



City of Elmira, New York

ZONING ORDINANCE

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TITLE

An ordinance regulating and restricting the location, construction and use of buildings, structures and the use of land in the City of Elmira, New York, and for said purposes of dividing the City into districts. This ordinance shall be known and may be cited as "The Zoning Ordinance of the City of Elmira".

PURPOSE

The zoning regulations and districts as herein set forth have been established in accordance with a comprehensive plan for the purpose of promoting the health, safety, and general welfare of the community. Said regulations have been designed to lessen congestion in the streets; to secure safety from fire, panic and other dangers; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; and to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements. They have been made with reasonable consideration, among other things, as to the character of each district and its peculiar uses, and with a view of conserving the value of buildings and encouraging the most appropriate use of land and orderly development, throughout the City, and to protect and conserve places, buildings and structures, and other objects having a special historic or aesthetic interest or value as a part of the heritage of the City and its environs, under and pursuant to Articles 2-A and 5-A of Chapter 21 of the General City Law of the State of New York.

ARTICLE I: DEFINITIONS

Section 100. Defined Generally.

For the purpose of this ordinance: words used in the present tense include the future; the singular number includes the plural and the plural, the singular; the word "lot" includes the word "plot"; the word "building" includes the word "structure"; the word "occupied" includes the words "designated or intended to be occupied"; the word "used" includes the words "arranged", "designed" or "intended to be used." "Shall" is used in the mandatory and not in the discretionary sense. Unless otherwise specifically denoted below, words or phrases used in this ordinance shall be interpreted so as to attribute to them the meaning they have in common usage and to accord this ordinance its broadest and most reasonable application.

Section 110. Definitions.

- 110.1 **Accessory Use:** A use which is controlled by the person exercising a Principal Use, incidental to and customarily associated with the Principal Use and located on the same lot as the Principal Use.
- 110.2 **Accessory Structure:** Shall mean a subordinate structure located on the same lot as the principal structure, occupied or devoted to an accessory use.
- 110.3 **Adult Care Facility:** Shall mean any entity, whether public, private or parochial, which provides, with or without compensation, care and supervision, to three (3) or more persons over the age of minority, for any period of time less than twenty four (24) hours per day per person
- 110.4 **Adult Use:** "See Sexually Oriented Business".
- 110.5 **Alley:** A narrow, supplementary thoroughfare for the public use of vehicles or pedestrians affording secondary access to abutting property.
- 110.6 **Alteration:** Any change, rearrangement, modification, addition, or enlargement to a building, other than repair; any modification in construction or building equipment.
- 110.7 **Appeal:** Shall mean a request for review of the Superintendent of Building's interpretation of any provisions of this ordinance or a request for a variance from the requirements of this Ordinance.
- 110.8 **Basement:** A story partly underground but having at least one-half (1/2) of its height above the average level of the adjoining ground. A "basement" shall be counted as a story for the purposes of height measurement if the vertical distance between the ceiling and the average level of the adjoining ground is more than five feet (5') or if it is used for business or dwelling purposes.

- 110.9 **Bed and Breakfast Establishment:** An owner occupied one-family dwelling used for providing overnight accommodations and a morning meal to not more than ten (10) lodgers containing at least three (3), but not more than five (5) bedrooms for such ten (10) lodgers. This category shall be subject to the conditions of Section 740.18 of this ordinance. *(Ord. No. 2003-314 dated Sept. 8, 2003)*
- 110.10 **Billboard:** A freestanding sign greater than one hundred (100) square feet, but not greater than two hundred (200) square feet in surface area.
- 110.11 **Board of Appeals:** Shall mean that entity charged with carrying out the requirements delegated to it by the Zoning Ordinance.
- 110.12 **Boardinghouse:** A dwelling or other residential structure in which lodging facilities are supplied for pay, with or without meals, over an extended period of time. The term "boardinghouse" shall include "rooming house", "lodging house" and "tourist house". This term shall not include "hotel", "motel" or "Bed and Breakfast" accommodations.
- 110.13 **Building:** Any structure wholly or partially enclosed within exterior walls, or within exterior and party walls, and a roof, affording shelter to persons, animals or property.
- 110.14 **Building height:** The vertical distance from the mean elevation of the finished grade along the front of the building to the highest point of a roof.
- 110.15 **Buildings, principal:** A building in which is conducted the main or principal use of the lot on which said building is situated.
- 110.16 **Bulk and Density Regulations:** Shall mean those regulations set forth in Article III of the Zoning Ordinance governing the development of lots in the various districts.
- 110.17 **Carport:** Shall mean an open-sided automobile shelter usually formed by an extension of a roof from the side of a building.
- 110.18 **Car Wash:** A building, lot, or portions thereof where vehicles are washed either by the patron or others using machinery and mechanical devices specifically designed for this purpose.
- 110.19 **Cellar:** That space of a building that is partly or entirely below grade, which has more than half of its height, measured from floor to ceiling, below the average established curb level or finished grade of the ground adjoining the building.
- 110.20 **Church:** See "Place of Worship".

- 110.21 **Clear Vision Zone:** A volumetric zone at an intersection, of any combination of roads, drives, internal drives and driveways permitting a visual line of sight and defined by a geometric sector of certain radius in a base plane in feet above finished grade and by a zone height extending a certain number of feet above the base plane.
- 110.22 **Club :** Any organization catering exclusively to members and their guests, or premises and buildings for recreational, social, or athletic purposes which are not conducted primarily for profit.
- 110.23 **College:** See “Institution of Higher Education”.
- 110.24 **Commercial Parking Facility:** The use of a lot or structure, or any portion thereof, for the parking of motor vehicles for profit, other than by a municipal corporation.
- 110.25 **Commercial vehicle :** Any vehicle having a maximum carrying capacity of more than one (1) ton; and/or more than three (3) axles; or trailer longer than eighteen feet (18') , used or designed to be used as part of the operations of commercial enterprises such as the transportation of goods, wares and merchandise.
- 110.26 **Communal space:** Privately owned land, under the care and control of the owners of residential parcels or units within a planned residential project. Such land generally is designed, developed and landscaped for use as lawns, tree areas, walkways, parks and outdoor recreational facilities, as part of the overall unified residential development.
- 110.27 **Concession:** A grant by a government of land or property, or of a right to use land or property for some specified purpose.
- 110.28 **Condominium unit:** The units in a multi-unit structure wherein each unit is individually owned and is able to be sold, mortgaged or exchanged independent of the other units. Each condominium unit is to be considered as a single-family or one-family dwelling.
- 110.29 **Controlled-Access Highway:** Every highway, street, or roadway in respect to which owners or occupants of abutting lands and other persons have no legal right of access to or from the same except at such points only and in such manner as may be determined by the public authority having jurisdiction over such highway, street, or roadway.
- 110.30 **Convalescent home:** A building used for accommodation and care of persons receiving non-skilled, long-term care, meeting the New York State Department of Social Services (NYSDSS), or their successor’s definition of a proprietary facility (see also "Nursing Home").

- 110.31 **Convenience Store with Gasoline Sales:** A retail use that combines two principal uses on a single lot; the sale of motor vehicle fuel and accessory substances, as well as the sale of groceries.
- 110.32 **Day Care Center:** A place, person, association, corporation, institution, or agency which provides day care for children as defined and licensed by the New York State Department of Social Services (NYSDSS) pursuant to the NYS Social Services Law and related Rules and Regulations. The name, description, or form of the entity which operates a day care center shall not affect its status as a day care center.
- The term “day care center” shall not refer to care provided in:
- (1) A day camp as defined in the State Sanitary Code (10 NYCRR Chapter 1); or
 - (2) An after school program operated by a Private School or religious organization; or
 - (3) A facility operated by a public school district or providing day services under an operating certificate issued by the Department of Mental Health.
- 110.33 **Day Care of Children:** Shall be defined and licensed by the New York State Department of Social Services (NYSDSS), pursuant to the NYS Social Services Law and related Rules and Regulations, to include care provided for three or more children away from their own homes in a day care center, excluding those children receiving family day care as defined in this Ordinance. Such care shall be for more than three (3) hours and less than twenty-four (24) hours per day per child accepted for care therein. The term “day care of children” includes services provided with or without compensation or payment.
- 110.34 **Day Care, Family Home:** Day care provided in the care givers’ residence in accordance with New York State Department of Social Services (NYSDSS) Rules and Regulations.
- 110.35 **Day Care, Group Family Home:** Day care provided in the care givers’ residence in accordance with New York State Department of Social Services (NYSDSS) Rules and Regulations.
- 110.36 **Development:** Any man-made change to improved or unimproved real property, including, but not limited to, the construction or demolition of buildings or other structures, mining, dredging, filling, paving, excavation or drilling operations.
- 110.37 **Drive, Internal:** An improved way that provides or is designed to provide vehicular access between a drive and one (1) or more uses on the same lot.

- 110.38 **Driveway:** That designated portion of a lot used primarily as a means for motor vehicle ingress and egress from said lot and the temporary parking of one or more vehicles which are generally associated with the owner of said lot.
- 110.39 **Dwelling:** A building designed or used exclusively as the living quarters for one or more families.
- (a) **Dwelling, one-family:** A building containing one (1) dwelling unit used exclusively for occupancy by one family.
- (b) A **"two-family dwelling"** is a building containing two dwelling units.
- (c) A **"three-family dwelling"** is a building containing three dwelling units.
- (d) A **"four-family dwelling"** is a building containing four dwelling units.
- (e) A **"multiple-family dwelling"** is a building containing more than four (4) dwelling units or more than four (4) roomers with one family in a one-family dwelling.
- 110.40 **Dwelling unit:** One or more rooms with provisions for living, cooking, sanitary and sleeping facilities arranged for the use of one family.
- 110.41 **Elevated building:** A building having its lowest floor elevated above the ground.
- 110.42 **Factory Manufactured Home:** Manufactured housing bearing the insignia of approval issued by the State of New York.
- 110.43 **Family:** One or more persons occupying a dwelling unit and living as a single nonprofit housekeeping unit in a domestic relationship, including domestic help, if any, as distinguished from a group occupying a boardinghouse, lodging house, club, fraternity or sorority, or hotel.
- 110.44 **Fence:** A structure, constructed of wood, masonry, stone, wire metal or any other manufactured material or combination of materials, erected in the minimum setback.
- 110.45 **Finished Grade:** The elevation at which the finished surface of the surrounding lot intersects the walls or supports of a building or structure. If the line of intersection is not reasonably horizontal, the finished grade, in computing height of a building and structure, shall be the mean elevation of all finished grade elevations around the periphery of the building.
- 110.46 **Flea Market:** A lot or parcel, or portion thereof, with outdoor stalls, booths, or selling spaces used for the display of used or new goods, wares, merchandise, antiques, collectibles and arts and crafts.
- 110.47 **Floor Area:** The aggregate sum of the gross horizontal area of the floor or several floors of the building or building group, measured from the exterior walls or from

the centerlines of walls separating the buildings. The floor area of a building or building group shall include:

- (1) Basement space;
- (2) Elevator shafts and stairwells at each floor;
- (3) Floor space for mechanical equipment, with structural headroom of 7'6" or more;
- (4) Penthouses;
- (5) Attic space (whether or not a floor has actually been laid) providing structural headroom of 7'6" or more for at least 50% of the area;
- (6) Interior balconies and mezzanines;
- (7) Enclosed porch or attached garage; and
- (8) Accessory use, exclusive of space for parking lots.

However, the floor area of a building shall not include:

- (1) Cellar space, except that cellar space used for retailing shall be included for the purposes of calculating requirements for accessory off-street parking spaces and accessory off-street loading berths;
- (2) Elevator and stair bulkheads, accessory water tanks, and cooling towers;
- (3) Floor space used for mechanical equipment, with structural headroom of less than 7'6";
- (4) Attic space (whether or not a floor has actually been laid) providing structural headroom of less than 7'6" for at least 50% of the area;
- (5) Uncovered steps and/or exterior fire escapes;
- (6) Terraces, breeze ways, open porches, and outside balconies and open spaces;
- (7) Accessory off-street parking spaces; and
- (8) Accessory off-street loading berths.

110.48 **Front Yard (minimum yard dimensions):** That space within and extending the full width of a lot from the front lot line to the part of the principal building which is nearest to such front lot line.

110.49 **Funeral home:** A structure used by a licensed mortician for burial preparation and funeral services.

110.50 **Garage, private:** An accessory building or portion of main building used primarily for the storage of one or more motor vehicles, owned or leased by the occupants of the principal structure, provided that no business, occupation, or service is conducted for profit therein, nor space therein is leased to a nonresident of the premises, as otherwise may be permitted in this ordinance.

110.51 **Garage, public:** A building or portion thereof used for the storage of motor vehicles on a commercial basis.

- 110.52 **Garage, mechanical:** A building, or portion thereof, used for the servicing, painting, repair, or maintenance of the mechanical, structural, or electrical systems of motor vehicles, which may or may not include the sale of gasoline or other motor fuel.
- 110.53 **Gasoline service stations:** Any area of land, including structures thereon, that is used for the sale of gasoline or other motor vehicle fuel.
- 110.54 **Grocery Store:** A store primarily devoted to the retail sale of foodstuffs and household supplies.
- 110.55 **Health Care Clinic:** A place where medical, dental, vision, nutrition, physical therapy, chiropractic, and other similar health care services are furnished to persons on an out-patient basis by three (3) or more physicians or professional health care providers who have common offices in a building which may also offer laboratory/testing facilities, medical or surgical procedures, and similar health care services.
- 110.56 **Heliport:** Any lot or other facility used or designed to be used, either publicly or privately, by any person for the landing and taking off of helicopters, including all necessary taxiways, aircraft storage and tie-down areas, hangars and other necessary buildings.
- 110.57 **Highest adjacent grade:** The highest natural elevation of the ground surface, prior to construction, next to the proposed walls of a structure.
- 110.58 **Historic District/Property:** A place located on the City, State or National Register of Historic Places. *(Ord. No. 2008-224; 6/23/08)*
- 110.59 **Historic Preservation Commission:** That committee of individuals charged with carrying out the mandates of all subsections found in Section 440 of this Ordinance, as the same may be amended from time to time. *(Ord. No. 2008-224; 6/23/08)*
- 110.60 **Home Occupation:** An occupation or profession carried on in a residential dwelling, or accessory structure thereto, and clearly incidental and secondary to the residential use of such dwelling or structure
- (a) **Home Occupation (Category I):** A home occupation employing the owner(s) of the premises plus no more than one (1) non-resident employee, agent, or sub-contractor and which is not open to the general public and which does not require a sign, parking or other exterior indicia of a home occupation. This category shall be subject to the conditions of Section 740.9(I) of this ordinance. *(Ord. No. 2002-60 dated 2/11/2002)*
- (b) **Home Occupation (Category II):** A home occupation employing the owner(s) of the premises plus no more than two (2) non-resident employees, agents, or sub-contractors, and which may be open to the general public. This category shall be

subject to the conditions of Section 740.9(II) of this ordinance. (*Ord. No. 2002-60 dated 2/11/2002*)

- 110.61 **Hospital:** A “hospital” shall be a facility primarily engaged in providing, by or under the continuous supervision of licensed health care providers, to inpatients and outpatients, diagnostic and therapeutic services for diagnosis, treatment, and care of persons. The term “hospital” shall also mean on or more buildings or structures which provide facilities and services of a type customarily provided by a hospital including, but not limited to, any services and facilities in support of or in any way related to the hospital’s activities including nursing homes, convalescent homes, long term skilled nursing facilities and a school of nursing conducted within the hospital facility. (See Section 350).
- 110.62 **Hotel:** A multiple dwelling used primarily for the purpose of furnishing lodging, with or without meals, for more than fifteen (15) transient guests, for compensation.
- 110.63 **House trailer:** See "Mobile Manufactured Home".
- 110.64 **Institution of Higher Education:** Any entity, whether public, private or parochial, which provides, as its primary purpose, educational instruction above the twelfth grade level including all academic, residential and service facilities attendant thereto and which is chartered, registered and/or certified, by the Commissioner of the New York State Department of Education or the Regents of the University of the State of New York, or their successors. (See Section 360).
- 110.65 **kennel:** Any lot or structure, or portion thereof, used or maintained for the boarding, breeding, sale, letting for hire or the commercial training of dogs and/or cats.
- 110.66 **Junk yard:** A lot, land, or structure, or part thereof, used primarily for the collecting, storage and sale of refuse, scrap metal, used building materials, discarded material; or primarily for the collecting dismantling, storage and salvaging of machinery or vehicles for the sale of parts thereof.
- 110.67 **Landscaped area:** An area that is permanently devoted and maintained for the growing of shrubbery, grass and other planted material.
- 110.68 **Landscaping:** The improvement of a lot, parcel or tract of land with grass and shrubs, trees, and/or other planted material. Landscaping may include pedestrian walks, flower beds, ornamental objects such as fountains, statuary, and other similar natural objects designed and arranged to produce an aesthetically pleasing effect.
- 110.69 **Large Tree:** A live tree that is a minimum of twelve inches (12") in diameter when measured forty-eight inches (48") above ground.

- 110.70 **Limited Light Industrial:** Shall mean any light industrial use employing fewer than twenty-five (25) persons.
- 110.71 **Light Industrial:** Shall mean any manufacturing or research establishment which has limited external impacts (such as the emission of smoke, noise or vibrations) on surrounding areas because of said establishments appearance, method of operation and use of public facilities and utilities.
- 110.72 **Lot:** A parcel of land occupied or capable of being occupied by one or more buildings and the accessory buildings and uses customarily incidental thereto including such open spaces as are arranged and designed to be used in connection with such buildings.
- 110.73 **Lot, corner:** A lot at the junction of two or more intersecting streets.
- 110.74 **Lot Coverage:** The lot area or percentage of lot area covered by buildings, including accessory structures, and all other impervious surfaces.
- 110.75 **Lot line:** Line dividing one premise from another, or from a street or other public space.
- 110.76 **Lot, width:** The mean horizontal distance measured between the side lot lines.
- 110.76.1 **Major Projects:** Shall mean a specific plan, design or planned undertaking determined by a representative of the City of Elmira Bureau of Inspection Services which requires Planning Commission or Zoning Board of Appeals action and approval including, but not limited to, new industrial, commercial or residential construction, subdivisions, or business expansion, as well as any project requiring a special permit or a variance. In addition, fencing and plantings in a Junkyard, as defined in section 452 of this ordinance, shall be considered Major Projects. *(Ord. No. 2007-280; 7/9/07)*
- 110.77 **Manufactured Modular Home:** Shall mean a factory-manufactured home where the structure or component is wholly or in substantial part constructed in a manufacturing facility and is intended for permanent installation on a building site. Said home must bear the Insignia of Approval issued by the New York State Fire Prevention and Building Code Council which certified that the home or component is in compliance with the requirements of Sub-chapter B of said code.
- 110.77.1 **Minor Projects:** Shall mean a specific plan, design or planned undertaking determined by a representative of the City of Elmira Bureau of Inspection Services which does not require Planning Commission or Zoning Board of Appeals action and approval including, but not limited to, simple residential remodeling or the construction of a fence, pool or deck. However, any request for a special permit or variance arising out of a simple remodeling, construction or undertaking shall be considered Major Projects. Furthermore, fencing and

plantings in a Junkyard, as defined in section 452 of this ordinance, shall be considered Major Projects. Minor Projects shall be handled through the City of Elmira Bureau of Inspection Services. *(Ord. No. 2007-280; 7/9/07)*

- 110.78 **Mobile/Manufactured home:** A structure, transportable in one or more sections, which in traveling mode, is 8 Feet (2438 body mm) or more in width or 40 feet (12, 192body mm) or more in length, or, when erected on site, is 320 square feet (29.7 m²) minimum, and that was built on or after June 15, 1976 on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities and includes the plumbing heating, air conditioning and electrical systems contained herein, The term “manufactured home” shall also include any structure that meets all the requirements of this definition except the certification required by the federal department of housing and urban development Housing Construction and Safety Act of 1974, as amended. The term label certifying compliance with the Standard for Mobile Homes, NFPA 501, ANSI 119.1, in effect at the time of manufacture is **deemed acceptable**. For purposes of this ordinance mobile homes and manufactured homes shall be both be referred to as “mobile/manufactured homes”. *(Ord. No. 2003-163 dated May 5, 2003)*
- 110.79 **Mobile Home:** A moveable or portable dwelling unit that was built prior to June 15, 1976 and that was designed and constructed to be towed on its own chassis comprising frame and wheels; connected to utilities; and designed and constructed without a permanent foundation for year-round living, excluding travel trailers. For purposes of this ordinance mobile homes and manufactured homes shall be both be referred to as “mobile/manufactured”. *(Ord. No. 2003-163 dated May 5, 2003)*
- 110.80 **Motel:** A multiple dwelling, intended primarily for motorists, not over two stories in height, in which the exit from each dwelling unit or sleeping room is directly to the exterior. (Includes, but is not limited to the terms motor court, motor hotel, tourist court).
- 110.81 **Motor Vehicle Repair:** Shall mean a lot, structure, or portion thereof, that may have as a principal use welding, painting, vehicular body, or engine repair, and may also include as a secondary use, the sale of related vehicle parts and vehicle fuel sales.
- 110.82 **Motor Vehicle Sales:** Shall mean a lot, structure, or any part thereof, used for the display, sale or lease, of new or used automobiles, trucks, or trailers.
- 110.83 **Nonconforming use:** Any use of a building, structure or parcel of land legally existing at the time of enactment of this ordinance, which does not conform to the regulations of the district in which it is located.
- 110.84 **Nursery school:** A school designed to provide temporary care or instruction for two or more children from two to six years of age inclusive.

- 110.85 **Nursing home:** An establishment, other than a hospital, licensed for nursing care by the State of New York, where persons are habitually housed, furnished with meals and nursing care for remuneration.
- 110.86 **Office, General Business:** A business, office or agency providing service to the general public or other offices and agencies, such as insurance brokers, real estate agents, computer programming, consulting organizations, or similar service businesses.
- 110.87 **Office, Professional:** A business office or agency providing services to the general public by a professional licensed by the State of New York such as a lawyer, engineer, architect, accountant, physician, chiropractor, therapist, dentist, or similar occupation.
- 110.88 **Official Zoning Map:** Shall mean that map identified by the signature of the Mayor and dated and attested to by the City Clerk following the words: "This is to certify that this is the official Zoning Map of the City of Elmira".
- 110.89 **Parking Lot/Facility:** Any lot whose principal use, or accessory use, is used for the parking of motor vehicles.
- 110.90 **Parking space:** An off-street space available for the parking of one motor vehicle exclusive of passageways and driveways appurtenant thereto and giving access thereto, and also exclusive of space necessary for maneuvering into or out of a parking space.
- 110.91 **Personal Services Establishment:** A non-retail use providing service related to an individuals' care and upkeep need, such as manicurist, barber shop or beauty parlor, and the upkeep of personal attire, such as tailor, seamstress, or shoe repair. This definition shall not include facilities used for appliance, vehicle, small engine repair or similar use.
- 110.92 **Place of Worship:** A building or lot used predominately for public worship by members or representatives of a religious sect, group, or organization recognized by State statute and any other use must be de minimous.
- 110.93 **Planning Commission:** Shall mean that entity charged with carrying out the requirements delegated to it by this Zoning Ordinance including, but not necessarily limited to, site plan review of AMajor Projects@, the review and approval or disapproval of fencing and planting in AJunkyards, as set forth in section 452 of this ordinance, the review and approval or disapproval of applications for a permit to establish a mobile/manufactured home park, the review and the making of a recommendation of approval or disapproval of all applications, as submitted or amended, for the establishment of a Planned Development District prior to any action taken by the Council, as well as make

recommendations to City Council regarding any proposed zoning regulation amendments or changes or district boundary amendments or changes. (Ord. No. 2007-280; 7/9/07)

- 110.93.5 **Pre-Application Conferences:** One or more meetings held prior to an applicant=s appearance before the Zoning Board of Appeals or the Planning Commission and after a determination has been made that the applicant=s proposed project is deemed a Major Project. The said Pre-Application Conferences will be scheduled with the applicant, a representative of the City of Elmira Bureau of Inspection Services, and at least one member of the Planning Commission or Zoning Board of Appeals. The said conference may also include the participation of other pertinent City of Elmira employees including, but not limited to, a member of the Law Department, Department of Public Services or Traffic Bureau. During the above Pre-Application Conference, the said participants shall address several issues including, but not limited to, the approval process in general, the documents and site plans required and any outstanding concerns which need to be addressed prior to the applicant=s appearance before the Planning Commission or Zoning Board of Appeals. (Ord. No. 2007-280; 7/9/07)
- 110.94 **Premises:** A lot, plot or parcel of land including the building or structures thereon.
- 110.95 **Principal Use:** Shall mean the main or primary use of a building, structure, or parcel of land.
- 110.96 **Principally above ground:** At least fifty-one percent (51%) of the equalized assessed value of the structure, excluding land value, is above ground.
- 110.97 **Private School:** Shall mean an elementary or secondary school facility operated by a person, firm, corporation, or organization (other than a public school district), registered and/or certified under the requirements of the Commissioner of the New York State Department of Education or chartered by the Regents of the University of the State of New York, or their successors.
- 110.98 **Public park:** A lot, or portion thereof, owned by any public agency, used or intended to be used for recreation purposes including parks, playgrounds, play fields or other outdoor recreation facilities.
- 110.99 **Public School:** Shall mean an elementary or secondary school facility operated by a public school district, municipality, or sub-division thereof, which said school registered or certified under the requirements of the Commissioner of the New York State Department of Education or chartered by the Regents of the University of the State of New York, or their successors.
- 110.100 **Rear Yard:** Shall mean that space within and extending the full width of the lot from the rear lot line to the part of the principal structure which is nearest to such lot line.

- 110.101 **Recreational Vehicle:** Shall mean a motorized vehicle or trailer that can be registered by the New York State Department of Motor Vehicles, which is designed to be primarily used for temporary living or sleeping purposes while traveling and which is customarily standing on wheels or removable rigid supports.
- 110.102 **Residential hotel:** A building occupied by permanent guests only and not by transients. It may include restaurants, newsstands and other accessory services primarily for serving its occupants and only incidentally the public.
- 110.103 **Restaurant, Fast Food:** Any establishment with more than twenty (20) seats, whose principle use is the preparation and sale of food for consumption by patrons on the premises. *(Ord. No. 2005-427 dated November 28, 2005)*
- 110.104(a) **Restaurant, Fast Food:** Any establishment with more than twenty (20) seats where food and beverages are sold in a form ready for consumption and where, by design, packaging and sales techniques, significant revenue is derived from food sales where consumption takes place off premises.
- 110.104(b) **Restaurant, Retail:** Any establishment with twenty (20) or less seats whose principle use is the preparation and sale of food and beverages for consumption by patrons on or off the premises. This category shall be subject to the conditions of Section 740.19 of this ordinance. *(Ord. No. 2005-427 dated November 28, 2005)*
- 110.105 **Retail:** A business primarily involving the sale of goods to the general public, but which may include incidental fabrication of said goods on premises.
- 110.106 **Rooming house:** See "Boardinghouse."
- 110.107 **Row house:** A dwelling sharing a common wall with adjoining dwellings and said wall(s) are party or lot line walls.
- 110.108 **Rummage Sale:** A sale of generally second-hand items by a private individual, usually conducted on the individual's premises.
- 110.109 **Sexually Oriented Business:** Shall mean any establishment having as a substantial or significant portion of its revenues or stock-in-trade, the presentation, selling, leasing, trading, or renting of, for any form of consideration whatsoever: any material, service, matter or performance, by way of any visual or sensory medium now known, or later developed, which depicts or relates to any specified sexual activity and/or specified anatomical area as those activities are defined in Section 457.2 of this Ordinance, as same may be amended from time to time.

- 110.110 **Sign:** Any name, identification, description, display, illustration, or device, greater than one (1) square foot in area, which directs attention to a product, place, activity, person, institution or business.
- 110.110.5 **Site Plan:** A rendering, drawing, or sketch prepared to specifications and containing necessary elements, as set forth in section 1025.6 of this ordinance, which shows the arrangement, layout and design of the proposed use of a single parcel of land as shown on said plan.
- 110.111 **Start of construction:** The point at which the premises begin to be physically altered; which shall also include the placement of construction trailers and the like. *(Ord. No. 2007-280; 7/9/07)*
- 110.112 **Storage Facility:** A building, or group of buildings, designed and constructed for the common, long-term and /or seasonal interior storage of individual or business property. This definition does not include a warehouse/distribution center, truck terminal or other transfer facility for goods, wares, or merchandise.
- 110.113 **Story:** Portion of a building which is between one floor level and the next higher floor level or roof.
- 110.114 **Street:** Thoroughfare dedicated and accepted by a municipality for public use or legally existing on any map of a subdivision filed in the manner provided by law.
- 110.115 **Structure:** An assembly of materials, forming a construction framed of component structural parts for occupancy or use, including buildings.
- 110.116 **Substantial improvement:** Any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds fifty percent (50%) of the market value of the structure either:
- (a) Before the improvement or repair is started; or
 - (b) If the structure has been damaged and is being restored, before the damage occurred.

For the purpose of this definition, "substantial improvement" is considered to commence when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.

The term does not, however, include any project for improvement of a structure to comply with existing state or local building, fire, health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions.

- 110.117 **Superintendent of Buildings:** The City's employee or designated agent charged with the enforcement of the ordinance and the provisions and regulations of the New York State Fire Prevention and Building Code, whom may also be referred to herein as the "Director of Code Enforcement".
- 110.118 **Tavern, Bar:** A business establishment licensed by the State of New York to serve alcoholic beverages and which establishment is designed primarily for the consumption of such alcoholic beverages on the lot, regardless of whether food or entertainment are provided as an accessory use.
- 110.119 **Tourist house:** See "Boardinghouse".
- 110.120 **Trailer:** See "Mobile home".
- 110.121 **Transient guest:** Any person who shares a dwelling unit on a non-permanent basis for not more than thirty (30) consecutive days.
- 110.122 **Use:** The specific purpose for which land or a building is designed, arranged, intended or for which it is or may be occupied or maintained. The term "permitted use" or its equivalent shall not be deemed to include any nonconforming use.
- 110.123 **Use Table:** Shall mean that Table at Section 260 describing the types of uses that may or may not be permitted in specific Zoning Districts.
- 110.124 **Utility/Storage Trailer:** Shall mean any non-motorized vehicle or mechanism accessory to a motorized vehicle, which is capable of being towed by said motor vehicle.
- 110.125 **Variance:** A grant of relief from one or more of the requirements of this ordinance.
- 110.126 **Veterinary Hospital/Office:** The use of premises, structure, lot, or any portion thereof, for the treatment and/or examination of animal illnesses, including facilities for boarding animals receiving examination or treatment. This definition is deemed to include animal hospital or clinic.
- 110.127 **Warehouse/Distribution Center:** The use of premises, structure, lot, or any portion thereof, for the storing of goods, wares, and merchandise, whether for the owner or for others, prior to shipment elsewhere.
- 110.128 **Wholesale Business:** A business or establishment which is engaged in selling primarily to retailers rather than directly to the public.

- 110.129 **Yard, front:** An open unoccupied space on the same lot with a building situated between the street line and a line connecting the parts of the building located nearest to such street line, and extending to the sidelines of the lot.
- 110.130 **Yard, rear:** An open unoccupied space, on the same lot with a building, situated between the rear line of the lot and a line connecting the parts of the building located nearest to such rear lot line, and extending to the sidelines of the lot.
- 110.131 **Yard, side:** An open unoccupied space on the same lot with the building situated between the nearest part of the building and the sideline of the lot and extending from the front yard to the rear yard. Any lot line not a rear line or a front line shall be deemed a sideline.
- 110.132 **Zoning Board of Appeals:** Shall mean that entity charged with carrying out the requirements delegated to it by this Zoning Ordinance, including but not limited to: interpreting the provisions of the Zoning Ordinance; reviewing actions of the Superintendent of Buildings; and the granting or denial of Special Permits or variances.
- 110.133 **Zoning District:** Shall mean a classification within which the regulations specified in this Ordinance are uniform and which is assigned to a particular area of the City by delineation upon the Zoning District Map as referenced in Article II hereof.
- 110.134 **Zoning District Map:** Shall mean the official, certified map upon which the boundaries of the various zoning districts are shown and which are an integral part of this Ordinance and together with the Zoning text make up the Zoning Ordinance for the City of Elmira.

**ARTICLE II: ESTABLISHMENT OF DISTRICTS AND INTERPRETATION OF
DISTRICT REGULATIONS**

Section 200. Districts established.

In order to fulfill the purpose of this Zoning Ordinance, the City of Elmira is hereby divided into sixteen (16) zoning districts as follows:

Residence AA	One Family - Large Lot
Residence A	One Family
Residence B	One-Two Family
Residence C	One-Four Family
Residence D	Multi-Family
Business A	Neighborhood Commercial
Business A-I	Neighborhood Commercial - I
Business B	Central Business District
Business C	Specialized Commercial
Business D	Historic Commercial
Business E	General Commercial
Business G	Gateway Commercial
HA	Hospital
HED	Higher Education
Industrial A	Light Industrial
Industrial B	General Industrial
Conservation	Floodplains, Hilly Slopes

Section 210. Zoning map.

The aforesaid districts are bounded and defined as shown on a map entitled "Zoning Map of the City of Elmira, New York" which accompanies this ordinance and which, with all explanatory matter thereon, is hereby declared to be a part hereof. The official Zoning Map shall be identified by the signature of the Mayor and dated and attested by the City Clerk following the words: "This is to certify that this is the official Zoning Map of the City of Elmira." The official Zoning Map shall be filed in the office of the City Clerk.

Editor's note — The zoning map is not included herein but is on file in the City Clerk's Office and is available online at:
<http://www.cityofelmira.net/permits>

Section 220. Planned development districts.

Provision is also made in this ordinance for the establishment of three additional types of districts which may be created according to the provisions of **Article VIII** of this ordinance.

Residence P	Planned Residential
Residence P-AA	Planned Low-Density Residential
Industrial P	Industrial Park

These districts may be established upon application by amending this ordinance according to the standards specified herein. As the boundaries of these districts are established, the maps, drawings or surveys showing the location of such boundaries and other details of the district shall be kept on file in the office of the City Clerk. The official Zoning Map shall be amended to show such districts.

Section 230. Interpretation of district boundaries.

Where uncertainty exists with respect to the boundaries of the various districts as shown on the official Zoning Map, the following rules shall apply:

- 230.1** Boundaries indicated as approximately following the center lines of streets, highways or alleys shall be construed to follow such center lines.
- 230.2** Boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines.
- 230.3** Boundaries indicated as approximately following city limits shall be construed as following city lines.
- 230.4** Boundaries indicated as following railroad lines shall be construed to be midway between the main tracks.
- 230.5** Boundaries indicated as following shore or center lines of streams, rivers, ponds, lakes or other bodies of water shall be construed to follow such shore or center lines, and, in the event of change in the shore or center line, shall be construed as moving with the actual line which changes.
- 230.6** Boundaries indicated as being parallel to or extensions of features indicated in subsections 230.1 through 230.5 above shall be so construed.
- 230.7** Distances not specifically indicated on the official Zoning Map and not covered by the above circumstances shall be determined by the scale of the map.
- 230.8** If, after the application of the foregoing rules, uncertainty exists as to the exact location of a district boundary, the Board of Appeals shall determine and fix the location of said line.

Section 240. Application of District Regulations.

The regulations established by this ordinance within each district shall be minimum regulations and shall apply uniformly to each class or kind of structure or land except as hereinafter provided:

- 240.1** No building, structure or land shall hereafter be used or occupied, and no building or structure or part thereof shall hereafter be erected, constructed, reconstructed, moved or

altered unless in conformity with all of the regulations herein specified for the district in which it is located.

240.2 No building or other structure shall hereafter be erected or altered:

- (a) to exceed the height limitations;
- (b) to accommodate or house a greater number of families;
- (c) to cover a greater percentage of the lot;
- (d) to occupy a smaller sized lot;
- (e) to have narrower lot width; or
- (f) to have narrower or smaller rear yards, front yards, side yards;

than is specified herein for the district in which such building is located.

240.3 No part of the yard, or other open space, or loading space required about or in connection with any building for the purpose of complying with this ordinance, shall be used or included as a building site or as part of a yard, open space, or loading space similarly required for any other building.

240.4 No yard or lot existing at the time of passage of this ordinance shall be reduced in dimension or area below the minimum requirements set forth herein. Yards or lots created after the effective date of this ordinance shall meet at least the minimum requirements established by this ordinance.

240.5 The regulations appearing in this article and in the schedule are subject to the Bulk and Density Regulations (Article III) and Supplementary District Regulations (Article IV) in addition to the other provisions of this ordinance.

Section 250. District Intents.

250.1 Residence AA District Intent. [One Family, Large Lot]

This district is intended to create, preserve and enhance areas of the City composed entirely of single family residences on large lots at low densities with a spacious, landscaped appearance and quiet streets. This district would be free of disrupting influences and would have only those functions in the district that are necessary and desirable to serve a single-family residential neighborhood of this character.

250.2 Residence A District Intent. [One Family]

This district is intended to create, preserve and enhance areas of the City composed primarily of single-family residences built at low or medium densities on quiet streets,

but which were developed at a period of time in the past when lot sizes were somewhat smaller than those of more recently developed single-family neighborhoods. These areas are still stable and essentially in sound condition and should be protected from the intrusion of uses and activities incompatible with the character of a single-family area. Because of the older and more modest character of this type of neighborhood, a limited amount of uses not of the single family type may have found a place in the district in the past.

250.3 Residence B District Intent. [One-Two Family]

This district is intended to create, preserve and enhance areas of the City that are primarily residential in character, but which are composed primarily of one and two family dwellings on lots large enough to provide parking and open space. These districts most often serve as a buffer between Residence A and Residence C districts.

250.4 Residence C District Intent. [One-Four Family]

This district is intended to create, preserve and enhance areas of the City that are primarily residential in character but built at a more medium density than any of the previous districts. It is expected that these areas would have more traffic on the streets and be convenient to transportation lines; would be more densely built up, but still have adequate light and space around the buildings, and be well landscaped with mature trees and shrubbery. These areas would have been built up in the past years and have undergone some change in use and character with the passage of time, and area likely to be located near the Central Business District or in the vicinity of business sub-centers.

250.5 Residence D District Intent. [Multi-Family]

This district is intended to create, preserve and enhance areas of the City that are primarily residential in character but built to higher densities than any of the previous districts. They may be older areas or newer developed or redeveloped areas where the plan of the City determines that it is feasible and desirable to develop certain areas with medium to high concentrations of population due to the availability of adequate public facilities and utilities, due to the adequacy of the road and transportation system, and where the environment in and around the area is suitable for such type of development. It is also the intent of this ordinance that some nonresidential uses would be permitted in this area if they are not incompatible with the character of a higher density residential area, but are instead, complementary and would enhance the livability of such a neighborhood.

250.6 Business A District Intent. [Neighborhood Commercial]

This district is intended to create, preserve and enhance business areas of the City that will serve residential neighborhoods. This is intended to be a limited business category which has the main purpose of providing day-to-day convenient retail needs of nearby residents. This district occurs most often at limited corner intersections of main

thoroughfares. They will generally be areas which will contain several small-scale retail establishments in small clustered groupings serving frequently recurring needs in locations convenient to residences. Since these districts immediately abut neighboring residential properties, emphasis on buffering, landscaping, scale and size of businesses is essential.

250.6.1 Business A-I Intent. [Neighborhood Commercial – I] *(Ord. No. 2005-349 dated 10/3/05)*

The intent of this district is the same as the intent and description set forth under section 250.6, Business A, except bars, taverns, nightclubs and restaurants and restaurants-fast food shall not be permitted. *(Ord. No. 2005-427 dated November 28, 2005)*

250.7 Business B District Intent. [Central Business District]

This district is intended to create, preserve and enhance the Elmira Central Business District as a regional center of shopping; employment; offices; hotels and motels; government; banking, investment and financial services; entertainment; and culture.

250.8 Business C District Intent. [Specialized Commercial]

This district, located along Maple Avenue on the Southside of Elmira, is intended to recognize the unique mixture of historically significant large homes and structures in the district. The district is intended to provide an alternative to sole residential use of these properties by allowing a viable blend of small commercial enterprises on premises also containing residential unit(s). Such uses are specifically intended to include small retail specialty shops that fulfill a specific function in the marketplace. Care should be taken to protect the unique aesthetic value of the area from typical commercial or suburban-like development.

250.9 Business D District Intent. [Historic Commercial]

This district, located along W. Church Street on the north side of Elmira, is intended to recognize the unique role which the historic district has played in the formation, growth and life of the City of Elmira. Due to the location along a major transportation route in the City, the area has evolved into a mixed use service/residential area that is close in, but functions secondary to the Central Business District. Because this area is within an historic district many of the structures have remained in-tact and green landscaping has taken priority over parking lots. The intent is to preserve the use, function, and appearance that exists as of the date of this ordinance.

250.10 Business E District Intent. [General Commercial]

This district is intended to create, preserve and enhance business areas devoted to general commercial services and wholesaling activities. Such areas would include a variety of commercial enterprises which are essential to the economy of the City, but which are frequently incompatible with residential areas and with the operations of a retail shopping

or office area, or other types of business areas, but are typically appropriate to centralized areas near major arterials, industrial concentrations, or in the vicinity of transportation lines or transportation terminal points.

250.11 Business G District Intent. [Gateway Commercial]

This district is intended to protect and enhance the primary gateways into the City of Elmira from NYS Route 17 along E. Church and E. Water Streets. It is characterized by its location along a major thoroughfare and proximity to commercial, cultural and employment centers. In permitting mixed uses, this district will maximize the benefits of location and existing infrastructure such as public transportation, sewer and water. The traffic and activity of this area lessens the desirability for single family living, while the accessibility and exposure provide an environment suitable for certain professional and business offices which can exist in close proximity to dwellings without adversely affecting the residential environment. The location of commercial and office uses in this district should not necessarily be related to retail trade. Rather, the commercial and office uses should complement and provide basic services to the residential use. All development within this district should maintain a high quality of development so as to enhance, through landscape plantings and minimal curb-cuts along E. Church Street, the City's primary gateway.

250.12 HA District Intent [Hospital].

The provisions of this section are intended to create, preserve, and enhance integrated and unified hospital areas devoted to medical, surgical and other therapeutic establishments within attractive, well landscaped settings, with good transportation services and adequate amounts of parking.

250.13 HED District Intent [Higher Educational].

This district is intended to recognize and manage the orderly development of institutions of higher education and their attendant uses; to promote compatibility with adjacent, non-educational zoning districts; and provide for the effective utilization of land located within the district.

250.14 Industrial A District Intent. [Light Industrial]

This district is intended to create, preserve and enhance industrial areas devoted primarily to manufacturing establishments, research establishments and other nonresidential and nonbusiness types of activities which have limited external impact on surrounding areas because of their appearance, their method of operation, and their use of public facilities and utilities. Such operations ordinarily have little influence on the neighborhood in the way of emission of smoke, noise, vibrations, etc.

250.15 Industrial B District Intent. [General Industrial]

This district is intended to create, preserve and enhance industrial areas devoted to manufacturing and other nonbusiness and nonresidential uses which are potentially incompatible with most other activities, and are typically appropriate to areas of the city which are somewhat distant from residential areas which have access to suitable and adequate railroad, highway or other transportation and shipping facilities. It is the expectation that such manufacturing or other nonresidential uses would have operating characteristics that are considered more obnoxious or unpleasant than those in Industrial A Districts, but would not be so obnoxious or unpleasant that they would be detrimental to surrounding properties or to any other part of the City.

250.16 Conservation District Intent.

This district is intended to create, preserve and enhance areas of the City for the protection of flood plains, natural water basins and steep lands abutting limited access highways where uncontrolled development would be adverse to community values and adverse to the public health, safety and general welfare of the City.

250.17 Residence P District Intent.

This district is intended to permit and encourage the development of well-planned, high-density, residential neighborhoods or groups of residences on sites larger than normal building lots. To give the site planner more freedom, more intensive use of land may be permitted and the coverage, height, setback and other requirements may be varied if certain requirements are met which will ensure a more imaginative use of a building site than can be achieved under the other regulations of this ordinance. It is the intent of this section to stimulate the construction of multiple-family developments that will be a continuing asset to the City of Elmira and will promote a stable, healthy and safe environment. It is likely that these areas would be found adjacent to, or near, the Central Business District, in older established areas of the City and around existing business sub-centers, or in the vicinity of activities employing a large number of people.

250.18 Residence P-AA District Intent.

This district is intended to permit and encourage the development of well-planned low density, residential neighborhoods or groups of dwelling units on sites larger than normal building lots. This type of development is characterized primarily as a home of ownership area, including the condominium form of ownership of residential units. To give the architect and site planner adequate flexibility to permit more creative and imaginative building and site design than can be achieved under the other regulations of this ordinance governing Residential AA Districts, more intensive uses of land are permitted, and the coverage, height, setback and other requirements are varied if certain additional requirements for such districts are met. Such developments are conceived of as being planned in their entirety to allow the development to make the most efficient use of the land and of existing buildings. These developments would be designed and built so that

careful attention is given to the placement and interrelationships of buildings, parking spaces, landscaping, and other features of development to each other as well to neighboring properties. Developments of this type also are expected to be characterized by a high degree of sensitivity to the protection and enhancement of existing historic structures and natural features of the site.

250.19 Industrial P District Intent.

This district is intended to create, preserve and enhance integrated and unified industrial parks devoted to industrial, manufacturing and research establishments within attractive, well landscaped settings with good transportation service and adequate amounts of off-street parking. Such industrial parks are typically appropriate to locations near major thoroughfares and near good shipping and receiving facilities for supplies and goods. Because such industrial parks are likely to cover a relatively large area of land, they would ordinarily be located in undeveloped or underdeveloped parts of the city separated from residential communities, or in blighted, built-up areas that would be redeveloped for such use.

Section 260. Use Table Requirements.

Uses permitted in each Zoning District shall be those set forth in the “Use Table” (Table 260).

(Amendments: Ordinance No. 99-330 dated August 16, 1999; Ordinance No. 2002-178 dated May 6, 2002; Ord. No. 2003-241 dated July 14, 2003; Ordinance No. 2009-199 dated May 11, 2009)

Table 260
USE TABLE

Key:

- N Not Permitted**
- P Permitted Principal Use**
- A Permitted Accessory Use (on same lot with permitted principal use)**
- SP Special Permit Required (see requirements in Article VII)**

RESIDENTIAL USES	R-AA	R-A	R-B	R-C	R-D	B-A	B-A-I	B-B	B-C	B-D	B-E	B-G	Hospital	Higher Education	I-A	I-B	I-P
Attached Single Family	N	N	P	P	P	P	P	P	P	P	N	P	P	P	N	N	N
Detached Single Family	P	P	P	P	P	P	P	N	P	P	N	P	P	P	N	N	N
2-Family	N	N	P	P	P	SP	SP	P	P	P	N	P	P	P	N	N	N
3-Family	N	N	N	P	P	SP	SP	P	P	P	N	P	P	P	N	N	N
Boarding, lodging, rooming houses	N	N	N	P	P	N	N	N	N	N	N	P	N	N	N	N	N
4-Family	N	N	N	P	P	SP	SP	P	P	P	N	P	P	P	N	N	N
Multi Family	N	N	N	N	P	SP	SP	SP	SP	SP	N	P	SP	SP	N	N	N
Condominium (see Sec. 740.4)	N	N	N	SP	SP	SP	SP	SP	SP	SP	N	P	SP	SP	N	N	N
Temporary structures for construction purposes	A	A	A	A	A	A	A	A	A	A	N	A	A	A	A	A	A
Garage and/or carport	A	A	A	A	A	A	A	A	A	A	N	A	A	A	P	P	P
Storage building, toolhouse, gardenhouse, playhouse not more than 200 SF	A	A	A	A	A	A	A	N	N	N	N	N	N	N	P	P	P
Storage building, toolhouse, gardenhouse, playhouse more than 200 square feet	N	N	N	N	N	N	N	N	N	N	N	N	P	P	P	P	N
Swimming pools, including decks attached thereto	A	A	A	A	A	A	A	A	A	A	N	A	A	A	N	N	N
Manufactured/Mobile Home Park (See Section 458)	N	N	SP	SP	SP	SP	SP	SP	SP	SP	N	N	N	N	N	N	N
Manufactured/Modular Homes	P	P	P	P	P	P	P	N	P	P	N	P	P	P	N	N	N

COMMERCIAL USES	R-AA	R-A	R-B	R-C	R-D	B-A	B-A-I	B-B	B-C	B-D	B-E	B-G	Hospital	Higher Education	I-A	I-B	I-P
Agricultural uses such as farms, greenhouses, gardens (See Sec. 740.1)	N	N	N	N	N	SP	SP	SP	SP	SP	SP	N	SP	SP	SP	SP	SP
Antique and craft shops	N	N	N	N	N	P	P	P	P	P	P	N	N	N	N	N	N
Commercial parking facilities	N	N	N	N	N	N	N	P	N	N	P	P	P	P	P	P	P
Banks, credit unions, financial institutions n more than 3,000 SF	N	N	N	N	N	P	P	P	N	P	P	P	P	P	N	N	N
Banks, credit unions, financial institutions 3,000 SF or more	N	N	N	N	N	N	N	P	N	N	P	N	N	N	N	N	N
Bars, taverns, nightclubs	N	N	N	N	N	P	N	P	N	N	P	N	N	N	N	N	N
Bed and Breakfast	N	N	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	N	N	N
Bowling alley, skating rink, billiard room, or similar establishment	N	N	N	N	N	N	N	P	N	N	P	N	N	N	N	N	N
Bus and railroad passenger station	N	N	N	N	N	N	N	P	N	N	P	P	N	N	P	N	N
Convenience store less than 2,500 sq. ft.	N	N	N	N	N	P	P	P	N	N	P	P	N	N	N	N	N
Convenience store 2,500 sq. ft. or more	N	N	N	N	N	N	N	P	N	N	P	P	N	N	N	N	N
Convenience store with gasoline sales, regardless of size	N	N	N	N	N	SP	SP	SP	N	N	SP	SP	N	N	N	N	N
Funeral Homes (See Sec. 740.7)	N	N	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	N	N	N	N	N
Home Occupations - Category I	P	P	P	P	P	N	N	N	N	N	N	N	N	N	N	N	N
Home Occupations - Category II (See Sec. 740.9)	N	N	SP	SP	N	N	N	N	N	N	N	N	N	N	N	N	N
Hotels, Motels	N	N	N	N	N	N	N	P	N	N	P	P	N	N	N	N	N
Laundry, cleaning, pressing, dyeing establishments with no processing on premises (See Sec. 740.11)	N	N	N	N	N	SP	SP	P	N	N	P	P	A	A	N	N	N

COMMERCIAL USES	R-AA	R-A	R-B	R-C	R-D	B-A	B-A-I	B-B	B-C	B-D	B-E	B-G	Hospital	Higher Education	I-A	I-B	I-P
Mixed commercial/residential occupancies (other than home occupations)	N	N	N	N	N	P	N	P	P	P	N	P	N	N	N	N	N
Motor vehicle sales and/or repairs (See Sec. 740.13)	N	N	N	N	N	N	N	SP	N	N	SP	SP	N	N	P	P	P
Motor vehicle gasoline sales (See Sec. 740.14)	N	N	N	N	N	SP	SP	SP	N	N	P	SP	N	N	SP	SP	SP
Newspaper offices, including printing operations accessory thereto	N	N	N	N	N	N	N	P	N	N	N	P	N	N	P	P	P
Offices	N	N	N	N	N	P	P	P	N	P	P	P	P	P	P	P	P
Outdoor cafes	N	N	N	N	N	A	A	A	A	P	A	P	A	A	N	N	N
Printing Shops	N	N	N	N	N	N	N	P	N	N	P	P	A	A	P	P	P
Restaurants	N	N	N	N	N	P	N	P	P	P	P	P	N	N	N	N	N
Retail stores less than 4,000 SF	N	N	N	N	N	P	P	P	SP	SP	P	P	A	A	N	N	N
Retail stores 4,000 SF or more	N	N	N	N	N	N	N	P	N	N	P	P	N	N	N	N	N
Self-storage units	N	N	N	N	N	N	N	N	N	N	N	N	N	N	P	P	P

GENERAL USES	R-AA	R-A	R-B	R-C	R-D	B-A	B-A-I	B-B	B-C	B-D	B-E	B-G	Hospital	Higher Education	I-A	I-B	I-P
Adult care facilities (See Sec. 740.16)	N	N	N	N	SP	SP	SP	SP	N	SP	SP	P	SP	SP	N	N	N
Adult Day Care (See Sec. 740.16)	N	N	N	SP	SP	N	N	SP	N	SP	SP	P	SP	SP	N	N	N
Adult Entertainment (See Sec. 457)	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	P	N
Antennas and satellite dishes - residential (greater than 3 feet) (See Sec. 740.2)	SP	SP	SP	SP	SP	N	N	N	N	N	N	N	N	N	N	N	N
Antennas and satellite dishes - commercial (greater than 3 feet) (See Sec. 740.3)	N	N	N	N	N	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP
Child Care (See Sec. 740.15)	P	P	P	P	P	P	P	P	P	P	P	P	P	P	N	N	N
Cultural facilities such as art galleries, museums, theaters, concert halls	N	N	N	N	N	N	N	P	P	P	P	P	N	N	N	N	N
Health care services and clinics	N	N	N	N	P	P	P	P	N	P	P	P	P	P	N	N	N
Hospitals (See Section 350)	N	N	N	N	N	N	N	N	N	N	N	N	P	P	N	N	N
Nursing or convalescent homes (See Sec.	N	N	N	P	P	P	P	P	N	P	N	P	P	P	N	N	N
Private educational facilities, including those for-profit and not-for-profit	N	N	N	N	N	N	N	P	P	P	P	P	P	P	N	N	N
Private institution of higher education inc. all academic, residential and service facilities.	N	N	N	N	N	N	N	P	N	N	N	N	P	P	N	N	N
Private, not-for profit membership organizations & clubs	N	N	N	N	P	P	P	P	N	N	P	N	P	P	N	N	N
Public Library	N	N	N	N	N	P	P	P	N	N	P	P	N	N	N	N	N
Public parks, playgrounds, inc. concession stands and other municipal recreational facilities (See Section 740.6)	P	P	P	P	P	P	P	P	P	P	P	P	P	P	N	N	N
Golf Courses/Country Clubs (See Section 740.8)	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	N	N	N	N	N
Cemetery (See Section 740.5)	N	N	N	SP	SP	SP	SP	SP	SP	SP	SP	SP	N	N	N	N	N
Utility transmission lines and utility substations (See Sec. 740.17)	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP
Veterinary offices and animal hospitals, including kennel (boarding) facilities	N	N	N	N	N	N	N	N	N	N	N	N	N	N	P	P	P
Public Schools	P	P	P	P	P	P	P	P	P	P	P	P	P	P	N	N	N
Churches	P	P	P	P	P	P	P	P	P	P	P	P	P	P	N	N	N

INDUSTRIAL USES	R-AA	R-A	R-B	R-C	R-D	B-A	B-A-I	B-B	B-C	B-D	B-E	B-G	Hospital	Higher Education	I-A	I-B	I-P
Limited Light Industrial Uses (See Sec. 740.12)	N	N	N	N	N	N	N	SP	N	N	N	N	N	N	P	P	P
Manufacturing facilities including processing, manufacture, fabrication, extraction, assembly, packaging, warehousing and/or other handling of materials components	N	N	N	N	N	N	N	N	N	N	SP	N	N	N	P	P	P
Railroad facilities including tracks, terminals, yards, and equipment servicing facilities.	N	N	N	N	N	N	N	N	N	N	N	N	N	N	P	P	P
Recycling centers and stations	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	P	P
Research and development facilities, including light assembly	N	N	N	N	N	N	N	N	N	N	N	N	N	N	P	P	P
Transportation and trucking terminal facilities maintaining less than twenty loading bays	N	N	N	N	N	N	N	N	N	N	SP	N	N	N	P	P	P
Transportation and trucking terminal facilities maintaining twenty or more loading bays	N	N	N	N	N	N	N	N	N	N	N	N	N	N	p	p	p
Warehousing and distribution	N	N	N	N	N	N	N	N	N	N	N	N	N	N	P	P	P
Wholesale businesses	N	N	N	N	N	N	N	P	N	N	P	P	N	N	P	P	P
Junkyards (See Sec. 740.10 and Sec. 452)	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	SP	P

ARTICLE III: BULK AND DENSITY CONTROL REQUIREMENTS

Section 300. Intent.

This Article is established in the interest of promoting public health, safety and welfare by providing open space for: the access of light and air circulation; preventing conflagration; facilitating fire fighting; meeting current and future sanitary disposal needs; protecting water supplies; providing non-congested traffic movements and protecting and promoting aesthetic views and values.

Section 310. Bulk and Density Control Tables.

The bulk and density control tables of required conditions for each Zoning District shall be as shown on the following tables: Table 320 - Residential Districts; Table 330 - Business Districts; Table 340 - Industrial Districts. Bulk and Density requirements for Hospital Districts shall be as shown in Section 350. Bulk and Density requirements for Higher Educational Districts shall be as shown in Section 360.

Table 320 - Residential Districts

	RES. AA	RES. A	RES. B	RES. C	RES. D
Minimum Lot Area	Fifteen Thousand (15,000) Square Feet	Five Thousand (5,000) Square Feet for Single-Family Dwellings	Five Thousand (5,000) Square Feet for Single Family Dwellings Ten Thousand (10,000) Square Feet for Two-Family Dwellings Ten Thousand (10,000) Square Feet for other uses permitted by Special Permits except as otherwise specified in Article IV and VIII	Five Thousand (5,000) Square Feet for Single Family Dwellings Additional One Thousand (1,000) Square Feet for each additional permitted family. Additional Two Hundred (200) Square Feet of Lot Area for each room let for profit. Ten Thousand (10,000) Square Feet for other uses permitted by Special Permits except as otherwise specified in Article IV and VIII	Five Thousand (5,000) Square Feet for Single Family Dwellings Additional One Thousand (1,000) Square Feet for each additional permitted family. Additional Two Hundred (200) Square Feet of Lot Area for each room let for profit. Ten Thousand (10,000) Square Feet for other uses permitted by Special Permits except as otherwise specified in Article IV and VIII
Minimum Frontage of Lot	One Hundred Feet (100')	Fifty Feet (50')	Fifty Feet (50') for Single Family Dwellings; Additional Ten Feet (10') for each additional permitted family. One Hundred Feet (100') for other uses permitted by Special Permits except s otherwise specified in Article IV and VIII	Fifty Feet (50') for Single Family Dwellings; Additional Ten Feet (10') for each additional permitted family or room let for profit; One Hundred Feet (100') for other uses permitted by Special Permits except s otherwise specified in Article IV and VII	Fifty Feet (50') for Single Family Dwellings; Additional Ten Feet (10') for each additional permitted family or room let for profit; One Hundred Feet (100') for other uses permitted by Special Permits except s otherwise specified in Article IV and VII
Maximum Percentage of Lot to be Covered by Building	Twenty Five Percent (25%)	Thirty-Five Percent (35%)	Thirty-Five Percent (35%)	Thirty-Five Percent (35%)	Thirty-Five Percent (35%)
Minimum Yard Dimensions for Principal Uses : Front Yard	Thirty Five Feet (35')	Twenty Five Feet (25')	Twenty Five Feet (25')	Fifteen Feet (15')	Fifteen Feet (15')
Minimum Yard Dimensions for Principal Uses: Side Yards	Twenty Feet (20')	Five Feet (5'), but at least one side yard shall be no less than ten feet (10') to allow for a driveway area	Five Feet (5'), but at least one side yard shall be no less than ten feet (10') to allow for a driveway area except for row houses in which case dwelling may be built side by side with common party walls but the end dwellings in a row next to any lot shall conform to the side yard requirements specified herein.	For buildings up to three stories but no more than thirty feet (30') high, five feet (5'), but at least one side yard shall be no less than ten feet (10') to allow for a driveway area, except for row houses in which case dwelling may be built side by side with common party walls but the end dwellings in a row next to any lot shall conform to the side yard requirements specified herein.	For buildings up to three stories but no more than thirty feet (30') high, five feet (5'), but at least one side yard shall be no less than ten feet (10') to allow for a driveway area, except for row houses in which case dwelling may be built side by side with common party walls but the end dwellings in a row next to any lot shall conform to the side yard requirements specified herein.
Minimum Yard Dimensions for Principal Uses:	Thirty Five Feet (35')	Thirty Feet (30')	Twenty Five Feet (25')	Twenty Five Feet (25')	Twenty Five Feet (25')

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Rear Yards					
Minimum Yard Dimensions for Accessory Uses : Front Yards	Thirty Five Feet (35')	Twenty-five Feet (25')	Twenty Feet (20')	Fifteen Feet (15')	Fifteen Feet (15')
Minimum Yard Dimensions for Accessory Uses: Side Yards	Ten Feet (10')	Five Feet (5')	Three Feet (3')	Three Feet (3')	Three Feet (3')
Minimum Yard Dimensions for Accessory Uses: Rear Yards	Five Feet (5')	Three Feet (3')	Three Feet (3')	Three Feet (3')	Three Feet (3')
Maximum Height Principal Buildings	Three (3) stories, but no more than thirty-five feet (35')	Three (3) stories, but no more than thirty-five feet (35')	Three (3) stories, but no more than thirty-five feet (35')	Six (6) stories, but no more than seventy feet (70')	Six (6) stories, but no more than seventy feet (70')
Maximum Height Accessory Buildings	Twenty Feet (20')	Twenty Feet (20')	Twenty Feet (20')	Twenty Feet (20')	Twenty Feet (20')

Table 330 - Business Districts

- (a) **Residential Uses in Business Districts.** Residential uses in the following Business Districts shall follow the requirements of the Bulk and Density Residential Table for Residential C districts.
- (b) **Residential uses are specifically prohibited in Business E districts.**
- (c) **If a business use abuts a residential property, then screening and buffering requirements apply. (See Sec. 411.1 and 411.2)**

	B-A Neighborhood Commercial	B-A-I Neighborhood Commercial	B-B Central Business District	B-C Specialized Commercial	B-D Historic Commercial	B-E General Commercial (See Additional Requirements at Sec. 340)	B-G Gateway Commercial
Minimum Lot Area	Ten Thousand (10,000) SF	Ten Thousand (10,000) SF	N/A	Ten Thousand (10,000) SF	Ten Thousand (10,000) SF	N/A	Ten Thousand (10,000) SF
Minimum Frontage of Lot	Fifty Feet (50')	Fifty Feet (50')	N/A	Fifty Feet (50')	Fifty Feet (50')	N/A	Fifty Feet (50')
Maximum Percentage of Lot to be Covered by Building	(1)	(1)	One Hundred Percent (100%)	(1)	(1)	Fifty Percent (50%)	(1)
Minimum Yard Dimensions : Front Yard	Ten Feet (10')	Ten Feet (10')	N/A	Fifteen Feet (15')	Fifteen Feet (15')	N/A	Fifteen Feet (15')
Minimum yard Dimensions: Side Yards	Twenty Feet (20')	Twenty Feet (20')	N/A	Five Feet (5') but at least one side yard shall be no less than Ten Feet (10') to allow for a driveway area	Five Feet (5') but at least one side yard shall be no less than Ten Feet (10') to allow for a driveway area	N/A	Five Feet (5') but at least one side yard shall be no less than Ten Feet (10') to allow for a driveway area
Minimum Yard Dimensions: Rear Yards	Twenty Feet (20')	Twenty Feet (20')	N/A	Twenty Five Feet (25')	Twenty Five Feet (25')	N/A	Twenty Five Feet (25')
Maximum Height of Principal Buildings	Two (2) stories or Thirty Feet (30')	Two (2) stories or Thirty Feet (30')	N/A	Four (4) stories or Fifty Feet (50')	Four (4) stories or Fifty Feet (50')	Four (4) stories or Fifty Feet (50')	Sixty Feet (60')
Maximum Height of Accessory Buildings	Twenty Feet (20')	Twenty Feet (20')	Eight (8) stories or One Hundred Feet (100')	Twenty Feet (20')	Twenty Feet (20')	Twenty Feet (20')	Twenty Feet (20')

- (1) **Maximum percentage of lot allowed to be covered by building will be determined by the regulations for off-street parking, yard setbacks, lot dimensions and any other applicable regulations.**

Table 340 - Industrial Districts

	I-A Light Industrial	I-B General Industrial	I-P Planned Industrial
Minimum Lot Area	Five Thousand (5,000) Square Feet	N/A	Forty Thousand (40,000) Square Feet
Minimum Frontage of Lot	N/A	N/A	One Hundred Fifty Feet (150')
Maximum Percentage of Lot to be Covered by Building	Eighty Percent (80%)	Eighty Percent (80%)	Fifty Percent (50%)
Minimum Yard Dimensions : Front Yards	Fifteen Feet (15')	N/A	Forty Feet (40')
Minimum Yard Dimensions: Side Yards	N/A	N/A	Twenty Feet (20')
Minimum Yard Dimensions: Rear Yards	Twelve Feet (12')	N/A	Twenty Five Feet (25')
Maximum Height of Principal Buildings	Sixty Feet (60')	Seventy Five Feet (75')	Seventy Five Feet (75')

Section 350. Hospital Zone.

350.1. Definition. A “hospital” shall be a facility primarily engaged in providing, by or under the continuous supervision of licensed health care providers, to inpatients and outpatients, diagnostic and therapeutic services for diagnosis, treatment, and care of persons. The term “hospital” shall also mean on or more buildings or structures which provide facilities and services of a type customarily provided by a hospital including, but not limited to, any services and facilities in support of or in any way related to the hospital’s activities including nursing homes, convalescent homes, long term skilled nursing facilities and a school of nursing conducted within the hospital facility.

350.2. Permitted Uses.

In addition to those applicable regulations as set forth in Table 260, the following shall apply:

- (a) Hospital, nursing and convalescent homes and medically related professional offices and such uses as described in Section 350.1 above shall be allowed. Such buildings constructed for said purposes may be occupied only by the patients, visitors, staff, employees and other incidental users of such facilities.
- (b) Support uses which are owned, operated, or leased by or otherwise controlled by the hospital. The burden of proof is on the hospital to show the support use is consistent with the mission of the hospital.

350.3. Permitted Accessory Uses and Buildings.

In addition to uses and buildings customarily incidental and subordinate to the principal uses and buildings as described in Section 350.1 and 350.2, permitted accessory uses and buildings shall include any and all uses or buildings in support of or for the use or convenience of the hospital, patients, patient’s families, visitors, hospital employees and staff.

350.4. Uses Requiring Special Notifications. Any use or storage of radioactive or explosive material shall require the notification of the City Fire Marshal and any other agency with regulatory jurisdiction.

350.5 Performance Standards Apply. No use shall be permitted which normally causes or emits objectionable odors, fumes, dirt, vibrations, glare, electrical interference or noise beyond the immediate sides of the building or buildings in which such uses are conducted. Standards for performance of all uses in a Hospital Zone shall conform to those set forth in Section 453 of this ordinance.

350.6 Area of Hospital Zone.

- (a) The area of a hospital zone shall be that which is set forth in the Official Zoning Map of the City of Elmira.
- (b) Said use restrictions and regulations shall be applicable only to those properties within the boundaries of such zones which are actually used as a “hospital” as defined in Section 350.1 of this ordinance and those other uses which are incidental thereto. Such property shall be designated “hospital property”. Those properties located within the boundaries of a hospital zone which are not for “hospital purposes” shall be governed by the applicable regulations and/or use restrictions of the Residence C zone.

350.7 Maximum Percentage of Hospital Property to be Covered by Building. The maximum percentage of lot to be covered by building(s) is Eighty percent (80%), exclusive of parking structures.

350.8 Minimum Yard Dimension Setback. The distance between the exterior of any structure on hospital property and any structure not included in a hospital zone shall not be less than seventy-five feet (75'). *(Ord. No. 2003-11 dated Jan 13, 2003)*

350.9 Maximum Height of Buildings. The maximum height of any building in an institutional zone shall be as follows:

- (a) Within fifty feet (50') of the hospital property boundaries, no more than four (4) stories;
- (b) Within eighty feet (80') of the hospital property boundaries, no more than six (6) stories;
- (c) Within one hundred feet (100') of the hospital property boundaries, no more than eight (8) stories; and
- (d) Within one hundred twenty feet (120') of the hospital property boundaries, no more than ten (10) stories.
- (e) Throughout the hospital zone, no more than the ten (10) stories or one hundred fifty feet (150') high.

350.10 Off Street Parking and Loading. Off-street parking and loading, and curb cuts shall be in accordance with the provision of Article VI of this ordinance.

350.11 Enclosure. All activities, including storage of materials, products, or machinery, shall be located in enclosed structures, except that open storage may be permitted if it is effectively screened by a solid wall and fence at least seven feet (7') in height.

350.12 Landscaping of Yards.

- (a) If a hospital use abuts, or is adjacent to, a Residential District or abuts, or is adjacent to a non-hospital residential structure, a buffer strip or landscaped area shall be placed along the property line that abuts such non-hospital residential structure and/or around the property line that abuts said Residential District. Where the property line abuts such a Residential District, the landscaped strip shall be an area at least six feet (6') immediately adjacent to the public right-of-way. In any area of a the Hospital District where a non-residential hospital use abuts or is adjacent to a non-hospital residential structure, the landscaped buffer strip shall be at least ten feet (10') wide, and such strip shall be planted with a strip of evergreen trees or dense shrubbery or a landscaped berm to such a height as to effectively screen the higher educational zoned property from view.
(Ord. No. 2003-11 dated Jan. 13, 2003)
- (b) Any owner or occupier of higher hospital zoned property shall, within six (6) months after the establishment of said hospital zone, present to the City of Elmira a plan complete with drawings for compliance with the above landscaping requirements. *(Ord. No. 2003-11 dated Jan. 13, 2003)*
- (c) Any property existing as a "hospital use" at the time of establishment of a hospital zone shall be brought into compliance with the provisions of this section in accordance with the approved plan submitted as required by subsection (b) above within three (3) years of the establishment of the Hospital zone.
(Ord. No. 2003-11 dated Jan. 13, 2003)

350.13 Surfacing.

- (a) All streets, drives and parking and loading areas shall be permanently paved with a hark surface of dustless material to a depth of at least six (6) inches. Parking lots shall also comply with the requirements set forth under Article VI of this ordinance. *(Ord. No. 2003-11 dated Jan. 13, 2003)*
- (b) Any owner or occupier of hospital property shall, within six (6) months of establishment of a hospital zone, present to the city a plan complete with drawings for compliance with the above surfacing requirements.
- (c) Any property existing as a hospital property at the time of establishment of a hospital zone shall be brought into compliance with the above surfacing requirements pursuant to the approved plan submitted pursuant to subsection (c) of this section within five (5) year of the establishment of a hospital zone.

Section 360. Higher Education Zone.

360.1 Permitted Uses.

In addition to those applicable regulations set forth in Table 260, the following shall apply:

- (a) Universities, college and theological schools, including their buildings, owned or leased, for administrative and faculty offices, classrooms, laboratories, chapels, auditoriums, lecture halls, museums, college bookstores, alumni halls, galleries, libraries, student and faculty centers, athletic facilities, dormitories, fraternities and sororities, and other residential facilities for faculty, staff and students, not including the use of any building, stadium or other facility for professional athletics, sports, games or similar commercial purposes.
- (b) Support uses which are owned, operated or leased by or otherwise controlled by the primary institution. The burden of proof is on the primary institution to show the support use is consistent with the mission of the primary institution.

360.2 Uses Requiring Special Notifications.

No use shall be permitted which normally causes or emits objectionable odors, fumes, dirt, vibrations, glare, electrical interference or noise beyond the immediate sides of the building or buildings in which such uses are conducted. Standards for performance of all uses in a higher educational zone shall conform to those set forth in Section 453 of this ordinance.

360.3 Area of Higher Educational Zone.

- (a) The area of a higher educational zone shall be that which is set forth on the Official Zoning Map of the City of Elmira.
- (b) The requirements, restrictions and regulations for higher educational zones in this section shall apply only to those properties located within the boundaries of said higher educational zone which are actually used for “higher educational” purposes as defined in Section 360.1 of this ordinance and those uses which are incidental thereto. Such property shall be designated “higher educational property”. *(Ord. No. 2003-11 dated Jan. 13, 2003)*
- (c) Those properties located within the boundaries of a higher educational zone on the official zoning map of the City of Elmira which are not used for “higher educational purposes” shall be governed by the applicable regulations and/or use restrictions of a Residential C district.

360.4 Maximum Percentage of Higher Educational Property to be Covered by Building.

The maximum percentage of a lot to be covered by buildings is eighty percent (80%), exclusive of parking structures.

360.5 Minimum Yard Dimensions Setback.

Any building or structure used for higher educational purposes shall be not less than fifteen feet (15') from any lot line.

360.6 Maximum Height of Buildings.

The maximum height of any building on higher educational property shall be: eight (8) stories or eighty feet (80').

360.7 Off-Street Parking and Loading.

Off-street parking, loading, and curb cuts shall be in accordance with the provisions of Article VI of this ordinance.

360.8 Enclosure.

Storage of materials, products, machinery, equipment or similar substances shall be located in enclosed structures, except that open storage may be permitted if it is effectively screened by a solid wall and fence.

360.9 Landscaping.

When a permitted higher educational use, as identified in Sections 360.1, abuts a lot containing a private residential structure, a landscaped area at least ten feet (10') wide shall be provided. Such area shall be planted with a strip of evergreen trees or dense shrubbery. *(Ord. No. 2003-11 dated Jan. 13, 2003)*

360.10 Surfacing.

All streets, drives and parking and loading areas shall be permanently paved with a hard surface of dustless material to a depth of at least six (6) inches. Parking lots shall comply with the requirements set forth under Article VI of this ordinance. *(Ord. No. 2003-11 dated Jan. 13, 2003)*

Section 370. Conservation Districts.

370.1 Permitted Uses.

- (a) Any agriculture use, in accordance with practices recommended by the County Soil and water Conservation District.
- (b) Any non-commercial or non-industrial use that has the characteristics of an open space use and requiring only incidental buildings on the land. Uses such as

playgrounds and playfields, Section 610 parking lots and similar uses are permitted subject to other regulations of this ordinance. Any use of land for overnight residential occupancy is specifically excluded except as otherwise permitted under the terms of a special permit use as specified below in Section 370.2

- (c) An accessory use customarily incidental to the above permitted uses.

Essential public utility facilities necessary to service and district and not requiring enclosure in a building or structure such as, but no limited to, gas, electric, steam or water distribution systems; and including related equipment such as poles, conduits and other similar equipment, (but not including utility transmission lines and utility substations which shall be permitted only by special permit. (see Section 370.2 (a)).

(Ord. No. 2003-11 dated Jan. 13, 2003)

370.2 Uses Requiring Special Permits.

- (a) Utility transmission lines and utility substation.
- (b) Any use permitted in a Residence A District subject to approval in accordance with the procedures established in Article VII of this ordinance, and, in addition, the following regulations shall apply.
 1. No building construction shall be permitted in floodplains unless there is a finding by the Board of Appeals that the site is not subject to inundation more than once in fifty (50) years or that the construction can be designed to be safe from flooding and will not constitute an impediment to the free flow of the stream, and will include safe access from a public street for emergency vehicles during flood periods as approved by the City Department of Public Safety.
 2. No building construction shall be permitted on property abutting limited access highways unless access to the property is obtained from a public non limited access street.
 3. No building construction shall be permitted within five hundred feet (500') of a limited access highway on lots containing an average slope of fifteen percent (15%) or more.
- (c) The extraction of earth products only in those areas under the jurisdiction of an agency of the State of New York in which case a special permit from the Sate is required. *(Ord. No. 2003-11 dated Jan. 13, 2003)*

370.3 Other District Regulations.

All the regulations specified in Section 320 of this ordinance shall apply to permitted uses and uses requiring special permits except as otherwise specified in Articles IV and VII of this ordinance. *(Ord. No. 2003-11 dated Jan. 13, 2003)*

ARTICLE IV: SUPPLEMENTARY DISTRICT REGULATIONS

Section 400. Intent of Supplementary District Regulations.

These regulations are intended to supplement the district regulations in Article III; all of the following regulations and requirements in Article IV shall apply in addition to those listed in Article III.

Section 401. Special Flood Hazard Districts.

All areas of special flood hazards within the jurisdiction of the City of Elmira as identified by the Federal Emergency Management Agency on the approved Flood Insurance Maps for the City of Elmira shall comply with the provisions of Local Law # 2 of 1997, as amended by Local Law #4 of 1997, as the same may be amended from time to time. (See appendix B1)

Section 410. Height exceptions.

The height limitations of this ordinance shall not apply to church spires, belfries, cupolas, bulkheads and domes if they are in no way used for human occupancy; and shall not apply to chimneys, ventilators, skylights, water tanks and necessary mechanical appurtenances usually carried above the roof level; and shall not apply to flagpoles, monuments, transmission towers and cables, distribution poles and lines, radio or television antennas or towers and similar structures. Such features shall be erected only to such height as is reasonably necessary to accomplish the purpose they are intended to serve.

Section 411. Supplementary yard requirements and exceptions.

411.1 Front Yard Exceptions. Other provisions of this ordinance notwithstanding, no building in any district need have a front yard greater in depth than the average front yard for the buildings existing on the four (4) lots, two (2) on each side, immediately adjacent to a lot. In the event a vacant lot is to be included in determining the average front yard, then for purposes of this computation, the front yard for the vacant lot shall be counted with the minimum required minimum front yard dimension for the district in which it is located. In no case shall the front yard in any residence district be less than ten (10) feet.

411.2 Front Yard Transition. Where two (2) districts abut, there shall be provided for a distance of fifty (50) feet from the district boundary line into the less restricted district a front yard equal in depth to the average of the required yard dimensions in the two (2) districts.

411.3 Side and Rear Yard Transition.

Where the side or rear yard of a lot abuts a side or rear yard of a lot in a more restricted district, there shall be provided along such abutting line or lines a side and/or rear yard or yards equal in depth to the average of the required yard dimensions in the two (2) districts provided that:

- (a) No side yard abutting the district line in the less restricted district shall be less than five feet (5') if it abuts any residence district; and
- (b) No rear yard abutting the district line in the less restricted district shall be less than fifteen feet (15') if it abuts any residence district.

411.4 Side Yard on Corner Lot. On a corner lot in a residence district the side yard on the street side shall be at least one-half the required front yard.

411.5 Yard Requirements When There Is More Than One Building On a Lot. When there is more than one principal building on a lot in any district except in Residence P, Residence P-AA and Industrial P Districts, the space between such buildings must be at least equal to the sum of the side yards required by such buildings or the sum of the rear and the front yards as the case may be. Each dwelling unit in a row house shall not be considered a separate principal building for the purpose of this section.

411.6 Projections in Yards. Every part of a required yard shall be open from its lowest point to the sky unobstructed, except for the ordinary projections of sills, belt courses, pilasters, leaders, chimneys, cornices, eaves and ornamental features, provided that no such projection shall extend more than two feet (2') into any required yard. Bays, including their cornices and eaves, may extend not more than two feet (2') into any required yard provided that the sum of such projections on any wall shall not exceed one-third the length of such wall. An exterior stairway may extend not more than six feet (6') into any required yard setback.

411.7 Accessory Buildings in Yards. Accessory buildings shall not be located in any front yard except as otherwise permitted herein. A private garage may be built across a common lot line with a party wall by mutual agreement between adjoining property owners. Garages built into or attached to dwellings shall not be considered accessory buildings, but part of the principal building. Where the natural slope of the ground exceeds a twenty per cent (20%) rise or fall directly from the street line, a private garage, not over one (1) story in height, may be located in the front yard not less than five feet (5') from said street line. On a corner lot, no accessory building may be located nearer the side street line than the required front yard depth on the side street.

411.8 Patios, Decks, Porches and Steps in Yards. A paved patio shall not be considered as part of a building in the determination of yard sizes and lot coverage, provided that such patio is at ground level, unroofed and without walls, parapets or other form of enclosure. If such patio does not meet these specifications, it shall be considered part of the principal building and shall meet all requirements for yard setbacks and sizes and lot coverage. In determining the percentage of building coverage of a lot or the size of yards for the purpose of this ordinance, porches and decks, open or enclosed, roofed or unroofed, shall be considered a part of the principal building. Unenclosed entrance steps or stairways providing access to the first story of a building may extend into any required yard at a distance not to exceed six feet (6').

Section 412. Visibility at intersections.

On any corner lot in any District, nothing shall be erected, placed, planted or allowed to grow in such a manner as to interfere materially with vision between a height of two and one-half feet (2½') and ten feet (10') above the center line grades of the intersecting streets in the area bounded by the street lines of such corner lots and a line joining points along said street lines thirty feet (30') from the point of the intersection of the street lines.

Section 413. Fences and walls.

- (a) The provisions of this ordinance shall not prohibit any necessary retaining wall or prohibit any fence or wall, except as limited in Section 412 above, providing that on any rear or side yard no fence, hedge or wall shall exceed seven feet (7') in height, and on any front yard no fence, hedge or wall shall exceed four feet (4') in height. Fences around utility power substations, tennis courts and sports fields are exempt from this height limitation. The provisions of this ordinance, except as otherwise specified, shall not apply to terraces, steps, unroofed porches or other similar features not over three feet (3') high above the level of the floor of the ground story.
- (b) All fences, walls and other similar enclosures shall be constructed in such a manner that all exposed components incident thereto, including fence posts, support beams, anchoring apparatus and the like, are visible only from within the property on which said fence, wall or other similar enclosure is constructed. Any new fence, wall and other similar enclosures being erected in such a manner that is attached or affixed in any manner to an existing fence, wall or similar enclosure shall be constructed so that the existing fence, wall or similar enclosure shall be visible only from within the property on which said new fence, wall or other similar enclosure is constructed.

Section 414. Frontage on street on official map.

Where a lot has frontage on a street which is proposed for right-of-way widening as shown on the official map of the City of Elmira, the required front yard area shall be measured from such proposed future right-of-way line.

Section 415. Abandoned cellar holes.

Within sixty (60) days after any excavation for a building has begun, said excavation for a building shall be covered over or refilled by the owner to the normal grade. Any excavation or cellar hole remaining after the demolition or destruction of a building from any cause shall be covered over or filled by the owner within thirty (30) days.

Section 416. Access to business or industrial uses.

No driveway or other means of access for vehicles, other than a public street, shall be maintained or used in any Residence District for the servicing of a business or industrial use located in a Business or Industrial District.

Section 417. Location of certain activities.

Other provisions of this ordinance, notwithstanding, the following uses or activities shall not be permitted within two hundred feet (200') of any residence district:

- (a) Garage or shop for the painting of automobiles or for the repairing of automobile bodies or fenders involving hammering or other work causing loud noise, fumes or odors.
- (b) Animal hospital, kennel or place for the boarding of animals .

Section 418. Extraction of earth products.

- (a) The excavation and extraction of sand, gravel, clay, topsoil or other natural earth products, including the quarrying of any kind of rock formation, is prohibited anywhere in the City of Elmira except when incidental to the construction or repair of a building or when incidental to the landscaping of a building site.
- (b) In those areas of the city within a Conservation District, earth products may be excavated only in locations under the jurisdiction of an agency of the State of New York where a special permit from the State is required.

Section 419. Building floor area.

No single-family dwelling in any district shall be erected or altered so as to provide for less than nine hundred (900) square feet of enclosed floor area and no minimum dimension thereof shall be less than twenty-four (24) feet. *(Ordinance No. 99-330 dated August 16, 1999)*

Section 430. Repealed. *(Ord. No. 2007-280; 7/9/07)*

Section 440. Approval of Architectural Design in Historic District. *(Ord. No. 2008-226; 6/23/08)*

440.1 Purpose and Intent. It is hereby declared as a matter of public policy that the protection, enhancement, and perpetuation of Landmarks and Historic Districts are necessary to promote the economic, cultural, educational and general welfare of the public. Inasmuch as the identity of a people is founded on its past, and inasmuch as Elmira has many significant historic, cultural, and architectural resources which constitute its heritage, this act is intended to:

- (a) preserve, protect, enhance and perpetuate the heritage of the City by preserving landmarks and Historic Districts as well as the individual buildings, structures,

sites and objects within these districts in the City which reflect elements of the City's cultural, social, economic, political, or architectural history;

- (b) foster civic pride in the accomplishments of the past;
- (c) protect and enhance the City's attractiveness to visitors and the support and stimulus to the economy thereby provided, and
- (d) insure the harmonious, orderly, and efficient growth and development of the City.

440.2 Definitions. The following definitions shall apply to this section:

- (a) **Alteration:** Any act or process that changes the exterior architectural feature(s) of a structure including, but not limited to, the erection, construction, reconstruction, relocation, or removal of any structure.
- (b) **Certificate of Appropriateness.** A signed and dated document evidencing the approval of the Historic Preservation Commission for work proposed by an owner or applicant for alterations to a Landmark or Historic District property.
- (c) **Certificate of Economic Hardship.** A signed and dated document from the City Zoning Board of Appeals authorizing an alteration, construction, removal or demolition, even though a Certificate of Appropriateness has previously been denied.
- (d) **Certificate of Exemption.** A signed and dated document from the City's Superintendent of Buildings authorizing any alteration listed under section 440.12 Historic Preservation List of Exempt Activities.
- (e) **Demolition.** An act or process that destroys, removes, or relocates in part or in whole a property or structure designated as a Landmark or located within a Historic District.
- (f) **Historic District.** An area or group of areas including buildings, structures, sites and objects that share a common historic element such as geography, period, style, or theme and which have been designated, or been determined eligible for listing on, the City of Elmira, National and/or State Register of Historic Places.
- (g) **Landmark.** An individual building, structure, site or object which has historical significance and which has been listed on the City of Elmira, National and/or State Register of Historic Places.
- (h) **Principal Building and Accessory Structure** shall be defined pursuant to Sections 110.15 and 110.2 of this ordinance.

- (i) **Project.** Any alteration, restoration, construction, relocation or demolition of a structure designated as a Landmark or as part of a historic district.

- (j) **Secretary of the Interior's Standards for Rehabilitation.** Those certain accepted guidelines for the planning and review of historic building rehabilitation, restoration, alteration and addition, prepared by the United States Department of the Interior dated 1976, as same may be amended from time to time.

440.3 Historic Preservation Commission.

- (a) **Membership and Appointment.** The Historic Preservation Commission members shall be appointed by the Mayor and shall consist of a minimum of seven (7) members, all of whom shall be persons to have a known interest in historic preservation and/or architectural design and development in the City, to be appointed, to the extent available in the community, as follows:
 - (1) at least one shall be a licensed architect experienced in working with historic buildings;
 - (2) at least one shall be a historian;
 - (3) at least one shall be a resident of a Historic District;
 - (4) at least one shall have demonstrated significant interest in or commitment to historic preservation evidenced either by involvement in a local historic preservation group, employment, or volunteer activity in the field of historic preservation, or other serious interest in the field.

- (b) **Term.** Commission members shall serve for a term of three (3) years, with the exception of the initial term of two of the members which shall be one year and two which shall be two years.

- (c) **Meetings.** The Commission shall hold meetings twice a month and shall establish such rules as may be appropriate and necessary for the orderly conduct of its business.

- (d) Any member of the Historic Preservation Commission who fails to attend three (3) Commission meetings or three (3) training sessions or a combination of three (3) Commission and training session meetings; without good cause, within a one (1) year period may be removed from the Commission. Good cause shall be determined by the Mayor.

- (e) The Mayor shall have the power to remove any member of the Historic Preservation Commission for cause after a public hearing.

- (f) **Compensation.** Each Commission member shall receive the sum of twenty-five dollars (\$25.00) per meeting, but the total sum to be received by each commission member shall not exceed six hundred dollars (\$600.00) per year per member.

- (g) **Quorum/Voting.** The presence of a majority of the whole Commission shall be necessary to constitute a quorum. No action shall be taken without a vote of the majority of the whole Commission. Minutes shall be kept by the Commission, with a copy forwarded to the Superintendent of Buildings.

- (h) **Officers.** The Commission shall elect a chairperson and vice-chairperson from its membership who shall serve in such capacity for terms of one year each. The chairperson shall preside over meetings of the Commission, and in the absence or disability of the chairperson, the vice-chairperson shall perform the duties of the chairperson.

- (i) **Powers and Duties.** The powers and duties of the Commission are as follows:
 - (1) Receive, review and approve/disapprove all requests for Certificates of Appropriateness under this Section of the Ordinance;
 - (2) Render advice and guidance to a property owner upon the owner's application for alteration of any Landmark or property located within a Historic District.
 - (3) Increase public awareness of the value of historic, cultural and architectural preservation by developing and participating in public education programs;
 - (4) Make recommendations to the City Council concerning the utilization of State, Federal, or private funds to promote the preservation of Landmarks and Historic Districts within the City;
 - (5) Utilization of consultants as necessary to carry out the duties of the Commission;
 - (6) Promulgation of rules and regulations as necessary to carry out the duties of the Commission;
 - (7) Adoption of criteria for the identification of significant historic, architectural, and cultural landmarks and for the delineation of historic districts;
 - (8) Conduct or cause to be conducted surveys of significant historic, architectural, and cultural landmarks and historic districts within the City of Elmira;
 - (9) Make recommendations to the City Council that it designate identified structures or resources as landmarks and/or historic districts;
 - (10) Recommend acquisition of a landmark structure by the City, where its preservation is essential to the purposes of this Ordinance Section and where private preservation is not feasible.

440.4 Designation of Landmarks or Historic District.

- (a) The Commission may recommend to the City Council that it designate an individual property as a landmark if it:
 - (1) possesses special character or historic or aesthetic interest or value as part of the cultural, political, economic or social history of the locality, region, state or nation; or
 - (2) is identified with historic personages; or
 - (3) embodies the distinguishing characteristics of an architectural style; or
 - (4) is the work of a designer whose work has significantly influenced an age;
 - (5) has a unique location or singular physical characteristic, or represents an established and familiar visual feature of the neighborhood; or
 - (6) has already been listed as a Landmark on the National or State Register of Historic Places.
- (b) The Commission may recommend to the City Council that it designates a group of properties as a historic district if it:
 - (1) contains properties which meet one or more of the criteria for designation of a landmark; and
 - (2) by reason of possessing such qualities, it constitutes a distinct section of the City; or
 - (3) has already been listed as a Historic District on the National or State Register of Historic Places.

The boundaries of each historic district designated henceforth shall be specified in detail and shall be filed in the City Clerk's Office for public inspection.

- (c) Notice of a proposed designation and the date and time of City Council's public hearing, which shall be at least twenty (20) days after the date of mailing, shall be sent by certified mail to the owner of the property proposed for designation, describing the property and announcing a public hearing by the City to consider the designation. Once the City Council has issued notice of a proposed designation, no building permits shall be issued by the Superintendent of Buildings or his designee until the City Council has made its decision.
- (d) The City Council shall hold a public hearing prior to designation of any landmark or historic district. The City Council, Commission, owners and any interested parties may present testimony or documentary evidence at the hearing which shall become part of a record regarding the historic, architectural, or cultural importance of the proposed landmark or historic district. The record may also contain staff reports, public comments, or other evidence offered outside of the hearing. City Council shall approve or disapprove the designation within thirty (30) days of the close of the public hearing.

- (e) The City Council shall forward notice of each property designated as a landmark and the boundaries of each designated historic district to the office of the Chemung County Clerk for recordation.

440.5 Alteration of Property Designated as a Landmark or part of a Historic District.

- (a)(1) Except as permitted in Section 440.12 - Historic Preservation List of Exempt Activities, no person and no non-governmental entity, shall alter, move, or construct any building, object or site located within a Historic District or designated as a Landmark in a manner that affects its exterior appearance visible from a public right-of-way without first obtaining written permission from the Historic Preservation Commission and the Superintendent of Buildings. This shall include alteration, restoration, new construction or moving of a building which would result in a material change in appearance of building materials, light fixtures, signs, porch elements, steps, or other exterior elements visible from a public street or alley.
- (a)(2) Within a Historic District, no person and no non-governmental entity shall demolish all or any part of a “principal building” or “accessory structure”, without first obtaining written permission from the Historic Preservation Commission and the Superintendent of Buildings . Within a Historic District, no person and no non-governmental entity shall demolish all or any part of a “principal building” or “accessory structure” designated as a Landmark building on the City of Elmira or National or State Register of Historic Places, without first obtaining written permission from the Historic Preservation Commission and the Superintendent of Buildings, said designation being other than by reason of solely being within the Historic District.
- (a)(3) Outside a Historic District, no person and no non-governmental entity shall demolish all or any part of a “principal building” or “accessory structure” if listed as a Landmark on the City of Elmira or National or State Register of Historic Places without first obtaining written permission from the Historic Preservation Commission and the Superintendent of Buildings.
- (a)(4) Whether within or outside a Historic District, no person and no non-governmental entity shall alter, move or demolish an object which is associated historically with the age and character of the principal building, such as, but not limited to, hitching posts, horse water troughs, and lamp posts, without first obtaining written permission from the Historic Preservation Commission and the Superintendent of Buildings.
- (b) Written permission from the Historic Preservation Commission shall be issued in the form of a Certificate of Appropriateness.

440.6 Certificate of Exemption.

No approval of the Historic Preservation Commission shall be required if the work proposed is listed in Section 440.11 - Historic Preservation List of Exempt Activities. The Superintendent of Buildings is hereby empowered to issue such Certificate of Exemptions.

440.7 Certificate of Appropriateness.

- (a) To obtain a Certificate, an application must be filed with City's Department of Inspection Services. The Department shall review the application for compliance with all other City codes, rules and regulations and shall then refer the application to the Historic Preservation Commission for a determination regarding compliance with this section and issuance of a Certificate of Appropriateness.
- (b) Prior to the commencement of any work requiring a Certificate of Appropriateness, the property owner or the property owner's authorized agent shall file an application on a form supplied by the City. Applications shall be deemed complete when accompanied by the following:
 - (1) Name, address and telephone number of applicant and owner
 - (2) Location and photographs of property
 - (3) Description of the proposed changes
 - (4) Elevation drawings of proposed changes (if applicable)
 - (5) Perspective drawings including relationship to adjacent properties (if applicable)
 - (6) Samples of colors and/or specifications of the materials to be used
 - (7) Where the proposal includes signs or lettering, a scale drawing showing the type of lettering to be used, all dimensions and colors, a description of materials to be used, method of illumination and a plan showing the sign's location on the property.
 - (8) Any other information which the Commission may deem necessary in order to visualize the proposed work.
- (c) In reviewing the application, the Historic Preservation Commission shall consider the following criteria for Approval of a Certificate of Appropriateness:
 - (1) the historical or architectural value and significance of the property and its relationship to the historical value of the surrounding area;
 - (2) the compatibility and relationship between the exterior architectural features of the structure and the rest of the structure, as well as to the surrounding district;
 - (3) the general compatibility of the exterior design, arrangement, texture and materials proposed;
 - (4) the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Properties;
 - (5) with regards to any new construction, the aesthetic compatibility with the district in which it is located; and
 - (6) any other factor which the Commission considers pertinent, including but not limited to:

- (i) the general aesthetics, design, character and appropriateness to the property of the proposed alteration or new construction;
 - (ii) the scale of proposed alteration or new construction in relation to the property itself, surrounding properties, and the neighborhood;
 - (iii) texture, materials, and color and their relation to similar features of other properties in the neighborhood;
 - (iv) visual compatibility with surrounding properties, including proportion of the property's front facade, proportion and arrangement of windows and other openings within the facade, roof shape, and the rhythm of spacing of properties on streets, including setback; and
 - (v) the importance of historic, architectural or other features to the significance of the property.
- (d) The Historic Preservation Commission shall approve, disapprove or approve with modification an application only on the basis of considerations specified in Section 440.7, subsection (c) above.
- (e) The Historic Preservation Commission may approve a plan with such modifications as it finds appropriate. Upon approval, it shall file its decision with the City's Department of Inspection Services and permits issued by that Department shall be only in accordance with that decision.
- (f) The Commission shall approve, deny, or approve with modifications an application within 30 days from receipt of completed application. The Commission shall file its minutes, resolutions, determinations, and decisions with the City Clerk's Office.
- (g) A Certificate of Appropriateness shall expire one year from the date the Certificate was filed with the City Clerk's Office and no further changes or work to the property covered by the Certificate shall be made or performed after the Certificate's expiration, unless a new application is submitted in accordance with the requirements of this Section and the Commission approves the issuance of a new Certificate.

440.8 Hardship Criteria.

- (a) An applicant whose Certificate of Appropriateness for a proposed demolition, alteration or new construction has been denied may apply for relief on the grounds of economic hardship.
- (b) In order to prove the existence of economic hardship with regards to alteration or new construction, the applicant shall establish and the Zoning Board of Appeal shall find the following:

- (1) the property is incapable of earning a reasonable return provided that a lack of return is substantial as demonstrated by competent financial evidence, regardless of whether that return represents the most profitable return possible;
 - (2) the hardship is not self-created; and
 - (3) the property can not be adapted in a manner and for any use compatible with preservation, which would result in a reasonable return.
- (c) In order to prove the existence of economic hardship with regards to demolition, the applicant shall establish and the Zoning Board of Appeal shall find the following:
- (1) the property is incapable of earning a reasonable return provided that a lack of return is substantial as demonstrated by competent financial evidence, regardless of whether that return represents the most profitable return possible;
 - (2) the hardship is not self-created;
 - (3) the property can not be adapted in a manner and for any use compatible with preservation, which would result in a reasonable return; and
 - (4) diligent efforts to find a purchaser interested in acquiring the property and preserving it have failed.

440.9 Hardship Application Procedure.

- (a) After the issuance of a decision by the Commission, an applicant may commence the process for hardship relief within thirty (30) days of the filing of the Commission's decision with the City Clerk's Office.
- (b) Application for hardship relief shall be made in writing to the Zoning Board of Appeals and shall include supporting evidence sufficient to establish eligibility for the hardship criteria identified in Section 440.8 above. Such evidence may consist of the following:
 - (1) the owner's knowledge of Landmark and Historic District restrictions;
 - (2) the amount paid for the property; the date of purchase; the party from whom purchased; the relationship, if any, between the seller and buyer; any terms of financing between seller and buyer;
 - (3) estimate of the cost of the proposed construction, alteration or demolition and an estimate of any additional cost that would be incurred to comply with the recommendations of the Commission for changes necessary for the issuance of a Certificate of Appropriateness;

- (4) a report from a licensed engineer or architect with experience in rehabilitation as to the structural soundness of any structure on the property and their suitability for rehabilitation;
 - (5) estimated market value of the property (i) in its current condition; (ii) after completion of the proposed construction, alteration or demolition; (iii) after any changes recommended by the Commission; and, (iv) in the case of a proposed demolition, the estimated market value of the property after renovation of the existing property for continued use;
 - (6) description of gross income from the property in the previous three (3) years; itemized operating and maintenance expenses for the previous three (3) years; and depreciation deductions and annual cash flow before and after debt service during the same period;
 - (7) remaining balance on any mortgage or other financing secured by the property and annual debt service for the previous three (3) years;
 - (8) all appraisals obtained within the previous three (3) years by the owner or applicant in connection with the purchase, financing, or ownership of the property;
 - (9) any listing of the property for sale or rent, price asked and offers received, if any, during the previous three (3) years;
 - (10) assessed value of the property according to the three (3) most recent assessments;
 - (11) real estate taxes for the previous three years; and
 - (12) form of ownership or operation of the property, whether sole proprietorship, for-profit or not-for-profit corporation, limited partnership, joint venture, or other.
- (c) All decisions of the Zoning Board of Appeals shall be in writing. The Zoning Board's decision shall state the reasons for granting or denying the Certificate of Economic Hardship. A copy of the decision shall be sent to the applicant by certified mail and copies shall be filed with the City Clerk, the Historic Preservation Commission and the Superintendent of Buildings.

440.10 Hardship Relief.

Upon finding that the applicant meets the criteria for hardship relief, the Zoning Board of Appeals shall issue a Certificate of Economic Hardship approving alterations, restoration, reconstruction, new construction, demolition, or movement which are not in strict conformance with the requirements of this ordinance, but are consistent with the effectuation of the purposes of this ordinance. The Zoning Board of Appeals shall grant no more than the minimal variance required to allow the owner to earn a reasonable rate of return.

440.11 Enforcement.

All work performed under a Certificate of Exemption from a Certificate of Appropriateness or a Certificate of Economic Hardship issued under this Section shall conform to any requirement included therein. It shall be the duty of the City's Department of Inspection Services to inspect periodically any such work to assure compliance. In the event work is found that is not being performed in accordance with a Certificate of Exemption, a Certificate of Appropriateness or a Certificate of Hardship, the City's Superintendent of Buildings shall issue a stop work order and all work shall immediately cease. No further work shall be undertaken as long as the stop work order is in effect.

440.12 Historic Preservation List of Exempt Activities.

The following project activities **do not** require review or approval by the Historic Review Commission under the City of Elmira's Landmark and Historic District Preservation Ordinance:

- (a) Repair, replacement and installation of electrical, plumbing, heating, and ventilation systems, provided that such work does not affect the exterior of the structure:
- (b) Repainting of exterior surfaces provided that destructive surface preparation treatments, including, but not limited to waterblasting, sandblasting and chemical cleaning are not used. (Although color schemes do not require review, assistance is available from the Commission on color choices to compliment different architectural styles.)
- (c) Repair or partial replacement of porches, cornices, exterior siding, doors, balustrades, stairs, or other trim when the repair or replacement is done in-kind to closely match existing material and form.
- (d) Caulking, weather-stripping, glazing and repainting of windows.
- (e) Repair, replacement or installation of storm windows (exterior, interior, metal or wood) provided they match the shape and size of historic windows and that the meeting rail coincides with that of the historic window. Color should match trim.
- (f) Installation of new window jambs or jamb liners.
- (g) Repair or replacement of awnings when work is done in-kind to closely match existing materials and form.
- (h) Roof repair or replacement of historic roofing with material which closely matches the existing material and form or better. Cement asbestos shingles may be replaced with asphalt based shingles.
- (i) Repair, replacement or installation of gutters and downspouts.

- (j) Installation of insulation where exterior siding or trim is not altered or damaged.
- (k) Replacement of non-significant flat stock trim in kind or with materials which match in appearance.
- (l) Repair or replacement of existing roads, driveways, sidewalks, and curbs provided that work is done so that there are only minimal changes in dimension or configuration of these features.
- (m) Exterior lead paint abatement that includes scraping and repainting of exterior work and masonry surfaces.
- (n) Repair or replacement of fencing when work is done in-kind to closely match existing material and form.
- (o) Repair or replacement of water, gas, storm and sewer lines.
- (p) Emergency repairs necessitated by a casualty to the property (fire, storm, flood, etc.); and
- (q) Demolition of buildings, structures and objects except as set forth in paragraphs (a)(2), (a)(3) and (a)(4) of Section 440.4.

Section 450. Outside storage of unregistered and/or unlicensed motor vehicles and motor parts:

- (a) There shall be no outside storage of any unregistered and/or unlicensed motor vehicle (except legal junkyards and licensed automobile dealers) for a period longer than seven (7) days in any calendar year. *(Ord. No. 2006-196 dated June 12, 2006)*
- (b) Such unregistered and/or unlicensed motor vehicle, notwithstanding the year in which the same shall have been manufactured, shall at all times while being so stored be kept in such condition and maintained with such equipment that it will meet the minimum requirements to pass the New York state Motor Vehicle Inspection standards as provided by the Vehicle and Traffic Law of the State of New York and all rules and regulations promulgated by the Commissioner of Motor Vehicles for the periodic inspection of motor vehicles in the State of New York and as the same may be amended from time to time.
- (c) The outside storage of any unregistered and/or unlicensed motor vehicle is prohibited, except for such unregistered or unlicensed motor vehicle belonging to a member of the armed forces of the United States who is serving on active military duty.
- (d) There shall be no outside storage in a Residence District of motor vehicle bodies or motor vehicle parts at any time.
- (e) There shall be no mechanical repairs done to any unregistered and/or unlicensed motor vehicle while it is in the public street. In addition, no evidence of repairs on a motor

vehicle shall be visibly apparent for more than twenty-four (24) hours in any front or side yard.

Section 451. Unsightly and unsanitary storage.

The storage of any manure, rubbish, or miscellaneous refuse in the open within any Residential, Conservation or Business District is specifically prohibited.

Section 452. Junkyards.

- (a) Any area used for the storage of rags, scrap paper, scrap metal or junk, including automobiles, automobile parts or salvage or used building materials, shall be completely enclosed by a substantial and solid opaque fence. Such fence must have a gate that can be closed and locked when the junkyard is not supervised and it must “substantially screen” the contents of the junkyard from outside view.
- (b) Such fence shall be at least eight feet (8') high and shall be of sufficient height to fully screen any storage visible from an adjoining street or highway. Such fence may be of substantial link construction with three-eighths inch vinyl-coated green mesh for arterial highway screening, plus plantings of shrubs, vines and/or trees.
- (c) Fence and plantings shall be approved by the City Planning Commission in accordance with particular location requirements.
- (d) Such fence and plantings shall be properly maintained at all times.
- (e) No such fence shall be nearer than ten feet (10') from any public highway right-of-way line.
- (f) There shall be no storage between the solid fence and the public right-of-way, nor abutting the fence.

Section 453. Additional Performance Standards.

The following performance standards and related requirements shall be met by all uses in all Industrial Districts, Hospital Districts, Higher Educational Districts excepting therefrom privately owned residential structures not used for higher educational purposes and in Business E Districts:

453.1 Intent. The intent of providing regulations regarding the transient nature of noise, odors, vibrations, glare and the like is to recognize the unique character and nature of urban life; the conglomeration of various uses of property in relatively close proximity to one another; and the need to promote and preserve a harmonious balance thereof.

453.2 Smoke. All uses shall meet the requirements of the State Department of Environmental Conservation (DEC) or its successor.

- 453.3 Dust, Ash and Dirt.** No transmittal of dust, ash, or dirt is permitted beyond the lot lines in any Industrial A, Industrial P, Hospital, Higher Educational or Business E district or beyond any district line for Industrial B Districts.
- 453.4 Odor.** No continuously detectible emission of offensive odors is permitted.
- 453.5 Toxic or Noxious Matter.** The emission of any toxic or noxious matter is prohibited.
- 453.6 Radiation.** The emission of any radiation is prohibited without the approval of the Chemung County Board of Health and in no event shall there be any radiation permitted beyond the lot lines in any district.
- 453.7 Fire and Explosive Hazards.** Approval required by the Fire Chief and Building Department.
- 453.8 Glare.** There shall be no emission of visible glare beyond any lot line for Industrial A or Industrial P District or beyond any district line for Industrial B Districts.
- 453.9 Heat.** The emission of readily detectable heat of 85 degrees Fahrenheit or more as measured at any lot line for Industrial A and P Districts or at any district line for Industrial B Districts is prohibited.
- 453.10 Industrial Waste and Sanitation.** All uses shall comply with the requirements of the New York State Fire Prevention and Building Code, the Chemung County Department of Health, the Chemung County Elmira Sewer District, the Chemung County Sewer Use Law, all City of Elmira sewer specifications, and the sewer ordinance of the City of Elmira and any Industrial Waste and Sanitation requirements promulgated by the New York State Department of Environmental Conservation (NYSDEC). If any of the requirements in the above mentioned codes are in conflict, the most restrictive, or that imposing the higher standard, shall govern.
- 453.11 Vibration.** No use shall be operated so that ground vibration is perceptible, without instruments, at any point along any lot line for Industrial A and P Districts or at any district line for Industrial B Districts.
- 453.12 Enclosure.** All activities, including storage of materials or products or machinery shall be located within enclosed structures, except that open storage may be permitted if it is effectively screened by a solid wall or fence at least seven feet (7') in height.
- 453.13 Landscaping.** Front yards, if any, shall be landscaped with grass, trees and shrubs and shall not be used for vehicular drives, parking or loading except driveways necessary for access. If an Industrial District is located within, adjacent to, or surrounded by any residential district, then a buffer strip shall be placed along each property line that abuts a residence district. Such buffer strip shall be at least ten feet (10') wide and shall be planted with a strip of evergreen trees or dense shrubbery. In addition, a decorative

fence, at least six feet (6') high, shall be built along such abutting property lines to screen the industrial park from abutting residential properties.

453.14 Noise. No greater emission of noise is permitted, as measured at any lot line for Industrial A or P Districts or at any district line for Industrial B Districts than represented in the following tables:

**Table 453.14(a)
Maximum Permissible Sound-Pressure Levels at the Lot (or District) Lines
for Noise Radiated Continuously from a Facility Between the Hours of 9:00 p.m. and 7:00 a.m.**

Octave Band in Cycles Per Second	Maximum Sound Pressure in decibels		Maximum Sound Pressure in decibels where the lot line (or district line for Industrial B) abuts a Residential District	
	Ind. A	Ind. B	Ind. A	Ind. B
0 - 75	74	74	65	69
75 - 150	69	70	50	60
150 - 300	61	63	43	56
300 - 600	54	57	38	51
600 - 1200	48	51	33	42
1200 - 2400	42	46	30	40
2400 - 4800	38	42	28	36
Above 4800	36	39	26	34

If the noise is not smooth and continuous and is not radiated between the hours of 9:00 p.m. and 7:00 a.m., one or more of the corrections in the following table shall be added to or subtracted from each of the decibel levels given above in Table 453.14 (a).

Table 453.14(b) Corrections for Sound-Pressure Levels Under Certain Conditions

Type of Operation or Character of Noise	Correction in decibels
Daytime Operation Only (7:00 a.m. to 9:00 p.m.)	Plus 5
Noise Source Operates less than 20% of any one-hour period	Plus 5*
Noise Source Operates less than 5% of any one-hour period	Plus 10*
Noise of Impulsive Character (hammering, etc.)	Minus 5
Noise of Periodic Character (hum, screech, etc.)	Minus 5

*Apply one of these corrections only.

Section 454. Swimming pools.

(a) Swimming pools be permitted only as an accessory use.

- (b) Swimming pools, except wading pools not permanently affixed to the realty and not greater than two feet (2') in depth, shall not be permitted in any front yard and shall not be located closer than ten (10) feet from any building as defined by Section 110.9 of this ordinance and shall not be located closer than five (5) feet from any lot line.
- (c) A building permit shall be required prior to the installation of swimming pools.

Section 455. Outdoor drive-in theaters.

Outdoor drive-in theaters are specifically prohibited anywhere in the City of Elmira.

Section 456. Temporary construction buildings and construction trailers .

Temporary construction buildings and construction trailers shall be permitted on any site in any district when used in conjunction with ongoing construction work taking place on such site. Such buildings or trailers shall be used only for such purpose and for no other, and shall be removed within one (1) month following the completion of the construction or the issuance of a certificate of occupancy, whichever is earlier. The location of all such buildings or trailers shall conform to the required minimum yard dimensions for principal buildings in the district in which it is located.

Section 457. Sexually Oriented Businesses.

457.1 Purpose and Intent.

- (a) **Recognition of Need.** It is hereby specifically recognized that sexually oriented businesses have promoted serious adverse secondary effects in many of the municipalities in which they operate; including, but not necessarily limited to: increases in prostitution, pandering, child endangerment, violent crimes against persons and property, as well as increases in other types of serious crimes and criminal enterprises; the increased proliferation of sexually transmitted diseases, as well as other serious communicable diseases such as Hepatitis and the like; the spread of urban blight and commensurate decrease in property values, and the general degradation of the quality of urban life. In addition, that these adverse secondary effects precipitate a deleterious impact on sensitive areas of the community, such as churches, synagogues and other places of worship, schools, child care centers, adult care facilities and the like, as well as promote the spread of urban blight which decreases property values and hinders economic vitality generally. As a result of said adverse secondary effects associated with sexually oriented businesses, said sexually oriented businesses require heightened supervision from public health and safety agencies in order to protect the health, safety and welfare of the patrons of such businesses, as well as the residents of the City of Elmira. Furthermore, the City Council recognizes that licensing, zoning, and other traditional municipal regulations are legitimate, reasonable means of accountability to insure compliance with this ordinance so as to control and

minimize the adverse secondary effects associated with sexually oriented businesses.

- (b) **Due Diligence.** The City Council in and for the City of Elmira, has carefully and meticulously reviewed: numerous case studies which relate the existence and impact of these adverse secondary effects on various municipalities; evidence of the existence of said secondary effects and their impact on the City of Elmira; implications regarding the introduction and expansion of such secondary effects within the City of Elmira and the potential impact thereof; various United States Supreme Court and New York court decisions relating to the regulation of Sexually Oriented Businesses; as well as the various and balanced comments and concerns advanced by the citizens of the City of Elmira and community-at-large.
- (c) **Non-Prejudiced Representation.** The City Council in and for the City of Elmira is charged with, and dutifully respects and adheres to, the mandate to effectively govern without bias for, nor prejudice against any entity residing or doing business within the City of Elmira.
- (d) **Pro-Active Government.** In furtherance of this charge, the City Council in and for the City of Elmira, specifically recognizes that it need not remain quiescent and thereby risk the expansion of, or influx of, said adverse secondary effects, but rather may pro-actively govern in order to manage and reduce the secondary effects that currently do exist as well as effectively manage and control future secondary effects, including, but not limited to the legitimate concern of the City Council to protect the health and safety of its citizens, all of which therefore, compels the implementation of reasonable regulation of Sexually Oriented Businesses.
- (e) **Need for Distance Buffer Zones.** In drafting and passing this ordinance, the City Council in and for the City of Elmira has carefully considered, among other issues, the need to protect sensitive areas and uses of land within the City of Elmira, by establishing minimum distances buffering said sensitive areas and uses from sexually oriented businesses thereby reducing the potential for impact by the secondary effects associated with said sexually oriented businesses. These sensitive areas are generally and normally associated with a decreased need to be on the alert for, and defend against, the heretofore mentioned adverse secondary effects associated with sexually oriented businesses, or represent areas which are generally and normally used by, or associated with, certain segments of the population at-large, who because of age or mental capacity are unable to defend against said adverse secondary effects. Such considerations include, but are not necessarily limited to the following:
 - (1) in order to protect children from the dangers of the heretofore referenced adverse secondary effects associated with sexually oriented businesses, areas within the vicinity of single and multiple family dwellings, as well

as uses normally associated with the care, education or housing of children, should be free of said sexually oriented businesses;

- (2) in order to protect the serene quality of certain areas normally associated with a decreased level of a need to be on heightened alert for the heretofore mentioned adverse secondary effects associated with sexually oriented businesses, areas within the vicinity of churches, public parks, schools, places of public assembly and residential uses should be free of said sexually oriented businesses; and
 - (3) that no evidence has been presented to demonstrate that the location of sexually oriented businesses within the City of Elmira, in violation of the provisions of this ordinance will improve the commercial viability or quality of life in the community.
- (f) **Need for Additional Regulations.** In addition, the City Council in and for the City of Elmira, has determined that the distance buffer zone criteria alone does not adequately protect the health, safety and general welfare of the people of the City of Elmira, and that therefore, certain additional regulations with respect to the ownership, management and operation of sexually oriented businesses is in the public interest. Therefore, this ordinance is enacted to more effectively manage, control, minimize and abate said harmful secondary effects that do exist; reduce the possibility of a future increase in said secondary effects; protect the health, safety and general welfare of the residents of the City of Elmira; promote, preserve and protect the distinguished character of the City of Elmira and quality of urban life, and to further the revitalization of the City's industrial, commercial and residential tax base and overall economic vitality.
- (g) **Non-Content Based Regulation.** It is neither the purpose, intent, nor effect in enacting this ordinance to impose any limitations or restrictions on the content of any expressive material, including sexually oriented material; nor to impede or hinder the free exchange of ideas, expressions and/or communications based on the content thereof; nor to restrict or deny the community-at-large legal access to said sexually oriented materials, ideas, expressions, and communications as protected by the First Amendments of the U.S. Constitution and the New York State Constitution or any other applicable legal precedence; nor to deny lawful access by the distributors and retailers of sexually oriented material to their intended market. Rather, it is the good-faith determination of the City Council in and for the City of Elmira, that in enacting this ordinance, it is furthering the important and substantial governmental interest of reducing and controlling the objectionable secondary effects that are, or may be in the future, precipitated by sexually oriented businesses upon the residents of the City of Elmira, in a manner no more restrictive than is necessary.
- (h) **Condemnation of Obscene Materials.** Furthermore, it is not the intent, in enacting this ordinance, to in any way condone or legitimize the distribution of

obscene materials, ideas, expressions or communications not protected by the First Amendments of the U.S. Constitution or New York State Constitution or any other applicable legal precedent, and the City Council recognizes that State and Federal law prohibits the distribution of obscene materials and expects and encourages the proper law enforcement entities to enforce said laws.

457.2 Definitions.

- (a) **Generally.** Unless otherwise specifically defined below, words or phrases used in this ordinance shall be interpreted so as to attribute to them the meaning they have in common usage and to accord this ordinance its broadest and most reasonable application.
- (b) **Specific Terms.** As used in this ordinance, unless otherwise specifically defined, the following terms shall have the meanings indicated:
 - (1) **Entity.** The term "entity" as used herein shall include any and all natural persons and legally recognized identities, which have a pecuniary interest or ownership interest (of any degree or category) in the subject Sexually Oriented Business.
 - (2) **Establishment.** The term "establishment" as used herein, is intended to limit the ordinance to the entities' ownership and/or operation of the Sexually Oriented Business within the subject building or structure, and does not include any non-sexually oriented business or establishments owned or operated by said entity; noting however, that the intent of this ordinance is that its mandates apply completely, though individually, to each and every sexually oriented business establishment owned or operated by said entity.
 - (3) **Sexually Oriented Bookstore.** Any establishment, having as a substantial or significant portion of its revenues or stock-in-trade, the selling, leasing, trading or renting of; for any form of consideration whatsoever: books, magazines, periodicals, photographs, video tapes, films, slides, computer generated material, or any other visual or sensory medium now known or later developed, which depicts, describes or relates to any specified sexual activity and/or specified anatomical area.
 - (4) **Sexually Oriented Business.** General term used herein to refer to any establishment, whether or not otherwise specifically enumerated herein, having as a substantial or significant portion of its revenues or stock-in-trade, the presentation, selling, leasing, trading or renting of; for any form of consideration whatsoever: any material, service, matter or performance, by way of any visual or sensory medium now known or later developed, which depicts, describes or relates to any specified sexual activity and/or specified anatomical area.

- (5) **Sexually Oriented Computer Center.** See, "Sexually Oriented Bookstore".
- (6) **Sexually Oriented Drive-in Theater.** Any establishment, having as a substantial or significant portion of its profit or stock-in-trade, the presentation of, for any form of consideration whatsoever: motion pictures, films, video tapes, slide shows or any other visual or sensory medium now known or later developed, in a drive-in theater setting as that term is commonly interpreted, which depicts, describes or relates to any specified sexual activity and/or specified anatomical area.
- (7) **Sexually Oriented Entertainment Establishment.** Any establishment, having as a substantial or significant portion of its profit or stock-in-trade, the live presentation of; for any form of consideration whatsoever: human-beings who depict, describe or relate to any specified sexual activity or specified anatomical area.
- (8) **Sexually Oriented Hotel/Motel.** Any establishment which rents or leases any room or rooms, for any period of time, which has as a substantial or significant portion of its profit or stock-in-trade, the selling, leasing, or renting of; for any form of consideration whatsoever: presentations, performances, material, goods and/or services which depict, describe or relate to any specified sexual activity and/or specified anatomical area.
- (9) **Sexually Oriented Massage Parlor.** Any establishment, having as a substantial or significant portion of its profit or stock-in-trade, the providing, selling or trading of; for any form of consideration whatsoever: body rubs or massages, as those terms are commonly interpreted, which depict, describe or relate to any specified sexual activity and/or specified anatomical area.
- (10) **Sexually Oriented Material.** General term used herein to refer to any matter, material, device, or performance, whether or not otherwise specifically enumerated herein, which depicts, describes or relates to any specified sexual activity or specified anatomical area.
- (11) **Sexually Oriented Novelty Store.** Any establishment, having as a substantial or significant portion of its profit or stock-in-trade, the selling, leasing, trading or renting of; for any form of consideration whatsoever: instruments, devices and/or paraphernalia, which depict, describe or relate to any specified sexual activity and/or specified anatomical area.
- (12) **Sexually Oriented Peep Show.** Any establishment, having as a substantial or significant portion of its profit or stock-in-trade, the presentation, selling, leasing, trading or renting of; for any form of

consideration whatsoever: material in the form of live shows, video tapes, films, slide shows, computer generated material or any other visual or sensory medium now known or later developed, which depicts, describes or relates to any specified sexual activity or specified anatomical area and which is viewed from an enclosure within the establishment which is usually occupied by a single patron.

- (13) **Sexually Oriented Theater.** Any establishment, having as a substantial or significant portion of its profit or stock-in-trade, the presentation, selling, leasing, trading or renting of; for any form of consideration whatsoever: motion pictures, films, videotapes, slide shows, computer generated material or any other visual or sensory medium now known or later developed, which depicts, describes or relates to any specified sexual activity and/or specified anatomical area.
- (14) **Sexually Oriented Video Store.** See, "Adult Bookstore".
- (15) **Specified Anatomical Areas.** Specified anatomical areas shall include the following:
- (A) less than completely and opaquely covered human: genitalia, pubic area, and/or buttocks;
 - (B) the human female breast below a point immediately above the areola;
 - (C) human male genitals in a discernibly turgid state even if completely and opaquely covered.
- (16) **Specified Sexual Activities.** Depictions, descriptions and relations to "Specified sexual activities" shall include and be defined as follows:
- (A) algolagnia - the receiving of sexual stimulation, excitement or erotic pleasure from the infliction of or suffering of pain, humiliation and/or maltreatment and includes therein, sadism, masochism and sadomasochism;
 - (B) anal intercourse - see, intercourse;
 - (C) anilingus - contact, however slight, between the mouth and anus;
 - (D) bestiality - any specified sexual activity between human and animal;
 - (E) coprophilia - the use of fecal matter for sexual stimulation and/or erotic pleasure;

- (F) cunnilingus - contact, however slight, between the mouth and vulva or mouth and clitoris;
 - (G) deviate sexual intercourse - see, sodomy;
 - (H) ejaculation - the act or portrayal of discharging semen, whether from a human penis or animal penis;
 - (I) fellatio - contact, however slight, between the mouth and penis or mouth and testes;
 - (J) flagellation - the receiving of sexual stimulation, excitement or erotic pleasure from whipping one's self or another;
 - (K) frottage - the receiving of sexual stimulation, excitement or erotic pleasure produced by rubbing against another person, animal or object;
 - (L) masochism - passive algolagnia; the receiving of sexual stimulation, excitement or erotic pleasure by being abused, humiliated or maltreated;
 - (M) masturbation - stimulation of human or animal genitals, whether such stimulation is being performed by the depicted human or animal, by another human or animal, or by means of an inanimate object;
 - (N) sadism - active algolagnia; the receiving of sexual stimulation, excitement or erotic pleasure by abusing, humiliating or maltreating another human or animal;
 - (O) sadomasochism - see, algolagnia;
 - (P) sexual intercourse - any penetration, however slight, of penis into vagina or penis into anus;
 - (Q) sodomy - any contact, however slight, between: penis and anus, mouth and penis, mouth and vulva, penis and another penis, or vulva and another vulva;
 - (R) urolognia - the receiving of sexual stimulation, excitement or erotic pleasure by viewing the act of urination.
- (17) **"Stock-in-trade"**. When used in this ordinance, the term "stock-in-trade" may include goods, merchandise, displays, advertisements, performances, and/or services; or any combination thereof.

- (c) **Overlapping of Definitions.** It is possible for one or more of the above-listed definitions to be inclusive, in whole or in part, of another definition.

457.3 Regulation of Sexually Oriented Businesses.

- (a) **Disbursed Zoning of Sexually Oriented Business.** Sexually Oriented Businesses, as defined in Subsection "B" above, are to be restricted as to location in the following manner, in addition to any other requirements of this Zoning Ordinance:
- (1) **Industrial B Districts.** No sexually oriented business shall be located in any zoning district, other than those districts zoned Industrial B Districts.
 - (2) **Separate Buildings.** No sexually oriented business may be operated in the same building, structure or portion thereof containing another sexually oriented business;
 - (3) **Other Sexually Oriented Businesses.** No sexually oriented business may be located within a five hundred foot (500') radius of any other sexually oriented business;
 - (4) **Churches and Places of Worship.** No sexually oriented business may be located within a five hundred foot (500') radius of any church, temple, synagogue, mosque, or other place of religious worship by a recognized religious organization.
 - (5) **Parks and Community Centers.** No sexually oriented business may be located within a five hundred foot (500') radius of any public park, community center or community sports complex.
 - (6) **Schools and Day Care Centers.** No sexually oriented business may be located within a five hundred foot (500') radius of any New York State accredited grammar school, junior high school, high school or day-care center duly licensed with the State of New York.
 - (7) **Residential Zones.** No sexually oriented business shall be located within five hundred feet (500') of any boundary of a Residential Use Zoning District Planned Residential District or Planned Low-Density Residential District.
 - (8) **Measuring of Distances.** For the purposes of this Ordinance, measurement of the distances enumerated herein, shall be made in a straight line, without regard to intervening structures or objects, from the exterior wall of the building or structure being used as a sexually oriented business located closest to the property line of the preserved property.

"Preserved property" shall mean those properties enumerated herein, a specified distance from which a sexually oriented business may not operate.

457.4 Licensing Requirements.

- (a) **Operating Without License Prohibited.** It shall be unlawful for any entity to own and/or operate a sexually oriented business without having first obtained a license as hereinafter provided.
- (b) **Pre-existing Sexually Oriented Businesses.** Where an entity lawfully owned and/or operated a sexually oriented business prior to the effective date of this ordinance, said entity shall have sixty (60) calendar days from the effective date hereof to apply for said license, at which time the business must be in compliance with the requirements of this ordinance. Said business may continue to operate until its application is either approved or disapproved.
- (c) **License Application.** Any entity desirous to own and/or operate a sexually oriented business within the City of Elmira shall file with the City Clerk, a Sexually Oriented Business License Application on a form as prescribed and amended from time to time by resolution of the City Council, and shall therewith pay a non-refundable application processing fee in an amount to be set and readjusted from time to time by resolution of the City Council, but which should be reflective of the estimated administrative costs associated with said application process.
 - (1) **Contents of Application.** The Sexually Oriented Business Application shall, at a minimum, contain the following information:
 - (A) **Name.** The complete, legal name of the entity applying for said license, including any and all aliases of said entity, as well as the names of all owners (to any degree) of said entity.
 - (B) **Address.** The entity's legal address and if said entity be a corporation the address of its principle place of business, name and address of the place to be served with process, and a copy of its certificate of incorporation and good standing with the State of New York or certificate of ability to operate in the State of New York.
 - (C) **d/b/a.** If the entity is or plans to conduct business under any other name, the exact name thereof as well as a copy of the entity's "Doing Business As (d/b/a)" form.

(Subsection (c)(1)(D) was repealed by Ordinance No. 99-330 dated August 16, 1999 and subsections (c)(1)(E) through (c)(1)(J) were re-lettered.)

- (D) **Prior Suspensions or Revocations.** Whether said entity, as owner (to any degree) and/or operator of a sexually oriented business, has had its license to own and/or operate a sexually oriented business within the State of New York revoked or suspended within the past twelve (12) months, and if so, the Applicant shall provide, with the Application, a copy of the actual notice of revocation or suspension from the municipality so issuing, or if such notice is unavailable, the Applicant shall provide the name of the municipality which suspended or revoked the Applicant's license and the dates thereof. (*Ordinance No. 99-330 dated August 16, 1999*)
- (E) **Landlord Not to be Currently under Suspension or Revocation.** The application shall require the applicant to indicate whether the real property on which the sexually oriented business is to be located, including any buildings thereon, is owned, rented by, or leased by any entity which has had its license to own or operate a sexually oriented business within the City of Elmira or elsewhere revoked within the past twelve (12) months or is currently under suspension. And furthermore, whether said entity has any proprietary, fiscal, or managerial interest in the sexually oriented business which is the subject of the current application.
- (F) **Age of Employees.** A statement that any and all current and future employees of the sexually oriented business are and shall be, at least the age of majority as that term is defined in New York State Penal Law.
- (G) **Prior Criminal Convictions.** A statement as to whether the applicant, other present owners and/or any of the employees of said sexually oriented business have, within the past twenty (20) years been convicted of a "sex Offense" in violation of New York State Penal Law Article 130, as that Article may be from time to time amended, or a crime occurring on or in the premises of the Sexually Oriented Business, or if known, within a one hundred foot (100') radius thereof.
- (H) **Continuing Duty to Notify City of Changes.** A statement that the entity shall have a continuing duty to notify the Clerk in and for the City of Elmira within five (5) calendar days of any change of the above.
- (I) **Verification.** The truthfulness, accuracy and completeness of the application shall be sworn to by the entity or entities who shall own and/or operate said sexually oriented business.

(2) **Inspections.** Commensurate with the filing of the Application, said entity must supply therewith, the following:

- (A) **Letter of Compliance.** A Letter of Compliance issued by the Superintendent of Buildings. Said Letter shall be dated no earlier than forty five (45) days from the date of the application and shall evidence compliance or non-compliance with all applicable laws, ordinances and regulations of the Codes Enforcement Department as well as compliance or non-compliance with all applicable laws, ordinances, and regulations of the Zoning Board.
- (B) **Inspection Preference.** The applicant shall make a written request to the Superintendent of Buildings of the City of Elmira for all necessary inspections to be completed and shall indicate in said letter that said inspections are for the purpose of operating a Sexually Oriented Business. The Superintendent of Buildings shall then cause all necessary inspections to be completed, with either the applicable Certificates issued or a written explanation of why any inspection was failed, within ten (10) business days from the receipt of said written request.
- (C) **Inspection Failure Only for Health and Safety Related Violations.** Failure to provide the required certificates shall be based only upon violation(s) which could reasonably impact on the health or safety of patrons, employees or the community at large.
- (D) **Continuing Duty to Notify City of Changes.** The entity shall have a continuing duty to notify the Clerk in and for the City of Elmira within five (5) calendar days of any change of any information provided for in the application process.
- (E) **Processing by Clerk.** Upon the receipt of an application, and non-refundable application processing fee, the Clerk shall review the application for facial completeness and factual correctness to the best of his/her knowledge, and shall, within five (5) business days, notify the entity by way of regular mail, of any errors or omissions and allow said entity ten (10) additional business days to correct or supply said information and initial same as true without reapplying or filing additional fees; provided however, that if each and every error or omission is not corrected or supplied within said ten (10) business days, the license application must be denied and the Sexually Oriented Business shall not be allowed to begin operating nor continue to operate without correcting or supplying said information.

- (1) **Issuance of License.** If the application is facially in order, the clerk shall call for, or conduct any further necessary investigation and shall issue or deny said license within twenty (20) business days after receipt of said application or corrected version thereof as above provided.
 - (A) **Only One License.** The Clerk shall issue only one (1) license per property site. Each property site containing a sexually oriented business must separately apply for a Sexually Oriented Business License regardless of whether it is owned and/or operated by the same entity or entities and/or under the same business name as the business which is the subject of the current application.
 - (B) **Non-Assignable.** The license shall not be transferable or assignable in whole or in part, to any other entity or any other location than the one described therein.
- (2) **Denial of Application.** If the application is denied, or license subsequently revoked, for the refusal of the entity to supply any information after being notified pursuant to the above, or if any false, misleading or incorrect information (which would have a material bearing on the denial or approval of said license) is discovered, the Clerk shall deny said application and shall so notify the entity, with the reasons therefore, within five (5) business days of the denial. The entity may reapply after twelve (12) months from the date of denial or revocation, however said applicant shall then pay another non-refundable application processing fee and be required to resupply updated information and certificates.
- (F) **Display of License.** The license shall be prominently displayed in the business in a conspicuous area. The license shall be available at all times of operation for inspection by the public. No person shall mutilate, cover, obstruct or remove a license so displayed. In the event that any information portrayed by said license becomes unreadable to the general public, the entity shall request, and the Clerk shall provide a new license in conformity with the City's normal course of operations for such issuances.
- (G) **Term of License.** All licenses issued hereunder shall be for a term of one (1) calendar year and shall commence on the date of the granting of same and continue until and including the same day and month of the following year.
- (H) **Yearly Renewal of License.** The entity shall be entitled to a renewal of its license as a matter of course with the payment of the appropriate yearly fee and the filing of a statement as hereinafter proscribed that there have been no changes since the previous inspection.

- (1) **Approval Based on Compliance.** An application herein shall only be approved if in compliance with this ordinance and other laws.
 - (2) **Failure to Renew.** The failure of the entity to renew said license within thirty (30) calendar days from its expiration shall be treated as a suspension of said license and the entity shall be required to cease operations until said affidavit is signed and fee plus a penalty as set by the Council, but in no event to exceed five percent (5%) per day of the yearly renewal fee, is paid.
 - (3) **Cessation of Operation.** Upon the suspension of said license for the failure to renew, the City shall notify said entity within five (5) business days of said suspension.
 - (4) **Notice Not Required.** Nothing herein shall be construed to mandate that the City notify the entity of the pending renewal date.
 - (5) **Retroactivity of New License.** The new license shall be retroactive to the date of expiration of the previous license.
- (I) **Denial or Revocation of License.** No license shall be issued, nor extension thereof granted, and a revocation of any existing license shall be executed in the event of any of the following circumstances:
- (1) **Incomplete or Fraudulent Application.** Any false, misleading, incorrect, and/or incomplete information provided by said entity in the application shall be grounds for denial of said application and/or revocation of said license. An entity submitting an application containing errors of a clerical nature and/or errors which would have no material effect on the decision to issue said license shall be given notice thereof and the ability to correct same as further provided herein;
 - (2) **Previous Suspension or Revocation.** The entity applying for Sexually Oriented Business License has, within the past twelve (12) months, had its license to own and/or operate another sexually oriented business within the City of Elmira revoked; or if said entity was a partial owner (of any degree) of any sexually oriented business whose license to operate within the City of Elmira has been revoked within the past twelve (12) months; or if the entity is the owner (to any degree) of any sexually oriented business whose license to operate within the City of Elmira is currently under suspension.
 - (3) **Landlord Not to be Currently under Suspension or Revocation.** The real property on which the sexually oriented business is to be located, including any buildings thereon, is owned, rented by, or leased by any entity, or if said entity has a managerial or fiscal interest in said sexually

oriented business, and which said entity has had its license to own or operate a sexually oriented business within the City of Elmira revoked within the past twelve (12) months or is currently under suspension.

- (4) **Attempt to Transfer.** Any attempt by the entity to whom a license is issued to hereunder, to transfer, sell, lease or assign said license to any other entity or establishment shall render said license null-and-void as to both the transferor and transferee.
- (5) **Failure to Comply.** The entity applying for said Sexually Oriented Business License has failed and/or refused to comply with the mandates of this ordinance and/or any other applicable statute, law, ordinance or regulation.
- (6) **Previous Criminal Conviction.** The applicant for said sexually oriented business or the entity operating thereunder within the past twenty (20) years has been convicted of a "sex offense" in violation of New York Street Penal Law Article 130, or has been convicted twice within the past five years of any obscenity crime in violation of Penal Law Article 235 as that article may be from time to time amended, or has been convicted of a felony occurring on or in the premises of the sexually oriented business, or within a one hundred foot (100') radius thereof. *(Ordinance No. 99-330 dated August 16, 1999)*

457.5 Lighting Requirements.

- (a) **Outside Premises.** All sexually oriented businesses, unless otherwise specifically conditioned herein, shall continually maintain at all hours of operation during the hours from dusk till dawn, lighting in all outside areas owned or leased by said business which shall include, but is not necessarily limited to: parking facilities; alleyways; stairwells, sidewalks; and like areas. Said lighting to be in conformity with neighborhood standards and to reasonably avoid "dark areas" which could cloak illegal activity.
- (b) **Inside Premises .** All sexually oriented business, unless otherwise specifically conditioned herein, shall continually maintain through all hours of operation, lighting throughout any and all portions of the facility to which the public shall have access, of an illumination intensity so as to reasonably avoid "dark areas" where illegal conduct could take place.

457.6 Other Requirements.

- (a) **Loitering Prohibited.** Loitering outside the premises of a sexually oriented business is hereby prohibited. For the purposes of this ordinance the term

"loitering" shall have the same meaning and interpretation as that employed by the Penal Law of the State of New York, as may be amended from time to time.

- (b) **Displays.** Displays shall be constructed and maintained in an open manner so as to offer the unobstructed observation of patrons. All displays, advertisements, merchandise, goods, services or performances which depict, describe or relate to any specified sexual activity or specified anatomical area shall be so positioned within the establishment so as to be unable to be seen or heard from outside the establishment.
- (c) **Proof of Age.** All sexually oriented business shall demand proof of age from all persons who enter the establishment who reasonably appear to be less than the age of majority and shall furthermore, promptly refuse entry to said individuals whose valid identification reveals that said person is a minor.
- (d) **Wrapping of Sales.** All sales of sexually oriented materials must be completely and securely wrapped so as to offer no indication of the contents thereof and the wrapping shall not depict, describe or refer to any specified sexual activity or specified anatomical area.
- (e) **Inspections.** All sexually oriented business establishments shall be subject to periodic inspections by City personnel from the Codes Department, Police Department and personnel from any applicable Health Department to ensure compliance with this ordinance.
 - (1) **Equal Protection.** Said inspections shall be conducted in conformity with the normal business operations of the City and shall be done in the least restrictive manner as is possible.
 - (2) **Cessation of Operations.** If an inspection reveals a condition which rationally construed, poses a significant risk of a detrimental impact on the health, safety and welfare of the patrons of the sexually oriented business or populace-at-large, the sexually oriented business may be ordered immediately closed by the department head of the investigating agency and shall remain closed until such time as the condition is remedied.
- (f) **Non Clandestine Requirements.**
 - (1) No doorway, whether an entrance or exit to the premises itself or any room or subdivision within the premises, which is open to the public, shall be locked at anytime the facility is open to the public or whenever any person is in the premises.
 - (2) No doors, curtains or other obstructions, shall be maintained on the exterior of any peep booths within the sexually oriented business

establishment, unless said doors, curtains or other obstructions can be easily opened from the outside of said peep booths.

- (g) **Aesthetic Requirements.** The premise(s) shall conform to the Building Code of the Elmira City Code of Ordinances, as amended, except to the extent that a requirement in said Code conflicts with a special requirement contained herein and then only to the extent of the conflict.
- (1) **Signage.** All signs, plaques or other forms of permanent or semipermanent advertising shall conform to the general characteristics of the community.
- (2) **Windows.** Any and all windows or openings, whether fully or only semi-opaque, which permit the premises to be viewed by the general public shall be made to be fully opaque in a manner consistent with preserving the wholesome character of the neighborhood.
- (h) **Public Restrooms.** No displays, material, goods, services or performances depicting, describing or relating to specified sexual activities or specified anatomical areas shall be provided or offered in any public or private restroom facility(ies) within the establishment.
- (i) **Hours of Operation.** Sexually oriented business may be open to the public generally or by special or specific invite only between the hours of 9:00 am and 2:00 am eastern standard time.
- (1) No customer shall be allowed to enter any sexually oriented business after the proscribed closing time.
- (2) The establishment must be free and clear of all patrons no later than fifteen (15) minutes after the proscribed closing time.
- (j) **Seating.** Only one person shall be allowed to occupy a peep-booth at any one time.
- (k) **Age of Employees.** All current and future employees of the sexually oriented business shall be, at least the age of majority as that term is defined in New York State Penal Law.

Section 458. Mobile Homes and Manufactured Homes. *(Ord. No. 2003-164 May 5, 2003)*

458.1 Purpose and Intent.

This section provides basic and uniform standards, in terms of performance objectives implemented by specific requirements, governing the facilities and the condition, use, occupancy and maintenance of mobile homes and manufactured

homes, to safeguard the safety, health and welfare of the occupants and users thereof. (Ord. No. 2003-164 dated May 5, 2003)

458.2 Where permitted.

Mobile homes and manufactured homes shall be located only in parks designated for mobile homes, manufactured homes, or a combination of mobile homes and manufactured homes. Such parks are specifically prohibited from Residential AA, Residential A, Business E, Business G and Industrial districts. For purposes of this ordinance mobile homes and manufactured homes shall be both be referred to as “mobile/manufactured homes”. (Ord. No. 2003-164 dated May 5, 2003)

458.3 Definitions.

- (a) **Community Area:** An area or space within a mobile/manufactured home park, including fences, walls or other minor structures, which is designed for joint use of occupants.
- (b) **Community Structure:** A structure within a mobile/manufactured home park, providing laundry, toilet, recreation, parking or other common facilities, including management offices and storage buildings.
- (c) **Manufactured Home:** a structure, transportable in one or more sections that, in the traveling mode, is 8 feet (2438 body mm) or more in width or 40 feet (12,192 body mm) or more in length, or, when erected on site, is 320 square feet (29.7 m²) minimum, and that was built on or after June 15, 1976 on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities and includes the plumbing, heating, air conditioning and electrical systems contained therein. The term “manufactured home” shall also include any structure that meets all the requirements of this definition except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the federal department of housing and urban development and complies with the standards established under the National Manufactured Housing Construction and Safety Act of 1974, as amended. The term “manufactured home” shall not include any self propelled recreational vehicle. A label certifying compliance with the Standard for Mobile Homes, NFPA 501, ANSI 119.1, in effect at the time of manufacture is **deemed acceptable**. For purposes of this ordinance mobile homes and manufactured homes shall be both be referred to as “mobile/manufactured homes”.
- (d) **Mobile Home:** A moveable or portable dwelling unit that was built prior to June 15, 1976 and that was designed and constructed to be towed on its own chassis comprising frame and wheels; connected to utilities; and designed and

constructed without a permanent foundation for year-round living, excluding travel trailers. For purposes of this ordinance mobile homes and manufactured homes shall both be referred to as “mobile/manufactured homes”.

- (e) **Mobile/Manufactured Home Park:** A parcel of land planned and improved for the placement of two or more mobile/manufactured homes for continuous occupancy.
- (f) **Mobile/Manufactured Home Lot:** A designated site within a mobile/manufactured home park for the exclusive use of the occupants of a single mobile/manufactured home. *(Ord. No. 2003-164 dated May 5, 2003)*

458.4 Permit Required; application and issuance; fees.

- (a) It shall be unlawful for any person to construct, alter or extend any mobile/manufactured home unless he/she holds a valid permit issued by the Superintendent of Buildings in the name of the person for which the specific construction, alteration or extension is proposed. Such permit shall be issued upon the proper submission of such documentation as may be required by the Superintendent of Buildings.
- (b) Each application for a permit to establish a mobile/manufactured home park shall be filed with the Superintendent of Buildings. The Superintendent of Buildings, upon review, shall submit the application to the City Planning Commission for review and approval. All applications for permits shall be accompanied by a fee as set forth in a resolution of the City Council and shall contain the following:
 - (1) The name and address of the applicant;
 - (2) The location and size of the lot;
 - (3) Interest of the applicant in the mobile/manufactured home park.
 - (4) Legal description of the mobile/manufactured home park, including a map showing the physical characteristics of the property, including topography, vegetation and wetlands.
 - (5) Complete plans and specifications (three sets) of the proposed park showing:
 - (A) Boundaries of all property lines, including dimensions;
 - (B) The number, location and size of all mobile/manufactured home lots;

- (C) The location of service buildings and any other proposed structures;
 - (D) The location and widths of roadways and walkways;
 - (E) The location of water and sewer lines and riser pipes;
 - (F) Set-backs from all property lines;
 - (G) Plans and specifications of all buildings constructed or to be constructed within the mobile/manufactured home park;
 - (H) Plans and specifications of the water supply, refuse disposal and sewage disposal facilities;
 - (I) The location and details of lighting and electrical systems;
 - (J) The phasing of any development, if any;
 - (K) Description of the foundation of the mobile/manufactured homes;
 - (L) All units must be in accordance with Appendix "E" of the New York State Residential Building Code;
 - (M) Environmental Assessment Form, as appropriate; and
 - (N) Such other information as may be required by the Planning Commission.
- (c) The Planning Commission shall approve, approve with modifications or disapprove such application and shall report its decision to the Superintendent of Buildings. If, upon review of the application, the Planning Commission and the Superintendent of Buildings are satisfied that the proposed plan meets the requirements of this section and other applicable provisions of the Code of Ordinances of the City of Elmira, a permit shall be issued. This permit, when issued, shall be a permit to operate said park for the first year, once the Superintendent of Buildings has certified the court for occupancy.
- (d) It shall be unlawful for any person to operate any mobile/manufactured home park within the limits of the City of Elmira unless he or she holds a valid permit issued annually by the Superintendent of Buildings in the name of such person for the specific mobile/manufactured home court.
- (e) Every person holding a permit shall give notice in writing to the Superintendent of Buildings within twenty-four (24) hours after having sold, transferred, given away or otherwise disposed of interest in, or control of, any mobile/manufactured home park. Such notice shall include the name and address of the person succeeding to the ownership or control of, any mobile/manufactured home park. Upon application in writing for transfer of the permit and deposit of a fee in the amount set by resolution of the City Council, the permit shall be transferred if the mobile/manufactured home park is in compliance with all applicable provisions of this section.
- (f) Applications for renewals of permit shall be made in writing by the holders of the permit, shall be accompanied by a renewal fee in the amount set by resolution of

the City Council, and shall contain any change in the information submitted since the original permit was issued or latest renewal was granted. (*Ord. No. 2003-164 dated May 5, 2003*)

458.5 Layout and design of Mobile/Manufactured Home Parks.

- (a) **Minimum Requirements.** A mobile/manufactured home park cannot be established or created except upon a tract of land at least ten (10) acres.
- (b) **Double Access.** All mobile/manufactured home parks containing twenty (20) or more mobile/manufactured home lots shall have access from two points along a single public street or highway, or if bordering on two streets, access can be gained from each street, such access points being separated at least one hundred feet (100') apart. Vehicular access to a town, county, or state highway shall be approved by the respective official involved.
- (c) **Landscaped green belt.** A mobile/manufactured home park shall be surrounded by a landscaped green belt of at least fifty feet (50') from each property line. The required green belt shall not be included in the yard requirements for the individual mobile/manufactured home lot.
- (d) **Other principal structures.** Private conventional residences and community structures serving the mobile/manufactured home park may be located within the mobile/manufactured home park. If located with frontage near the public highway, such structures shall not be located within the green belt.
- (e) **Soil and Ground Cover Requirements.** Exposed ground surfaces in all parts of every mobile/manufactured home park shall be paved or protected with a vegetative growth that is capable of preventing soil erosion and of eliminating objectionable dust.
- (f) **Block Lengths.** The layout of interior roadways or driveways shall be such that no block is longer than five hundred feet (500'); provided, however, that this may be extended to seven hundred fifty feet (750') if an interior walkway is provided for pedestrian access across the center of the block.
- (g) **Interior drives.** Interior drives shall be designed so as to prevent blockage of vehicles entering or leaving the site. Drives may be one-way or two-way. All access ways to any public street or highway shall be located at least two hundred feet (200') from the intersection of any street lines, shall be designed with two hundred feet (200') of clear visibility and shall be maintained in a manner conducive to safe ingress and egress.
- (h) **Roadway width.** All mobile/manufactured home lots shall abut upon a road with a right-of-way of fifty feet (50') having a paved all weather roadway of not less than thirty feet (30') in width.

- (i) **Street grades.** The maximum street grade shall be seven percent (7%). Entrance gradients shall be less than three percent (3%) for a distance of seventy-five feet (75') from the edge of the right-of-way of the highway.
- (j) **Minimum radius of street curves.** The minimum radius of curvature for any street shall be one hundred feet (100').
- (k) **Street alignment.** Streets shall be laid out so as to intersect as nearly as possible at right angles, and in no case shall any angle or intersection be less than 75°.
- (l) **Street and parking areas.** Street or driveway pavement shall be located in the center of the right-of-way. If provision is made within the street, such parking area may be off the pavement and the clear zone (street width) shall be increased proportionately to provide therefore. If parking provision is made in a parking area for three or more vehicles in nodes throughout the park, such areas shall be located off the pavement considered to be the street or driveway and in such manner as not to encroach upon the area considered to be the mobile/manufactured home lot. Provision shall be made for the parking of a minimum of three motor vehicles for each two mobile/manufactured home lots.
- (m) **Auxiliary parking.** Central auxiliary parking area shall be provided at a ratio of two hundred (200) square feet per mobile/manufactured home lot in a location which is not contiguous with the lot serviced, such area being screened from lots and public highways by a coniferous hedge or other effective vegetation. Auxiliary parking areas are to be provided for parking trucks, maintenance equipment, boat trailers, utility trailers, and recreational vehicles.
- (n) **Lot area and bulk requirements.** Shall be the same as for single family residences in the district in which they are located per the Bulk and Density Control Table at Section 310.
- (o) **Corner Lots.** Corner lots in mobile/manufactured home parks shall be 1½ times the width and area of regular lots. If a street makes a turn of 90°, the lot on the inside shall be considered a corner lot and the lots on the outside shall be considered radial lots, wherein the width shall be measured at the distance of ten feet (10') from the street line.
- (p) **Double Frontage Lots.** Double frontage lots shall be avoided. If there is a situation where only one mobile/manufactured home can be located between streets, then a buffer strip of at least ten feet (10') shall be created and suitably planted.
- (q) **Walkways.** Concrete walkways, a minimum of three feet (3') in width, shall be laid out so as to connect all patios with the street and connect service buildings, drying yards and storage lockers within the streets. Walkways shall connect

access to the recreation areas if such areas are not located adjacent to a street. Additional walkways can also be placed along the rear of each lot.

- (r) **Recreation space.** Recreation space shall be provided in a central location and at a ratio of one thousand (1000) square feet per lot. Such space shall be enclosed with shrubs or evergreens placed not further than ten feet (10') apart.
- (s) **Trees.** All existing trees in mobile/manufactured home parks shall be preserved insofar as possible in the design of the park. New trees shall be added to each lot, buffer strip, or green belt as necessary. Each lot shall have a minimum of one tree capable of growing to a minimum height of thirty-five (35') and having a minimum spread of twenty-five feet (25'). *(Ord. No. 2003-164 dated May 5, 2003)*

458.6 Required Improvements and Utilities.

- (a) **Water Supply.** Each mobile/manufactured home shall be connected to the Municipal Water System.
- (b) **Sanitary Sewer System.** Each mobile/manufactured home shall be connected to the Municipal Sanitary System.
- (c) **Electrical Systems.** Must conform to the National Electrical Code, as amended from time to time.
- (d) **Lighting.** Artificial lighting shall be provided to illuminate walks, driveways and parking spaces for the safe movement of pedestrians and vehicles as follows:
 - (1) Overhead street lighting standards shall be placed no farther than one hundred feet (100') apart, have a minimum clearance above the pavement of sixteen feet (16') and shall have a capacity of 100 watts.
 - (2) Alternate-side street lighting (post lamps) shall be placed not farther than sixty feet (60') apart, as measured along the center line of the street, one hundred twenty feet (120') on one side of the street, have a minimum height of nine feet (9') and a maximum height of twelve feet (12') and shall have a capacity of 60 watts or equivalent.
 - (3) Service buildings shall have sufficient exterior lighting fixtures so as to properly illuminate entrances and drying yards connected therewith.
 - (4) Street and service buildings shall be illuminated during all hours of darkness.
 - (5) All wires shall be located underground.

- (e) **Gas piping system.** Gas piping shall comply with the National Gas Codes and Standards and the rules, regulations and requirements of the local gas supplier.
- (f) **Refuse disposal.** Refuse disposal shall be in conformance with Local Law #4 of 1996, as amended from time to time, governing the Collection of Refuse in the City of Elmira.
- (g) **Stormwater drainage.** The first inch of runoff must be controlled on-site for a twenty-five year design storm using the calculations based on the Soils Conservation Service Technical Release # 55 (TR-55) stormwater runoff calculation procedures, as the same may be amended from time to time.
(Ord. No. 2003-164 dated May 5, 2003)

458.7 Mobile/Manufactured Home Stand.

- (a) **Mobile/manufactured home stand.** Each mobile/manufactured home lot shall contain a mobile/manufactured home stand capable of containing a mobile/manufactured home in a fixed position. The mobile/manufactured home stand shall be graded with an asphalt or concrete material at least six inches (6") in thickness. The topographic change of the mobile/ manufactured home stand shall be a maximum of one-fourth inch (1¼") per foot elevation change from the center of the stand in all directions. Mobile/manufactured home stands shall be equipped with permanent anchor points for the tie-down of mobile/manufactured homes.
- (b) The wheel tongue must be removed. *(Ord. No. 2003-164 dated May 5, 2003)*

458.8 Mobile/Manufactured Home Park Property Maintenance Standards.

- (a) In general, mobile/manufactured home parks shall be properly maintained so as to ensure the desirable residential character of the property. Specifically, the following shall apply:
 - (1) **Yard Maintenance.** Mobile/manufactured home parks shall be maintained reasonably free from holes and excavations, sharp protrusions and other objects or conditions which might be a potential cause of personal injury.
 - (2) **Accessory Structures.** All accessory buildings or structures shall be kept in good repair, free from health, fire and accident hazard. They shall be of durable construction and surfaces of all structures that are not inertly resistant to deterioration shall be periodically treated with a protective coating of paint or other suitable preservative.
 - (3) **Infestation.** All area grounds and structures shall be maintained free of insect, vermin and rodent harborage and infestation. Methods used for extermination shall conform with generally accepted practices.

- (4) The bottom portion of a mobile/manufactured home shall be skirted with a properly vented fireproof material within ten (10) days of arrival in the park.
- (5) No occupied travel or vacation trailer shall be permitted in a mobile/manufactured home park.
- (b) The person to whom a permit for a mobile/manufactured home park is issued shall operate the park in compliance with this section and regulation issued hereunder and shall provide adequate supervision to maintain the park, its facilities and equipment in good repair and in a clean and sanitary condition.
- (c) The park management shall notify the park occupants of all applicable provisions of this section and inform them of their duties and responsibilities under this section and regulations issued hereunder.
- (d) The park management shall supervise the placement of each mobile/manufactured home on its lots, which includes installing all utility connections. A mobile/manufactured home shall not be occupied for dwelling purposes unless it is properly placed on a mobile home stand and connected to water, sewage and electrical facilities. *(Ord. No. 2003-164 dated May 5, 2003)*

458.9 Responsibilities of Park Occupants.

- (a) **Generally.**
 - (1) Every park occupant shall comply with all applicable requirements of this section and regulations issued hereunder and shall maintain his or her mobile/manufactured home lot, its facilities and equipment in good repair and in clean and sanitary condition.
 - (2) Every park occupant shall be responsible for proper placement of his or her mobile/manufactured home on its mobile/manufactured home stand and proper installation of all utility connections in accordance with the instructions of the park management.
 - (3) No addition to a mobile/manufactured home in excess of forty (40) square feet floor space shall be permitted unless supplied by a manufacturer of mobile/manufactured homes. *(Ord. No. 2003-164 dated May 5, 2003)*

ARTICLE V: SIGNS

Section 500. Intent.

The intent of this Article is to create a comprehensive system regulating the location, area, height, frequency and lighting of signs placed in the city in order to:

- (a) Promote public health, safety and general welfare by facilitating easy and effective communication from signs to persons seeking information displayed on signs;
- (b) Protect and enhance the character of certain areas within the City by conforming the size and location of signs to the scale of the city;
- (c) Improve traffic safety by limiting distractions generated by excessive information displayed to motorists; and
- (d) Restrict sign regulation to time, place and manner, without limitations on content, so long as the material displayed avoids content commonly judged to be immoral, indecent or obscene.
- (e) The lawful use of any sign or sign structure existing at the time of the enactment of this ordinance may be continued, provided, however, that such use may not be enlarged in any way. (*Ordinance No. 99-330 dated August 16, 1999*)

Section 510. Definitions.

A sign shall be any name, identification, description, display, illustration, or device, greater than one (1) square foot in area, which directs attention to a product, place, activity, person, institution or business.

510.1 Billboard: Any free standing sign greater than one hundred (100) square feet but not greater than two hundred (200) square feet in surface area.

510.2 Business Sign: A sign which identifies a business or directs attention to a building or structure wherein a business, product, activity or service is conducted, manufactured, sold or offered for sale, on the premises where such sign is located.

510.3 Building Frontage: When used in connection with sign regulations shall mean those frontages which abut a public street, or abut an off-street parking area open to the general public including pedestrian and vehicular access areas.

510.4 Flashing Sign: A sign, the illumination of which is not kept constant in intensity at all times when in use, and which exhibits sudden or marked changes in such light or color effects.

- 510.5 Freestanding Sign:** Any sign which is supported by one or more columns, poles, uprights, braces or other type of supporting structure in or upon the ground and not part of or attached to a building.
- 510.6 Garage Sale Sign:** Any sign pertaining to the sale of personal property in, at or upon any residentially zoned property. Garage sales shall include but are no limited to all such sales, and shall include the advertising of the holding of any such sale, whether made under any other name, such as lawn sale, backyard sale, home sale, attic sale, rummage sale, patio sale, flea market, or any similar designation.
- 510.7 Illuminated Sign:** A sign, any part of which, is illuminated by any type of artificial light.
- 510.8 Indirectly Illuminated Sign:** An illuminated, non-flashing sign whose illumination is derived entirely from an external artificial source so arranged that no direct rays of light are projected from such artificial source into any neighboring property or into public streets.
- 510.9 Marquee sign (canopy):** Any sign which is attached to a marquee which is defined as a permanent roofed structure projecting over public or private property and attached to a building and supported by the building or on column supports from grade or a combination of both.
- 510.10 Nameplate sign:** A sign which states the name and/or the address of the occupant of the lot or building where the sign is located.
- 510.11 Off-site Advertising Sign:** A sign which directs attention to a business, product, activity or service not conducted, manufactured, sold or offered on the premises where such sign is located.
- 510.12 Projecting Sign:** Any sign, other than a wall sign or roof sign, suspended from, attached to, or supported by a wall, building or structure. A projecting sign shall not extend out from the face of the building more than four feet, six inches (4' 6"), and shall not be located lower than nine feet (9') above the sidewalk level, not be higher than fifteen feet (15') above the sidewalk level. The total area of any permitted projecting sign shall not exceed twenty-four (24) square feet.
- 510.13 Public Service Sign:** Any sign which communicates a message of general interest to the public such as the time of day, weather, a philanthropic fund-raising campaign or a message relating to a public or quasi-public structure, building, facility or activity and intended to be for the information and convenience of the public.
- 510.14 Roof Sign:** Any sign attached to, or placed upon: a roof; framing wall; column; or other part of a building on which the advertising display or message is located above the roof level. Roof signs are specifically prohibited in the City of Elmira (section 520.3).

510.15 Sign Decorative Trim: The moldings, battens, capping, nailing strips, latticing, platforms and letters, figures, characters or representations in cutout or irregular form which are attached to the sign structure(s).

510.16 Sign Surface Area: For measurement purposes the sign surface area shall be considered as follows:

- (a) **Double-faced signs:** Double faced signs less than twenty-eight inches (28") at their thickest point shall be measured on one side only in computing total surface area. The surface area shall be the area of the smallest rectangle that can be placed over the entire sign. Double-faced signs with more than one section, either connected or not, may be measured as one sign or more than one, but each separately measured section shall count as one sign. Double-faced signs over twenty eight inches (28") thick shall be measured on each side and the total area of both sides shall be used in computing the total surface area.
- (b) **Wall signs:** Wall signs which are installed or may be removed as complete units or more than one unit or display panel shall be measured the same as the smallest rectangle that can be placed over the entire sign.
- (c) **Letters.** Letters (including insignias, designs, trademarks or pictorials) applied to the face or facing of a building or awning, shall be measured by computing the area of the smallest rectangle that can be placed over the letters. Where upper and lower case letters are used, which extend above or below the top or bottom row of letters, the area may be measured either by computing the area of the smallest rectangle placed over the letters and enclosing the entire group of letters or by computing the area of the smallest rectangle enclosing the entire group of lower case letters without the extension above or below the line of letters and adding twenty five percent (25%) to such area to compute the total area of the sign.

510.17 Temporary Sign: Any sign which is not structurally affixed to a foundation or a building. Temporary sign shall also include a portable sign which shall be any sign designed to be moved from place to place regardless of whether rigidly attached to the ground or permanent structure.

510.18 Wall Sign: Any sign painted on, attached to, or erected against the wall of a building or structure, with the exposed face of the sign in a plane parallel to the plane of said wall, building or structure and not extending more than eighteen inches (18") from the face of such wall.

510.19 Window Sign: Any sign located within any structure but visible from a public right-of-way because of its location behind or painted on a piece of glass or any other transparent or translucent material.

Section 520. General Sign Regulations.

The construction of any type of sign shall conform to the following requirements and to any other municipal regulation governing the construction and location of signs. In addition, the following general regulations shall apply in all zoning districts unless otherwise specified:

520.1 Exemptions. The following types of signs shall not be subject to any of the provisions of this ordinance:

- (a) Signs of a duly constituted governmental body including traffic or similar regulatory devices, legal notices, street signs or warnings at railroads;
- (b) Flags, emblems, symbols or insignias of a nation, governmental body, school or religious group;
- (c) Memorial tablets, signs or historical markers; and
- (d) Signs in cemeteries;

520.2 After the effective date of this ordinance, no sign of any kind may be altered or erected except in conformance with the requirements of this Article.

520.3 Roof Signs. Roof signs are specifically prohibited in the City of Elmira.

520.4 Interference with traffic prohibited.

- (a) No sign shall project into the line of vision of an official traffic signal or railroad signal viewed by a motorist within one hundred and fifty feet (150') of such signal. For signs located at intersections, the requirements of Section 412 shall also apply.
- (b) No sign visible from the street shall contain the word "Danger", "Caution", "Stop" or any symbol or instructions which mimic or could be understood to be signs regulating traffic,, or rotating beam, beacon or flashing illumination resembling an emergency light with the intent of simulating traffic or other official signs or affecting the flow of traffic.

520.5 Placement on Public Property. No sign or sign structure shall be placed on public property, tree or utility pole without the written consent of the owner or agent thereof. No sign or sign structure shall be placed upon any street or highway right-of-way.

520.6 No sign shall be erected in such a manner so as to obstruct ingress, egress, ventilation or light of any window, stairway, door, or other opening intended for ingress or egress.

520.7 Repair and maintenance of signs.

- (a) All signs and sign structures shall be erected, placed and maintained in a state of good and safe repair and shall comply with all building codes, including, if applicable, the Electrical Code.

- (b) Signs will not be allowed to continue in an unkempt, blistered or faded condition, and the area immediately surrounding ground signs shall be kept clear of all untended vegetation and debris so as to comply with the intent of this Article.

520.8 Obsolete signs. Any sign, or sign structure, which no longer serves an on-going business, shall be removed by the owner, agent or person having the beneficial use of the building, structure, or lot upon which such sign is situated. Such sign shall be removed within three months after such time that the sign has been abandoned or is no longer functional. After such time, the Superintendent of Buildings is hereby authorized to notify, in writing, the owner of the building structure or lot or his agent ordering that the sign be removed within thirty (30) days after receipt of such notice. Upon failure to comply with such notice within the time specified in such order, the Superintendent of Buildings is hereby authorized to cause removal of such sign, and any expense incident thereto shall be paid by the owner of the building, structure, or lot upon which such sign is found.

520.9 Temporary Signs. Temporary signs, shall not be used for a period exceeding thirty (30) consecutive days.

520.10 Awning Signs. Signs or lettering may be painted on, attached to, or otherwise located on an awning provided that they shall not extend vertically or horizontally beyond the limits of the awning.

520.11 Community Facility Signs. Unless otherwise permitted, any structure devoted to a school, church, library, museum or other permitted community facility, may have one (1) identification sign not to exceed twenty-four (24) square feet in area. If otherwise permitted to be illuminated hereunder, said signs may be illuminated only during the hours that the facility is open for use by the public.

520.12 Realty Signs. One sign, announcing the sale, lease or rental of a property, lot, or portion thereof is permitted for every fifty (50) feet of frontage of a property. For purposes of this section, a Realty Sign shall not be construed to be a Temporary or Portable sign.

520.13 Height of Signs. No sign shall extend higher than the top of the parapet or past the roof line of a building, whichever is higher.

520.14 Off-street Parking and Loading Signs. Signs for off-street parking and loading areas shall not be limited in number, but shall be limited to those signs necessary to ensure the most efficient and safe operation of such area. Such signs shall be subject to the following requirements:

- (a) Signs controlling traffic and pedestrian movement or designating entrances or exits shall not exceed six (6) square feet in area;
- (b) One sign, not exceeding sixteen (16) square feet in area, identifying a parking or loading area shall be permitted for each street frontage of such area. Such sign

may include the name of the owner or operator and the name of the use for which it is provided;

- (c) All such signs shall be located within the parking or loading area.

520.15 Garage Sale Signs. Garage sale signs shall not be displayed for longer than three (3) days.

520.16 Signs Abutting Residential Properties/Districts. Any sign which abuts a residential property or residential district shall be set back so as to meet the side, rear and front setback requirements of the abutting Residential District. Flashing signs are specifically prohibited within one hundred fifty feet (150') from any residential property if visible from such property.

520.17 Temporary Signs for Special Events. Balloon, banner, and pennant signs are generally not permitted. However the City Clerk may authorize the installation of such balloon, banner and pennant signs for one period not to exceed thirty (30) days per community event of importance, grand opening of a new business, or business that has changed ownership, or business that have reopened after extensive renovation, or a business which has made appreciable expansion to its facility. For purposes of clarification, "new business" shall mean any newly organized commercial venture that is opening for the first time, or an existing business that has changed location. The City Clerk shall be further authorized to permit off-premises balloon, banner, pennant and other signs to promote items or events for nonprofit organizations of community importance or significance. (*Ordinance No. 99-330 dated August 16, 1999*)

Section 530. Signs Permitted in Zoning Districts.

Signs permitted in each Zoning District shall be as shown on the "Sign Table" at Section 530.1 and shall further comply with the size and location requirements set forth in Section 540 for the District in which they are located.

Section 530.1 Sign Table

Type of Sign	R-AA	R-A	R-B	R-C	R-D	B-A	B-A-I	B-B	B-C	B-D	B-E	B-G	Hospital	Higher Educationa I	I-A	I-B
Billboard	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	SP	P
Business	NP	NP	SP	SP	SP	P	P	P	P	P	p	P	P	P	P	P
Flashing (See Sec. 520.16)	NP	NP	NP	NP	NP	NP	NP	SP	NP	NP	SP	NP	NP	NP	P	P
Freestanding	P	P	P	P	P	P	P	P	P	P	p	P	P	P	P	P
Internally Illuminated	NP	NP	NP	NP	NP	P	P	P	NP	NP	P	P	P	P	P	P
Indirectly Illuminated	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Marquee	NP	NP	NP	NP	NP	NP	NP	SP	NP	NP	NP	NP	NP	NP	NP	NP
Nameplate	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Off-Site Advertising	NP	NP	NP	NP	NP	NP	NP	P	NP	NP	NP	P	NP	NP	P	P
Projecting	NP	NP	NP	NP	NP	P	P	P	P	P	P	P	P	P	P	P
Public Service	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP
Temporary	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Wall	NP	NP	SP	SP	SP	NP	NP	P	P	P	P	P	P	P	P	P
Window	NP	NP	SP	SP	SP	P	P	P	NP	NP	P	P	NP	NP	P	P

Key: NP - Not Permitted; SP - Special Permit Required; P - Permitted

Section 540. Size and Location Requirements.

540.1 Residence AA, A, B, C and D Districts.

- (a) One temporary sign shall be permitted announcing the construction, remodeling, rebuilding, sale, lease, or rental of said land or structure on which it is located; provided that such sign shall not exceed twenty four (24) square feet in area.
- (b) Only one sign shall be permitted for any permitted principal use giving the name and address of the occupant provided that such sign shall not exceed six (6) square feet in area and shall not be illuminated. If the one sign permitted is a freestanding sign, such sign shall not exceed six (6) square feet in area, shall not exceed three (3') feet in height above grade, shall not project over a public right-of-way, and shall not be illuminated. *(Ord. No. 2002-386 dated Oct. 21, 2002).*
- (c) For special permit uses, one sign shall be permitted, limited to "name plate" and an address, no more than two (2) square feet in area. Notwithstanding the above, no sign shall be permitted for a Category I Home Occupation.
- (d) For open-air automobile parking lots, four (4) additional signs shall be permitted pertaining to the function, operation, or ownership of such parking lots, provided that each sign shall not exceed four (4) square feet and shall not be illuminated.

540.2 Business A - Neighborhood Commercial and Business A – I Neighborhood Commercial – I Districts. *(Ord. No. 2005-349 dated October 3, 2005)*

- (a) The requirements of Section 540.1 shall apply to all residential uses in this District.
- (b) For business and other uses permitted in this district, signs shall meet the following requirements:
 - (1) The total surface area of any permitted signs shall not exceed one (1) square foot for each linear feet of building frontage.
 - (2) Such signs may be illuminated but shall not be flashing signs. Signs may be illuminated only during the hours that the establishment is open for business.
 - (3) Only one (1) projecting sign, complying with the requirements of Section 510.12, shall be permitted for each business establishment.
 - (4) Only one freestanding sign shall be permitted. Such freestanding sign shall be included in the computation of the surface area of signs permitted by subparagraph (b)(1) of this section. Such freestanding sign shall not exceed five (5') feet in height above grade, and shall not project over a public right-of-way. *(Ord. No. 2002-386 dated Oct. 21, 2002)*

540.3 Business B - Central Business District.

- (a) The requirements of Section 540.1 shall apply to all residential uses in this District.
- (b) For business and other uses permitted in this district, signs shall meet the following requirements:
 - (1) The total surface area of any permitted signs shall not exceed one (1) square foot for each linear feet of building frontage.
 - (2) Such signs may be illuminated and flashing, provided a special permit is obtained for all flashing signs.
 - (3) Only one (1) projecting sign shall be permitted for each business establishment.
 - (4) Only one freestanding sign shall be permitted on lots which have a maximum building coverage of fifty percent (50%). Such freestanding sign shall be included in the computation of the surface area of signs

permitted by subparagraph (b)(1) of this section. Such freestanding sign shall not exceed forty (40) square feet in area, shall not exceed sixteen feet (16') in height, shall not project more than four feet, six inches (4'6'') over a public right-of-way, and shall not be located than nine feet (9') above the right-of-way. (*Ord. No. 2002-386 dated Oct. 21, 2002*)

Section 540.4 - Business C and D - Specialized Commercial Districts.

- (a) The requirements of Section 540.1 shall apply to all residential uses in this District.
- (b) For business and other uses permitted in this district, signs shall meet the following requirements:
 - (1) The total square area of such signs shall not exceed thirty two (32) square feet.
 - (2) Such signs shall not be internally illuminated or flashing.
 - (3) Only one (1) projecting sign shall be permitted for each business establishment.
 - (4) Only one freestanding sign shall be permitted. Such freestanding sign shall be included in the computation of the surface area of signs permitted by subparagraph (b)(1) of this section. Such freestanding sign shall not exceed five (5') feet in height above grade, and shall not project over a public right-of-way. (*Ord. No. 2002-386 dated Oct. 1, 2002*)

540.5 Business E - General Commercial District.

For business and other uses permitted in this district, signs shall meet the following requirements:

- (a) The total surface area of any permitted signs shall not exceed one (1) square foot for each linear feet of building frontage.
- (b) Such signs may be illuminated and flashing provided that a special permit is obtained for all flashing signs.
- (c) Only one (1) projecting sign shall be permitted for each business establishment.
- (d) One freestanding sign shall be permitted on lots which have a maximum building coverage of fifty percent (50%). Such freestanding sign shall be included in the computation of surface area of signs permitted by subparagraph (a) of this section. Such freestanding sign shall not exceed forty (40) square feet in area, shall not exceed twenty feet (20') in height above grade, shall not project more than four

feet six inches (4'6") over a public right-of-way, and shall not be located lower than nine feet (9') above the right-of-way. *(Ord. No. 2002-386 dated Oct. 21, 2002)*

540.6 Business G - Gateway Commercial District.

- (a) The requirements of Section 540.1 shall apply to all existing residential uses in this District, at the time of adoption of this ordinance.
- (b) For business and other uses permitted in this district, signs shall meet the following requirements:
 - (1) The total square area of such signs shall not exceed thirty two (32) square feet.
 - (2) Such signs may be internally or indirectly illuminated, however indirect illumination is encouraged in this district.
 - (3) Only one (1) projecting sign shall be permitted for each business establishment.
 - (4) Only one freestanding sign shall be permitted on lots which have a minimum building coverage of fifty percent (50%). Such freestanding sign shall be included in the computation of the surface area of signs permitted by subparagraph (b)(1) of this section. Such freestanding sign shall not exceed thirty-two (32) square feet in area, shall not exceed sixteen (16') feet in height above grade, shall not project more than four feet (4'6") over a public right-of-way, and shall not be located lower than nine feet (9') above the right-of-way. *(Ord. No. 2002-386 dated Oct. 21, 2002)*

540.7 Hospital District.

- (a) The requirements of Section 540.1 shall apply to all existing residential uses in this District, at the time of adoption of this ordinance.
- (b) No sign shall exceed thirty-two (32) square feet.
- (c) Such signs may be illuminated internally or indirectly.

540.8 Higher Educational District.

- (a) The requirements of Section 540.1 shall apply to all existing residential uses in this District, at the time of adoption of this ordinance.
- (b) No sign shall exceed thirty-two (32) square feet.

- (c) Such signs may be illuminated internally or indirectly.

540.9 Industrial A and Industrial B Districts.

For business and other uses permitted in this district, signs shall meet the following requirements:

- (a) The total surface area of any permitted signs shall not exceed one (1) square foot for each linear feet of building frontage.
- (b) Such signs may be illuminated and flashing.
- (c) Only one (1) projecting sign shall be permitted for each business establishment.
- (d) One freestanding sign shall be permitted on lots which have a maximum building coverage of fifty percent (50%). Such freestanding sign shall be included in the computation of number and surface area of signs permitted for this district. Freestanding signs shall not exceed seventy-five (75) square feet in area, shall not exceed thirty five feet (35') in height, and shall not project more than four feet, six inches (4'6") over a public right-of-way.

540.10 Non-conforming Signs.

- (a) **Residential Districts.** All non-conforming signs in a residentially zoned district must be brought into compliance with this ordinance within one (1) year from the date of passage of this ordinance.
- (b) **Non-Residential Districts.** All non-conforming signs in any district other than residential must be brought into compliance with this ordinance within two (2) years from the date of passage of this ordinance.

ARTICLE VI: PARKING

Section 601. Location Requirements.

601.1 All parking spaces provided pursuant to this section shall be on the same lot with the building except that the following exceptions are permitted:

- (a) Adequate and available off-street parking within two hundred fifty feet (250') walking distance of a building may be substituted for parking spaces on the lot of the building in compliance with any parking space requirements of this ordinance provided that such spaces have not previously been designated in the compliance of parking space requirements for other buildings;
- (b) All-day off-street parking spaces within one thousand feet (1,000') walking distance of a building may be substituted for employee parking spaces on the lot of the building in compliance with employee parking space requirements of this ordinance, provided that such spaces have not previously been designated in the compliance with any parking space requirements for other buildings.
- (c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, no property zoned for residential use shall be utilized to satisfy the parking requirements pertaining to nonresidential uses located outside of a residential zone. *(Ord. No. 2009-270; §1, 6/22/2009)*

In the case of such an exception, assurance shall be given to the Superintendent of Buildings in writing, at the time of issuance of a building permit, that such off-street parking required by this ordinance will continue to be available for the entire period of time that the premises served by the parking is in use.

601.2 Two (2) or more property owners may cooperate in meeting the requirements of this subsection, so long as each participant has adequate space required by Table 610.1.

601.3 Vehicles shall not be parked within the required front yards in any Residence District except on a driveway which is paved to accommodate vehicles.

Section 602. Parking Space Size.

A parking space shall have a minimum area of one hundred eighty (180) square feet, plus necessary additional spaces for entrances, exits and aisle space, and no space shall be less than nine (9) feet in width.

Section 603. Compliance with other regulations.

All parking areas, with the exception of private residential properties, shall conform to the requirements of the Americans with Disabilities Act (ADA) and the New York State Fire Prevention and Building Code (NYSFP&BC).

Section 610. Number of Parking Spaces Required.

After the date when this ordinance becomes effective, the following off-street parking spaces shall be provided and satisfactorily maintained by the owner of the property for each building which is erected, enlarged, or converted from one principal use to another for use for any of the following purposes. If a building is used for a purpose which combines two (2) or more of the purposes listed below, only the requirement for the predominant purpose shall be provided and as if the entire structure were so utilized. These space requirements apply in all districts except Business B Districts. In Business B Districts, the following spaces are not required but shall be taken as desirable standards for off-street parking for new buildings and uses.

Table Section 610.1

Use	# of Off-Street Parking Spaces	For Each
Residence	1	Dwelling Unit
Rooms Let for Profit	1	Room Let for Profit
Bed and Breakfast, Hotel, Motel	1	Guest Room
Sorority or Fraternity	1	Two (2) Persons Housed
Dormitory for Educational Facilities	1	Two (2) Persons Housed
Home Occupation - Category I	3	Home Occupation
Home Occupation - Category II (See Section 740.9)	4	Home Occupation or one parking space for each employee, whichever is greater
Church	1	Three (3) seats
Funeral Home (See Section 740.7)	1	Fifty (50) SF of floor area in rooms used for funeral services
Auditorium, Stadium, Theatre	1	Five (5) seats
Restaurant, Bar, Tavern, Club	1	Five (5) seats
Bowling Alley	2	Bowling Lane
Hospital, Sanitarium, Convalescent or Nursing Home	1	Bed
Retail Store or Bank	1	300 Square Feet of Gross Floor Area
Wholesale or Warehouse	1	1,000 Square Feet of Gross Floor Area
Industry	1	Two (2) Employees on the maximum work shift
Business or Professional Office	1	Practitioner and, in addition, one (1) space for each employee

Section 620. Design of Parking Lots.

Parking lots for more than four (4) vehicles shall be improved in accordance with the following requirements:

620.1 Fences and Screening:

- (a) An attractive rail, fence, wall, or other continuous barricade of a height sufficient to retain all cars completely within the property shall be provided. Such barricade may

consist of planted material at least four feet (4'), but no greater than seven feet (7') in height.

- (b) In addition, on any side of the parking lot abutting a residential district or abutting a property being used for residential purposes and not owned by the owner of the parking lot, a minimum six foot (6') wide buffer strip of planted material shall be installed, said planting to consist of compact hedge material and shall be maintained in good condition by the owner.

620.2 Entrances and Exits:

Entrances and exits shall have a maximum grade of ten percent (10%) at any point and shall be graded to provide a nearly level intersection with a public street for at least twenty feet (20') into the property from the street line. Entrances and exits shall be at least twelve feet (12') wide at street and sidewalk lines.

620.3 Additional Requirements for Open-Air Parking Lots:

- (a) No parking lot shall surround a residential use on three (3) sides.
- (b) No parking lot shall be used for dead storage of vehicles.

620.4 Paving:

All streets, driveways, parking lots, and loading areas shall be permanently paved with a hard-surfaced, dustless material.

620.5 Repealed *(Ord. No. 2007-280; 7/9/07)*

620.6 Commercial Vehicles, Boats and Trailers in Residential Districts.

In any Residence District, not more than one (1) commercial vehicle having a maximum carrying or hauling capacity of one (1) ton, and not more than one (1) boat for boat trailer and not more than one (1) residential camper having a carrying capacity or hauling capacity of one ton and not being used for dwelling purposes and not more than one (1) utility trailer may be stored or parked outside on any lot and may be so stored and parked only if owned and regularly driven or used by the owner or resident of the dwelling on the lot. A commercial vehicle may be parked in a front yard if it conforms to the requirements in Section 601.3, but a boat, boat trailer, house trailer, or utility trailer shall not be stored in any front or side yard.

Section 630. Off-street loading.

- (a) An off-street loading space shall have a minimum of four hundred fifty (450) square feet plus necessary additional space for entrance, exit and aisle space.

- (b) The following off-street loading spaces shall be provided and satisfactorily maintained by the owner of the property for each building which is erected, enlarged or altered for use for any of the following purposes. If a building is used for a purpose which combines two (2) or more of the purposes listed below, only the requirement for the predominant purpose shall be provided as if the entire structure were so utilized. These space requirements apply in all districts except Business B districts, in which the following spaces are not required but shall be taken as desirable standards for new buildings and uses.

Use	Minimum # of Off-Street Loading Spaces	For Each
Office Building	1	Building
Auditorium or Stadium	1	Building or Structure
Hospital	1	Building
Hotel or Motel	1	Building
Laundry	1	3,000 SF of Floor Area
Retail Store	1	Store
Wholesale or Industry	1	Business or Industry

Section 630.1 Truck terminals.

Loading platforms shall be so located on the lot and designed so that no part of any truck using such loading platforms shall extend into a public right-of-way and maneuvering space for trucks shall be provided on the lot and not on any public right-of-way.

ARTICLE VII: PROCEDURE FOR USES REQUIRING SPECIAL PERMITS

Section 700. General.

All uses identified in Article II, District Regulations, and Article V, Signs, as uses requiring special permits are hereby declared to possess distinctive characteristics requiring individual consideration to determine their suitability for particular sites and their impact on the district in which they are located and on surrounding property. Such uses identified as requiring special permits shall conform to additional standards and requirements as set forth in this article, and if such uses satisfy such standards and requirements, they shall be deemed to be permitted uses in their respective districts.

Section 701. Permits Limited to Specific Uses.

No permit shall be granted by the Board of Appeals, except for a specific use designated in Article II, or Section 530.1 of this ordinance as requiring a Special Permit, and can only be granted for property in a use district where such special permit is designated.

Section 702. Existing Violations.

No special permit shall be issued for a property where there is an existing violation of this ordinance.

Section 710. Application Procedure.

710.1 Submitted to Superintendent of Buildings.

An application for a special permit shall be submitted to the Superintendent of Buildings. The application shall be accompanied by a non-refundable fee of Seventy Five Dollars (\$75.00). (*Ord. No. 2007-280; 7/9/07*)

710.2 Required Plan.

Every application for a special permit submitted to the Department of Inspection Services shall include a plan showing:

- (a) the location of buildings;
- (b) parking areas;
- (c) traffic access and circulation;
- (d) open spaces;
- (e) landscaping;
- (f) height and number of buildings; and
- (g) such other information required in the standards for each special permit use as set forth in this article.

710.3 Repealed. (*Ord. No. 2007-280; 7/9/07*)

710.4 Board of Appeals Approval Required.

- (a) Every application for a special permit shall be submitted to and reviewed by the Board of Appeals in terms of the conditions and standards specified in Sections 720 and 730 below. *(Ord. No. 2007-280; 7/9/07)*
- (b) It shall issue the permit only if it finds that conditions and standards specified in Sections 720 and 730 below have been met.
- (c) A majority vote of the Board of Appeals shall be required for approval of an application for a special permit.
- (d) The Board of Appeals shall follow the procedure for public hearing as well as all other requirements pertaining to special permits as set forth in Article X of this ordinance.
- (e) The Board of Appeals shall render its decision within sixty (60) days, unless good cause is shown.
- (f) If the Board of Appeals approves an application for a special permit, it shall notify the Superintendent of Buildings of such action, and the Superintendent of Buildings shall issue the permit for which application has been made.
- (g) The permit shall include such conditions and safeguards as were deemed reasonable and necessary when such application was approved by the Board of Appeals.
- (h) If the applicant has not started work within one (1) year on the project for which the special permit was issued, such permit shall expire, and a new permit shall be required and shall follow all the procedures set forth herein.

Section 720. Conditions and standards applicable to all special permit uses.

The Planning Commission and the Board of Appeals shall consider the following conditions and standards when reviewing an application for a special permit and the Board of Appeals shall issue a permit only if it finds that the following conditions and/or standards have been met:

720.1 The location and size of the use, the nature and intensity of operations involved in or conducted in connection with it, the size of the site in relation to it, and the location of the site with respect to streets giving access to it, are such that it will be in harmony with the appropriate and orderly development of the district in which it is located, and will not discourage the appropriate development of adjacent land and buildings or impair the value thereof.

720.2 The location, nature and height of buildings, walls and fences, and the nature and extent of the landscaping on the site are such that the use will not hinder or discourage the appropriate development and use of adjacent land and buildings.

720.3 Operations in connection with any special permit use will not be more objectionable to nearby properties by reason of noise, fumes, vibration or flashing of lights than would be the operations of any permitted use not requiring a special permit.

720.4 Parking areas will be suitable in size, properly located and suitably screened from any adjoining residential uses, and the entrance and exit drives shall be located so as to achieve maximum safety.

Section 730. Continual conformance to conditions and standards.

Uses granted a special permit shall conform continually to the conditions and standards set forth in Sections 720 and 740. The Board of Appeals may require additional safeguards and conditions as are reasonable and necessary to assure continual conformance to all applicable conditions and standards. Such additional safeguards may include review by the Board of Appeals or by the Superintendent of Buildings and his/her designee, at specified periods of time to ensure that conditions and standards are being met. Failure to comply shall result in suspension or revocation of said Special Permit.

Section 740. Conditions and standards for specific uses.

In addition to other provisions of this ordinance the following conditions and standards shall be required for the following uses:

740.1 Agricultural uses such as Farms, Greenhouses and Commercial Gardens.

Such uses shall be on sites at least forty thousand (40,000) square feet in area. No manure, fertilizer or dust-producing substance shall be stored outside.

740.2 Antennae and Satellite Dishes in Residential Districts.

A satellite antenna greater than three feet (3') in diameter shall comply with the following minimum requirements:

- (a) Size and Height: A satellite antenna shall not exceed ten feet (10') in diameter. The total height of ground-mounted antenna shall not exceed fifteen feet (15') above finished grade. Roof mount installations of an antenna shall require a building permit and the total height of the antenna from finished grade shall not exceed the height restrictions for the Zoning District in which the antenna is installed.
- (b) Location: A satellite antenna shall be located only in the rear yard of any lot and must have a minimum setback of five feet (5') from any principal structure and/or a lot line as measured from the outermost diameter of the antenna.

740.3 Antennae and Satellite Dishes in Commercial Districts.

A satellite antenna greater than three feet (3') in diameter shall comply with the following minimum requirements:

- (a) **Size and Height:** A satellite antenna shall not exceed fifteen feet (15') in diameter. The total height of a ground-mounted antenna shall not exceed twenty feet (20') above the finished grade. Roof mount installations of an antenna shall require a building permit and the total height of the antenna from finished grade shall not exceed the height restrictions for the Zoning District in which the antenna is installed.
- (b) **Location:** All satellite antennae in Business Districts shall be roof-mounted.

740.4 Condominiums; Townhouses; Low-Density Apartment Development.

Such development shall be permitted only in those areas designated by this ordinance as Residence C and D Districts. Such developments shall be on sites of at least twenty thousand (20,000) square feet in area and shall have a minimum street frontage of one-hundred feet (100'). In addition to the above minimum lot areas, the following requirements shall be met:

(a) **Lot Area Requirements:**

<u>Dwelling Unit</u>	<u>Residence C & D</u>
Efficiency and One-Bedroom	833 SF
Two Bedrooms	1,666 SF
Three Bedrooms	2,500 SF
Four or More Bedrooms	833 SF

for each additional bedroom over three

(b) **Yard Requirements:**

Front Yard: Same as the requirement for the district for principal and accessory uses.

Rear Yard: Same as the requirement for the district for principal and accessory uses.

Side Yard: Same as the requirement for the district for accessory uses. For principal uses as follows:

<u>Required Lot Area</u>	<u>Side Yard Requirement</u>
Minimum 20,000 SF	10 feet (10') each side
20,000 to 39,999 SF	15 feet (15') each side
40,000 and above	20 feet (20') each side

740.5 Cemetery.

A cemetery shall be located on a site of at least ten (10) acres. Buildings shall be set back at least fifty feet (50') from property lines. A fence at least six feet (6') in height shall be placed around the entire site and, in addition, landscape screening shall be planted along the entire length of the fence.

740.6 Concessions Within a Park.

No building for a concession within a public park shall be nearer than one hundred feet (100') to any lot line.

740.7 Funeral Homes.

Funeral homes shall be on sites at least fifteen thousand (15,000) square feet in area. Parking requirements for funeral homes as stated in Section 610.1 shall be met, but in no case shall there be less than twenty (20) off-street parking spaces. A funeral home shall not be considered a customary home occupation. Off-street loading areas for funeral homes shall be surrounded by a solid fence or wall of adequate width and height to shield the view of the loading area from neighboring properties.

740.8 Golf Course or Country Club.

A golf course or country club shall be located on a site of at least forty (40) acres. At least four (4) off-street parking spaces shall be provided for each tee, and all parking spaces shall be located at least fifty feet (50') from abutting property lines. Buildings shall be set back at least one hundred feet (100') from property lines.

740.9(I) Home Occupations (Category I). *(Ord. No. 2002-62 dated Feb. 11, 2002)*

A home occupation shall not permit any exterior storage of materials and no other exterior indication of the home occupation or variation from the residential character of the principal building. Home occupations shall conform to the following requirements:

- (a) The "home occupation" is conducted solely by the residential occupants thereto, plus not more than one (1) non-resident employee, agent or subcontractor.
- (b) There shall be no change in the character of the use of the dwelling or structure as a residence.
- (c) There shall be "no outside storage" or display of materials or products in connection with such home occupation use.
- (d) There shall be no generation of vehicular traffic or parking beyond what is normal for the residential district.
- (e) There shall be no "noticeable" noise, vibration, glare, fumes, odor, or electrical interference beyond the lot line.

- (f) No sign shall be permitted to indicate the existence of a home occupation on the premises.
- (g) A home occupation that is open to the general public shall be specifically excluded from "Home Occupation (Category I)".
- (h) No more than one (1) such home occupation shall be conducted on the premises.

740.9(II) Home Occupations (Category II).

A home occupation shall not permit any exterior storage of materials and no other exterior indication of the home occupation or variation from the residential character of the principal building. Special permits granted for home occupations shall conform to the following requirements:

- (a) The "home occupation" is conducted solely by the residential occupants thereto, plus not more than two (2) non-resident employees, agents, or sub-contractors.
- (b) There shall be no change in the character of the use of the dwelling or structure as a residence.
- (c) Not more than twenty-five percent (25%) of the floor area of one story of the residence, or fifty percent (50%) of a basement, cellar, or permitted accessory structure, but not both, shall be devoted to the "home occupation".
- (d) There shall be " no outside storage" or display of materials or products in connection with such home occupation use.
- (e) There shall be no generation of vehicular traffic or parking beyond what is normal for the residential district.
- (f) There shall be no "noticeable" noise, vibration, glare, fumes, odor or electrical interference beyond the lot line.
- (g) One (1) sign shall be permitted, limited to "name plate" and an address, no more than two (2) square feet in area.
- (h) Uses specifically excluded from "home occupancy" shall include barber shop or beauty parlor with more than one (1) chair; teaching or licensed day care of more than six (6) pupils at one time; antique or gift shop; medical or dental clinic; veterinary clinic; animal kennel; conversion of a single family home to a multifamily home, unless otherwise permitted by the Zoning Ordinance; a motor vehicle engine or body repair shop.
- (i) No more than one (1) such home occupation shall be conducted on the premises.

740.10 Junkyards

Such uses shall be on sites at least forty thousand (40,000) square feet in area. In addition, they shall conform to the requirements as set forth in Section 452.

740.11 Laundry; Cleaning; and Pressing Establishments with no Processing.

Such uses shall be permitted if they are accessory to the principal activity of such establishments which shall be taken to be the accepting of goods and garments at that location and the return of same processed according to the request of the customer. .

740.12 Limited Light Industrial Uses.

Such uses shall be permitted as special permit uses in Business B Districts if they are of the nature and character of small research, assembly, light manufacturing, laboratories or similar establishments employing fewer than twenty-five (25) persons and using light machinery. The intent of this section is to permit, under these conditions, certain types of establishments in the Central Business District which would use upper floor or loft space above or alongside business establishments; e.g., dental laboratories, jewelry manufacture and repair, lens grinding, optical instrument repair and sales and other establishments similar to these.

740.13 Motor Vehicle Sales and Sales/Repairs.

Repair and service work, except for the sale of fuels and lubricants, shall be conducted entirely within a building. No outdoor storage of partially dismantled or wrecked motor vehicles shall be permitted, except for a period of no longer than seventy-two (72) hours. No more than four (4) other motor vehicles shall be stored outdoors at any time and all such other motor vehicles so stored shall be licensed and in such condition that they can pass New York State inspection. If the sale of gasoline or other motor vehicle fuels are sold or provided on the premises, the requirements of Section 740.14 shall also apply.

740.14 Motor Vehicle Gasoline Sales.

Fuel pumps shall be at least fifteen feet (15') from any street line. Except for underground storage tanks, all other structures shall be at least forty feet (40') from street lines, ten feet (10') from side lot lines, and twenty feet (20') from rear lot lines, except when a gasoline service station abuts a Residential Property or Residence District in which case no structure shall be closer than twenty feet (20') to any side lot line. When a gasoline service station abuts a Residential Property or Residential District, there shall be maintained in suitable condition a landscaped area at least ten feet (10') wide or a solid screen fence six feet (6') high along the lot line abutting such Residential property or Residential District. No part of any gasoline service station or public garage shall be used for residence or sleeping purposes. All applications for permits to construct or alter a gasoline service station shall be referred to the Fire Chief and the Chief of Police for analysis of fire, traffic and other possible hazards. The Superintendent of Buildings shall review their comments on the proposed new or altered facility and many suggest

modifications of the site and construction plans to lessen potential fire, traffic and other hazards.

740.15 Nursery Schools; Day Care Centers.

Nursery schools shall be on sites at least ten thousand (10,000) square feet in area. The front yard of the site shall not be used for outdoor play space for children. Any other part of the site used for play space shall be surrounded by a fence at least six feet (6') in height. No nursery school shall have more than thirty (30) children enrolled in any session. An off-street parking place must be provided for each teacher in the school.

740.16 Nursing, Convalescent Homes and Adult Care Facilities:

Buildings to be constructed for such purposes shall be on sites of at least forty thousand (40,000) square feet in area. The building shall be of a size of at least two hundred (200) square feet for each patient bed or intended occupant. Parking requirements for these activities as stated in Article VI, Parking shall be met. No yard, including side yards, shall be less than fifty feet (50') for nursing or convalescent homes in any district.

740.17 Utility transmission lines and utility substations.

Transmission lines shall be so constructed as not to endanger the public or surrounding property. Public utility substations shall be on lots of not less than ten thousand (10,000) square feet in area. Suitable fencing shall be provided for protection of the public and in Residence Districts or when such utility transmission lines and/or substations abut a Residential Property, suitable landscaping and screening shall also be provided. Yards required in the district shall be provided for all structures.

740.18 Bed and Breakfast Establishments.

An Owner occupied one-family dwelling is permitted to be converted for use as a bed and breakfast establishment under the following conditions:

1. The bed and breakfast establishment shall comply with all New York State Laws and Regulations as they pertain to the operation of bed and breakfast establishments, specifically Section AJ-701 of the Residential Code of New York State.
2. An annual fire inspection must be conducted by the City's Department of Inspection Services to ensure compliance and conformance with the City of Elmira Zoning Ordinance and any other state regulations, standards and codes.
3. There must be at least one (1) off-street parking space for each guest room.
(Ord. No. 2003-315 dated Sept. 8, 2003)

740.19 Retail Restaurant Establishments.

1. The Retail Restaurant establishment shall comply with all New York State Laws and Regulations specifically as they pertain to the operation of food service establishments.
2. An annual fire inspection must be conducted by the City's Department of Inspection Services to ensure compliance and conformance with the City of Elmira Zoning Ordinance and any other state regulations, standards and codes.
3. The Zoning Board of Appeals shall impose conditions to limit:
 - (a) The presence of drive-thru windows;
 - (b) The hours of operation
 - (c) On-premises consumption of alcohol to the extent not in conflict with New York State Alcohol Beverage Control Law and regulations there under.

ARTICLE VIII: PROCEDURE FOR PLANNED DEVELOPMENT DISTRICTS

Section 800. Amendment to the zoning ordinance required.

Planned Development Districts, Residential P, Residential P-AA, and Industrial P may be established only by amendment to this zoning ordinance by the Council of the City of Elmira (hereafter referred to as "the Council") according to the procedures set forth in Article XI and, in addition, according to those procedures set forth in the following sections of this article.

Section 810. District regulations apply.

The regulations listed in Article II shall apply to proposed developments in development districts for Residential P, Residential P-AA, and Industrial P, respectively. No amendment to this zoning ordinance shall be granted for a Planned Development District unless such regulations have been met³.

Section 820. Other regulations apply.

Any application for development which includes condominium units shall also conform to all applicable state or local legislation governing the construction of new condominium units or the conversion of existing dwelling units to condominium units.

Section 830. Planning Commission review required.

All applications for the establishment of a Planned Development District shall be submitted to the planning commission for review prior to any action taken by the council. The following procedures shall be followed by the applicant and by the planning commission for the review of an application for a Planned Development District:

830.1 Application. An application for establishment of a Planned Development District shall be made to the Superintendent of Buildings. Within seven (7) calendar days after the date of application, the Superintendent of Buildings shall forward the application to the planning commission together with all maps, plans and other materials submitted with the application. Within the same period of time, the Superintendent of Buildings shall also send formal notification of the application to the Council for its information. Such notification shall consist of a copy of the application together with a map showing the location and boundaries of the proposed Planned Development District. The council shall not take action on the application until it has received a recommendation from the Planning Commission unless the Planning Commission does not act within the time period set in Section 830.2.

830.2 Planning Commission Review Procedures. The Planning Commission shall, within sixty (60) days of receipt of such application, recommend approval or disapproval of such application as submitted or amended, and shall report its decision to the Council. A majority vote shall be required for approval by the Planning Commission. If the Planning Commission does not act within the time specified herein, the application shall be

forwarded without a Planning Commission recommendation to the Council for action. The applicant may agree to a longer period of time for Planning Commission consideration of the application. Such agreement shall be given in writing by letter from the applicant to the Planning Commission.

830.3 Information required. The Planning Commission may require the applicant to furnish such preliminary plans, drawings, sketches, elevation drawings, models and supplementary information as may be required for an understanding of the proposed development. In addition, for Residential P-AA Districts, the following shall be submitted:

- (a) **Preliminary Design Plan.** Each application for the establishment of a Residential P-AA District shall include a preliminary design plan showing the character of the development that is proposed for the requested district. The preliminary design plan shall show general locations of principal and accessory structures, typical building elevation drawings, parking areas, traffic access and circulation, and open or landscaped areas.
- (b) Market and financial capability reports may be requested by the Planning Commission.

830.4 Findings. The Planning Commission shall review the application together with all explanatory material and shall base a decision to recommend approval of the applications by making findings that:

- (a) The proposed development is desirable for the general welfare and economic growth of the City;
- (b) The proposed development does not substantially conflict with the Master Plan of the City, that there is a need for the proposed development, and that the proposed development in such location is desirable and conducive to the orderly growth of the City;
- (c) That the proposed development will not have an adverse effect of neighboring properties;
- (d) That the proposed development will not cause traffic congestion on neighboring streets;
- (e) That the capacity of the public utilities is adequate to serve the proposed development;
- (f) That the proposed development meets the specifications for the Planned Development District.

Such findings, together with a recommendation for approval shall be submitted in writing to the Council. If the Planning Commission is unable to make positive findings for all of the above, then it shall recommend disapproval of the application. In the event that the Planning Commission recommends disapproval of an application, the reasons for such disapproval shall be submitted in writing to the Council. The Planning Commission may seek expert advice or avail itself of public testimony if it deems it necessary or desirable to do so to enable it to make a determination on the above findings.

Section 840. Council amendment procedures.

The Council shall follow the procedures set forth in Article XI when amending this ordinance to set up a Planned Development District. In amending the ordinance upon application for a Residential P and Industrial P District, such action shall have the effect of granting permission only for development of the specific proposed use in accordance with the specifications, plans, drawings and other material presented with the application which served as the basis for amendment to this ordinance.

In amending the ordinance upon application for a Residential P-AA District, such action shall have the effect of granting per-mission only for development of the proposed use in accordance with the preliminary design plan as specified in Section 830.3(a). Specific design plans and maintenance plans shall be reviewed by the Planning Commission in accordance with the requirements and procedures specified in Section 850. In the event that there has not been a start made on the proposed development authorized by the Council within two (2) years from the date of passage of the amendment, such amendment may be revoked by council after legal public notice and hearing and the land in question shall be deemed subject to the same regulations as were effective before such amendment was passed.

Section 850. Planning commission review and approval of Residence P-AA plans.

Following establishment of a Residence P-AA District by the Council, detailed design and maintenance plans should be submitted to the Planning Commission for its review and recommendations. The commission shall require the following information for review and recommendations:

- (a) **Detailed Design Plan.** Additional information showing specific locations and designs for principal and accessory structures, building elevation drawings, parking areas, traffic access and circulation, and open or landscaped areas shall be provided to the Commission. Such a design plan as submitted, or any revisions suggested by the Planning Commission shall be presented to City Council for its consideration at the public hearing of any application for a development submitted under the terms of this section, and the development shall be carried out in accordance with the design plan given final approval by City Council. Any change in the design shall be submitted to the Planning Commission for its review and its recommendations.
- (b) **Maintenance Plan.** Each application for a development submitted under the terms of this section shall include a plan which spells out in detail the administrative, legal and

financial arrangements that will be established for maintaining all of the communal open space and landscaping that is shown on the design plan. Such a maintenance plan shall also include a time schedule indicating when it shall go into effect. The maintenance plan, as submitted, or as suggested by the Planning Commission shall be made part of any application for a development submitted under the terms of this section, and the development shall be carried out in accordance with such approved maintenance plan. Any change in the maintenance plan shall be submitted to the Planning Commission for its review and recommendations.

- (c) **Hearing Required.** Before the City Council acts upon detailed design and maintenance plans for developments in Residence P-AA Districts, a public hearing shall be held. The same requirements for public hearings as specified in Section 1070 shall apply to hearings pertaining to design and maintenance plans for developments in Residence P-AA Districts.

ARTICLE IX: NONCONFORMING USES

Section 900. Continuation.

The lawful use of any building or land existing at the time of the enactment of this ordinance may be continued except as is otherwise provided in this article.

Section 910. Nonconforming lots of record.

Other provisions of this ordinance notwithstanding, a single-family dwelling and customary accessory buildings may be erected on any single lot of record at the effective date of adoption or amendment of this ordinance, except as specifically excluded in Business E, Industrial A, and Industrial B Districts provided that all yard requirements are met. Such lot must be in separate ownership and not of continuous frontage with other lots in the same ownership. No nonconforming lot of record shall be further reduced in size.

Section 920. Nonconforming use of land.

No nonconforming use of land shall be expanded to occupy a greater area of land than that occupied by such use at the time of the adoption of this ordinance. No nonconforming use of land shall be changed to another nonconforming use. No nonconforming use of land shall, if once changed into a conforming use, be changed back again into a nonconforming use.

Section 930. Nonconforming structures.

930.1 Physical Requirements. Where a lawful structure exists at the effective date of adoption of this ordinance that could not be built under the terms of this ordinance by reasons of restrictions on lot area, lot frontage, building coverage, height, yards or other characteristics of the structure or its location on the lot, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

- (a) No such structure shall be enlarged or altered in a way which increases its nonconformity.
- (b) Should a nonconforming structure be destroyed by any means to an extent of more than fifty per cent (50%) of its replacement cost at the time of destruction, it shall not be reconstructed except in conformity with the requirements governing building coverage, height and yards.
- (c) Should such structure be moved for any reason, it shall thereafter conform to all the regulations for the district in which it is relocated.

930.2 Use Requirements. If a lawful use of a structure exists at the effective date of adoption of this ordinance, that would not be allowed in the district under the terms of this ordinance, the use may be continued so long as it remains otherwise lawful, subject to the following provisions:

- (a) Any structure devoted to a nonconforming use may be enlarged an amount not to exceed a total for all enlargements of ten per cent (10%) of the floor area which such nonconforming use occupied at the time when it became nonconforming; provided that such enlarged portion conforms to the required dimensions, lot coverage, and height of buildings in the district in which the nonconforming use is located; and provided that such enlarged portion meets the requirements for off-street parking and off-street loading as specified in Sections 610 and 630. A nonconforming use shall not expand in such a manner that the enlarged portion extends into a more restrictive district.
- (b) If any structure devoted to a nonconforming use is hereafter removed, the subsequent use of the lot on which such building was located and the subsequent use of any building erected thereon shall be in conformity with the regulations for the district.
- (c) Should a structure devoted to a nonconforming use be destroyed by any means to an extent greater than fifty per cent (50%) of its replacement cost at the time of destruction, it shall not be reconstructed except as a permitted use.
- (d) No structure devoted to a nonconforming use shall, if changed into any conforming use, be changed back again into a nonconforming use.
- (e) **Discontinuance.** If for a continuous period of one (1) year, either the nonconforming use of land is discontinued, or the active operation of substantially all the nonconforming uses in any building or other structure is discontinued, such land or building or other structure shall thereafter be used only for a conforming use. Intent to resume active operations shall not affect the foregoing. Notwithstanding the foregoing, in Residential A districts, for any non-conforming use in any building initially constructed so as to contain more than one dwelling unit and for which additional dwelling units have not been added since its construction, the non-conforming use of said building shall not be discontinued if a dwelling unit within said building remain vacant for a continuous period of one year. The burden of proof shall be upon the owner to establish the number of dwelling units within said building at the time of its initial construction.

Section 940. Nonconforming junkyards.

Notwithstanding any other provision of this ordinance, any automobile or other junkyard in existence at the effective date of this ordinance shall comply with the requirements at Section 452 (a), (b), (c), (d) and (f) within three (3) years of the date hereof.

ARTICLE X: ADMINISTRATION

Section 1000. Enforcement.

1001.1 The Superintendent of Buildings.

This ordinance shall be administered and enforced including the inspection of buildings by the Superintendent of Buildings, any Police Officer or Sworn Firefighter and said Superintendent, Police Officer or Sworn Firefighter may call upon the Corporation Counsel for assistance when necessary for advice, or to enjoin or prosecute violations of this ordinance. The Superintendent of Buildings, any Police Officer or Sworn Firefighter shall have the power to make inspections of buildings or premises necessary to carry out his duties in the enforcement of this ordinance.

1001.2 Building Permits.

- (a) No building shall be erected, moved, altered, added to or enlarged, and no excavation for any building shall commence until a building permit for such work has been issued by the Superintendent of Buildings.
- (b) No building permit shall be issued by the Superintendent of Buildings except where all provisions of this ordinance shall have been met and complied with, or under specific written order of the Board of Appeals.
- (c) All applications for such permits shall be in accordance with the requirements of this ordinance, the New York State Fire Prevention and Building Code, and with all applicable rules, regulations and requirements of the City of Elmira and the State of New York.
- (d) No building permit shall be issued verbally.
- (e) No lot grading or tree removal in connection with the construction of a building or parking lot shall be undertaken until the building permit for said building or parking lot is obtained.
- (f) No building permit shall be issued if any of the provisions of this ordinance or of the applicable city and state building or other codes are in question.
- (g) No building permit shall be issued where natural watercourses or drainage areas are to be altered by filling, excavating, tree removal, or in any other way unless the written approval of the Director of Public Works has first been obtained.
- (h) No permit shall be required for ordinary repairs of buildings and structures, the cost of which shall not exceed two thousand dollars (\$2,000), but such repairs shall not be construed to include the removal of any stone, concrete or brick wall, or any portion thereof; the removal or cutting of any beams or supports or the removal, change or closing of any staircase, or opening in an exterior wall. *(Ord. No. 2004-66, §1, 2-23-04)*

1001.3 Application Procedure for Building Permits.

- (a) Application for building permits shall be submitted on a form or forms provided by the Superintendent of Buildings. Each application shall set forth the purpose for which the permit is being sought and the intended use of the building, and shall be accompanied by a plot plan, drawn to scale, showing the size and shape of the lot and buildings together with dimensions and also showing the dimensions of required yards.
- (b) The Superintendent of Buildings may require such additional information, other than that called for on the application form, as may reasonably be needed for him to determine if the proposed project, the use of the building and the use of the land are in conformity with the provisions of this ordinance. The Superintendent shall issue a building permit within a reasonable period of time allowing him to determine whether all of the provisions of this ordinance are complied with.
- (c) Building permits together with the application for same shall be considered public records and the file for each permit and a copy of the building permit itself shall be maintained by the Superintendent of Buildings. The files shall be open to the public.

1001.4 Certificate of Occupancy.

- (a) It shall be unlawful to use or permit the use of any building or land or part thereof hereafter erected, moved, substantially improved, added to or enlarged in whole or in part until a Certificate of Occupancy shall have been applied for and issued by the Superintendent of Buildings.
- (b) The Certificate of Occupancy shall state that the buildings or land and proposed use thereof comply with the provisions of this and other applicable statutes, laws, ordinances and regulations governing the use of occupancy of land and buildings.
- (c) A certificate of occupancy may be obtained on application from the Superintendent of Buildings and may be issued only after the completion of the building or the alteration thereto.
- (d) The Superintendent of Buildings shall make or cause to have made an inspection of each building or lot for which a certificate of occupancy has been applied before issuing such certificate. Such inspection shall be made within ten (10) days from the date of application for such certificate, Saturdays, Sundays and legal holidays excepted. Upon written agreement by the applicant, such a period of time may be extended.
- (e) Certificates of occupancy shall be considered public records and a record of all certificates shall be maintained by the Superintendent of Buildings.

1001.5 Violations and Penalties.

- (a) Any person who shall violate any of the provisions of this ordinance, or who fails to comply with any order or regulation made hereunder, or who erects, alters, moves or uses any building or uses any land in violation of this ordinance or in violation of any detailed statement or plans submitted by him and approved under the provisions of this ordinance shall be deemed guilty in accordance with applicable provisions of state law.
- (b) Undertaking construction of any kind before the issuance of a building permit shall be subject to a penalty of one hundred dollars (\$100.00) and double fee.
- (c) Upon conviction of a violation, he shall be subject to a fine not exceeding five hundred dollars (\$500.00), or to imprisonment for a period not exceeding fifteen (15) days, or to both such fine and imprisonment.
- (d) Each calendar month's continued violation shall constitute a separate offense. If the violation persists beyond three (3) calendar months from the date of first written notification of a violation by the Superintendent of Buildings, each offense is then subject to a fine not exceeding one thousand dollars (\$1000.00), or imprisonment for a period not exceeding thirty (30) days or both.
- (e) The proper local authorities of the City, in addition to other remedies, may institute any appropriate action or proceedings to prevent or correct such violation or to enjoin the continuation of any violation.
- (f) Whenever a violation of this ordinance occurs, any resident or taxpayer in the city may file a complaint in regard thereto. All such complaints shall be in writing and shall be filed with the Superintendent of Buildings. Upon receipt of such complaint, he shall immediately investigate the complaint and report thereon to the person making such complaint and to the appropriate local enforcement authorities. If the Superintendent of Buildings or the appropriate local enforcement authorities fail to take appropriate action within a period of ten (10) days after the filing of a complaint, or after notification to a violator of a violation by the City, then any three (3) residents or taxpayers of the City may institute such appropriate action or proceedings in like manner as such local authorities are authorized to do. In such case, the Superintendent of Buildings shall notify the appropriate local enforcement authorities, and the Council, for its information, of such action or proceedings.
- (g) In addition to the above-mentioned penalties, any person, firm, corporation or general agent who violates any of the provisions of this ordinance, or who fails to comply with any order or regulation made hereunder, shall also be liable for a civil penalty not to exceed one thousand dollars (\$1000).

Section 1010. Board Of Appeals.

1010.1 Establishment of Board.

There is hereby established a board of appeals which shall function in the manner prescribed in the General City Law.

1010.2 Composition and Appointment of Board.

- (a) The Board of Appeals shall consist of five (5) members, as provided in Section 81 of the General City Law.
- (b) All members shall be residents of the City of Elmira and shall be appointed by the Mayor and shall serve for terms as established under Section 81 of the General City Law. Vacancies occurring in said board by expiration of terms or otherwise shall be filled in the same manner.
- (c) Any member of the Zoning Board of Appeals who fails to attend three (3) Board meetings or three (3) training sessions or a combination of three (3) Board and training session meetings; without good cause, within a one (1) year period may be removed from the Board. Good cause shall be determined by the Mayor. *(Ord. No. 2007-280; 7/9/07)*
- (d) The Mayor shall have the power to remove any member of the Zoning Board of Appeals for cause after a public hearing. *(Ord. No. 2007-280; 7/9/07)*

1010.3 Organization of Board.

- (a) At the first regular meeting each year, the Board of Appeals shall elect one of its own members as chairperson, and one of its own members as vice-chairperson, who shall preside in the absence of the chairperson.
- (b) In the absence of both the chairperson and vice-chairperson, the Board of Appeals shall choose one of its number as acting chairperson. Such chairperson, or the party acting in his stead during his absence, may administer oaths and compel the attendance of witnesses.
- (c) The Clerk to the Board of Appeals shall be appointed by the City Manager who shall take the minutes of all its meetings and keep its records.
- (d) The Board of Appeals shall adopt from time to time such rules and regulations as it may deem necessary to carry into effect the provisions of this ordinance, and all its resolutions and orders shall be in accordance therewith. These rules and regulations shall be filed with the City Clerk after the first meeting and prior to the second meeting of the board annually.

1010.4 Meetings of the Board.

- (a) The Board of Appeals shall meet at least once a month on a designated date and at any other additional time that is deemed necessary to fulfill its duties.
- (b) **Compensation.** Each board member shall receive the sum of twenty-five dollars (\$25.00) per meeting, but the total sum to be received by each board member shall not exceed six hundred dollars (\$600.00) per year per member.
- (c) The presence of a majority of the whole board shall be necessary to constitute a quorum.
- (d) No action shall be taken without a vote of the majority of the whole board.
- (e) The Board shall keep written minutes of its meeting showing the vote of each member upon every question, or if absent or failing to vote, indicating such fact. The Board shall also keep written records of its examinations, hearings and other official actions. The Board shall file its minutes with the City Clerk.
- (f) All meetings of the Board shall be open to the public.

1010.4.5 Board of Appeals – Pre-Application Conferences. After an applicant’s proposed project is deemed a “Major Project” and prior to an appearance before the said Board of Appeals, the applicant must participate in one or more Pre-Application Conferences as set forth in section 110.93.5 of this ordinance. *(Ord. No. 2007-280; 7/9/07)*

1010.5 Powers and Duties of the Board.

The Board of Appeals shall have all the powers and duties prescribed by law and by this ordinance, but its powers are limited only to those powers prescribed by law and by this ordinance and the Board shall exercise no others. These powers are more particularly specified as follows:

- (a) **Interpretation.** Upon appeal from a decision by an administrative official, the Board may decide any question involving the interpretation of any provision of this ordinance, including determination of the exact location of any district boundary if there is uncertainty with respect thereto.
- (b) **Review of Actions.** An appeal may also be taken to the Board by an aggrieved person for any refusal of a building permit or certificate of occupancy by the Superintendent of Buildings, or for a review of any order or decision of said Superintendent, where such order or decision is based upon the requirements in this ordinance. The Board may confirm, reverse, or modify any action, order, issuance of permit or determination by said officer, according to the terms of this ordinance.
- (c) **Special Permits.** The Board may grant or deny a special permit for any of the specific uses for which this ordinance requires the obtaining of such permits from the Board of

Appeals. Such specified uses are listed in Article II, District Regulations, and the procedures and standards for the issuance of special permits for specific uses are set forth in Article VII. In granting or denying a special permit, the Board shall conform to the procedures, standards and other requirements specified in the above-mentioned articles of this ordinance and to no others.

(d) **Variances.** The Board shall have the power to grant use variances and area variances.

(1) A “use variance” shall mean the authorization by the Board for the use of land for a purpose which is otherwise not allowed or is prohibited by the regulations of this ordinance. No such use variance shall be granted by the Board without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. To prove such unnecessary hardship the applicant shall demonstrate to the Board that for each and every permitted use under these zoning regulations for the particular district where the property is located:

- (i) the applicant cannot realize a reasonable return, provided that the lack of return is substantial as demonstrated by competent financial evidence;
- (ii) the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood;
- (iii) the requested use variance, if granted, will not alter the essential character of the neighborhood; and
- (iv) the alleged hardship has not been self-created.

(2) An “area variance” shall mean the authorization by the Board for the use of land in a manner which is not allowed by the dimensional or physical requirements under these zoning regulations. In making its determination, the Board shall take into consideration, the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such granting. In making such determination, the Board shall also consider:

- (i) whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance;
- (ii) whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than an area variance;
- (iii) whether the requested area variance is substantial;
- (iv) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and

- (v) whether the alleged difficulty was self created, which consideration shall be relevant to the Board's discussion but shall not necessarily preclude the granting of the area variance.
- (3) The Board, in the granting of use variances, shall grant the minimum variance that it shall deem necessary and adequate to address the unnecessary hardship proven by the applicant and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.
- (4) The Board, in the grant of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.
- (5) The Board, in granting use and area variances and Certificates of Appropriateness, shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property.
- (6) The Board may grant a variance from the regulations of this ordinance where the strict application of its provisions would result in practical difficulties or unnecessary hardship. In reaching a decision or determination of practical difficulties or unnecessary hardship, the Board of Appeals shall find the following conditions are present before granting a variance to the regulations of this ordinance:
 - (7) That the strict application of the provisions of this ordinance would deprive the applicant of any reasonable use of land or building for any of the permitted uses in the district, that the granting of the variance is necessary for the reasonable use of such property, and that the variance granted by the Board is the minimum variance that will accomplish this purpose; and
 - (8) That there are special circumstances or unique conditions, fully described in the findings of the Board, applying to such land or buildings and not applying generally to land or buildings in the neighborhood, which would prevent said land or buildings from yielding a reasonable return if used for any permitted use. The Board shall find, among other things, that the lot in question has peculiar topographic or other physical characteristics unlike those of surrounding properties, that the variance will not increase the dwelling unit densities stipulated by the ordinance in the district in which said lot is located, and that the variance will not add substantially to the traffic congestion or off-street parking problems of the area in which said lot is located; and
 - (9) That the special circumstances or unique conditions have not resulted from any act of the applicant subsequent to the adoption of this ordinance; and

- (10) That the granting of the variance will be in harmony with the general purposes and intent of this ordinance and will not be injurious to the neighborhood, will not alter the essential character of the locality, will not otherwise be detrimental to the public welfare, and that the public safety and welfare will be secured and substantial justice be done.

In granting a variance, the Board of Appeals may prescribe appropriate conditions or safeguards that are necessary or desirable to protect the neighborhood and preserve the spirit and intent of this ordinance. Any violation of such conditions or safeguards may result in the rescission of the variance.

Section 1020. Procedure for appeals.

- (a) The Board of Appeals shall act in strict accordance with the procedure specified by law and by this ordinance.
- (b) A request for a special permit, or an appeal by an aggrieved person from a determination of the Superintendent of Buildings may be taken to the Board of Appeals. In addition, appeals may be taken to the Board by any officer, department, board, commission or bureau of the City. Appeals to the Board may also be made by any person seeking a variance as provided herein.
- (c) Only the property owner, or a person designated in writing and properly acknowledged by the owner, shall have standing to request a variance.
- (d) **Application and filing.** All appeals and applications made to the Board shall be in writing on forms prescribed by the Board, and shall be accompanied by a non-refundable fee of seventy-five dollars (\$75), and shall be filed with the Clerk of the Board or in the absence of such person, with the Superintendent of Buildings who shall forthwith transmit to the Board all papers constituting the record, upon which the action appealed from was taken, together with the appeal application. *(Ord. No. 2007-280; 7/9/07)*
- (e) **Content of Application.** Every appeal or application for relief shall set forth the interpretation that is claimed, or the use for which a special permit is sought, or the details of the variance applied for and the grounds for which it is claimed that the variance should be granted, as the case may be. In requesting consideration for a special permit, the applicant shall follow the procedures and satisfy the requirements as specified in Article VII. In requesting consideration of a variance, the appellant shall provide a dimensioned drawing showing the site layout proposed and including a sketch drawing of the main elevation of the structure indicating proposed building materials and landscaping treatment. Any significant change in the plan and elevation drawing originally submitted must be re-approved by the Board.
- (f) **Re-application.** No parcel of property, or part thereof, may be the subject of an application for a zoning variance, special use permit, or an interpretation of the Zoning Ordinance within six (6) months after the Zoning Board of Appeals has heard and

decided an application concerning the same parcel unless such application shall show a substantial change of fact from the previous application, or seek substantially different relief than that sought in the previous application. It shall be the Zoning Board of Appeals which decides whether the applicant has shown a substantial change of fact from the previous application, or whether the applicant is seeking a substantially different relief than that sought in the previous application. *(Ord. No. 2007-280; 7/9/07)*

Section 1025. Planning Commission *(Ord. No. 2007-280; 7/9/07)*

1025.1 Establishment of Planning Commission.

There is hereby established a Planning Commission which shall possess the powers and duties as specified for a planning board as provided in the General Municipal Law, as well as the general City Law of the State of New York, provided, however, that section 238 of the General Municipal Law shall not be in force.

1025.2 Composition and Appointment of Planning Commission.

(a) The Planning Commission shall consist of five (5) members: one (1) to serve one (1) year, two (2) to serve for two (2) years, and two (2) to serve for three (3) years, and at the expiration of such terms, the terms of office for successors shall be three (3) years. The terms of office of each commissioner shall commence on May first. *(Ord. No. 2009-432; 11/23/09; §1)*

(b) All members shall be residents of the City of Elmira and shall be appointed by the Mayor with the approval of the City Council. Vacancies occurring in said Commission by expiration of terms or otherwise shall be filled in the same manner.

(c) Any member of the Planning Commission who fails to attend three (3) planning meetings or three (3) training sessions or a combination of three (3) planning and training session meetings, without good cause, within a one (1) year period may be removed from the Commission. Good cause shall be determined by the Mayor.

(d) The Mayor shall have the power to remove any member of the Planning Commission for cause after a public hearing.

1025.3 Organization of Planning Commission.

(a) At the first regular meeting each year, the Planning Commission shall elect one of its own members as chairperson and one of its own members as vice-chairperson, who shall preside in the absence of the chairperson.

(b) In the absence of both the chairperson and vice-chairperson, the Planning Commission shall choose one of its number as acting chairperson. Such chairperson, or the party acting in his stead during his absence, may administer oaths and compel the attendance of witnesses.

(c) The Clerk to the Planning Commission shall take the minutes of all its meetings and keep its records and such Clerk shall be appointed by the City Manager.

(d) The Planning Commission shall adopt from time to time such rules and regulations as it may deem necessary to carry into effect the provisions of this ordinance, and all its resolutions and orders shall be in accordance therewith. These rules and regulations shall be filed with the City Clerk after the first meeting and prior to the second meeting of the Commission annually.

1025.4 Meetings of the Planning Commission.

(a) The Planning Commission shall meet at least once a month on a designated date and at any other additional time that is deemed necessary to fulfill its duties.

(b) **Compensation.** Each Planning Commission member shall receive the sum of twenty-five dollars (\$25) per meeting, but the total sum to be received by each Planning Commission member shall not exceed six hundred dollars (\$600) per year per member.

(c) The presence of a majority of the whole board shall be necessary to constitute a quorum.

(d) No action shall be taken without a vote of the majority of the whole board.

(e) The Planning Commission shall keep written minutes of its meetings showing the vote of each member upon every question or, if absent or failing to vote, indicating such fact. The Planning Commission shall also keep written records of its examinations, hearings and other official actions. The Planning Commission shall file its minutes with the City Clerk.

(f) All meetings of the Planning Commission shall be open to the public.

1025.5 Planning Commission - Pre-Application Conferences.

After an applicant's proposed project is deemed a Major Project and prior to an appearance before the said Planning Commission, the applicant must participate in one or more Pre-Application Conferences, as set forth in Section 110.93.5 of this Ordinance.

1025.6 Powers and Duties of the Planning Commission.

The Planning Commission shall have all the powers and duties prescribed by law and by this ordinance, but its powers are limited to those powers prescribed by law and

by this ordinance and the Planning Commission shall exercise no others. These powers are more particularly specified as follows:

(a) **Site Plan Review of AMajor Projects@.**

(i) **Site Plan Checklist:** Once a project is deemed a AMajor Project@, an application for site plan approval shall be made, in writing, to the Planning Commission and shall be accompanied by a rendering, drawing or sketch prepared to specifications and containing the following necessary information;

1. Title of drawing, including name and address of applicant and person responsible for preparation of such drawing;
2. North arrow, scale and date;
3. Boundaries of the property plotted to scale;
4. Existing buildings;
5. Grading and drainage plan and watercourses;
6. Location, design, type of construction, proposed use and exterior dimensions of all buildings;
7. Location, design and type of construction of all driveways, parking, and truck loading areas, showing access and egress;
8. Provision for pedestrian access;
9. Location of outdoor storage, if any;
10. Location, design and construction materials of all existing or proposed site improvements including drains, culverts, retaining walls and fences;
11. Description of the method of sewage disposal and location, design and construction materials of such facilities;
12. Description of the method of securing public water and location, design and construction materials of such facilities;
13. Location of fire and other emergency zones, including the location of fire hydrants;
14. Location, size and design and type of construction of all proposed signs;

15. Location and proposed development of all buffer areas, including existing vegetative cover;
16. Location and design of outdoor lighting facilities;
17. Location, design and construction materials of all energy distribution facilities including, but not limited to, electrical, gas and solar energy;
18. Identification of the location and amount of building area proposed for retail sales or similar commercial activity;
19. General landscaping plan and planting schedule;
20. An estimated project construction schedule;
21. Record of application for and status of all necessary permits from other governmental bodies;
22. Identification of any permits from other governmental bodies required for the project=s execution; and
23. To comply with the requirements of the New York State Environmental Quality Review Act (SEQRA) and any details considered pertinent, as well as, any other elements integral to the proposed development as may be considered necessary in the particular case by the Planning Commission.

(ii) Site Plan Standards and Consideration: The Planning Commission=s review of the site plan shall include, as appropriate, but is not limited to, the following general considerations:

1. Location, arrangement, size, design and general site compatibility of buildings, lighting and signs;
2. Adequacy and arrangement of vehicular traffic access and circulation, including intersections, road widths, pavement surfaces, dividers and traffic controls;
3. Location, arrangement, appearance and sufficiency of off-street parking and loading;
4. Adequacy and arrangement of pedestrian traffic access and circulation, walkway structures, control of intersections with vehicular traffic and overall pedestrian convenience;

5. Adequacy of storm water and drainage facilities;
6. Adequacy of water supply and sewage disposal facilities;
7. Adequacy, type and arrangement of trees, shrubs and other landscaping constituting a visual and/or noise buffer between the applicant=s and adjoining lands, including the maximum retention of existing vegetation;
8. Adequacy of fire lanes and other emergency zones and the provision of fire hydrants;
9. Special attention to the adequacy and impact of structure, roadways and landscaping in areas with susceptibility to ponding, flooding and/or erosion; and
10. Overall impact of the proposed project upon the neighborhood, including compatibility of design and historic considerations.

(iii) Public Hearing: The Planning Commission may conduct a public hearing on the site plan, if considered desirable by a majority of its members. Such public hearing shall be advertised in a newspaper of general circulation in the City at least five (5) days before the public hearing. In addition, such hearing shall be held within sixty-two (62) days of the receipt of application for site plan review. The decision must be rendered within sixty-two (62) days after the hearing or, if no hearing is held, the decision must be rendered within sixty-two (62) days after the application is received including a filing of a determination of significance as required under SEQRA. These times may be extended by mutual consent of the applicant and Planning Commission.

(b) Review of Junkyards and Mobile/Manufactured Home Park.

An application to the Planning Commission shall be made, in writing, to the Planning Commission for either of the following;

(i) The review and approval or disapproval of fencing and planting in Junkyards, as set forth in Sections 452 et. seq. of this Ordinance; and

(ii) The review and approval or disapproval of applications for a permit to establish a mobile/manufactured home park, as set forth in Sections 458 et. seq. of this ordinance.

(c) Review and Recommendations of Planned Development Districts to City Council.

The review and the making of a recommendation of approval or disapproval to City Council of all applications, as submitted or amended, for the establishment of a Planned Development District, as set forth in Sections 830 et. seq. of this Ordinance; and

(d) Review and Recommendations of proposed zoning regulation amendments or changes or district boundary amendments to the City Council.

The making of recommendations to City Council regarding any proposed zoning regulation amendments or changes or district boundary amendments or changes, as set forth in Sections 1100 et. seq. of this Ordinance.

(e) Review and Approval of Subdivision of Land.

The review and approval of subdivision of land as set forth in Appendix A of the Code of Ordinances for the City of Elmira.

(f) Matters referred to commission for report thereon.

The following matters shall be referred, for report thereon, to such commission, by the board, commission, commissioners or other public officer or officers which is the final authority thereon before final action thereon by such authority: the adoption of any map or plan of the city or part thereof, the plans or maps for any public waterfront or marginal street.

Final Action.

(1) The authority having final jurisdiction over any matter in which the city planning commission also has jurisdiction in accordance with section 236 of chapter 699 of the Laws of 1913, shall not proceed to such final action until the city planning commission has made its final report thereon to such authority, but if the commission shall not have made its final report thereon within six (6) months from the date of reference thereof, the authority having final jurisdiction may proceed to final action.

(2) This section shall not be construed to prevent the body creating this commission from granting, in any specific case, such longer period as it may fix within which commission may make its report; and if such longer period is granted, the authority having final jurisdiction shall not in the absence of such report, proceed to final action until that longer period has elapsed.

(g) Maps and Plans.

The city planning commission may cause to be made a map or maps of the city or any portion thereof and of any land outside the limits of the city so near or so related thereto that in the opinion of the planning commission it should be so mapped. Such plans may show not only such matters as by law have been or may be referred to the planning commission, but also any and all matters and things with relation to the plans of the city which to the planning commission may seem necessary and proper, including all recommendations and changes suggested by it and any report at any time made, may include any of the above. Such planning commission may obtain expert assistance in the making of any such maps or any investigation necessary and proper in relation thereto.

(h) Filing of copies of plans, plots and descriptions.

No plan, plot, or description showing the layout of any highway or street upon private property or of building lots in connection with or in relation to such highways or streets within the limits of this city, shall be received for record in the office of the clerk of Chemung County until a copy of such plan, plot, description has been filed with the commission, and it has certified with relation thereto its approval thereof, but if any such street is plotted or laid out in accordance with the map of this city adopted according to law, then it shall not be necessary to file such copy or obtain or record the certificate thereof as otherwise required by law.

(i) Authority and power to approve plats showing new streets or highways.

The city planning commission shall be authorized and empowered to approve plats showing new streets or highways as described in section 32 of article 3 of the General City Law.

(j) Authority and power to confirm zoning regulations, etc.

The city planning commission shall be and it hereby is authorized and empowered to confirm the zoning regulations of land platted as shown on the official zoning maps for the city or to make any reasonable change therein, as provided in section 37 of article 3 of the General City Law.

1025.7 Application and Filing .

All applications made to the Planning Commission shall be in writing on forms prescribed by the Board, and shall be accompanied by a non-refundable fee of seventy five (\$75) dollars, and shall be filed with the Clerk of the Board or in the absence of such person, with the Superintendent of Buildings who shall forthwith transmit to the Board all papers constituting the record, upon which the action appealed from was taken, together with the appeal application.

Section 1030. Referral to the County Planning Board.

(a) Referral to the County Planning Board from the Zoning Board of Appeals.

As required under Section 239-m of the General Municipal Law, the Board of Appeals shall refer certain applications for variances or special permits as described herein to the County Planning Board for a report before acting thereon. The Board shall refer such applications for variances and special permits affecting land within five hundred feet (500') from the boundary of any city, village or town, or from the boundary of any county or state park or other recreation area, or from any county or state parkway, expressway, throughway or other limited access highway, or from the right-of-way of any stream or drainage channel owned by the county or for which the county has established channel lines, or from any county or state lands on which a public building or institution is situated. Within thirty (30) days of referral, the County Planning Board shall report its recommendations to the Board of Appeals supporting its recommendations with a full statement of its reasons. If the County Planning Board fails to report, the Board of Appeals may proceed to take action. If the County Planning Board disapproves the proposed variance or special permit, or if the County Planning Board recommends modification, approval by the Board of Appeals of such application for a variance or special permit shall not become effective except by an affirmative vote of the majority plus one of the Board of Appeals and a resolution stating fully the reasons for its action. (*Ord. No. 2007-280; 7/9/07*)

(b) Referral to the County Planning Board from the Planning Commission. As required under section 239-m of the General Municipal Law, the Planning Commission shall refer certain applications for site plan approval or approval of fencing and planting in junkyards, or approval of applications for permits to establish a mobile/manufactured home park, as described herein to the County Planning Board for a report before acting thereon. The Commission shall refer such applications for site plan approval or approval of fencing and planting in junkyards, or approval of applications for permits to establish a mobile/manufactured home park, as described herein to the County Planning Board for a report before acting thereon affecting land within five hundred feet (500') from the boundary of any city, village or town, or from the boundary of any county or state park or other recreation area, or from any county or state parkway, expressway, throughway or other limited access highway, or from the right-of-way of any stream or drainage channel owned by the county or for which the county has established channel lines, or from any county or state lands on which a public building or institution is situated. Within thirty (30) days of referral, the County Planning Board shall report its recommendation to the City Planning Commission supporting its recommendations with a full statement of its reasons. If the County Planning Board fails to report, the City Planning Commission may proceed to take action. If the County Planning Board disapproves the proposed site plan approval or approval of fencing and planting in junkyards, or approval of applications for permits to establish a mobile/manufactured home park, or if the County Planning Board recommends modification, approval by the City Planning Commission of such application for a site plan approval or approval of fencing and planting in junkyards, or approval of applications for permits to establish a mobile/manufactured home park shall not become effective except by an affirmative vote of the majority plus one of the City Planning Commission and a resolution stating fully the reasons for its action. (*Ord. No. 2010-40; §1; 2/1/10*)

Section 1040. Notification of the Corporation Counsel.

The Corporation Counsel shall be promptly notified of all requests for variances, changes in nonconforming uses and other subjects of appeal to the Board of Appeals. It shall be the duty of the Corporation Counsel to notify the Board of Appeals in advance of their hearings of the legality of each request. The Corporation Counsel or his representative shall attend meetings and hearings of the Board of Appeals and shall advise the Board on the legality of each request and on the legality of the actions the Board may take.

Section 1050. Decisions of the Board.

(a) All decisions of the Board shall be in writing and a copy of each decision shall be sent to the party or parties making the appeal or submitting the application for a special permit and to the Superintendent of Buildings.

(b) Each decision shall set forth in full the reasons for the decision of the Board and the findings of fact on which the decision was based. Such findings and reasons in the decision on a special permit use shall include specific references to the requirements for special permits as specified in Article VII. Where the appeal is for a variance, the decision shall include special references to the findings described in Section 1010.5 (d).

(c) Unless otherwise specified, the concurring vote of three (3) members of the Board shall be necessary to decide matters over which the Board has jurisdiction. Any member of the Board who has a conflict of interest in regard to any matter coming before the Board for a decision shall not vote on the matter and shall absent himself from all deliberations.

Section 1060. Notices to property owners.

If a variance or special permit is requested, the appellant shall send notice of same to all property owners within two hundred feet (200') from the boundaries of the lot or lots under consideration. Such notice shall be by mail and shall state the time and day of the public hearing, the relief sought, the type of use contemplated, the appellant's name and the location of the property in question. Such notices shall be mailed so as to arrive at least five (5) days prior to the public hearing date.

Section 1070. Public hearings.

Public hearings shall be held on all matters which come before the Board of Appeals for a decision. Notice of public hearings shall be given by publication once in the official newspaper of the City of Elmira, which notice shall state the nature of the appeal or of the special permit request, the appellant's name, and the location of the property. Such notice shall be not less than ten (10) days before the date of the public hearing. Notice of adjourned or rescheduled public

hearings on any matter before the Board shall be given by publication in the official newspaper of the City of Elmira in the same manner as the original hearing was advertised and property owners within two hundred feet (200') from the boundaries of the lot or lots under consideration shall be notified again in the same manner as they received notice of the original hearing. At the hearing, any party may appear in person or by agent or be represented by attorney.

Section 1080. Cost of Advertising.

Any person, firm or corporation filing an appeal or requesting a special permit shall, at the time of filing said appeal or applying for such special permit, execute a guarantee to assume the cost of advertising.

Section 1090. Reports.

Every action of the Board of Appeals shall be filed with the City Clerk and with the Superintendent of Buildings and shall be a public record. The Board of Appeals shall report to the Mayor and to the Council annually. Such report shall summarize all applications and appeals made to it since the last report and shall contain a summary of the Board's decisions. A copy of the report shall be transmitted to the City Planning Commission and to the Superintendent of Buildings. The Board of Appeals may also submit to the Council or City Planning Commission advisory reports recommending changes or modifications in the Zoning Ordinance or its administration.

ARTICLE XI: AMENDMENTS

Section 1100. How Initiated.

The Council may from time to time on its own motion or on petition amend, supplement or repeal the regulations and district boundaries established by this ordinance. The Planning Commission may, by resolution, propose an amendment, supplement or repeal of the regulations or district boundaries to the Council.

Section 1110. Referral to the City Planning Commission.

Every such proposed amendment or change, whether initiated by the Council or by petition, shall be referred to the City Planning Commission for a report and recommendation before the Council acts thereon. Should the City Planning Commission object to the proposed amendment or change, it shall state the reasons for its objections in its report. Should the City Planning Commission object to the proposed amendment or change, it shall not become effective except by a three-fourths (3/4) vote of the Council. The City Planning Commission shall submit its report within sixty (60) days after receiving such referral.

Section 1120. Referral to the County Planning Board.

At least thirty (30) days prior to any required public hearing on an amendment, supplement or change of the regulations or district boundaries, the Council shall comply with the provisions of Article 12-B, Section 239-m of the General Municipal Law as amended, and refer to the County Planning Board proposed amendments affecting property within a distance of five hundred feet (500') from the boundary of any city, village or town or from the boundary of any county or state park, or from the right-of-way of any county or state parkway, throughway, expressway or other controlled-access highway, or from the right-of-way of any stream or drainage channel owned by the county or for which the county has established channel lines, or from the boundary of any county or state owned land on which a public building or institution is located. Within thirty (30) days of referral, the County Planning Board shall report its recommendations to the Council. If the County Planning Board fails to report within this period, or an agreed extension thereof, the Council may take final action without the report. If the County Planning Board recommends disapproval or recommends modification in the proposed amendment, the City Council shall not act contrary to such a recommendation except by a vote of a majority plus one of all the members there of.

Section 1130. Notice and hearing on proposed amendments.

Before any amendment, supplement or repeal in the regulation or district boundaries, there shall be public notice and hearing thereon as provided by law. The Council, by resolution, shall fix the time and place of a public hearing on the proposed amendment, supplement or repeal and cause notice to be given as follows:

- (a) By publishing a notice at least five (5) days prior to the date of the public hearing in the official newspaper of the City of Elmira.
- (b) A written notice of any proposed change or amendment affecting property within five hundred feet (500') of the boundaries of any state park or parkway shall be given to the required State authorities having jurisdiction over such state park or parkway at least ten (10) days prior to the date of such public hearing.
- (c) A written notice of any proposed change or amendment affecting property within five hundred feet (500') of the boundaries of any city, village, town or county shall be given to the clerk of such municipality and the clerk of the County Legislature at least ten (10) days prior to the date of such hearing.

Section 1140. Protest petition.

If a protest against a proposed amendment, supplement, or repeal be presented to the Council, duly signed and acknowledged by the owners of twenty per cent (20%) or more of the area of land included in such proposed change, or by the owners of twenty per cent (20%) or more of the area of land immediately adjacent extending one hundred feet (100') from the street frontage of such opposite land, such amendment shall not become effective except by the favorable vote of at least three-fourths (3/4) vote of the Council.

ARTICLE XII: MISCELLANEOUS

Section 1200. Interpretation.

In their interpretation and application, the provisions of this ordinance shall be held to be minimum requirements, adopted for the promotion of the public health, safety, and general welfare. Whenever the requirements of this ordinance are at variance with the requirements of any other lawfully adopted rules, regulations or ordinances, the most restrictive, or that imposing the higher standards, shall govern.

Section 1210. Validity.

Should any section or provision of this ordinance be decided by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the ordinance as a whole or any part thereof other than the part so decided to be unconstitutional or invalid.

1215. Costs.

Costs incurred by the Planning Commission, Zoning Board of Appeals or the City of Elmira for consultation fees, advertising expenses or extraordinary expenses in connection with an application to the respective Commission or Board shall be charged to the applicant. *(Ord. No. 2007-280; 7/9/07)*

1216. Appeals.

The applicant or any interested person may appeal a decision of the Planning Commission and/or Zoning Board of Appeals. The appeal shall be made to the Supreme Court of New York State for review by a proceeding under Article 78 of the Civil Practice Law and Rules of New York State. The said appeal shall be made within thirty (30) days after the filing of the decision with the Elmira City Clerk's Office. *(Ord. No. 2007-280; 7/9/07)*

Section 1220. Existing zoning ordinance repealed.

The existing Zoning Ordinance of the City of Elmira, New York, adopted on September 26, 1966, together with all changes and amendments hereto, is hereby repealed and declared to be of no effect. The adoption of the ordinance, however, shall not affect any pending or prevent any future prosecution of or action to abate any existing violation of the existing Zoning Ordinance, as amended, if the use so in violation is in violation of the provisions of this ordinance as well. Nothing herein shall be deemed to change the status of nonconforming uses heretofore created by virtue of the existing Zoning Ordinance, if each use remains nonconforming under the provisions of the ordinance as well.

Section 1230. Short title.

This ordinance shall be known and may be cited as "The Zoning Ordinance of the City of Elmira."

Section 1240. Effective date.

This ordinance shall be in force and effect immediately upon adoption and filing in the office of the City Clerk and upon publication of an affidavit of filing as provided by law.