlargement in the square footage of the sign face, an enlargement of the number of sign faces, or an increase in illumination.

The board shall issue a permit to the applicant allowing restoration of the legal nonconforming outdoor advertising sign upon such a showing and upon evidence submitted by the applicant that an unnecessary hardship or practical difficulty would result if the special permit were denied.

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c. The determination of whether a structure or building is 50 percent, as measured by the fair market value, destroyed shall rest with the director of codes administration.

d. No permit for restoration shall be issued by the director of codes administration unless a certificate of legal nonconformance is presented with the request for a permit.

(8) *Interpretation.* Nothing in this section shall be interpreted as authorization for or approval of the continuance of the use of a building or premises in violation of zoning regulations in effect at the time of the effective date of this chapter or of any amendment thereto.

Section C. It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this chapter are severable, and if any phrase, clause, sentence, paragraph or section of this chapter shall be declared unconstitutional or invalid by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this chapter, since the same would have been enacted by the City Council without the incorporation in this Chapter of any such unconstitutional or invalid phrase, clause, sentence, paragraph or section.

Section D. That the Council finds and declares that before taking any action on the proposed amendment hereinabove, all public notices and hearings required by the Zoning Ordinance have been given and had.

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I hereby certify that as required by Chapter 80, Code of Ordinances, the foregoing ordinance was duly advertised and public hearings were held.

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Secretary, City Plan Commission

Approved as to form and legality:

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Assistant City Attorney