

**CHAPTER 150.01
Title, Purpose and Application**

150.0101	Title.	150.0104	Conflicting laws.
150.0102	Purpose.	150.0105	Scope.
150.0103	Application.	150.0106	Severability.

§ 150.0101 TITLE.

These rules, regulations, procedures and map shall be known, cited and referred to as the Montgomery Zoning Code Update, or Zoning Code.

§ 150.0102 PURPOSE.

(a) The purpose of this Zoning Code and the intent of the legislative authority in its adoption is to promote and protect the public health, safety, convenience, comfort, prosperity, and general welfare in the City, by dividing the municipality into districts (zones) of such number and dimension as to achieve a coordinated, beneficial and meaningful development of land uses by the following:

- (1) Regulating the use of buildings, other structures and land for residential, business, and other uses;
- (2) Regulating the area and dimension of lots, and yards;
- (3) Regulating and restricting the location, bulk, height, design and land coverage of buildings;
- (4) Regulating the density of land occupancy; and
- (5) Providing regulations and procedures for the administration, amendment and enforcement thereof.

(b) In addition, this Zoning Code is intended to achieve, among others, the following objectives:

- (1) To protect the character, integrity and value of the residential, business, institutional, and recreational areas and to assure their orderly and beneficial development;
- (2) To provide adequate open space and prevent overcrowding of the land and an excessive concentration of the population;
- (3) To protect commercial opportunity, enhance the viability of the commercial establishment, and preserve a balance of business services to facilitate the availability of retail and professional services sufficient to meet the needs of the residential population of the City;
- (4) To regulate the location of buildings and intensity of uses in relation to streets and traffic flow to assure the least interference with traffic movement thereby improving and promoting the public safety;
- (5) To facilitate adequate provisions for public utilities and facilities such as recreation, school, sewerage, water, transportation and other public requirements;
- (6) To promote the compatibility of adjacent uses;
- (7) To guide the future development of the City in a manner that brings about the gradual conformity of land and building uses in accordance with comprehensive plans adopted by the City; and

(8) To accomplish the specific intentions and goals set forth hereinafter in this Zoning Code.

§ 150.0103 APPLICATION.

Unless specifically noted otherwise, the provisions of this Zoning Code shall be considered as the minimum requirements necessary for public health, safety, and general welfare.

§ 150.0104 CONFLICTING LAWS.

This Zoning Code shall not repeal, abrogate, annul or in any way impair or interfere with any existing law or ordinance, or any rules, regulations, deed restrictions or covenants heretofore or hereafter adopted or promulgated pursuant to law regulating the use of land or buildings. However, in cases where this Zoning Code imposes a greater restriction upon the use of buildings or premises, upon the height of buildings, upon the lot area per family or requires larger yards or other open spaces than are imposed or required by such other laws or ordinances, or by such rules and regulations, the provisions of this Zoning Code shall control.

§ 150.0105 SCOPE.

Nothing in this Code shall be construed to limit Council in the exercise of all of the powers to zone or redistrict now or hereafter authorized by the Ohio Constitution or Ohio statutes or the City Charter.

§ 150.0106 SEVERABILITY.

Sections and subsections of this Zoning Code and the several parts or provisions thereof are hereby declared to be independent sections, subsections, parts and provisions, and the holding of any such section, subsection, part or provision thereof to be unconstitutional, void or ineffective for any cause shall not affect nor render invalid any other such section, subsection, part or provision thereof.

Chapter 150.02
General Provisions

150.0201	General regulation of lots.	150.0204	General regulation of structures and construction.
150.0202	Nuisances prohibited.		
150.0203	Visibility at intersections.		

§150.0201 GENERAL REGULATION OF LOTS.

(a) Required Street Frontage. All zoning lots shall front on a dedicated public street. All lots created as a result of lot splits or subdivisions shall have frontage on a dedicated street in the amount required in this Code.

(b) Required Yard and Open Space Maintained. The required yards surrounding an existing principal building, which have been counted or calculated as part of a side yard, rear yard, front yard, or other open space required by this Zoning Code shall not, by reason of change in ownership or otherwise, be counted or calculated to satisfy the yard or other open space requirement for any other principal building, nor shall any area occupied by a street right-of-way be included as part of the minimum yard and open space requirements or lot area requirements.

(c) Required Lot Area To Be Maintained. A parcel of land may be subdivided into two or more lots provided any lot resulting from such division is located in only one district and shall conform to the lot area and lot width requirements in this Code. A nonconforming lot of record that is owned separately from adjoining lots on the effective date of this Zoning Code or as amended which affected its conformity shall not be reduced in any manner that would increase its nonconforming situation.

§ 150.0202 NUISANCES PROHIBITED.

No use shall be permitted or authorized to be established which, when conducted in compliance with the provisions of this Zoning Code and any additional conditions and requirements prescribed, may be hazardous, noxious, or offensive due to the emission of odor, dust, smoke, fumes, cinders, gas, noise, vibration, light, electrical interference, refuse matters and water carried wastes, or which will interfere with adjacent landowners enjoyment of the use of their lands.

§ 150.0203 VISIBILITY AT INTERSECTIONS.

On every corner lot there shall be no material impairment to visibility (whether by the location of structures including fences, landscaping or other means) between a height of 2 feet and a height of 6 feet above the natural grade, within the triangle formed by the right-of-way lines of two intersecting streets, and a line drawn between two points, one on each such right-of-way line, each 30 feet from the point of intersection of such right-of-way lines.

§ 150.0204 GENERAL REGULATION OF STRUCTURES AND CONSTRUCTION.

(a) Minimum Construction Standards. All structures, except those exempt as specified in this Zoning Code, shall comply with the standards of all enabling codes adopted by the City of Montgomery. Compliance to the building code is

required regardless of whether the structure is constructed on the building site, fabricated in a factory, or moved in from a location outside the City.

(b) Permitted Height Exemption

(1) With the exception of a residential structure in a residential district or an accessory structure in a residential district, roof structures for the housing of elevators, stairways, tanks, ventilating fans or similar equipment required to operate and maintain the building; fire or parapet walls, skylights, towers, steeples, stage lofts, and screens; and the following, either rooftop or freestanding: flagpoles, chimneys, smokestacks, radio and television aerials, wireless masts, water tanks or similar structures shall be permitted to exceed the maximum height set forth for the district in which the structure is located provided:

(i.) No such structure shall exceed the height limits of the district in which it is located by more than 15 feet; and

(ii.) No such structure shall have a total area greater than 25 percent of the roof area of the building.

(iii.) Fire or parapet walls shall not exceed 10 percent of the linear feet of the elevation of the building façade on which it is located.

(2) Residential structures in a residential district or accessory structures to a residential use or structure in a residential district shall not exceed the height limits of the district in which they are located.

(c) Accessory Buildings. Accessory buildings and uses shall be permitted in accordance with district regulations provided that no accessory structure or building is permitted on a lot unless there exists a principal building on such lot.

(d) Structures for Human Habitation. Only structures that meet all the requirements for a permitted dwelling unit shall be permitted to be occupied for human habitation.

(e) Temporary Facilities. Temporary construction facilities for use incidental to construction work may be erected in any zoning districts herein established; however, such facilities shall be removed within 30 days of issuance of the temporary certificate of occupancy or upon completion or abandonment of the construction work. Such facilities shall not be occupied for human habitation. Temporary facilities include: construction fencing, construction sheds and offices, tool sheds, and portable toilet facilities.

CHAPTER 150.03
Definitions

150.0301 Interpretation of terms and words.

150.0302 Definitions

§ 150.0301 INTERPRETATION OF TERMS AND WORDS.

For the purpose of this Code, certain terms and words used herein shall be interpreted as follows:

- (a) The word "shall" is a mandatory requirement...
(b) The word "building" includes the word "structure."
(c) The words "used" and "occupied" include the words "intended, designed or arranged to be used or occupied."
(d) The present tense includes the future tense...
(e) The word "person" includes a firm, association, organization...
(f) Whenever a number of days are specified, days shall mean calendar days...
(g) The words "include", "for example", "such as", or words of similar meaning are nonexclusive...
(h) In the case of any real or apparent conflict between the text of this zoning code and any other illustration explaining the text, the text shall apply.

(i) Section and subsection headings contained herein, are provided for illustrative purposes only, and shall not be deemed to limit, govern, modify, or otherwise affect the scope, meaning, or intent of any provision of this zoning code.

(j) Unless the context clearly indicates the contrary, the following conjunctions shall be interpreted as follows:

- (i) "And" indicates that all connected items or provisions apply.
(ii) "Or" indicates that the connected items or provisions may apply singly or in any combination.
(iii) "Either...or" indicates that the connected items or provisions shall apply singly, but not in combination.

§ 150.0302 DEFINITIONS.

- (a) Words used in this Code are used in their ordinary English usage.
(b) For the purpose of this Code the following terms, whenever used in this Code, shall have the meaning herein indicated:
(1) ACCESS DRIVE. A paved strip, which provides a vehicular connection between off-street parking spaces and a public street.
(2) ACCESSORY USE OR BUILDING. Subordinate use or building customarily incidental to and located on the same lot with the principal building or use.
(3) ADULT DAY-CARE FACILITY. An establishment that during any

part of the normal business day provides supervised educational, recreational and social activities to elderly and/or handicapped adults, but not including persons suffering from acute or chronic alcoholism or other drug dependency and persons who regularly require restraint.

- (4) ALTER OR ALTERATION. Any material change in external architectural feature(s) of any property or any change to an archaeological feature of the property, including a change or rearrangement in the structural parts or building service equipment or an enlargement, whether by extending on a side or by increasing height. ALTERATION shall include a change in design, color, texture, materials or exterior architectural feature. Ordinary maintenance to correct any deterioration or damage to a structure or to restore the structure to its condition prior to such deterioration or damage is excluded from the definition of ALTERATION, provided such work does not involve a change in design, color, texture, material or exterior architectural feature.
- (5) ANIMAL ENCLOSURE. Any structure used to restrict an animal or animals to a limited amount of space, such as a pen, cage, coop or hutch. Animal enclosures shall also include any structure used to house an animal or animals and/or provide protection from the elements, such as a dog house. Animal enclosures shall not include bird houses.
- (6) ANIMAL BOARDING FACILITY. A facility providing for the shelter and care of dogs and cats on a commercial basis including activities such as feeding, exercising,

grooming and incidental medical care.

- (7) ANIMAL GROOMING FACILITY. A facility providing bathing, cutting and trimming services for dogs and cats on a commercial basis, but shall not include the overnight boarding of animals.
- (8) ANIMAL HOSPITAL OR CLINIC. A place where animals are given medical or surgical treatment and the boarding of animals occurs only as an incidental use.
- (9) APPLICANT. Any owner, owners, association, partnership, corporation, or agents thereof, who applies for a zoning certificate, building permit, certificate of occupancy, variance, conditional use permit, sign permit, zoning amendment or certificate of approval.
- (10) ARCHITECTURAL FEATURE. Ornamentation or decorative features attached to or protruding from an exterior wall of a building, including, but not limited to: cornices, eaves, gutters, belt courses, sills, lintels, bay windows, chimneys, and other decorative ornaments.
- (11) ASSOCIATION. A legal entity operating under recorded land agreements or contracts through which each unit owner in a single-family detached cluster development, single-family attached dwellings or multi-family development is a member and each dwelling unit is subject to charges for a proportionate share of the expenses of the organization's activities such as maintaining common open space and other common areas and providing services needed for the development. An association can take the form of a homeowners' association, community

- association, condominium association or other similar entity.
- (12) **AUTOMOBILE SERVICE STATION** (See also Gasoline Station): A building, part of a building, structure or space which is used for the retail sale of lubricants and motor vehicle accessories.
- (13) **AUTOMOBILE/TRUCK RENTAL AGENCY**. The use of any building, land area or other premise for the leasing of automobiles, vans, and/or single axle trucks or trailers.
- (14) **AUTOMOBILE/TRUCK SALES AGENCY**. Any establishment engaged in activities such as displaying, offering for sale and selling new and used motor vehicles at retail, and which may also include, as a incidental use to such sales, operating a service facility to perform repairs and maintenance on motor vehicles, offering for sale and selling motor vehicle parts at retail, and conducting all other acts that are usual and customary to the operation of a new or used motor vehicle dealership. For purposes of this ordinance, possession of either a valid new or used motor vehicle dealer franchise agreement or a new or used motor vehicle dealer license, or both of these items, is not evidence that a person is operating as an automobile/truck sale agency. Also for purposes of this ordinance, the terms used herein not specifically defined in this ordinance, shall be defined as in Ohio Revised Code Chapter 4517 and successors.
- (15) **AWNING**. An awning shall include any structure made of cloth, metal, plastic or any other similar material with a frame attached to a building or other structure and projecting outward therefrom. An awning may be retractable so as to permit it to be raised to a position flat against the building when not in use, but its general purpose will be to provide shelter or shade.
- (16) **BASEMENT**. That portion of a building which is partly or completely below grade.
- (17) **BED AND BREAKFAST**. A private owner-occupied or manager-occupied residence where overnight accommodations are available and compensation is paid by guests for overnight stay.
- (18) **BLOCK**. The area between two adjacent streets or if no streets are present an area not to exceed 600 feet in length or width.
- (19) **BOARD**. The Montgomery Board of Zoning Appeals, as established by Charter.
- (20) **BUFFER**. An area of healthy and viable vegetation, natural or planted, adjoining or surrounding a land use and unoccupied in its entirety by any building structure, paving or portion of such land use, for the purpose of separating screening and softening the effects of the land use. A buffer may include a wall, fence or berm. No part of this buffer is to be used for active recreation, parking, or interior access drives.
- (21) **BUILDABLE AREA**. The area of the lot remaining after the minimum zoning requirements for yards, setbacks, coverage and allowance for panhandles, easements and restrictions have been met. See Figure 1.

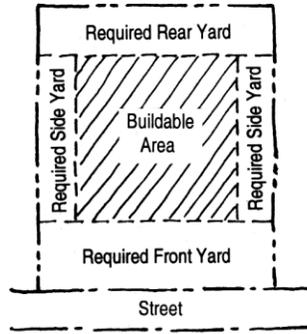


Figure 1. Buildable Area.

(22) **BUILDING.** Any structure with a roof and walls designed or intended for the support, enclosure, shelter, or protection of persons, animal or property.

A. BUILDING, ACCESSORY. A subordinate building detached from, but located on the same lot as the principal building, the use of which is incidental to that of the principal building or use. The footprint of an accessory building shall be smaller than the footprint of the principal building on a residential lot.

B. BUILDING, PRINCIPAL. A building occupied by the main use of the lot on which said building is located.

(23) **BUILDING COVERAGE.** The lot area covered by the principal building(s) and any roofed over accessory buildings or structures, measured from the exterior faces of exterior walls, but excluding decks, terraces and other accessory uses which are open to the sky.

(24) **BUILDING DEPARTMENT.** The building department of the City of Montgomery, Ohio its chief enforcement official or his/her regularly authorized deputy.

(25) **BUILDING, HEIGHT OF.** The vertical distance from the average lot

grade at the front of the structure to the highest point of the structure, i.e. to the coping of a flat roof or to the deck line of a mansard roof, or the mean height between eaves and ridge for hip and gable roofs.

(26) **BUILDING LINE:** An imaginary linear extension of the building wall parallel to the street right-of-way line defining the limits of the front yard, or in the case of a corner lot, either yard abutting the street.

(27) **CANOPY.** A canopy shall include any structure, made of cloth, metal, plastic, concrete or any other similar material which is supported by poles, stanchions or a frame projecting from the ground which has as its general purpose providing shelter or shade.

(28) **CAR WASH.** A building or enclosed area that provides facilities for washing and cleaning motor vehicles, which may use production line methods with a conveyor, blower, or other mechanical devices and/or which may employ hand labor.

(29) **CELLAR.** A space between the floor and the ceiling next above it having more than 1/2 of its height below grade. A cellar is counted as a story for the purposes of height regulation only if it is used for dwelling purposes.

(30) **CERTIFICATE OF APPROVAL.** A document issued by the Landmarks Commission signifying that the proposed demolition or moving of a designated landmark or the construction, reconstruction or alteration of a designated landmark has been reviewed by the Landmarks Commission, and found to be in compliance with the requirements for historical and architectural landmarks, as outlined in this

Zoning Code. Certificates of Approval shall also be issued by the Zoning Administrator for exterior changes to buildings in the Heritage Overlay District that are neither a designated landmark nor subject to development plan review, in accordance with the provisions of this Zoning Code.

- (31) **CERTIFICATE OF OCCUPANCY.** A certificate stating that a building or structure, as illustrated on approved plans and as constructed, conforms to the provisions of this Zoning Code.
- (32) **CHILD DAY-CARE.** Administering to the needs of infants, toddlers, pre-school children, and school children outside of school hours by persons other than their parents or guardians, custodians, or relatives by blood, marriage, or adoption for any part of the twenty-four hour day in a place or residence other than a child's own home.
- (33) **CHILD DAY-CARE FACILITY.** Any place other than a family day-care home in which child day-care is provided.
- (34) **CLINIC.** An establishment where sick, ailing, infirm, or injured persons are admitted for examination and treatment on an outpatient basis by one or more physicians, dentists, or other medical personnel and where patients are not kept longer than 23 hours. Such clinics may include ambulatory or emergency care centers.
- (35) **CLUB.** A building or portion thereof or premises owned or operated by a corporation, association, or group of persons for a social, educational, recreational, charitable, political, patriotic or athletic purpose, but not primarily

for profit or to render a service which is customarily carried on as a business.

- (36) **COMMISSION.** The Landmarks or Planning Commission of the City of Montgomery.
- (37) **COMMON AREA.** Any land area, and associated facilities, within a single-family detached cluster development, attached single-family development or multi-family development that is held in common ownership by the residents of the development through a Homeowners' Association, Community Association or other legal entity, or which is held by the individual members of a Condominium Association as tenants-in-common.
- (38) **COMMON DRIVE.** A shared means of vehicular ingress and egress located within an easement of access serving 2 to 6 lots not dedicated to the City of Montgomery by recorded instrument that is maintained solely by the party or parties using such drive for private access.
- (39) **COMMUNITY MARKET.** The temporary outdoor sale and display of goods operated by a non-for-profit or service organization supporting the Montgomery community.
- (40) **COMPOST HEAP.** A pile of organic materials kept under controlled conditions so that the original raw materials are transformed by decay and degradation into compost.
- (41) **COMPREHENSIVE PLAN.** A document adopted by City Council which sets forth the community characteristics, articulates goals, and explores alternative long-term plans for the future of the City.

- (42) **CONDITIONAL USE.** See USE, CONDITIONAL.
- (43) **CONDITIONAL USE PERMIT.** A permit issued by the Zoning Administrator upon approval by the Planning Commission and/or Council to allow a use other than a principally permitted use to be established within the district on a specific parcel. See also; Use, Conditional.
- (44) **CONSTRUCTION & MECHANICAL SERVICES.** Contracting businesses including heating, air conditioning, plumbing, electrical, and general contracting, which typically require storage of machinery, equipment, and/or material on premise in addition to administrative offices and service counters.
- (45) **CONTRIBUTING PROPERTY.** A building, structure, or site within the heritage overlay District that is not a designated Landmark, but which adds to the historic significance of the District because of its historic associations, historic architectural qualities, or archaeological values for which the District is significant. A contributing property must also retain its “integrity”, meaning it must retain enough of its historic physical features to convey its significance as part of the District.
- (46) **COUNCIL.** City Council of the City of Montgomery.
- (47) **CREMATORY.** A building where human bodies or human remains are burned to ashes.
- (48) **DENSITY.** A unit or measurement describing the number of dwelling units permitted per gross acre of land.
- (49) **DESIGN CONSISTENT PROPERTY.** A property located in the Heritage Overlay District that was built since the adoption of the Heritage District Design Guidelines and conforms to those guidelines.
- (50) **DISTRICT.** A section of the municipality for which the regulations governing the use of buildings, the size of yards, and the area of lots are uniform.
- (51) **DRIVE-THRU FACILITY.** An establishment which is designed to provide service to customers while in their motor vehicles, which may be in addition to similar services offered within the building. The term “drive-thru” shall also include “drive-up” and “drive-in”, including kiosks and ATM’s, but shall not include Car Wash, Gasoline Station, and Automobile Service Station.
- (52) **DRIVEWAY, PRIVATE RESIDENCE.** A paved drive extending from the street pavement to a private garage or garages on a residential lot which is used by residents of the lot for vehicular access to and from such street and for the temporary storage of registered and licensed motor vehicles.
- (53) **DWELLING.** Any building or portion thereof containing one or more dwelling units which is designed or used for residential purposes exclusively, except as expressly permitted in this Zoning Code.
- (54) **DWELLING, ATTACHED SINGLE-FAMILY.** Dwelling units that are structurally attached to one another, side by side, and erected as one building, each dwelling unit being separated from the adjoining unit or units by a party wall without openings extending from the basement floor to the roof and each

- such building being separated from any other building by space on all sides, and including such elements as separate ground floor entrances, services and attached garages.
- (55) DWELLING, CLUSTER SINGLE-FAMILY. A dwelling unit which is designed and used exclusively by one family and separated from all other dwelling units by open space from ground to sky, which is grouped with other dwelling units on a site and which may be located on its own subdivided lot without a front, side and/or rear yard in compliance with the standard zoning district regulations.
- (56) DWELLING, DETACHED SINGLE-FAMILY. A dwelling unit designed for or occupied exclusively by one family situated on a lot located on a public street with a front, side and rear yard and separated from all other dwelling units by open space from ground to sky.
- (57) DWELLING, MULTIPLE. A dwelling or portion thereof designed for or occupied by more than 2 families living independently of each other in more than 2 dwelling units where the units are separated by party walls with varying arrangements of entrances.
- (58) DWELLING, TWO-FAMILY. A dwelling designed for or occupied exclusively by two families living independently of each other in two dwelling units. The dwelling units may be either attached side by side or one above the other.
- (59) DWELLING UNIT. A group of rooms comprising living, dining, sleeping room or rooms, storage closets, as well as space and equipment for cooking, bathing and toilet facilities, all used by only one family.
- (60) EASEMENT. A grant by a property owner of the use, for a specific purpose or purposes, of a designated strip of land to the general public, a corporation, or other individuals.
- (61) ENVIRONMENTAL CONSERVATION AREA. A tract of land that has been awarded protected status in order to ensure that natural features or biota are safeguarded.
- (62) FAMILY. One (1) or more persons related by blood, adoption, marriage or legal guardianship plus no more than five unrelated individuals residing in a household as a functional family maintaining a common household as their permanent residence, as distinguished from a group occupying a Hotel (or Motel), as defined herein.
- (63) FAMILY DAY CARE HOME, TYPE B. A permanent residence of the provider in which child day-care or child day-care services are provided for one to six children at one time and in which no more than three children may be under two years of age at one time. In counting children for the purposes of this division, any children under six years of age who are related to the provider and who are on the premises of the type B home shall be counted. "Type B family day-care home" does not include a residence in which the needs of children are administered to, if all of the children whose needs are being administered to are siblings of the same immediate family and the residence is the home of the siblings, nor does it include any child day camp.

- (64) **FARM ANIMALS/LIVESTOCK.** Animals, including horses, pigs, goats, cows, sheep, geese, ostriches, roosters and other animals typically kept on farms. Farm Animals/Livestock does not include chickens/hens or rabbits.
- (65) **FENCE.** A vertical structure of a linear nature that is a barrier and is used as a boundary, as a means of protection, confinement, decoration, or as part of a buffer, which is made of traditional manufactured fencing material, such as but not limited to chain link, wood or stone material.
- (66) **FIRE PIT.** A below ground pit or a manufactured portable device intended to contain and control outdoor wood fires. Below ground fire pits shall be at least 4" in depth, no greater than 16 square feet or 4' in diameter and shall be surrounded on the outside, above ground, by a noncombustible material such as steel, brick or masonry. Manufactured portable fire pits shall be used in accordance with the manufacturer's specifications.
- (67) **FLOOR AREA, GROSS.** The total number of square feet of all floor space contained within the outside surface of the exterior walls of a building or from the center line of a common wall separating two buildings but not including space in cellars or basements, space in machinery penthouses or floor space used for accessory off-street parking. However, if the cellar or basement is used for business or commercial purposes, including storage in a habitable space, it shall be counted as floor area in computing off-street parking requirements.
- (68) **FLOOR AREA, DWELLING UNIT.** The sum of the gross horizontal area of a building devoted to residential use measured from the exterior faces of exterior walls or from the centerline of common walls separating two dwelling units. It shall not include unfinished basements, attached garages, attics, terraces, breezeways, open porches, and covered steps.
- (69) **FOUNDATION.** The support base of a building or structure built at or below grade which serves as the support of a wall, pier, column or other structural part of a building or structure.
- (70) **FOSTER HOME.** A residence certified by the State of Ohio to provide foster care for children.
- (71) **FRONTAGE.** That portion of the boundary of a lot which abuts a dedicated public street right-of-way or easement.
- (72) **FUNERAL HOME.** A building or part thereof used for human funeral services. Such building may contain space and facilities for: (a) embalming and the performance of other services used in preparation of the dead for burial; (b) the performance of autopsies and other surgical procedures; (c) the storage of caskets, funeral urns, and other related funeral supplies; and (d) the storage of funeral vehicles, but shall not include facilities for cremation. Where a funeral home is permitted, a funeral chapel shall also be permitted.
- (73) **GARAGE, PARKING** (see also **PARKING LOT**). A principal or accessory building or an enclosed space within the principal building in which motor vehicles owned by the general public are parked, including facilities operated as a business enterprise with a service charge or fee paid to the owner or operator of such facility, with no facilities for

mechanical service or repair of a commercial or public nature.

- (74) GARAGE, PRIVATE. An accessory building or portion of the main building designed or used principally for the storage of self-propelled passenger vehicles or trailers by the families resident upon the premises.
- (75) GASOLINE STATION (see also Automobile Service Station). An establishment where liquids used as motor fuels are stored and dispersed into the fuel tanks of motor vehicles by an attendant or by persons other than the station attendant and may include facilities available for the sale of other retail products.
- (76) GRADE. The elevation of the finished surface of the ground adjoining the building after final grading and normal settlement. The grade shall be determined by:
 - A. For buildings five feet or less from a street, the grade is the sidewalk elevation at the center of the building. If there is more than one street, an average sidewalk elevation is to be used. If there is no sidewalk, the Zoning Administrator shall establish the sidewalk grade.
 - B. For buildings more than five feet from any street, the grade is the average level of the finished surface of the ground within 50 feet of the exterior walls of the building.
- (77) GREEN SPACE: An area that is permanently set aside in a natural, undisturbed or re-vegetated condition and will not be developed with any impervious cover and/or structures.
- (78) HOME OCCUPATION. Any activity carried out for gain by a

resident conducted as an accessory use in the resident’s dwelling.

- (79) HOSPITAL. An institution providing health services primarily for in-patient medical or surgical care and emergency services for human patients and including related facilities such as laboratories, out-patient departments, training facilities, and staff offices that are an integral part of the facilities.
- (80) HOTEL (or MOTEL). A building in which lodging is provided and offered to the public for compensation on a daily rate and which is open to occupancy for periods of less than one week.
- (81) IMPERVIOUS COVER. Any surface in the urban/suburban landscape that cannot effectively absorb or infiltrate rainfall.
- (82) INDOOR RECREATION. An indoor facility for any number of uses such as game courts, exercise equipment, exercise and/or dance floor area, pools, locker rooms, spa, whirlpool or hot tub, and which may include an accessory retail shop for the sale of related equipment.
- (83) INSTITUTION. A building occupied by a non-profit corporation or a non-profit establishment for public use.
- (84) LANDSCAPE AREA. A portion of property where the surface of the ground has been purposely planted, cultivated and maintained to create an aesthetic effect, which includes, but is not limited to lawn grass, ornamental grass, bushes, trees, flowers or other vegetation and surface covering, such as gravel, rocks, shale, bark, mulch, soils and paving stones, but does not include weeds or noxious weeds.

- (85) **LANDMARK PROPERTY.** Any property which has special character, historical aesthetic, architectural, or archaeological value as part of the heritage, development, or cultural characteristics of the City of Montgomery, State of Ohio, or the United States, and which has been designated as an approved landmark pursuant to the provisions of this Zoning Code.
- (86) **LIGHT POLE.** A freestanding vertical support used for the purpose of elevating a light source.
- (87) **LOADING SPACE, OFF-STREET.** An area located on the same lot with a building or contiguous to a group of buildings, completely outside of any public right-of-way, for the temporary parking of vehicles entering the premises for picking up and making delivery of goods and materials.
- (88) **LOT.** A combination of complete lots of record, a combination of complete lots of record and portions of lots of record, or a combination of portions of lots of record. If more than one lot or a portion of a lot is used collectively to meet the minimum lots requirements, the lots must be contiguous and allow for either the construction with appropriate setbacks for any proposed building on the site, or the safe movement within the site of motor vehicle traffic between the lots over a surface drive of appropriate width and meeting all Code requirements for setbacks and two way travel. The term "zoning lot" is used synonymously with "lot" in this Zoning Code. A lot may consist of:
 - A. A single lot of record;
 - B. A portion of a lot of record;
 - C. A combination of complete lots of record, of complete lots of record and portions of lots of record, or of portions of lots of record. If more than one lot is used collectively to meet the minimum lot requirements, they must be contiguous and allow for the safe and convenient movement of automobile and customer movement between the lots and allow for adequate construction of a proposed building on site.
- (89) **LOT AREA.** The area contained within the lot lines exclusive of any portion of the right-of-way of any public street.
- (90) **LOT COVERAGE.** The ratio of total ground floor area of all buildings on a lot to the area of the lot expressed as a percentage.
- (91) **LOT, DEPTH OF.** The mean horizontal distance between the front and rear lot lines.
- (92) **LOT LINE.** The boundary line defining the limits of the lot. Lot line is synonymous with "property line". See Figure 2.
 - A. **LOT LINE, FRONT.** The lot line separating a lot from a street right-of-way.
 - B. **LOT LINE, REAR.** The lot line opposite and most distant from the front lot line; or in the case of triangular or irregularly shaped lots, a line ten (10) feet in length entirely within the lot, parallel to and at a maximum distance from the front lot line.
 - C. **LOT LINE, SIDE.** Any lot line other than a front or rear lot line.

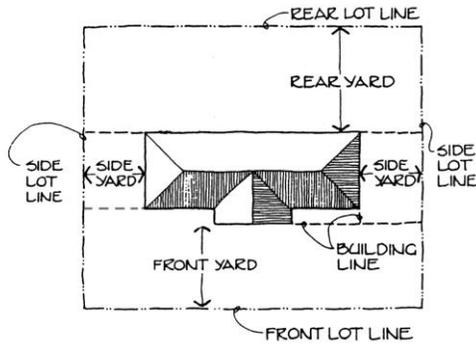


Figure 2. Lot Lines.

(93) **LOT OF RECORD.** A lot which is part of a subdivision, the map of which has been recorded in the office of the recorder of Hamilton County, Ohio, or a parcel of land, the deed to which was on record on or prior to the effective date of this Zoning Code. For the purposes of these regulations, any plan of a subdivision which has been approved by official action of the City Planning Commission on or before the effective date of this Zoning Code shall have the same status as if the subdivision plan was officially recorded in the office of the recorder of Hamilton County, Ohio.

(94) **LOT TYPES** (See Figure 3).

A. CORNER LOT. A lot abutting upon two or more streets at their intersection or upon two or more parts of the same street which, in either case, form an interior angle of less than 135 degrees.

B. DOUBLE FRONTAGE (OR THROUGH) LOT. A lot having frontage on two streets not at an intersection, as distinguished from a corner lot.

C. INTERIOR LOT. A lot abutting or with frontage on only one street.

D. PANHANDLE LOT. A lot utilizing a strip of land to provide access to or legal frontage on a public street, but where the majority of the area of the lot is situated immediately behind one or more lots (front lots) relative to the street right-of-way to which the panhandle lot has access. Such lots are commonly referred to as “rear lots” and “flag lots”. The intended use of the panhandle lot is for a residential dwelling, separate and apart from the front lot.

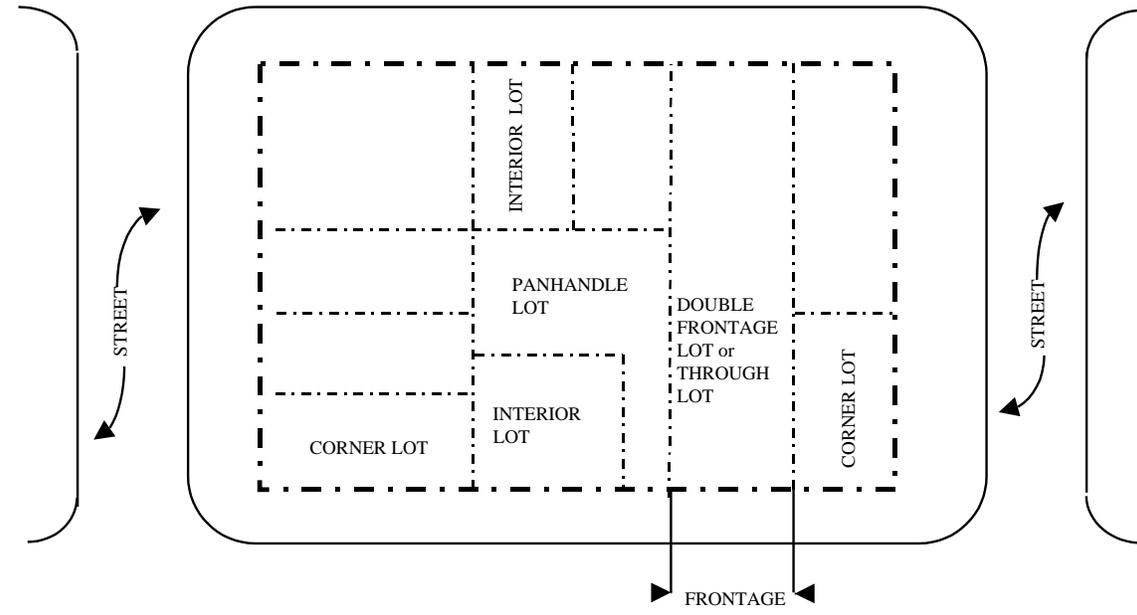


Figure 3. Lot Types.

- (95) LOT WIDTH. The horizontal distance between the side lot lines, measured along a straight line parallel to the front lot line at the required setback line.
- (96) MANSARD. A sloped roof or roof-like facade architecturally comparable to a building wall.
- (97) MAUSOLEUM. Any building designed or intended as a tomb for the interment of one or more human bodies or human cremains at or above grade level.
- (98) MEDICAL OFFICE. A building or portion thereof where human patients are admitted for examination and treatment by members of the medical, dental, or healing arts profession in group or individual practice, but who are not lodged overnight.
- (99) MINOR ALTERATION. Any incidental construction, addition or modification of a building or structure, as set forth in §150.1405.
- (100) MOTEL. See HOTEL.
- (101) NEW MOTOR VEHICLE. A motor vehicle, the legal title to which has never been transferred by a manufacturer, remanufacturer, distributor or dealer to an ultimate purchaser.
- (102) NONCONFORMING BUILDING. A building or other structure existing when this Zoning Code or any amendment thereto became effective which does not conform to the regulations governing structures of the district in which it is located.
- (103) NONCONFORMING LOT. A lot lawfully existing on the effective date of this Zoning Code or any amendment thereto, which on such effective date, does not conform to the lot area, width or frontage

- requirements of the district in which it is located.
- (104) **NONCONFORMING SITE CONDITION.** Any structure lawfully existing on the effective date of this Zoning Code or any amendment thereto, which, on such effective date, does not conform to the yard regulations, off-street parking and loading requirements, sign regulations, landscaping or screening requirements or other development standards of the district in which it is situated.
- (105) **NONCONFORMING USE.** Any structure or land lawfully occupied by a use on the effective date of this Zoning Code or any amendment thereto but which does not conform to the use regulations, off-street parking and loading requirements, or performance standards of the district in which it is located.
- (106) **NON-CONTRIBUTING PROPERTY.** A property within the Heritage Overlay District that does not add historic significance to the District because it was built prior to the adoption of the Heritage District Guidelines and is not consistent with the 19th century village theme, or a building which may have originally had architectural characteristics that represented the desired 19th century village theme, but has been altered over time and no longer contributes to the District theme.
- (107) **NURSING HOME.** An extended or intermediate care facility which provides skilled nursing and dietary care for persons who are ill or incapacitated or which provides service for the rehabilitation of the persons who are convalescing from illness or incapacitation, excluding homes or similar institutions or facilities for persons suffering from acute or chronic alcoholism or other drug dependency, or persons who are mentally incapacitated from causes other than simple senility or who regularly require constraint.
- (108) **OPEN SPACE.** An area that is permanently set aside for public use and may be used for passive or active recreation, stormwater management, landscaped areas and other similar uses.
- (109) **OUTDOOR DISPLAY.** The placing of merchandise in an outdoor area that is open to the general public when the merchandise on display is removed from its shipping packaging and is representative of merchandise that is available for purchase inside the building and/or is available for purchase by the general public directly from the display area.
- (110) **OUTDOOR BOILER, STOVE OR FURNACE.** An accessory structure, designed and intended, through the burning of wood or other solid fuel for the purpose of heating the principal structure or any other site, building, or structure on the premises.
- (111) **OUTDOOR FIREPLACE.** A permanent outdoor fireplace consisting of such elements such as a center firebox, chimney, screen and back wall. Materials include prefabricated metal, terracotta, brick, stucco and stacked stone. For the purposes of this ordinance, fire pits are not considered outdoor fireplaces. See also "FIRE PIT".
- (112) **OUTDOOR KITCHEN.** A permanent cooking area in an outdoor living space, usually designed for dining and entertaining. Outdoor kitchens may consist of a simple barbecue and counter or can

be more involved with a grill, cook stove or cook top, sink, refrigerator, lighting, cabinetry, fireplace, countertops, etc. For the purposes of this ordinance, portable grills are not considered outdoor kitchens.

- (113) PARAPET. The extension of a false front or wall above a roofline.
- (114) PARKING LOT (see also GARAGE, PARKING). A paved area made up of marked, unenclosed parking spaces where vehicles may be stored for the purposes of temporary, daily or overnight off-street parking.
- (115) PARKING SPACE, OFF-STREET. An open or enclosed area sufficient in size to store an automobile with room for opening doors on both sides and with access to a public street. Arrangement of the parking space shall be such as to allow satisfactory ingress and egress of an automobile, and shall be located totally outside of any public right-of-way.
- (116) PATIO. A paved outdoor space that adjoins a dwelling unit, includes an area also referred to as terrace.
- (117) PELLET STOVE. A device that burns compressed wood or biomass pellets to create a source of heat.
- (118) PERGOLA. An arbor or passageway of columns supporting a roof of trelliswork on which climbing plants are often trained to grow.
- (119) PLACE OF WORSHIP. A building, structure, or other indoor or outdoor facility used for public worship. The word "place of worship" includes the words "church," "chapel," "synagogue," "tabernacle," "mosque," and "temple" and their uses and activities that are customarily related.

- (120) PLAN, DEVELOPMENT. Drawing(s) and map(s) illustrating the proposed design, layout and other features for the development of one or more lots.
 - A. GENERAL DEVELOPMENT PLAN: Drawings and maps including all the elements set forth in § 150.1406.
 - B. FINAL DEVELOPMENT PLAN: Drawings and maps including all the elements set forth in § 150.1407.
- (121) POLE BUILDING. A permanent structure which has the primary support derived of wood or metal posts supported by individual submerged footers, rather than a single continuous foundation, and the framing of the structure is horizontal rather than vertical. Pole structures include freestanding unattached, unenclosed carports, with or without poured footers.
- (122) PROPERTY LINE. See "LOT LINE"
- (123) PUBLIC OFFICES. Governmentally owned and operated office facility established to provide administrative services for said governmental agency.
- (124) PUBLIC PARK. A public park is any publicly owned park, playground, swimming pool or other similar use within the jurisdiction and control of the City of Montgomery. Accessory structures such as restrooms, gazeboes, picnic tables, barbeque grills, basketball hoops and other similar uses shall be permitted in public parks.
- (125) PUBLIC SAFETY FACILITY. A governmentally owned and operated facility established to provide local

police or fire safety services to the surrounding area.

(126)PUBLIC SERVICE FACILITY. The erection, construction, alteration, operation, or maintenance of buildings, power plants, or substations, water treatment plants, or pumping stations, sewage disposal or pumping plants, and other similar public service structures by a public utility, a railroad, whether publicly or privately owned, or a municipal or other governmental agency, including the furnishing of electrical, gas, rail transport, communication, public water and sewage service.

(127)RAIN BARREL: A barrel used as a cistern to hold rainwater.

(128)RAIN GARDEN: A landscaping feature that is planted with native perennial plants and is used to manage stormwater runoff from impervious surfaces such as roofs, sidewalks, parking areas, etc.

(129)RECONSTRUCTION. The reproducing by new construction of the exact form and detail of a vanished structure, or a part thereof, as it appeared at a specific period of time, as detailed in the Secretary of the Interior’s guidelines.

(130)REHABILITATION. The restoration, rehabilitation or conservation of blighted premises by improvement, modernization or repair of a structure or structures thereon to bring it into conformance with applicable building and zoning provisions of the City. The restoration, rehabilitation or conservation of a deteriorating or blighted area by:

A. Formulating and carrying out a plan for a program of voluntary improvement, modernization or

repair or rehabilitation of privately owned structures;

B. The acquisition of real estate and the demolition or removal of buildings thereto where necessary to eliminate unhealthful, unsanitary or unsafe conditions, lessen density or eliminate blight or incompatible land uses detrimental to the public health and welfare;

C. Otherwise removing or preventing the spread of blight or deterioration;

D. Constructing or reconstructing necessary streets, playgrounds, utilities, parks and other public improvements;

E. Acquiring and clearing land for development of privately owned community facilities;

F. Disposing, for uses in accordance with the urban renewal plan, of property acquired;

G. Purchasing, repairing and rehabilitating for guidance purposes and reselling of buildings which are located in the urban renewal area and which, under the urban renewal plan, are to be repaired or rehabilitated for dwelling use or related facilities, provided that there shall not be acquired for such purposes, in any urban renewal area, buildings which contain or will contain more than 100 dwelling units, or five (5) percent of the total number of dwelling units in such area which under the urban renewal plan are to be repaired or rehabilitated, whichever is the lesser;

H. Rehabilitation shall not include the construction or improvement by the City of any building other than municipal

buildings, except as provided in subsection G hereof.

(131)RESIDENTIAL FACILITY. A publically or privately operated home as defined by Revised Code Chapter 5119

Residential Facilities shall further be divided into Category I and Category II which are defined below:

A. Category I means a Residential Facility providing accommodations and personal care services for one to five unrelated persons and licensed as a Residential Facility by the State of Ohio.

B. Category II means a Residential Facility providing accommodations and personal care services for six to sixteen persons and licensed as a Residential Facility by the State of Ohio.

(132)RESTAURANT, COUNTER SERVICE. A retail service establishment whose principal business is the sale of foods, frozen desserts, or beverages in ready-to-consume individual servings, for consumption either within the restaurant building or for carry-out, and where customers are not served their food, frozen desserts, or beverages by a restaurant employee at the same table or counter where the items are consumed.

(133)RESTAURANT, TABLE SERVICE. A retail service establishment wherein the entire business activity, or substantially all of the business activity, consists of the sale of food and service to patrons seated at tables for consumption within the building.

(134)RETAIL ESTABLISHMENT. An establishment engaged in the selling of goods or merchandise to the

general public for personal or household consumption, which is open to the general public during regular business hours and which has display areas that are designed and laid out to attract the general public. In determining a use to be a retail use, the Planning Commission may consider the proportion of display area vs. storage area and the proportion of the building facade devoted to display windows.

(135)RETIREMENT VILLAGE. A residential facility to provide for the personal, social and/or medical needs of individuals who are elderly. The facility may include one or more of the following types of residential facilities: independent living with congregate dining facilities, congregate living, or assisted living, any of which may include nursing care as an accessory use.

(136)RIGHT-OF-WAY. A strip of land taken, dedicated, or otherwise recorded as an irrevocable right-of-passage for use as a public way. In addition to the roadway, it normally incorporates the curbs, lawn strips, sidewalks, water and sewer lines, lighting, and drainage facilities, and may include special features (required by the topography or treatment) such as grade separation, landscaped areas, viaducts, and bridges.

(137)RIGHT-OF-WAY LINE. The line between a lot, tract, or parcel of land and a contiguous public street, and demarcating the public right-of-way. "Right-of-way line" also means "street line."

(138)ROOFLINE. The top edge of a roof or building parapet, whichever is higher, excluding any cupolas, pylons, chimneys or minor projections. See Figure 4.

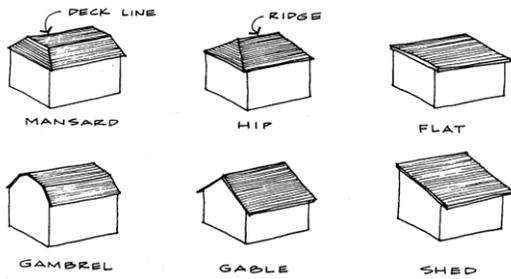


Figure 4. Roof Types.

- (139)SATELLITE DISH. A device capable of receiving communications from a transmitter or a transmitter relay located in planetary orbit. This definition is meant to include, but not be limited to, what are commonly referred to as satellite earth stations, and satellite microwave antennas.
- (140)SCHOOL FACILITIES: Publicly or privately owned facilities providing full-time or part time instruction and training at the elementary, junior high and high school levels in accordance with the requirements of Chapter 3313 of the Ohio Revised Code; or publicly or privately owned facilities providing kindergarten or nursery school training and care which are operated by a board of education or an established religious organization.
- (141)SCHOOL, COMMERCIAL AND TRADE: A higher education facility primarily teaching useable skills that prepare students for jobs in a trade.
- (142)SCREEN: A method of reducing the impact of noise and unsightly visual intrusions with more harmonious elements, such as plants, berms, fences, walls, or a combination thereof, in compliance with this Zoning Code.
- (143)SETBACK: The required minimum horizontal distance between a lot line

and a structure as established by this Zoning Code.

- (144)SETBACK LINE (See also “YARD, REQUIRED”): A line established by this Zoning Code generally parallel with and measured from the lot line, defining the limits of the required yard in which no building, or structure may be located above ground, except as may be provided in this Zoning Code. The term "setback line" shall also include "required setback line."
- (145)SIDEWALK. That portion of a right-of-way between the curb line and the adjacent property lines, intended for the use of pedestrians.
- (146)SIGN. Any object, device, display, graphic, architectural feature, structure, or part thereof, which is situated indoors or outdoors or is attached to, painted on, or displayed from any premises in order to direct attention to or announce an object, person, institution, organization, business, product, service, event, or location by any means, including words, letters, figures, designs, symbols, fixtures, colors, illumination, or projected images.
- (147)STABLE, PRIVATE. An accessory building to a residential, principal use that shelters animals for the exclusive use of the occupants of the premises.
- (148)STORMWATER BEST MANAGEMENT PRACTICE (“STORMWATER BMP”). A structural or non-structural technique designed to temporarily store or treat stormwater runoff in order to mitigate flooding, reduce pollution, and provide other amenities. Examples include rain gardens, bio-retention areas, filter strips, swales,

and other progressive environmental methods.

(149)STORY. That portion of a building, other than a cellar as defined herein, included between the surface of any floor and the surface of the floor next above it, or if there is no floor above it, then the space between the floor and the ceiling next above it.

(150)STORY, HALF. A space under a sloping roof which has the line of intersection of roof decking and wall face not more than three feet above the top floor level and in which space not more than two-thirds of the floor area is finished off for use, or a basement.

(151)STREET. All property dedicated for public street, highway, freeway, or roadway purposes or subject to public easements. Included is the land between the street right-of-way lines, whether improved or unimproved, and may comprise pavement, gutters, sidewalks, division strips or other areas within the right-of-way lines. Streets are further classified as follows:

A. ALLEY. A street used primarily for service access to the rear or side of properties abutting also on other streets.

B. ARTERIAL STREET. A street primarily for through traffic usually on a continuous route. This facility provides for through traffic movement between areas, across the country, and to and from expressways.

C. COLLECTOR STREET. A street that primarily carries traffic from local to arterial streets, including the principal entrance and circulation routes within residential subdivisions.

D. LOCAL STREET. A street primarily for providing access to residential or other abutting property.

E. PRIVATE STREET. A local private way that provides vehicular access to more than one residential structure that is not and will not be dedicated to public use, but which is owned and maintained by an Association.

F. PUBLIC STREET. An existing State, County, or City street or public road shown on the recorded subdivision plat.

(152)STREAM BUFFER: A vegetated area bordering a stream which exists or is established to protect a stream system.

(153)STREET LINE. See RIGHT-OF-WAY LINE.

(154)STREETSCAPE. The planned system of pedestrian walkways and improvements on major and secondary arteries in historic downtown Montgomery as specified by Ordinance.

(155)STRUCTURAL ALTERATION. Any change in the supporting members of the building, such as bearing walls or partitions, columns, beams or girders, or any increase in the area or cubical content of the building.

(156)STRUCTURE. Anything constructed or erected, having permanent location on or in the ground or attached to something having a permanent location on or in the ground, including, but not limited to, buildings, barriers, bridges, decks, fences, gazebos, outdoor seating facilities, platforms, poles, advertising signs, back stops for athletic fields or courts, pergolas, pools, patios, sheds and walls.

(157)STUDIOS FOR INSTRUCTION. A building, or portion thereof, that is used or intended to be used for nonacademic group instructional purposes for a fee, which include but

are not limited to arts, crafts, dance, and computer instruction.

(158)SWIMMING POOL. An outdoor structure, in-ground or above-ground, used for recreational swimming, which is designed to contain at least two (2) feet of water at any point and has a diameter greater than six (6) feet.

(159)TEMPORARY STORAGE CONTAINER. Any container, storage unit, or other portable structure designed and primarily used for the temporary storage of personal property and which is located outside an enclosed building. Accessory buildings complying with all building and zoning requirements shall not be considered a Temporary Storage Container.

(160)TRANSFER. "Transfer" means any sale, lease, assignment, or other conveyance by an applicant, either voluntary or by operation of law, of any permit or approval granted to such applicant under this zoning code, or occupancy or management by any person other than the applicant or its employees of any property which is the subject of such a permit or approval, without the prior written consent of the Planning Commission, Board of Zoning Appeals, or City Council, as applicable. If the applicant is a corporation, then any merger, consolidation, dissolution or liquidation, or any change (whether in one or a series of transactions) in ownership or power to vote o fifty (50%) per cent or more of its outstanding voting stock shall constitute a transfer requiring prior written consent. If the applicant is a limited liability company, partnership, joint venture or other entity, then any liquidation or

dissolution, or any transfer of ownership of interests totaling fifty (50%) per cent or more of the total interests in such entity (whether in one or a series of transactions) shall constitute a transfer requiring prior written consent. These provisions shall not be applicable so long as the stock of the applicant is traded at a recognized regional stock exchange.

(161)USE: The purpose for which land, a building or structure is arranged, designed, intended, maintained or occupied; or any occupation, activity or operation carried on in a building or structure or on land.

A. USE, ACCESSORY: A use of land incidental to the principal use of a lot or building located on the same lot.

B. USE, CONDITIONAL: A use permitted in a district, other than a principal use permitted by right, which is allowed only under certain conditions as set forth in Chapter 151.20 and which requires a conditional use permit and approval in accordance with the standards and procedures set forth in Chapter 150.16.

C. USE, PERMITTED: A use that is authorized by this Zoning Code as either a use permitted by right, a conditional use or an accessory use.

D. USE PERMITTED BY RIGHT: A permitted use that is approved administratively when it complies with the standards and requirements set forth in the Zoning Code, the approval of which does not require a public hearing.

E. USE, PRINCIPAL: The primary or main use or activity of a building or lot.

(162)VARIANCE. A grant of relief from the strict requirements of the Zoning Code, provided, however, that such grant does not have the effect of nullifying the intent and purpose of the Zoning Code.

(163)VARIANCE, DIMENSIONAL. A grant of relief from the dimensional or area requirements (i.e. height, setbacks, yard) of the Zoning Code, when it is determined that the strict enforcement of the Code will result in practical difficulty to the applicant, pursuant to § 150.2010.

(164)VEHICLE MAINTENANCE & REPAIR FACILITY. The repair, rebuilding or reconstruction of motor vehicles or parts thereof including collision service, painting, washing and steam cleaning of vehicles. This also includes general maintenance facilities such as tire and/ or exhaust system replacement, and oil and lube facilities.

(165) WALL. A vertical structure of a linear nature that is a barrier and is used as a boundary, as a means of protection or confinement or as a buffer, which is made of manufactured material, such as but not limited to wood or stone material.

(166) YARD (See Figure 5). An open space on the same lot with a principal building extending between the lot line and the extreme front, rear or side wall of the main building or structure.

A. YARD, FRONT. A yard extending across the full width of the lot between the front of the principal building and the front lot line. Where a lot is located at the intersection of two or more streets, there shall be a front yard on each street side of a corner lot. Where a

lot has frontage on two streets not at an intersection (double frontage or through lots), there shall be a front yard on both streets.

B. YARD, REAR. A yard extending across the full width of the lot between the rear of the principal building and the rear lot line. On corner lots, the rear yard shall be considered as parallel to the street upon which the lot has its least dimension.

C. YARD, REQUIRED (see also SETBACK LINE). The open space between a lot line and a setback line for a building, parking area or use that is the minimum area required to comply with the regulations of the district in which the lot is located, and within which no structure shall be located except as expressly permitted in this Zoning Code.

D. YARD, SIDE. A yard between the principal building and the side lot line and extending from the front yard or front lot line to the rear yard or rear lot line.

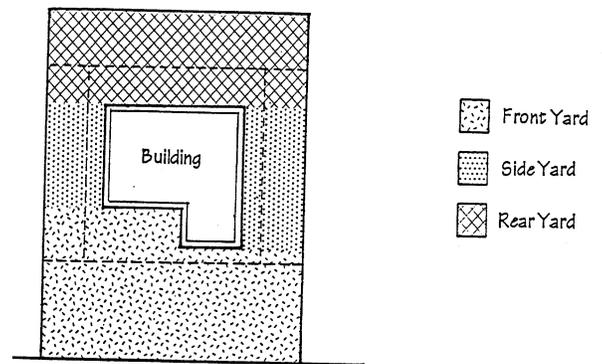


Figure 5. Yards.

(167)YARD STRUCTURE. A subordinate structure detached from, but located on the same lot as the principal building, the use of which is incidental to that of the principal

building or use and having permanent location on or in the ground. Yard structures include, but are not limited to gazebos, play equipment, trellises, arbors, pergolas, basketball hoops, fire pits, dog houses, skateboard ramps, fountains, sculptures, ponds, and animal enclosures.

**CHAPTER 150.10
Administrative Powers and Duties**

150.1001 Purpose.	150.1005 Landmarks Commission.
150.1002 Zoning Administrator.	150.1006 Board of Zoning Appeals.
150.1003 Landmarks Consultant.	150.1007 City Council.
150.1004 Planning Commission.	

§ 150.1001 PURPOSE.

This Chapter sets forth the powers and duties of the Zoning Administrator, Landmarks Consultant, Planning Commission, Landmarks Commission, Board of Zoning Appeals, and City Council with respect to the administration of the provisions of this Zoning Code.

§ 150.1002 ZONING ADMINISTRATOR.

(a) Establishment. The Zoning Administrator shall be appointed by the City Manager and act as the administrative officer for the purpose of effecting the proper administration of the Zoning Code.

(b) Powers and Duties. The Zoning Administrator shall have the following powers and duties:

- (1) Enforce the provisions of this Code and interpret the meaning and application of its provisions.
- (2) Issue zoning certificates as provided by this Code and keep a record of the same with a notation of any special conditions involved.
- (3) Review and act on applications for exterior changes to buildings in the Heritage Overlay District, according to the procedures set forth in this Zoning Code.
- (4) Accept, review for completeness, and respond to questions regarding applications upon which the Zoning Administrator is authorized by the provisions of this Code to review including amendments to the Code,

development plan review, conditional uses, variances, and appeals.

- (5) Coordinate the City’s administrative review of applications required by this Zoning Code including, rezoning applications, development plan review and conditional use applications.
- (6) Maintain any records required by this Code including inspection documents, and records of all variances, amendments, and conditional uses.
- (7) Make such records available for the use of Council, Planning Commission, Landmarks Commission, Board of Zoning Appeals, and the public.
- (8) Conduct or cause the inspection of buildings and uses of land to determine compliance with this Code.
- (9) Determine the existence of any violations of this Zoning Code and cause such notifications, revocation notices, stop orders, or citations to be issued, or initiate such other administrative or legal action as needed, to address such violations.
- (10) Maintain in current status the “Official Zone Map of the City of Montgomery”.

§ 150.1003 LANDMARKS CONSULTANT.

(a) Establishment. The office of Landmarks Consultant is hereby created. The City shall appoint a primary consultant to aid in the review of development proposals. The primary consultant shall have training or experience in aesthetics and design within the fields of architecture, architectural history, historic preservation, archaeology, planning or related profession. One additional consultant may be designated as an alternate to the primary consultant and shall perform the duties of the primary consultant as necessary and when requested.

(b) Powers and Duties. For the purposes of this Zoning Code, the Landmarks Consultant shall provide guidance and advice on design, amenities, quality, relationships to natural features and all other aspects which relate to the appearance of an entire project, its parts or its surroundings as specified below:

- (1) Assist and advise the Landmarks Commission in its review of projects proposed in the Heritage Overlay District.
- (2) Assist and advise the Landmarks Commission in its review of nominations for the National Register or designation of a listed landmark property.

(c) Conflicts of Interest. In the event the primary consultant has a conflict of interest in a proposed project, the alternate consultant shall be designated by the Zoning Administrator to review the proposed project.

§ 150.1004 PLANNING COMMISSION.

(a) Establishment. The Planning Commission shall consist of seven members, as established by the Charter

and appointed by Council to serve a four-year term.

(b) Powers and Duties. In general, without limiting the specific powers and duties set forth in the Charter or this Zoning Code, the Planning Commission shall have the following powers and duties:

- (1) Make and adopt plans and maps of the City of Montgomery and periodically amend, extend, delete or add to the plans and maps.
- (2) Review and act on all development plans required by this Zoning Code.
- (3) Review and act on all applications for conditional use permits, proposed uses which are substantially similar to uses permitted herein, or proposed uses not otherwise permitted herein according to the procedures, standards and criteria stated in this Zoning Code.
- (4) Review all proposed amendments to this Zoning Code and make recommendations to City Council as provided in this Zoning Code.
- (5) Investigate and propose on its own initiative such amendments to the Zoning Code as it may deem consistent with the purposes of this Zoning Code and which further the public health, safety, and general welfare of the City of Montgomery.
- (6) Review and act on plans and plats for the subdividing of land.
- (7) Adopt rules and bylaws for the holding of regular and special meetings, for the transaction and disposition of its business and the exercise of its powers.

(b) Meetings. The Planning Commission shall schedule meetings twice per month. The Chairman may

cancel a meeting if a properly prepared application has not been received in a timely manner. At its first meeting each February, it shall select its chairman and vice-chairman. Meetings of the Commission shall be open to the public.

§ 150.1005 LANDMARKS COMMISSION.

(a) Establishment. The Montgomery Landmarks Commission is created by Charter. This Commission shall be comprised of seven members, who shall be appointed by Council to serve three-year terms. The City Manager shall provide staff to the Commission, who will serve as liaisons between the Landmarks Commission and the Planning Commission. Members shall be residents of or owners of property in the City, with the exception of the professionals specified below, who may also be business owners or professionals working in the City. Members should have, to the highest extent possible, a recognized knowledge of and a known interest in historic preservation together with a determination to work for the overall improvement of the quality of the City's physical environment. It is recommended that one or more members of the Commission be preservation-related professional members from the fields of architecture, architectural history, history, archaeology, planning or a related discipline.

(b) Powers and Duties. The duties of the Landmarks Commission are as follows:

- (1) To improve the quality of life in the City by striving to further and achieve the spirit and purpose of this Zoning Code;
- (2) To act in an advisory role to other officials and departments of local government regarding the protection of local cultural properties;

- (3) To review and make recommendations to the Planning Commission regarding development plans for proposed development within the Heritage Overlay District and the Old Montgomery Gateway District. The recommendation by the Landmarks Commission shall be weighed with other evidence presented to the Planning Commission during the development plan review process in determining whether or not the development plan conforms with the requirements for the district, the underlying district, and the guidelines for development within the City.
- (4) To act as a liaison on behalf of the local government to individuals and organizations concerned with historic, architectural and archaeological preservation;
- (5) To recommend to the City Planning Commission and City Council legislation that would serve to beautify, preserve, restore and develop the City or that would result in additions or revisions to this Zoning Code;
- (6) To conduct or cause to be conducted a continuing survey of cultural resources in the community including all buildings, structures sites, objects, and areas of architectural, archaeological, historic or aesthetic interest according to survey guidelines established by the Ohio Historic Preservation Office;
- (7) Based upon information available or presented to it, to make recommendations to the City Council for the designation of properties as landmarks;
- (8) To review proposed National Register nominations for properties within its jurisdiction in accordance

- with Ohio Certified Local Government guidelines;
- (9) To keep a current register of all listed properties and provide a current copy thereof. The register shall be located at the Montgomery City Building at 10101 Montgomery Road, Montgomery, Ohio, 45242 and shall be accessible to the public. All inventory material shall be recorded on Ohio Historic Inventory, Ohio Archaeological Inventory forms, and/or forms compatible with the Ohio Historical Preservation Office's computerized inventory and therefore compatible with the state-wide comprehensive preservation planning process. They shall be made available to the Ohio Historical Preservation Office. Listed properties and corresponding data shall be updated periodically to reflect changes, alterations and demolitions;
- (10) To review and act upon all applications for certificates of approval as required by Chapter 150.12 and to establish criteria, rules and regulations not otherwise included in Chapter 150.12 for evaluating applications for certificates of approval submitted to it;
- (11) To consider whether a certificate of approval may be issued without substantial detriment to the public welfare and without substantial derogation of the interest and purposes stated herein.
- (12) To prepare an annual report documenting the Commission's activities, cases, decisions, special projects and membership that will be available for public inspection;
- (13) To conduct or encourage members to attend educational sessions at

- least once a year pertaining to the function of the Commission or relating to specific historic or archaeological preservation issues; and
- (14) To work for the continuing education of the residents of the City with respect to the architectural, historic and archaeological heritage of the City and historic and archaeological preservation issues and concerns;
- (c) Meetings. The Landmarks Commission shall meet not less than once per month at regularly scheduled meetings. At the first meeting of February of each calendar year, the Commission shall organize and select a chairperson and vice-chair.

§ 150.1006 BOARD OF ZONING APPEALS.

- (a) Establishment. The Board of Zoning Appeals shall consist of seven members as established by the Charter, and appointed by Council as set forth within the Code of Ordinances. The members shall be appointed to serve for four-year terms.
- (b) Powers and Duties. In general, without limiting the specific powers and duties set forth in the Charter or this Zoning Code, the Board of Zoning Appeals shall have the following powers and duties:
 - (1) To hear and decide appeals where it is alleged there is an error in any order, requirement, decision, interpretation, or determination made by an administrative official in the administration or enforcement of this Zoning Code, unless otherwise provided in this Zoning Code.

- (2) To authorize such variances from the terms of this Zoning Code, as provided herein.
 - (3) To resolve any disputes with respect to the precise location of a zoning district boundary, using, where applicable, the standards and criteria of Section 151.01.
 - (4) To permit the substitution of one nonconforming use with another nonconforming use in conformance with the provisions of this Zoning Code.
 - (5) To authorize the restoration or repair of a nonconforming use or nonconforming building that is destroyed by any means to the extent of more than 60% of its assessed taxable value in conformance with the provisions of this Zoning Code.
 - (6) To adopt rules or bylaws for the holding of regular and special meetings, for the transaction and disposition of its business and the exercise of its powers.
- (c) Meetings. At the first meeting of February of each calendar year, the Board shall organize and select a chairperson and a vice-chairperson. The Board shall keep a record of its proceedings. The minutes shall show the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall contain a record of its examinations and other official actions, a copy of which shall be filed as soon as practical after a meeting of the Board in the office of the zoning administrator and shall be a public record. The Board of Zoning Appeals shall meet not less than once per month at regularly scheduled meetings. All meetings of the Board shall be open to the public.

§ 150.1007 CITY COUNCIL.

City Council is established by Charter. In general, without limiting the specific powers and duties set forth in the Charter or this Zoning Code, Council shall have the following powers and duties:

- (a) To initiate or act upon proposed amendments to this Zoning Code, according to the procedures set forth herein.
- (b) To review and act upon the recommendation from the Planning Commission for approval of a conditional use.
- (c) To review and act upon the recommendation from the Planning Commission regarding the determination of a similar use.
- (d) To review and act upon the recommendation from the Planning Commission, for approval of a proposed use that is not listed as a permitted or conditional use in the district it is proposed.
- (e) To review and act upon the recommendation from the Landmarks Commission for the designation of a landmark.
- (f) To review and act on Subdivision Improvement Plans pursuant to the requirements set forth in Chapter 156.02.
- (g) To review and act upon appeals as provided herein.
- (h) To review and act upon the recommendation of the Planning Commission to approve site plans with equivalencies.

CHAPTER 150.12
Procedures for Zoning Certificates, Certificates of Approval, and Certificates of Occupancy

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| <p>150.1201 Purpose.</p> <p>150.1202 Zoning certificate required.</p> <p>150.1203 Zoning certificate for a single-family dwelling, two-family dwelling or use accessory thereto.</p> <p>150.1204 Staking required.</p> <p>150.1205 Expiration of zoning certificate.</p> | <p>150.1206 Certificate of approval required for listed landmarks.</p> <p>150.1207 Exterior changes to buildings in the heritage overlay district reviewed by zoning administrator.</p> <p>150.1208 Certificate of occupancy.</p> |
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§ 150.1201 PURPOSE.

The administrative provisions of this Chapter establish the procedures for reviewing and acting upon applications for zoning certificates, including certificates of approval and certificates of occupancy, in order to accomplish the purposes for which this Zoning Code is adopted.

§ 150.1202 ZONING CERTIFICATE REQUIRED.

No building or structure shall be erected, constructed, enlarged, structurally altered, or moved in whole or in part, no use shall be established or changed and no space shall be reoccupied in the City of Montgomery until a zoning certificate is issued by the Zoning Administrator. Applications for interior alterations only that do not require a change in use of an existing building or structure shall be exempt from the zoning certificate requirements set forth herein. A zoning certificate shall be issued only when the plans for the proposed use, building or structure comply with the regulations set forth in this Zoning Code.

(a) A zoning certificate shall be issued for the following when the required steps are accomplished:

- (1) Single-Family Dwellings, Two-Family Dwellings and Uses

Accessory Thereto; when an application for a single-family dwelling, two-family dwelling or use accessory thereto has been reviewed and approved by the Zoning Administrator according to the procedures of this Chapter.

- (2) All Other Permitted Uses; when an application for development plan approval for any other permitted use not described in subsection (a) above has been reviewed and approved by the Planning Commission and/or Council according to the development plan procedures set forth in Chapter 150.14.

- (3) Conditional Uses; when an application for a conditional use has been reviewed and approved by the Planning Commission and/or Council according to the procedures set forth in Chapter 150.16.

- (4) Variance Requests; when an application for which a variance from a requirement of this Zoning Code is requested has been reviewed and approved by the Board of Zoning Appeals, according to the procedures set forth in Chapter 150.20.

- (5) Signs; when an application for a sign permit has been reviewed and

approved by the Planning Commission and/or Zoning Administrator according to the procedures set forth in Chapter 151.30.

(6) Similar Uses; when an application for any building or use not specifically listed in this Code as a permitted or conditional use has been reviewed and approved by the Planning Commission and Council according to the procedures set forth in Chapter 150.16.

(b) Applications for zoning certificates are available in the office of the Zoning Administrator. A completed application form accompanied by all other applicable submission requirements shall be submitted to the Zoning Administrator.

§ 150.1203 ZONING CERTIFICATES FOR A SINGLE-FAMILY DWELLING, TWO-FAMILY DWELLING OR USE ACCESSORY THERETO.

(a) Submission of Applications. An application for the construction or alteration of a single-family dwelling, two-family dwelling or use accessory thereto shall include the items set forth below, unless specific items are determined by the Zoning Administrator to be inapplicable or unnecessary and are waived in writing by the Zoning Administrator. Such applications may be submitted simultaneously with an application for a building permit.

- (1) The completed application form, along with the application fee as established by City Council.
- (2) One copy of a general vicinity map.
- (3) Three copies of a plot plan. The plot plan shall be legibly drawn to scale, shall be based on an accurate survey, prepared by a registered surveyor, and shall include the following.

A. Property boundary lines showing the actual shape, exact dimensions, and area of the lot to be built upon or utilized.

B. Right-of-way of adjacent streets.

C. Location, dimensions, height, and bulk of all existing and proposed buildings and structures to be erected or altered.

D. The existing and intended use(s) of all land, buildings and structures.

E. Dimensions of yards, driveways and parking areas.

F. The number of dwelling units the building is designed to accommodate.

G. Location and use of buildings and adjoining lots within 10 feet of all property lines.

H. Grading plan showing pre-existing grade, finish grade and erosion control measures to be maintained during construction.

I. A tree preservation plan identifying trees to be removed, trees to be maintained, and methods used to protect trees during construction.

J. Any other pertinent data as may be required by the Zoning Administrator to determine and provide for the enforcement of this Zoning Code.

(b) Review for Completeness. The Zoning Administrator shall review each submitted application to determine compliance with the submission requirements. If the application is deemed insufficient, the Zoning Administrator shall notify the applicant of necessary changes or additional information needed. When the application is deemed complete and the application fee has been paid, the Zoning Administrator shall officially accept the

application for consideration of the action(s) requested on the date such determination is made.

(c) Action by Zoning Administrator. The Zoning Administrator shall evaluate the application and approve or deny it within 30 days from the date it was determined to be complete. In evaluating the application, the Zoning Administrator may consult with any department, agency, public body, official, company, or individual necessary to determine whether the application complies with the regulations of this Zoning Code.

- (1) Approval. The Zoning Administrator shall issue a zoning certificate upon finding that the building, structure or use, as proposed, complies with the provisions of this Zoning Code.
- (2) Denial. If it is determined by the Zoning Administrator that the proposed building, structure or use would violate one or more provisions of this Zoning Code, then the zoning certificate shall not be issued. The Zoning Administrator shall state on the application the reason for the denial, including the regulation(s) that would be violated by the proposed use.
- (3) Report of Zoning Administrator One copy of the plot plan signed, dated and noted as approved or disapproved shall be returned to the applicant, the original application shall be retained as a public record. If the Zoning Administrator does not act on the application within 30 days, it may be deemed denied.

§ 150.1204 STAKING REQUIRED.

The lot and location thereon of the intended buildings or structures shall be staked out on the ground before construction is started, when required by the Zoning Administrator.

§ 150.1205 EXPIRATION OF ZONING CERTIFICATE.

A zoning certificate shall become void at the expiration of 12 months after the date of issuance unless, prior thereto, construction is begun, or an extension has been granted by the Zoning Administrator. If no construction is begun within one year of the date of the certificate and an extension has not been granted, a new application and certificate shall be required. Construction is deemed to have begun when all necessary excavation and piers or footings of the structure included in the application have been completed. The date of expiration shall be noted on the zoning certificate.

§ 150.1206 CERTIFICATE OF APPROVAL REQUIRED FOR LISTED LANDMARKS.

- (a) A certificate of approval shall be obtained from the Landmarks Commission prior to commencing any of the following:
 - (1) Demolition or moving of a listed landmark property in the City, in compliance with the procedures set forth in this Section and § 150.1804; or
 - (2) Any change to a listed landmark, including reconstruction or alteration or partial demolition of the structure or exterior architectural feature thereto and including any exterior change to the property such as accessory buildings, fences, walks, paint and similar features. Such proposals may also be subject to development plan review, as required in § 150.1402.
- (b) The Chief Building Official or Fire Chief may order repairs, demolition, or other corrective action to a listed landmark without a certificate of approval when, in his determination, there is an imminent threat to public health or safety.

(c) The application for a certificate of approval shall be filed with the City with such plans, specifications, and other material as the Landmarks Commission may from time to time prescribe.

(d) The application shall be transmitted to the Landmarks Consultant within ten days for a recommendation. Within 60 days, the Landmarks Commission shall review the application, plans, specifications, and the advice of the Landmarks Consultant and determine whether a certificate of approval shall be issued or denied. If after 60 days Landmarks Commission fails to act on the application from the date the application was determined to be administratively complete, or an extended period as may be agreed upon, then the applicant may consider the application denied and such denial may be appealed to Planning Commission by filing a written notice of appeal with the secretary of the Planning Commission within 30 days of the expiration of the 60 day date.

(e) The Landmarks Commission shall determine whether the proposed construction, reconstruction, or alteration, is appropriate, or whether it has an adverse effect upon the property. In making such determination, the Landmarks Commission shall consider the advice of the Landmarks Consultant, refer to the Secretary of the Interior's Standards for Rehabilitation, to the design guidelines adopted by City Council, or to other information available. In the case of archaeological properties, the Landmarks Commission shall refer to the Advisory Council on Historic Preservation's Treatment of Archaeological Properties: A Handbook.

(f) The Landmarks Commission may require any person applying for a certificate of approval to file with the Landmarks Commission, prior to any hearing or determination, information concerning the applicant's intentions. The Landmarks Commission may also ask any interested

person to file with the Landmarks Commission, prior to any hearing or determination, information concerning any adverse or supporting interests.

(g) If the proposed construction, reconstruction, alteration, or partial demolition is determined to have no adverse effect on the property, then the certificate of approval shall be issued. The certificate may also contain conditions imposed by the Landmarks Commission to insure that the construction, reconstruction or alteration will be compatible with the historic nature of the property.

(h) If the Landmarks Commission determines that the proposed construction, reconstruction, alteration, or partial demolition will have an adverse effect on the property, then the Landmarks Commission shall deny issuance of the certificate of approval.

(i) In the event that the Landmarks Commission determines that a certificate of approval shall not be issued, it shall forthwith state in its records reasons for such determination, and may include recommendations relative to the proposed construction, reconstruction, alteration, or partial demolition of any building, structure, site, or object. The Landmarks Commission shall notify the applicant in writing of such determination and transmit to him/her the reasons for denial and recommendations, if any, of the Landmarks Commission.

(j) When the proposed construction or alteration is also subject to development plan review, the Landmarks Commission may act on the application for a certificate of approval prior to Planning Commission's approval of the development plan.

(k) The applicant may appeal the denial of the certificate of approval to the Planning Commission only when the decision of the Landmarks Commission is contrary to the recommendation of the Landmarks

Consultant. In such instance, the Planning Commission may reverse or modify the decision of the Landmarks Commission upon review of the recommendation of the Landmarks Consultant and the determination of the Landmarks Commission.

(l) Applicants may appeal the decision of the Planning Commission to the Court of Common Pleas as provided under Ohio Law.

(m) Applications for exterior changes to property in the heritage overlay district that is neither a listed landmark property nor subject to development plan review shall comply with the procedures set forth in Section 150.1207.

§ 150.1207 EXTERIOR CHANGES TO BUILDINGS IN THE HERITAGE OVERLAY DISTRICT REVIEWED BY ZONING ADMINISTRATOR.

(a) A certificate of approval shall be obtained from the Zoning Administrator prior to commencing any exterior change to a building in the Heritage Overlay District that is neither a listed landmark property nor subject to development plan review. For the purposes of this Section, an exterior change shall include:

- (1) Ordinary maintenance to correct any deterioration or damage to a structure;
- (2) Any changes in the material, color, general design or arrangement of the exterior of the building, including but not limited to roof coverings, windows, doors, siding materials, foundations, awnings, porches, staircases, chimneys, cornices, columns, dormers, signs, and railings that do not alter its original footprint or ground floor area; and
- (3) Any proposed project that is determined to be a minor alteration,

pursuant to § 150.1405, exclusive of land within the OM District.

(b) The application for a certificate of approval shall be filed with the Zoning Administrator with such plans and specifications, including materials and installation methods, or other information that the Zoning Administrator may require.

(c) The Zoning Administrator shall review the proposal to determine if it is in compliance with the design review criteria set forth in Chapter 151.14 and the purposes and objectives of this Zoning Code. In making such determination, the Zoning Administrator may refer the application to the Landmark's Commission for their review and recommendation. Within 30 days, the Zoning Administrator shall review the application, plans, specifications, and the recommendation of the Landmarks Commission, if requested, and determine whether a certificate of approval shall be issued or denied.

(d) If the Zoning Administrator finds that the proposed exterior change complies with the provisions of this Zoning Code, then the Administrator shall approve the application and issue a certificate of approval.

(e) If the Zoning Administrator denies the proposal, he or she shall notify the applicant and transmit his or her reasons for the denial. The applicant may appeal such denial to the Landmarks Commission, who shall consider such appeal in accordance with the procedures set forth in Section 150.1206.

(f) In the event that the decision of the Zoning Administrator is contrary to the recommendation of the Landmarks Commission, if requested, then a determination on the certificate of approval shall not be issued. In such instance, the application shall be subject to

the review and approval of the Planning Commission in accordance with the development plan review procedures set forth in Chapter 150.14. The Planning Commission shall consider the decision of the Zoning Administrator and recommendation of the Landmarks Commission during their evaluation of the application.

§ 150.1208 CERTIFICATE OF OCCUPANCY.

(a) Certificate of Occupancy Required. Land shall not be occupied or used and a building which has been erected or altered shall not be occupied or used until a certificate of occupancy had been applied for and issued as follows:

(1) Occupancy of a Building. A zoning certificate of occupancy shall be required in addition to a building certificate of occupancy before a building that has been constructed, or an existing building that has been altered, moved, changed in use, or changed as to off-street parking or loading requirements may be occupied. A certificate of occupancy shall only be issued after the completion of the erection or alteration, or change in use of the building and the building is found, upon inspection, to conform to the provisions of this Zoning Code.

(2) Occupancy of Land. A zoning certificate of occupancy shall be required before occupancy of the land or where use of the land has been changed to a use different from the prior use. A certificate of occupancy shall be issued when it is determined, upon inspection that the

use conforms to the provisions of this Zoning Code.

(3) Change in Use of Nonconforming Building or Use. A certificate of occupancy shall be required whenever a nonconforming use of a building or land is changed, and shall not be issued until the Board of Zoning Appeals has approved the change.

(b) Temporary Certificate of Occupancy. Pending the issuance of a zoning certificate of occupancy, a temporary zoning certificate for all or partial occupancy of a building or land may be issued for a period not exceeding six months when, due to weather conditions, final grading or landscaping can not be completed before the building certificate of occupancy or temporary certificate of occupancy is ready. Such temporary certificate shall not be issued except under such restrictions and provisions as will adequately ensure the safety of the occupants.

(c) Applications. Applications for a certificate of occupancy are available in the office of the Zoning Administrator and shall include accurate information provided by the owner, or authorized representative, regarding the size and location of the lot, dimensions of all yards and open space, the use of land or building operations or processes and other pertinent information as may be requested by the City.

(d) Certification. The certificate of occupancy shall document that the building or proposed use of land or building conforms to the provisions of this Zoning Code.

CHAPTER 150.14
Administrative Procedures for Development Plan Review

<p>150.1401 Purpose.</p> <p>150.1402 Development plan review required.</p> <p>150.1403 Filing an application.</p> <p>150.1404 Pre-application meeting encouraged.</p> <p>150.1405 Minor alterations reviewed by Zoning Administrator.</p> <p>150.1406 General development plan submission requirements.</p> <p>150.1407 Final development plan submission requirements.</p> <p>150.1408 Development plan review procedures.</p> <p>150.1409 Planning Commission review of a general development plan.</p>	<p>150.1410 Planning Commission review of a final development plan.</p> <p>150.1411 Request for additional information.</p> <p>150.1412 Simultaneous plat approval.</p> <p>150.1413 Action by Planning Commission.</p> <p>150.1414 Equivalency provision.</p> <p>150.1415 Action by Council</p> <p>150.1416 Significance of an approved development plan; plan revisions.</p> <p>150.1417 Expiration of development plan approval.</p>
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§ 150.1401 PURPOSE.

The purpose of this Chapter is to provide adequate review of proposed developments in those zoning districts where the uses are of such a nature, because of their size, scale or effect on surrounding property, that review of specific plans is deemed necessary to protect the public health, safety and general welfare of the community.

§ 150.1402 DEVELOPMENT PLAN REVIEW REQUIRED.

Review and approval of a general development plan and/or final development plan shall be conducted in compliance with the following prior to the issuance of a zoning certificate:

(a) General Development Plan. A general development plan that indicates the general concept of development for an entire site including the general location of use areas, open space and circulation pattern, shall be required for any project that includes phased development, which, at the option of the applicant, may run concurrent with the final development

plan approval process. Applicants for other types of projects may but are not required to submit a general development plan.

(b) Final Development Plan. A final development plan that indicates, among other things, the exact location of buildings, landscaping, parking areas, access drives, signs, and outdoor storage areas shall be required for the following:

- (1) All single-family residential developments not otherwise subject to the subdivision regulations.
- (2) For any proposed development for which, according to subsection (a) above, a general development plan is required.
- (3) New construction of all permitted uses in multi-family and business districts;
- (4) New construction of all conditional uses;
- (5) Any existing or previously approved development meeting the criteria of subsections (2) through (4) above

that proposes to alter, reconstruct, or otherwise modify a use or site including expanding the floor area of the permitted use; increasing the number of dwelling units in a multi-family development; or changing the use which requires an increase in the amount of parking or a change in the site's circulation, unless exempt from development plan review pursuant to § 150.1405.

- (6) Any development not otherwise exempted in this code.

§ 150.1403 FILING AN APPLICATION.

Applications for development plan review shall be filed by a property owner, designated agent or a lessee with formal and sufficient consent of the property owner.

§ 150.1404 PREAPPLICATION MEETING ENCOURAGED.

The applicant is encouraged to meet with the Zoning Administrator or the Planning Commission prior to submitting an application for general development plan review or final development plan review. The purpose of this meeting is to discuss early and informally with the applicant the purpose and effect of this Zoning Code and the criteria and standards contained within. However, no action shall be taken at such a meeting and no opinions, suggestions, or recommendations discussed shall be relied on by the applicant to indicate subsequent approval or disapproval of the development plan.

§ 150.1405 MINOR ALTERATIONS REVIEWED BY ZONING ADMINISTRATOR.

When a minor alteration is proposed to an existing building, structure or site arrangement on a zoning lot or to an approved development plan prior to or

during the time of construction, the Zoning Administrator may make a determination that such a proposal is not subject to development plan review.

- (a) For the purposes of this Section, a proposed development may be considered a minor alteration when it complies with both (1) and (2) below:

- (1) It is limited to the following:

- A. The construction, addition, or alteration of a principal or accessory structure permitted in the O, L-B, or G-B Districts, or a principal or accessory structure of a conditional use permitted in any district, excluding the OM District, that results in an increase in the building footprint of that principal or accessory structure by less than 25% but not more than 1,000 sq. ft, whichever is less.

- B. Any construction on a property in the O, L-B or G-B District, or a conditional use in any district, excluding the OM District, which results in an increase of the total impervious surface area on the lot up to 10% but not more than 2,000 square feet.

- C. Minor modifications to a landscape or lighting plan, provided that the plan remains in compliance with the requirements of Chapters 151.32 and 151.34 and does not significantly reduce the number of full shade trees or visual screening of the original approved plan.

- D. In any case, a proposed increase in the original building footprint of 500 square feet or less may be considered a minor alteration.

- (2) The Zoning Administrator determines that the minor alteration will have no discernible impact on

neighboring properties, the general public, or those intended to occupy or use the proposed development.

(b) The applicant shall submit a scaled drawing indicating the proposed minor alteration.

(c) The Zoning Administrator shall review the proposal to determine that it is appropriate and not contrary to this Zoning Code. In making such determination, the Zoning Administrator may consult with the Chair of the Planning Commission.

(d) In the event that the Zoning Administrator approves the proposal, he or she shall issue a Zoning Certificate to the applicant. The Zoning Administrator shall complete his review and make a determination within 30 days of receipt of a complete application. The Zoning Administrator shall record his determination and report it to the Planning Commission at their next regularly scheduled meeting. If the Zoning Administrator denies the proposal, he/she shall notify the applicant and transmit the reasons for the denial. Denial of a minor alteration by the Zoning Administrator may be appealed to Planning Commission by the applicant, if a Notice of Appeal is filed with the Zoning Administrator within 14 days of the date the development plan is denied in writing.

(e) When the Zoning Administrator determines that a minor alteration proposed in the Heritage Overlay District is not subject to development plan review, according to the criteria outlined in subsection (a) above, such proposal shall be reviewed by the Zoning Administrator in accordance with the procedures set forth in § 150.1207.

(f) All other requests for modifications that do not meet the criteria outlined in this Section shall be submitted for approval in accordance with this Chapter.

§ 150.1406 GENERAL DEVELOPMENT PLAN SUBMISSION REQUIREMENTS.

An application for general development plan review shall include a plan for the entire area of the proposed project. The application along with the application fee shall be submitted to the Zoning Administrator. The application shall include the map, plan, and supplementary documentation itemized below. A sufficient number of copies of the following items, as determined by the Zoning Administrator, shall be submitted with the application.

(a) A vicinity map showing the relationship of the site to existing development and including existing property lines, easements, utilities, and street rights-of-way of the subject property and property within 200 feet of the site, and zoning district boundaries.

(b) Verification of availability of all utilities, including water, sanitary sewer, gas, electric etc.

(c) The general development plan shall be drawn to an appropriate scale and shall indicate:

(1) The location of all existing structures and access points.

(2) The general location of existing buildings, parking areas and access drives on parcels within 200 feet of the site.

(3) The general location of all proposed construction including buildings and structures, parking areas, and access points.

(4) The location of existing and proposed topography, water courses, existing flood plains, major vegetation features, and wooded areas;

(5) The general layout of the proposed internal road system, indicating the proposed vehicular right-of-way of all

proposed public streets and pedestrian circulation.

(d) A summary table showing total acres of the proposed development, the number of acres devoted to each type of use including streets and common open space, and the number of proposed dwelling units by type;

(e) If the property is to be developed in phases, a proposed development schedule shall be prepared and the plan shall identify the separate phases of the project.

(f) Other documentation needed as deemed necessary by the Zoning Administrator to evaluate the general concept of the proposed development.

§ 150.1407 FINAL DEVELOPMENT PLAN SUBMISSION REQUIREMENTS.

An application for final development plan review shall be required for each phase of development. The application and the application fee shall be submitted to the Zoning Administrator. The application shall include the maps, plans, designs and supplementary documents itemized below, unless specific items are determined by the Zoning Administrator to be inapplicable or unnecessary and are waived in writing by the Zoning Administrator. Upon review by the Planning Commission, any information waived by the Zoning Administrator may subsequently be required. A sufficient number of copies of the maps, plans, designs and supplementary documents as determined by the Zoning Administrator shall be submitted with the application.

(a) An accurate, legal description and survey prepared or certified by a registered surveyor of the state;

(b) A vicinity map showing the relationship of the site to existing development and including existing property lines, easements, utilities and street rights-of-way of the subject property and

property within 200 feet of the site, and zoning district boundaries.

(c) Verification of availability of all utilities, including water, sanitary sewer, gas, electric etc.

(d) The ownership interests of the subject property, including liens and easements, and the nature of the developer’s interest if not the owner.

(e) A final development plan, prepared by a qualified professional such as a licensed architect, surveyor, engineer or landscape architect, and drawn to an appropriate scale indicating the following:

(1) Use, location and height of existing and proposed buildings and structures;

(2) Location of all public rights-of-way and private streets;

(3) Location and configuration of vehicular circulation including off-street parking and loading areas; the arrangement of internal and in-out traffic movement including access roads and drives; lane and other pavement markings to direct and control parking and circulation; and the location of signs related to parking and traffic control;

(4) Location of proposed and existing structures including fences, walls, signs, and lighting;

(5) Location and layout of all proposed and existing outdoor storage areas including storage of waste materials and location of trash receptacles;

(6) Sanitary sewers, water and other utilities including fire hydrants, as required, and proposed drainage and storm water management;

(7) Dimensions of all buildings, setbacks, parking areas, drives and walkways;

(8) Location, size and character of any open space.

(f) Topographic maps showing existing and proposed grading contours, water courses, existing flood plains, and major vegetation features including existing trees with a caliper of four or more inches, wooded areas, wetlands and other environmental features;

(g) Proposed landscaping and screening plans indicating the preliminary description of the location and nature of existing and proposed vegetation and landscaping, including species, size at planting and separation, screening elements and any existing trees to be removed;

(h) Conceptual water management and sediment control plans in accordance with the Hamilton County Storm Water Regulations or similar method as approved by the City Engineer.

(i) Illumination plan, including, but not limited to, a photometric plan which shows maximum foot candles at the surface, light pole heights and locations, average foot candle calculations and location of house side shields.

(j) Preliminary architectural plans for the proposed development or use showing exterior elevations and building floor plans, and site construction materials prepared and certified by a professional engineer, architect, or surveyor.

(k) Signage plan, pursuant to Chapter 151.30.

(l) Summary table showing total acres of the proposed development, the number of acres devoted to each type of use including streets and open space, and the number of proposed dwelling units by type, building coverage, pavement coverage and acreage devoted to open space;

(m) Subdivision plat, if appropriate;

(n) The substance of covenants, grants of easements, or other restrictions which will be imposed upon the use of the land, buildings, and structures, including

proposed easements or grants for public utilities.

(o) A statement identifying any aspect of the plan in which the applicant is requesting an equivalency waiver, pursuant to Section 150.14 or for which a variance is required.

(p) Table of contents or other index indicating where each of the plan submission requirements is located within the application package (page number of narrative or drawing).

(q) A list of all property owners lying within 300' of any part of the property, including their addresses and permanent parcel number, as shown on the current tax duplicate in the Office of the Hamilton County Treasurer.

(r) Other information necessary for the evaluation of the final development plan as deemed necessary by the Zoning Administrator.

§ 150.1408 DEVELOPMENT PLAN REVIEW PROCEDURES.

Development plans, both general and final, shall be reviewed and distributed according to the following procedures.

(a) Review for Completeness. The Zoning Administrator shall review the submitted application for completeness and compliance with the applicable submission requirements. If the application is deemed insufficient, the Zoning Administrator shall notify the applicant of the deficiencies and place the application on hold until complete. When the application is determined complete and all applicable fees have been paid, the Zoning Administrator shall officially accept the application for consideration and place it on the Planning Commission's agenda.

(b) Distribution of Plans. Within 10 days after determining that an application is complete, the Zoning Administrator

shall forward the application to the following for review and comment. Any reports, comments, or expert opinions shall be returned to the Zoning Administrator within 60 days from the date that the application is deemed complete.

- (1) All applications shall be transmitted to the appropriate City departments and professional consultants;
- (2) Applications for listed landmark properties or involving sites located in the Heritage Overlay District or the Old Montgomery Gateway District shall also be transmitted to the:
 - A. Landmarks Consultant, who shall then transmit his or her comments directly to the Landmarks Commission prior to the Landmarks Commission’s review of the proposal.
 - B. Landmarks Commission, who shall consider the Landmarks Consultant’s recommendations.
- (c) Transmission to the Planning Commission. The Zoning Administrator shall distribute the application for development plan review and any reports prepared by the individuals in subsection (b) above to the Planning Commission.
- (d) Notification to Property Owners. Prior to the Planning Commission’s formal review of a development plan application, written notice shall be given by first class mail to the applicant and the property owners within 300 feet of the property on which the use is proposed. Such notification shall be sent to the names and addresses of such owners appearing on the County Auditor’s current tax list. If the address appearing on the tax list is that of a lending institution or other person or entity clearly recognizable as not being the owner, then written notice shall be mailed to such institution, person or entity at the listed address and to the named owners at the street address of the property. Notices shall

be made at least 7 days prior to the date of the Planning Commission meeting. Failure of delivery of such notice shall not invalidate action taken on such application. The Planning Commission may continue or defer its consideration and no further notice shall be required.

§ 150.1409 PLANNING COMMISSION REVIEW OF A GENERAL DEVELOPMENT PLAN.

The Planning Commission shall review a development plan to determine if such application complies with the review criteria set forth below. The Planning Commission shall take into consideration the comments and recommendation of staff, consultants and the Landmarks Commissions when reviewing the application. In order to approve a general development plan, the Planning Commission shall determine that:

- (a) The plan is consistent with the Comprehensive Plan and the applicable regulations set forth in this Code.
- (b) The appropriate use and value of property within and adjacent to the area will be safeguarded.
- (c) The development will result in a harmonious grouping of buildings within the proposed development and in relationship to existing and proposed uses on adjacent property.
- (d) The development will have adequate open spaces that meet the objectives of the Comprehensive Community Plan.
- (e) The development will preserve and be sensitive to the natural characteristics of the site in a manner that complies with the applicable regulations set forth in this Code.

§ 150.1410 PLANNING COMMISSION REVIEW OF A FINAL DEVELOPMENT PLAN.

The Planning Commission shall review a final development plan to

determine if such application complies with the review criteria set forth below. In order to approve a final development plan, the Planning Commission shall determine that:

(a) The plan is consistent with any plan for the orderly development of the City and, when applicable, conforms in all respects to the approved or provisionally approved general development plan, provided however, that the Planning Commission may authorize plans as specified Section 150.1414.

(b) The appropriate use and value of property within and adjacent to the area will be safeguarded.

(c) The development will result in a harmonious grouping of buildings within the proposed development and in relationship to existing and proposed uses on adjacent property.

(d) Adequate provision is made for safe and efficient pedestrian and vehicular circulation within the site and to adjacent property.

(e) The development will have adequate public service and open spaces.

(f) The development will preserve and be sensitive to the natural characteristics of the site in a manner that complies with the applicable regulations set forth in this Code.

(g) The development will provide adequate lighting for safe and convenient use of the streets, walkways, driveways, and parking areas without unnecessarily spilling or emitting light onto adjacent properties or the general vicinity.

(h) The proposed signs:

(1) Are of an appropriate size, scale, and design in relationship with the principal building, site, and surroundings; that the base of ground-mounted signs are adequately landscaped.

(2) Adequately identify the use; and

(3) Are located so as to maintain safe and orderly pedestrian and vehicular circulation.

(i) The landscape plan will adequately provide the following:

(1) Enhance the principal building and site;

(2) Maintain existing trees to the extent possible;

(3) Buffer adjacent incompatible uses;

(4) Break up large expanses of pavement with natural material; and

(5) Provide appropriate plant materials considering the ultimate mature size and shape of plants relative to the buildings and site, and the climate of the area, including typical weather conditions.

(j) Adequate provision is made for storm drainage within and through the site so as to maintain, as far as practicable, usual and normal swales, water courses and drainage areas, and shall comply with the applicable regulations in this Code and any other design criteria established by the City or any other governmental entity which may have jurisdiction over such matters. The final water management and sediment control plan is subject to review and final approval by the City Engineer or consulting engineer.

(k) If the project is to be carried out in progressive stages, each stage shall be so planned that the foregoing conditions are complied with at the completion of each stage.

(l) The project complies with all other local, state and federal laws and regulations.

§ 150.1411 REQUEST FOR ADDITIONAL INFORMATION.

In their review of an application, the Planning Commission may request that the

applicant supply additional information that the Commission deems necessary to adequately review and evaluate the proposed development.

§ 150.1412 SIMULTANEOUS PLAT APPROVAL.

If the proposed development includes the subdivision of land, the development shall be subject to the requirements of the plat approval process in accordance with Chapter 156. Preliminary development plan approval and subdivision plat approval may proceed simultaneously at the discretion of the Planning Commission.

§ 150.1413 ACTION BY PLANNING COMMISSION.

- (a) For a general or final development plan, the Planning Commission shall either:
 - (1) Approve the development plan as submitted; or
 - (2) Approve the plan subject to specific conditions not included in the plan as submitted, such as, but not limited to, improvements to the yard layout, open space arrangement, on-site control of access to streets or such features as fences, walls and plantings to further protect and improve the proposed and surrounding developments; or
 - (3) Deny the development plan when the application does not demonstrate that the required standards have been met. Such denial may be appealed to Council by the applicant if a Notice of Appeal is filed with the Planning Commission and the Clerk of Council within 14 days of the date the applicant's development plan is denied in writing by the Planning Commission. Such appeal shall be heard as provided in Section 150.1415.

(b) If the Planning Commission fails to act on the application within 120 days from the date the application was determined to be administratively complete, or an extended period as may be agreed upon, then the applicant may deem the development plan to be denied and such denial may be appealed to Council by filing a written Notice of Appeal with the Planning Commission and the Clerk of Council at anytime after the 120 day date, and before a final decision on such development plan is made by the Planning Commission.

§ 150.1414 EQUIVALENCY PROVISION.

In reviewing the application, the Planning Commission may find that a general or final development plan either adheres or is equivalent to the requirements of this Zoning Code.

- (a) The Planning Commission may consider elements of a general or final development plan to be equivalent to a requirement if:
 - (1) The proposed general or final development plan substantially complies with all specific requirements and with the purposes, intent and basic objectives of the zoning district;
 - (2) Through imaginative and skillful design in the arrangement of buildings, open space, streets, access drives and other features, as disclosed by the application, the proposal results in a development of equivalent or higher quality than that which could be achieved through strict application of such standards and requirements; and
 - (3) The development, as proposed, shall have no adverse impact upon the surrounding properties or upon the health, safety or general welfare of the community.

(b) It shall be the responsibility of the applicant to demonstrate to the Planning Commission that the provisions of this Section have been satisfied. When evaluating the application with respect to this Section, the Planning Commission shall make any finding of equivalency in writing which explains how and why the proposal has satisfied the above criteria. When making such finding, the Commission may approve the proposed application, including waivers from the numerical or dimensional standards herein, as if the application were in strict compliance with the standards and requirements in this Zoning Code. Any plan approval which includes an equivalency approved by the Planning Commission must be reviewed and confirmed by Council before finally approved for development.

(c) If the Planning Commission fails to find that an equivalency waiver is appropriate, Planning Commission shall complete its review, after which the applicant may apply for an appropriate variance from the Board of Zoning Appeals. The 120-day period for development plan review, as required in §150.1413(b), shall be suspended during the Board of Zoning Appeals' review of such variance request on a final development plan.

§ 150.1415 ACTION BY COUNCIL.

(a) Council shall hold a public hearing on any appeal brought before Council under Section 150.1413(a) or (b), or to review and confirm a development plan with equivalencies approved by the Planning Commission pursuant to §150.1414(b). Such public hearing shall be held within thirty days (30) of the date the appeal is appropriately filed with both the Planning Commission and the Clerk of Council, or within thirty days (30) of the Planning Commission's written approval

of the equivalencies as provided in Section 150.1414(b).

(b) Notice of such public hearing shall be given by first class mail to the applicant/appellant and to the property owners within three hundred feet (300) of the property to which the appeal relates, or to the property to which the development plan relates for which such equivalencies were granted. Such notification shall be sent to the names and addresses of such owners appearing on the County Auditor's current tax list. If the address appearing on the tax list is that of a lending institution or other person or entity clearly recognizable as not being the owner, then written notice shall be mailed to such institution, person, or entity at the listed address and to the named owners at the street address of the property. Further notice shall be given in one or more newspapers of general circulation in the City. Such written notice shall be mailed, and such publication shall be made, at least fourteen days before the date of said public hearing. All notices shall set forth the time, place and nature of the public hearing. Failure of the delivery of such notice shall not invalidate any action taken as a result of such public hearing. The Council may continue or defer its consideration and no further notice shall be required.

(c) Equivalencies Review. The purpose of Council's review of a development plan which contains equivalencies approved by the Planning Commission is to allow Council to confirm or deny the proposed equivalencies. In doing so Council shall rely upon the written findings of the Planning Commission granting such equivalency as required by Section 150.1414(b) and such additional evidence as has been previously presented to the Planning Commission. Council shall accept no new evidence to support or oppose such equivalencies. At the public hearing the applicant shall be given an opportunity to make a statement in support

of the equivalencies and Council may take further public comment concerning the recommendation of the Planning Commission and in support of or in opposition to the Planning Commission recommendation and the evidence considered. Within thirty days (30) of the public hearing Council shall act upon the development plan according to the following:

- (1) Council, by a majority vote, may confirm the recommended equivalency from the Planning Commission; or
- (2) Council, by a majority vote, may remand the recommendation back to the Planning Commission for further study and review of items specified by Council. Any additional review must be completed by the Planning Commission within thirty (30) days of its remand, after which a report of the Planning Commission’s action shall be returned to Council. Council shall then act upon the return of the remand within thirty (30) days, or
- (3) Council, by five concurring votes, may approve a modification of the recommended equivalencies from the Planning Commission; or
- (4) Council, by five concurring votes, may reject the recommended equivalencies from the Planning Commission.

Council’s failure to act within thirty (30) days of the public hearing or within thirty (30) days of the return of the remand to Council from the Planning Commission; whichever is later, shall be deemed a confirmation of the Planning Commission’s recommended equivalencies.

(d) Appeal Under § 150.1413(a)(3). At a public hearing, upon any appeal brought before Council, under Section

150.1413(a)(3), Council’s review shall be limited to a review of the written findings from the Planning Commission denying such application and such other evidence as has been previously submitted to the Planning Commission for their consideration. Council shall accept no new evidence at such appeal hearing. At the hearing, Council shall allow the Applicant/Appellant the opportunity to comment upon the evidence and the decision of the Planning Commission and Council may take further public comments either in support of or in opposition to the denial by the Planning Commission and the evidence considered. Within thirty (30) days of Council’s hearing on such appeal, Council shall act according to the following:

- (1) Council, by majority vote, may affirm the decision of the Planning Commission denying the site plan; or
- (2) Council, by majority vote, may remand the appeal back to the Planning Commission for a further study and review of items specified by Council. Any additional review by the Planning Commission must be completed within thirty (30) days of its remand, after which a report of the Planning Commission’s action shall be returned to Council. Council shall act upon the return of the remand within thirty (30) days; or,
- (3) Council, by five concurring votes, may overrule the denial by the Planning Commission approving the application as submitted or with such additional modifications as Council may approve by five concurring votes;

Council’s failure to act within thirty (30) days of the public hearing, or within thirty (30) days of the return of the remand to

Council from the Planning Commission, whichever is later, shall be deemed a denial of the appeal of the Planning Commission's decision.

(e) Appeal Under § 150.1413(b). At a public hearing upon an appeal brought before Council under Section 150.1413(b), Council's review shall be limited to review of the evidence as has been previously submitted to the Planning Commission for their consideration and from which no action was taken by the Planning Commission in a timely manner. Council shall take no new evidence at such appeal hearing. Within thirty (30) days of Council's hearing on such appeal, Council shall act according to the following:

- (1) Council, by majority vote, may remand the appeal back to the Planning Commission for a further study and review of items specified by Council. Any additional review by the Planning Commission must be completed within thirty (30) days of its remand after which a report of the Planning Commission's action shall be returned to Council. Council shall then act upon the return of the remand within thirty (30) days.
- (2) Council, by five concurring votes, may approve the development plan as submitted to the Planning Commission or as submitted to the Planning Commission with such additional modifications as Council may establish by five concurring votes. If the proposed plan includes any equivalencies, Council must find support for such equivalencies consistent with the standards set forth in Section 150.1414(a)(1-3). If Council fails to approve the development plan by five (5) concurring votes, the proposed plan

is then denied, unless Council by the affirmative vote of four (4) or more members refers the appeal back to the Planning Commission as provided in subsection (1) above.

Council's failure to act within thirty (30) days of the public hearing or thirty (30) days of the return of the remand to Council from the Planning Commission, which ever is later, shall be deemed a denial of the proposed plan.

§ 150.1416 SIGNIFICANCE OF AN APPROVED DEVELOPMENT PLAN; PLAN REVISIONS.

An approved development plan shall become for the proposed development a binding commitment of the specific elements approved for development.

- (a). The approved development plan may not be transferred by the applicant to another person, corporation, or group of individuals or corporations prior to the issuance of a building permit, without the written approval of the Planning Commission. A request for such a transfer or change of ownership shall be presented to the Planning Commission and granted only if the new ownership entity satisfies the administrative, financial, legal and all other performance guarantees approved with the original development plan.
- (b) After the approval of the development plans, the applicant shall obtain a zoning certificate and building permit prior to construction.
- (c) All construction and development under any building permit shall be in accordance with the approved plan. Any departure from such plan shall be cause for revocation of the Zoning Certificate.
- (d) No certificate of occupancy shall be issued unless all facilities and improvements that are included on the approved plans are provided.

§ 150.1417 EXPIRATION OF DEVELOPMENT PLAN APPROVAL.

An approved development plan shall remain valid for a period of 12 months following the date of its approval. Two six month extensions may be granted by the Zoning Administrator. Any further extension requires written approval by the Planning Commission.

(a) General Development Plan. If, at the end of that time, a final development plan has not been submitted to the Zoning Administrator, then approval of the general development plan shall expire and shall be of no effect unless resubmitted and re-approved in accordance with this Chapter.

(b) Final Development Plan. If, at the end of that time, construction of the development has not begun, then approval of such final development plan shall expire and shall be of no effect unless resubmitted and re-approved in accordance with the procedures set forth in this Chapter. Construction is deemed to have begun when all necessary excavation and piers or footings of one or more principal buildings included in the plan have been completed.

CHAPTER 150.16
Conditional Use Permits and Similar Uses

<p>150.1601 Purpose.</p> <p>150.1602 Pre-application meeting encouraged.</p> <p>150.1603 Submission of application.</p> <p>150.1604 Conditional use application procedures.</p> <p>150.1605 Review of conditional use permit application.</p> <p>150.1606 Public hearing and notice by Planning Commission.</p>	<p>150.1607 Action by Planning Commission.</p> <p>150.1608 Action by Council.</p> <p>150.1609 Terms and duration of conditional use permit.</p> <p>150.1610 Reapplication.</p> <p>150.1611 Similar uses.</p>
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§ 150.1601 PURPOSE.

When a proposed use is permitted in a zoning district as a conditional use, as set forth in the district regulations, a conditional use permit is required and the application for such conditional use permit shall be submitted and reviewed according to the guidelines outlined in this chapter.

§ 150.1602 PREAPPLICATION MEETING ENCOURAGED.

The applicant is encouraged to meet with the Planning Commission or Zoning Administrator, or his designee, prior to submitting an application for a conditional use permit. The purpose of this meeting is to discuss early and informally with the applicant the purpose and effect of these zoning regulations and the criteria and standards contained within. However, no action shall be taken at such a meeting and no discussions, opinion, suggestions, or recommendations of the Planning Commission or Zoning Administrator shall be relied upon by the applicant to indicate subsequent approval or disapproval of the application.

§ 150.1603 SUBMISSION OF APPLICATION.

The owner, or agent thereof, of property for which such conditional use is proposed shall file with the Zoning Administrator an application for a

conditional use permit on the form provided for such purposes, which shall be accompanied by payment of the required fee. The application for a conditional use permit shall disclose all uses proposed for the development, their location, extent, and characteristics and shall include the following:

- (a) A development plan and associated documentation when required in Section 150.1402.
- (b) A list of all property owners lying within 300 feet of any part of the property on which the conditional use is proposed and the president of the neighborhood association where the conditional use is located, including their addresses and permanent parcel number, as shown on the current tax duplicate in the Office of the Hamilton County Treasurer.
- (c) A statement of need for the proposed use, its location, and magnitude.
- (d) A summary report identifying and evaluating the consequences and effects of the proposed use on the surrounding properties and the neighborhood at large.
- (e) A statement indicating how the negative effects of the proposed use will be mitigated and how all the conditions for approval set forth in Chapter 151.20 for the proposed use will be met.

§ 150.1604 CONDITIONAL USE APPLICATION PROCEDURES.

(a) Review for Completeness. The Zoning Administrator shall review the submitted application for completeness and compliance with the applicable submission requirements. If the application is deemed insufficient, the Zoning Administrator shall notify the applicant of the deficiencies and place the application on hold until complete. When the application is determined complete and all applicable fees have been paid, the Zoning Administrator shall officially accept the application for consideration of the action(s) requested on the date such determination is made and place it on the Planning Commission’s agenda.

(b) Distribution of Plans. Within 10 days after determining that the application is complete, the Zoning Administrator shall forward the application to appropriate City departments and professional consultants for review and comment. Any reports, comments, or expert opinions shall be returned to the Zoning Administrator within 60 days from the date the application is deemed complete.

(c) Transmission to the Planning Commission. The Zoning Administrator shall distribute the application for conditional use permit and any reports prepared by the individuals in subsection (b) above to the Planning Commission, prior to the time of the Commission’s review at their next regularly scheduled meeting.

(d) Minor Alterations Reviewed by Zoning Administrator. When a minor alteration is proposed to an existing conditionally permitted building or structure or to the site arrangement of an existing conditionally permitted building or structure, the Zoning Administrator may make a determination that such a proposal is not subject to conditional use approval. Such determination by the Zoning

Administrator shall only be made in compliance with the conditional use criteria and procedural requirements for minor alterations set forth in §150.1405.

§ 150.1605 REVIEW OF CONDITIONAL USE PERMIT APPLICATION.

The Planning Commission shall review the proposed conditional use, as presented on the submitted plans and specifications, to determine whether or not the proposed use is appropriate and in keeping with the purpose and intent of this Zoning Code.

(a) The Planning Commission shall review the development plan for the proposed conditional use according to the development plan review procedures and criteria set forth in Sections 150.1408 through 150.1410, as applicable;

(b) The Planning Commission shall review the application to determine if the establishment and operation of the proposed conditional use complies with the general criteria established for all conditional uses and the specific requirements established for that particular use, as set forth in Chapter 151.20 of this Zoning Code; and

(c) The Planning Commission may require the applicant to submit such additional information as deemed necessary, including the carrying out of special studies and the provisions of expert advice.

§ 150.1606 PUBLIC HEARING AND NOTICE BY PLANNING COMMISSION.

Prior to considering a proposed conditional use, the Planning Commission shall hold a public hearing. Notice of such public hearing shall be given by first class mail to the applicant and to the property owners within 300 feet of the property on which the use is proposed. Such notification shall be sent to the names and

addresses of such owners appearing on the County Auditor’s current tax list. If the address appearing on the tax list is that of a lending institution or other person or entity clearly recognizable as not being the owner, then written notice shall be mailed to such institution, person, or entity at the listed address and to the named owners at the street address of the property. Further notice shall be given in one or more newspapers of general circulation in the city. All notices shall be made at least 14 days before the date of said public hearing. All notices shall set forth the time and place of the public hearing and the nature of the proposed conditional use. Failure of delivery of such notice shall not invalidate action taken on such application. The Planning Commission may continue or defer its consideration and no further notice shall be required.

§ 150.1607 ACTION BY PLANNING COMMISSION.

- (a) The Planning Commission shall take one of the following actions:
 - (1) If the proposed conditional use is determined by the Planning Commission to be appropriate and in conformance with the review criteria outlined in Chapter 151.20, the Planning Commission shall make specific findings of fact to support its recommendation. As part of the recommendation, the Planning Commission may proscribe appropriate conditions, stipulations, safeguards and limitations on the duration of the use as it may deem necessary and in conformance with the intent and purposes of Chapter 151.20. The Planning Commission may approve the application for the conditional use without approving the submitted development plan.
 - (2) If the proposed use is found not to comply with the specifications of this Zoning Code, the Planning

Commission shall deny the application. The Planning Commission shall indicate in its records the reason(s) for its action. The applicant may then bring an appeal on such decision to the City Council pursuant to Section 150.1608 if a Notice of Appeal is filed with the Planning Commission and the Clerk of Council within fourteen (14) days of the date the applicant’s request is denied in writing by the Planning Commission.

- (b) If the Planning Commission fails to act within 120 days from the date the application was deemed complete, or an extended period as may be agreed upon, then the applicant may deem the application denied. The applicant may then bring an appeal on such application to the City Council pursuant to Section 150.1608 by filing a Notice of Appeal with the Planning Commission and Clerk of Council at anytime after the 120 days has passed and before any decision by the Planning Commission.

§ 150.1608 ACTION BY COUNCIL.

- (a) Council shall hold a public hearing to review and confirm a conditionally permitted use accepted by the Planning Commission or upon any appeal brought before Council under § 150.1607(a)(2) or (b). Such public hearing shall be held within thirty (30) days of the date the appeal is appropriately filed with both the Planning Commission and the Clerk of Council or within thirty (30) days of the Planning Commission’s written approval of a conditionally permitted use.
- (b) Notice of such public hearing shall be given by first class mail to the applicant/appellant and to the property owners within three hundred (300) feet of the property to which the application applies. Such notification shall be sent to the names and addresses of such owners

appearing on the County Auditor’s current tax list. If the address appearing on the tax list is that of a lending institution or other person or entity clearly recognizable as not being the owner, then written notice shall be mailed to such institution, person, or entity at the listed address and to the named owners at the street address of the property. Further, notice shall be given in one or more newspapers of general circulation in the City. Such written notice shall be mailed and such publication shall be made at least fourteen (14) days before the date of said public hearing. All notices shall set forth the time, place and nature of the public hearing. Failure of the delivery of such notice shall not invalidate any action taken as a result of such public hearing. Council may continue or defer its consideration and no further notice shall be required.

(c) Council Confirmation. Following a recommendation for approval by the Planning Commission, the application shall be submitted to Council for confirmation. The purpose of Council’s review shall be to review and confirm or deny the recommendation of the Planning Commission. In doing so, Council shall rely upon the findings of the Planning Commission and on such additional evidence as has been previously presented to the Planning Commission. Council shall accept no new evidence to support or oppose such conditionally permitted use. At the public hearing the applicant shall be given an opportunity to make a statement in support of the application and Council may take further public comment concerning the recommendation of the Planning Commission and in support of or in opposition to any evidence previously presented to the Planning Commission. Within thirty (30) days of the public hearing Council shall act upon the application according to the following:

- (1) Council, by a majority vote, may confirm the recommended conditionally permitted use; or
- (2) Council, by a majority vote, may refer the recommendation back to the Planning Commission for further study and review of items specified by Council. Any additional review must be completed by the Planning Commission and returned to Council within thirty (30) days of its remand or if the Planning Commission shall fail to act within such thirty (30) day period the matter shall be returned to Council for final decision; or
- (3) Council, by five concurring votes, may approve a modification of the Planning Commission recommendation for the conditionally permitted use. A modification shall include any additional conditions which Council may wish to impose which were not originally imposed by the Planning Commission; or
- (4) Council, by five concurring votes, may reject the recommended conditionally permitted use.

Council’s failure to act within thirty (30) days of the public hearing, or thirty (30) days following the return of the remand from the Planning Commission, whichever is later, shall be deemed a confirmation of the Planning Commission’s recommended conditionally permitted use.

(d) Council Appeal. At a public hearing upon any appeal brought before Council from §150.1607(a)(2), Council shall be limited to a review of the written findings from the Planning Commission denying such application and such other evidence as has been previously submitted to the Planning Commission for its

consideration. If an appeal is brought to Council pursuant to § 150.1607(b) as a result of the Planning Commission’s failure to act in a timely manner, Council shall only consider such evidence as has been previously submitted to the Planning Commission for its consideration. Council shall consider no new evidence under either appeal. Under either appeal, Council shall allow the applicant/appellant the option to comment upon the evidence and/or recommendation from the Planning Commission and Council may take such additional comments from the public at such hearing either in support of or in opposition to the decision of the Planning Commission and any evidence previously presented. Within thirty (30) days of Council’s hearing on such appeal, Council shall act according to the following:

- (1) Upon an appeal brought pursuant to Section 150.1607(a)(2), Council by majority vote may affirm the decision of the Planning Commission from which such appeal is taken.
- (2) On an appeal brought pursuant to Section 150.1607(a)(2) or (b), Council by majority vote may remand the appeal back to the Planning Commission for a further study and review of items specified by Council. Any additional review must be completed by the Planning Commission within thirty (30) days of its remand. At the end of that thirty day period, whether or not a decision has been made by the Planning Commission, the matter shall be returned to Council with a report of any action by the Planning Commission and Council shall then act within thirty (30) days of such remand.
- (3) On an appeal brought pursuant to Section 150.1607(a)(2). Council by five concurring votes may

overrule the denial of the application by the Planning Commission and approve the application as submitted or approve the application with such additional modifications as Council may decide are appropriate with such five concurring votes.

- (4) On an appeal brought pursuant to Section 150.1607(b), Council by five concurring votes may approve the application as submitted to the Planning Commission or as submitted to the Planning Commission with such additional modifications as Council may decide are appropriate by five concurring votes. If there are fewer than five votes to approve the application as appealed, the application shall be considered denied unless Council by the affirmative vote of four or more members elects to remand the appeal back to the Planning Commission as provided in subsection two above.

Failure of Council to act within thirty (30) days of the public hearing on appeal or within thirty (30) days of the return of an application to Council following a remand to the Planning Commission, whichever is later, shall be deemed to be a denial of the appeal if such appeal is brought pursuant to § 150.1607(a)(2) or approval of the application as submitted if the appeal was brought pursuant to § 150.1607(b).

§ 150.1609 TERMS AND DURATION OF CONDITIONAL USE PERMIT.

Following Council’s confirmation of an application for a conditional use permit, the Zoning Administrator shall issue a conditional use permit.

(a) The permit shall authorize a particular conditional use on a specific parcel for which it was approved. The permit shall be valid only for the use and the operation of such use as specified on the permit and may not be transferred by the applicant to any other person or entity without written approval of Planning Commission and City Council. The breach of any condition, safeguard or requirement shall constitute a violation of this Zoning Code.

(b) The conditional use permit shall expire one year from the date of enactment unless the following occur:

- (1) The final development plan is approved for uses that require a final development plan;
- (2) Substantial progress in the establishment of the use is accomplished; or
- (3) As otherwise specifically approved by the Planning Commission.

(c) Other than a minor alteration, any expansion, enlargement, or change in the operation of the conditional use that involves enlarging buildings or structures, expanding impervious surfaces including parking areas, or changing the use shall require approval of a separate conditional use permit.

§ 150.1610 REAPPLICATION.

A reapplication may be considered by the Planning Commission when they determine that there is good cause shown by the applicant for reconsideration. A vote of five of the seven members is required for reapplication. A re-application shall comply with all the requirements of this Chapter, including payment of the required fee.

§ 150.1611 SIMILAR USES.

Within each zoning district established by the Zoning Code and

amendments thereto, uses of land or structures which are compatible with each other are permitted in the district. To the extent that new types of uses are created and are not addressed by this Zoning Code, this section provides the procedure by which the Planning Commission may make a determination that a new use is similar to a use permitted in a district.

(a) Determination. A proposed use may be permitted as a similar use when the Planning Commission determines that such proposed use is in compliance with the following provisions:

- (1) The proposed use is not prohibited in any other district;
- (2) The proposed use is not listed as a permitted building or use in any other district;
- (3) The proposed use conforms to and is consistent with the Purpose statement of the proposed district more appropriately than in any other district;
- (4) The proposed use is of the same general character as the permitted uses in the district to which it is proposed or is similar to a specific use permitted in that district.

(b) Procedure. The Planning Commission shall review the proposed use according to the conditional use procedures set forth in Sections 150.1602 through 150.1605, including the requirement for a public hearing.

(c) Action by Planning Commission. The Planning Commission shall, within 10 days after its hearing, forward a recommendation to City Council in compliance with the procedures set forth in §150.1607. The Planning Commission shall recommend that Council confirm, confirm with modifications or deny the application for a similar use determination and provide the reasons for their decision.

(d) Action by Council. Council shall act upon such recommendation pursuant to the procedures of Section 150.1608 If Council confirms the proposed similar use, then the similar use shall be added to those districts that allow the principal or conditional use that is most similar Districts. If Council, by a majority vote of its members, concurs with the recommendations of the Planning Commission and confirms the proposed similar use, then the similar use shall be added to those districts that allow the principal or conditional use that is most similar, as identified in the recommendation. Council shall complete their review within 60 days from the date the application is forwarded from the Planning Commission.

**CHAPTER 150.18
Regulations for Landmark Properties**

<p>150.1801 Purpose.</p> <p>150.1802 Designation of city landmark property.</p> <p>150.1803 Certificate of approval required.</p>	<p>150.1804 Demolition or moving permit required.</p> <p>150.1805 Review of proposed national register nominations.</p>
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§ 150.1801 PURPOSE.

Procedures set forth in this Chapter regulate certain sites, buildings, structures, objects and works of art so as to allow a measure of protection afforded by a thorough study of alternatives to incompatible alterations or demolition before such acts are performed, so that the following objectives are reached:

- (a) To safeguard the architectural integrity of the city’s listed landmark properties.
- (b) To safeguard the heritage of the city by preserving sites, buildings, structures, objects and works of art that reflect elements of the city’s cultural social economic political or architectural heritage.
- (c) To seek alternatives to demolition or incompatible alterations to listed properties before such acts are performed.
- (d) To afford the widest possible scope of continuing vitality through private renewal and architectural creativity within appropriate controls and standards.
- (e) To contribute to the economic, recreational, cultural and educational development of the City of Montgomery by:
 - (1) Protecting and enhancing the city’s historic properties for existing and prospective residents, tourists, and visitors.
 - (2) Stabilizing and improving property values.

- (3) Fostering civic pride in the beauty and notable accomplishments of the past.
- (4) Promoting the use and preservation of historic and archaeological sites and structures for the education and general welfare of the people of Montgomery.

§ 150.1802 DESIGNATION OF CITY LANDMARK PROPERTY.

All applications for designation of a city landmark must be made by, or with the written concurrence of, the owner of the nominated property. In considering the designation of any site, building, structure, object or work of art as a city landmark property, the Landmarks Consultant, Landmarks Commission and City Council shall review nominations or applications according to the following.

- (a) Review Criteria. The following criteria shall apply to each property to qualify for designation. One or more of the following must apply to the property.
 - (1) It has character, interest, or value as part of the heritage of the city, the state, or the United States;
 - (2) It was the location of a significant historic event;
 - (3) It is identifiable with a person or persons who significantly contributed to the historic development of the city;
 - (4) It exemplifies the cultural, economic, social, archaeological or historic heritage of the city;

- (5) It portrays the environment of a group of people in an era of history characterized by a distinctive architectural style;
 - (6) It is the embodiment of distinguishing architectural characteristics, type or specimen;
 - (7) It is identifiable as the work of an architect or master builder whose individual work has influenced the development of the City;
 - (8) It is an embodiment of elements of architectural design, detail, materials, or craftsmanship which represent a significant architectural or technological innovation;
 - (9) Its unique location or singular physical characteristic represents an established and familiar visual feature of a neighborhood, community, or the City;
 - (10) It has yielded, or is likely to yield information important to prehistoric or historic understanding.
- (b) Public Hearing Required. Whenever the Landmarks Commission is to consider the designation of a listed landmark property, or a national register building, it shall hold a public hearing thereon and shall publish notice of such hearing in a newspaper of general circulation within the municipality once a week for two consecutive weeks on the same day of the week, the first of such publications to take place not less than 30 days prior to the public hearing.
- (c) Landmarks Commission Action. The Landmarks Commission shall conduct the public hearing and shall provide a reasonable opportunity for all interested parties to express their opinions. Within 30 days after the hearing, the Landmarks Commission shall set forth in its decision findings of fact which constitute the basis for its decision and shall transmit the

decision concerning the proposed designation or listing to Council.

(d) Confirmation by City Council. Within 45 days of the receipt of the Landmarks Commission’s decision, City Council shall review and consider legislation designating the landmark as recommended by the Landmarks Commission or as amended by Council.

(e) Decision Shown on Zoning Map. Upon the designation of a landmark, the Montgomery Zoning Map shall be revised to indicate by an appropriate symbol or device that the parcel so marked is subject to listed landmark designation, and the Clerk of the Council shall send a certified copy of the Resolution by registered mail to the record owner, and any person known to have a legal or equitable interest in the property.

(f) Designations. City Council may designate landmarks without limitation as to number or period when designation proceeds from an application for the same.

(g) Certificate of Approval Required. An owner or other person, having received written notice that a site is being considered for designation as a landmark, shall make no alterations to the site until the procedures for designation as a landmark as noted herein are completed.

§ 150.1803 CERTIFICATE OF APPROVAL REQUIRED.

No construction, reconstruction, alteration, demolition, or partial demolition of any listed landmark structure or architectural feature thereto, shall be undertaken prior to obtaining a certificate of approval according to the procedures outlined in § 150.1206. The redevelopment of vacant land that previously was occupied by a designated landmark that has been demolished must also obtain a certificate of approval according to the procedures outlined in Section 150.1206.

§ 150.1804 DEMOLITION OR MOVING PERMIT REQUIRED.

(a) Whenever the owner of a city landmark property intends to demolish or move a structure, he/she shall first apply for and secure a demolition or moving permit and a certificate of approval.

(b) Subsequent to the application for demolition or moving, there shall be a 270-day review period. During the review period the Landmarks Commission shall research the history, architectural merit, or other relevant characteristics of the property, review the public and private interests inherent in its preservation, discuss the proposal with the applicant, and explore possible alternates to demolition or moving. Should the applicant and the Landmarks Commission arrive at a mutually acceptable agreement, all or part of the 270-day review period may be waived by the Landmarks Commission.

(c) In order to grant approval for demolition or moving, the Landmarks Commission shall determine that the building meets at least one of the following criteria:

- (1) Deemed a hazard. The building is a hazard to public health or safety and repairs are unfeasible as determined by the city’s Building Inspector or his designee, who shall seek the advice of the appropriate technical experts as needed.
- (2) Rehabilitation not feasible. Rehabilitation of the building is not feasible. It shall be the responsibility of the applicant to prove that rehabilitation of the building is not feasible. In reviewing the feasibility of rehabilitation, the Landmarks Commission shall review the applicant’s proposed use and shall

consider alternative uses for which the building might be better suited.

(3) Detriment to community. The retention of the building would not be in the interest of the community as a whole.

(d) In the event that the Landmarks Commission determines within the 270-day review period that a certificate of approval shall not be issued, it shall forthwith state in its record reasons for such determination, and may include recommendations relative to the proposed demolition or moving. The Landmarks Commission shall notify the applicant of such determination and shall transmit its reasons for denial and recommendations for demolition or moving, if any.

(e) The applicant may appeal the denial of the certificate of approval to City Council. Council shall review the recommendation of the Landmarks Consultant and the determination of the Landmarks Commission. Council may, by 5 concurring votes, reverse or modify the decision of the Landmarks Commission.

(f) While a structure is under consideration for demolition or moving, it remains the owner’s responsibility to maintain the building in a reasonable fashion. Deterioration of a structure through simple negligence shall not be permitted. At the direction of the City’s Building Inspector, the owner shall take action to ensure the property does not fall into disrepair.

(g) The City Manager may grant a certificate of approval for demolishing or moving in instances where there is an imminent threat to the public health or safety. In such instances, the City Manager shall seek the advice of appropriate technical experts as needed prior to issuing the certificate of approval.

(h) When a certificate of approval is granted for reasons other than public

health or safety such approval shall not, unless waived, become effective until three months after the date of the approval decision by the Landmarks Commission in order to provide a period of time within which it may be possible to relieve a hardship or to cause the property to be transferred to another owner who will retain the building. The foregoing does not imply approval of demolition or moving by the Building Inspector.

§ 150.1805 REVIEW OF PROPOSED NATIONAL REGISTER NOMINATIONS.

The Landmarks Commission shall review proposed National Register nominations for properties within its jurisdiction according to the Ohio Certified Local Government guidelines summarized below:

(a) Within 60 days of notice from the Ohio Historic Preservation Office (OHPO) the Landmarks Commission shall review the nomination to determine its compliance with the review criteria listed in § 150.1802. Following its review, the Landmarks Commission shall prepare a report containing its recommendation. Attached to the report shall be a recommendation from the Mayor regarding the eligibility of the nominated property. Minimally, the report may be a letter, signed by both the Mayor and the Chairperson of the Landmarks Commission, stating their respective opinions regarding a property's eligibility for listing on the National Register of Historic Places.

(b) A copy of the Landmarks Commission's report shall be available for public inspection at a location within the City.

(c) The City may expedite the nomination process by submitting a report with the nomination when it is first submitted to the OHPO. Public participation requirements still apply.

(d) Upon written agreement between the City and the OHPO, the City may elect to assume responsibility for notification of property owners and the public throughout the nomination process. If the City assumes the notification responsibilities, the OHPO will provide guidance regarding public notification and the content and timing of the notification letters.

CHAPTER 150.20

Administrative Procedures for Appeals and Variances

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| 150.2001 Appeals to the Board of Zoning Appeals | 150.2008 Issuance of permits and certificates. |
| 150.2002 Initiation of appeal. | 150.2009 Reapplication of appeal. |
| 150.2003 Public hearing by the board. | 150.2010 Dimensional variances. |
| 150.2004 Notice of public hearing. | 150.2011 Establishment of a use not otherwise permitted. |
| 150.2005 Stay of proceedings. | |
| 150.2006 Review of appeal. | |
| 150.2007 Decision of the board. | |

§ 150.2001 APPEALS TO THE BOARD OF ZONING APPEALS.

Appeals to the Board of Zoning Appeals may be submitted by any person, firm or corporation, or by any officer, board or department of the Municipality, deeming himself or itself to be adversely affected by a decision of the Zoning Administrator, or by any administrative officer deciding matters relating to this Code.

§ 150.2002 INITIATION OF APPEAL.

Applications for appeal shall be filed with the Zoning Administrator and with the Board of Zoning Appeals within 20 days after the date of any adverse order, requirement, decision, or determination. The application for appeal shall include reference to the decision, the provision of this Code from which the appeal is sought, reasons for the appeal and a list of all property owners lying within 300 feet of any part of the property to which such appeal relates, including their addresses and permanent parcel numbers as shown on the current tax duplicate of the Office of the Hamilton County Treasurer. The Zoning Administrator shall transmit to the Board of Zoning Appeals all papers constituting the record upon which the action being appealed was taken.

§ 150.2003 PUBLIC HEARING BY THE BOARD.

When an application for appeal has been filed in proper form with the Board of Zoning Appeals and the application fee has been paid, the Zoning Administrator shall place the request upon the calendar for public hearing before the Board of Zoning Appeals, which shall be conducted within 60 days. The Board may recess such hearings from time to time, and, if the time and place of the continued hearing is publicly announced at the time of the adjournment, no further notice shall be required. Any interested person may appear at the public hearing in person or by attorney.

§ 150.2004 NOTICE OF PUBLIC HEARING.

Notice of such public hearing shall be given by first class mail to the parties making the request for the appeal and to the property owners within 300 feet of the property to which such appeal relates. Such notification shall be sent to the names and addresses of such owners appearing on the County Auditor’s current tax list. If the address appearing on the tax list is that of a lending institution or other person or entity clearly recognizable as not being the owner, then written notice shall be mailed to such institution, person, or entity at the listed

address and to the named owners at the street address of the property. Further notice shall be given in one or more newspapers of general circulation in the city. All notices shall be made at least 14 days before the date of said public hearing. All notices shall set forth the time, place and nature of the public hearing. Failure of delivery of such notice shall not invalidate action taken on such application. The Board may continue or defer its consideration and no further notice shall be required.

§ 150.2005 STAY OF PROCEEDINGS.

An appeal shall stay all proceedings in furtherance of the action appealed from, unless the Zoning Administrator shall certify to the Board of Zoning Appeals after the notice of the appeal has been filed, that by reason of facts stated in the permit, a stay would cause imminent peril to life or property. In such case, proceedings shall not be stayed by other than a restraining order granted by a court having lawful jurisdiction.

§ 150.2006 REVIEW OF APPEAL.

The Board of Zoning Appeals shall review the appeal. To aid in their review, the Board may transmit the application to appropriate administrative departments and professional consultants for review and comment. Any reports, comments or experts opinions shall be compiled by the Zoning Administrator and transmitted to the Board prior to the time of the Board’s review.

§ 150.2007 DECISION OF THE BOARD.

Within the limits of the powers set forth in this Code, the Board of Zoning Appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination being appealed, and to that end shall have

all the powers of the officer from whom the appeal is taken, and it may direct the issuance of a permit or certificate.

(a) Any decision by the Board of Zoning Appeals requires the concurrence of four or more members. The Board shall render a decision on the appeal within 30 days from the date of the hearing unless an extended period of time is mutually agreed upon by the applicant and the Board. If the Board fails to act within such period of time, the appellant may determine the appeal has been denied.

(b) The Board shall notify the appellant in writing of the decision of the Board, which shall include the reasons for the action taken.

§ 150.2008 ISSUANCE OF PERMITS AND CERTIFICATES.

Once the appellant has received the Board's decision, he may submit an application for a zoning certificate or conditional use permit that complies with the Board of Zoning Appeal's decision. A copy of the Board of Zoning Appeal's decision shall be attached to the application.

§ 150.2009 REAPPLICATION OF APPEAL.

If the appeal is denied by the Board of Zoning Appeals, the Board need not rehear the application within 6 months after the date of the decision unless the Board determines there is just cause. A vote of five of the seven members is required for reconsideration.

§ 150.2010 DIMENSIONAL VARIANCES.

The Board of Zoning Appeals may authorize upon appeal in specific cases of a dimensional or area variance from the terms of this Code as will not be contrary to the public interest according to the following procedures:

(a) Definition. Dimensional or area variances shall be considered those variances from a zoning regulation that establishes minimum or maximum areas, heights, distances, separation volume or any other measurement, which is expressed in terms of a geometric measurement.

(b) Application Requirements. An application for a dimensional variance shall be filed with the Zoning Administrator for review by the Board of Zoning Appeals upon the forms provided, and shall be accompanied by the following requirements necessary to convey the reason(s) for the requested variance:

- (1) Name, address and phone number of applicant(s);
- (2) Proof of ownership, legal interest or written authority;
- (3) Description of property or portion thereof;
- (4) Description or nature of variance requested;
- (5) Narrative statements establishing and substantiating the justification for the variance pursuant to subsection (c) below;
- (6) Site plans, floor plans, elevations and other drawings at a reasonable scale to convey the need for the variance;
- (7) Payment of the application fee;
- (8) A list of all property owners lying within 300 feet of any part of the property on which the variance is proposed, including their addresses and permanent parcel numbers;
- (9) Any other documents deemed necessary by the Zoning Administrator.

(c) Review for Completeness. Upon receipt of a written request for a dimensional variance, the Zoning

Administrator shall make a preliminary determination whether such application provides the information necessary for review and evaluation. If it is determined that such application does not provide the information necessary for such review and evaluation, the Zoning Administrator shall within 10 days so advise in writing the applicant of the deficiencies and shall not further process the application until the deficiencies are corrected. If the applicant fails to correct such deficiencies within 20 days of the date of the written notice from the Zoning Administrator or such an extension granted from the 20 days deadline, then such appeal shall be dismissed as not being timely filed.

(d) Review by the Board. According to the procedures established for appeals in Sections 150.2003 and 150.2004, the Board shall hold a public hearing and give notice of the same. The Board shall review each application for a dimensional variance to determine if it complies with the purpose and intent of this Code and evidence demonstrates that the literal enforcement of this Code will result in practical difficulty. The following factors shall be considered and weighed by the Board to determine practical difficulty:

- (1) Whether special conditions and circumstances exist which are peculiar to the land or structure involved and which are not applicable generally to other lands or structures in the same zoning district. Examples of such special conditions or circumstances are exceptional irregularity, narrowness, shallowness or steepness of the lot, or adjacency to non-conforming and inharmonious uses, structures or conditions;
- (2) Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance;

- (3) Whether the variance is substantial and is the minimum necessary to make possible the reasonable use of the land or structures;
- (4) Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer substantial detriment as a result of the variance;
- (5) Whether the variance would adversely affect the delivery of governmental services such as water, sewer, trash pickup;
- (6) Whether the property owner purchased the property with knowledge of the zoning restrictions;
- (7) Whether special conditions or circumstances exist as a result of actions of the owner;
- (8) Whether the property owner's predicament feasibly can be obviated through some method other than a variance;
- (9) Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting a variance; and
- (10) Whether the granting of the variance requested will confer on the applicant any special privilege that is denied by this regulation to other lands, structures, or buildings in the same district.

(e) Requests for Additional Information. The Board of Zoning Appeals may request that the applicant supply additional information that the Board deems necessary to review and evaluate the request for a variance.

(f) Additional Conditions and Safeguards. The Board may further prescribe any conditions and safeguards that it deems necessary to ensure that the

objectives of the regulation(s) or provision(s) to which the variance applies will be met.

(g) Action by the Board. The Board shall either approve, approve with supplementary conditions as specified in subsection (f) above, or disapprove the request for dimensional variance. In no case shall the Board of Zoning Appeals approve a variance that establishes a nonconforming use of land, building or structure where one had not previously existed.

(h) Term and Extension of Variance. Dimensional or area variances shall be non-assignable without the written approval of the Board of Zoning Appeals and shall expire one year from the date of their enactment, unless prior thereto, the applicant commences actual construction in accordance with the granted variance or an extension of time has been granted by the Board of Zoning Appeals. There shall be no modification of variances except by further consideration of the Board. Once the time limit pursuant to this Section has expired, a request for a variance shall be considered to be a new application for a variance and shall meet all requirements for application and review pursuant to this Section. Dimensional variances approved in conjunction with a development plan, pursuant to § 150.1414(c), shall remain valid for a one-year period in compliance with § 150.1416.

§150.2011 ESTABLISHMENT OF A USE NOT OTHERWISE PERMITTED.

In the event a proposed use is not listed as a permitted or conditional use in the district in which it is proposed, but is a permitted or conditional use in another district, the Planning Commission and Council may determine that instead of rezoning the parcel to the district in which the use is permitted, it is in the public

interest to authorize the establishment of the use. The use of this provision, however, is not intended to be a substitute for a zoning amendment or the establishment of an appropriate conditional use. The establishment of such proposed use shall be limited to single parcels or multiple parcels, the sum of which does not exceed approximately one-half to three-fourths of an acre in size. The review and approval of the establishment of such use on the specific parcel noted on the application shall be conducted according to the conditional use procedures and submission requirements set forth in Chapter 150.16, including confirmation by Council and the right to appeal the decision from the BZA to Council.

(a) In order to grant conditional use approval to a use that is not specifically listed in the district, the Planning Commission and Council shall determine that strict compliance with the terms of this Code will result in unnecessary hardship to the applicant. The applicant shall demonstrate such hardship, by clear and convincing evidence that **all** of the following criteria are satisfied:

- (1) The specific parcel cannot be put to any economically viable use under any of the permitted or conditional uses listed in the Schedule of Uses in the zoning district in which the property is located;
- (2) The hardship stems from a condition that is unique to the property at issue and not found in the same zone or district, therefore the granting of the requested use is not likely to be requested by other property owners;
- (3) The hardship condition is not created by actions of the applicant;

- (4) The granting of the proposed use will not adversely affect the rights of adjacent property owners or residents;
 - (5) The granting of the proposed use will not adversely affect the public health, safety or general welfare;
 - (6) The proposed use will be consistent with the general spirit and intent of the Code; and
 - (7) The proposed use sought is the minimum that will afford relief to the applicant.
- (b) The permit shall authorize the particular use on the specific parcel for which it was approved. The operation of such use as specified on the permit shall not be assigned to any other subsequent use or party by virtue of ownership, lease or similar agreement. The breach of any condition, safeguard or requirement shall constitute a violation of this Zoning Code.
- (c) Approval of the proposed use shall not be deemed to authorize such use on any other parcel in the district, except when approved for a specific parcel according to this Section.

**CHAPTER 150.22
Zoning Amendments**

<p>150.2201 Authority for zoning amendments.</p> <p>150.2202 Initiation of zoning amendments.</p> <p>150.2203 Zoning amendments initiated by property owners(s).</p> <p>150.2204 Zoning amendments initiated by Planning Commission or Council.</p>	<p>150.2205 Review and public notice by Planning Commission.</p> <p>150.2206 Recommendation by the Planning Commission.</p> <p>150.2207 Public hearing and notice by Council.</p> <p>150.2208 Action by Council.</p>
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§ 150.2201 AUTHORITY FOR ZONING AMENDMENTS.

Whenever the public necessity, general welfare or good zoning practices require, City Council may amend, revise, rearrange, renumber or recodify this Zoning Code or amend, supplement, change or repeal the boundaries or classification of property according to the procedures set forth in this Chapter and subject to the procedures provided by law.

§ 150.2202 INITIATION OF ZONING AMENDMENTS.

Amendments to the Zoning Code, either text or map, may be initiated in one of the following ways:

- (a) By the filing of an application to the Planning Commission by at least one owner or lessee of property or developer with an option on such property within the area proposed to be changed or affected by said amendment.
- (b) By the adoption of a motion by the Planning Commission recommending to City Council that the process be initiated to consider a zoning amendment, with concurrence by Council.
- (c) By motion of City Council to initiate the rezoning process.

- (d) Upon a written recommendation by the Zoning Administrator to the Planning Commission.

§ 150.2203 ZONING AMENDMENTS INITIATED BY PROPERTY OWNER(S).

An amendment initiated by at least one owner or lessee of property or developer with an option on such property within the area proposed to be changed or affected by said amendment shall be submitted and reviewed according to the following:

- (a) Submission Requirements. Applications for proposed amendments shall contain at least the following information:
 - (1) The name, address and phone number of the applicant and the property owner if other than the applicant;
 - (2) A statement of the reason(s) for the proposed amendment;
 - (3) A statement on the ways in which the proposed amendment relates to the Comprehensive Plan;
 - (4) The payment of the application fee;
 - (5) Amendments to the Zoning Map adopted as part of this Zoning Code shall contain the following additional information:

- A. Legal description of the parcel(s) to be rezoned, drawn by a registered surveyor;
- B. Present use and zoning district;
- C. Proposed use and zoning district;
- D. A vicinity map at a scale approved by the Zoning Administrator showing property lines, thoroughfares, existing and proposed zoning, and such other items as the Zoning Administrator may require;
- E. A list of all property owners lying within 300 feet of any part of the property on which the zoning amendment is requested, including their addresses and permanent parcel number as shown upon the County auditor’s current tax list;
- F. Existing topography at two-foot contour intervals of the property to be rezoned and extending at least 300 feet outside the proposed site, and including property lines, easements, street rights-of-ways, existing structures, trees and landscaping features existing thereon;

(b) Referral to Planning Commission. After the filing of a completed application by an owner, lessee of property or developer with an option on such property, the Zoning Administrator shall transmit the application to the Planning Commission to begin the review process set forth in Sections 150.2205 through 150.2208.

§ 150.2204 ZONING AMENDMENTS INITIATED BY PLANNING COMMISSION OR COUNCIL.

After recommendation by the Planning Commission and concurrence by City Council or by motion of City Council to initiate the process, the proposed

amendment shall be reviewed and considered by the Planning Commission and Council according to the process set forth in Sections 150.2205 through 150.2208.

§ 150.2205 REVIEW AND PUBLIC NOTICE BY PLANNING COMMISSION.

(a) Upon the receipt of an application, resolution, or upon the passage of a motion of the Planning Commission and concurrence by Council, Planning Commission shall set a meeting date for reviewing the proposed amendment.

(b) Whenever the Planning Commission is to consider a map amendment that proposes to rezone 10 or fewer parcels as listed on the tax duplicate, notice shall be given according to the following:

- (1) Written notification shall be given by first class mail to the applicant and to all owners of property within 300 feet of the property proposed to be rezoned or redistricted.
- (2) Notices shall be given at least 7 days prior to the date of the meeting.
- (3) Notices shall include the time and place of the meeting and a summary of the proposed amendment.
- (4) Failure of delivery of such notice shall not invalidate any recommendation of the Planning Commission or any subsequently enacted ordinance.

(c) The Planning Commission may continue or defer its consideration and no further notice shall be required.

§ 150.2206 RECOMMENDATION BY THE PLANNING COMMISSION.

(a) After the conclusion of the public hearing required in Section 150.2205, the Planning Commission shall recommend one of the following to City Council:

- (1) That the amendment be granted as requested,
 - (2) That the amendment be granted as modified by the Planning Commission, or
 - (3) That the amendment be denied.
- (b) If the Planning Commission does not make a recommendation on the proposed amendment within 90 days from the submittal of a complete application or referral by City Council or an extended period as may be agreed upon by the applicant, it may be deemed that the recommendation of the Planning Commission is that the amendment be denied and Council shall act thereon according to Section 150.2277. Upon either a motion by Council or at the request of the applicant, such motion by Council or request by the applicant must be filed with the secretary of the Planning Commission before any recommendation is made by the Planning Commission.
- (c) The Secretary of the Planning Commission shall file with the Clerk of Council a written report of the Planning Commission’s recommendation and findings.

150.2207 PUBLIC HEARING AND NOTICE BY COUNCIL.

Upon receipt of the recommendation from the Planning Commission, Council shall set a time within 60 days for a public hearing on the proposed amendment.

- (a) Notice of the public hearing shall be given by Council according to the following:
 - (1) Notice of the proposed amendment shall be published once a week for two consecutive weeks on the same day of the week, the first of which shall be published at least 30 days prior to the date of the required

hearing, in one or more newspapers of general circulation in the City.

- (2) Whenever a proposed map amendment proposes to rezone 10 or fewer parcels as listed on the tax duplicate, written notice of the hearing shall be given to the applicant and to all owners of property that are within 300 feet of the property proposed to be rezoned or redistricted. Notification shall be sent to the names and addresses of such owners appearing on the county auditor’s current tax list. Such list shall be furnished by the city law director’s office. If the address appearing on the tax list is that of a lending institution or other person or entity clearly recognizable as not being the owner, then written notice shall be mailed to such institution, person, or entity at the listed address and to the named owners at the street address of the property. Notices shall be sent by first class mail at least 30 days prior to the public hearing.
- (3) Notices shall include the time and place of the public hearing, a summary of the proposed amendment and a statement that opportunity to be heard will be afforded to any person interested. Failure of delivery of such notice shall not invalidate any such amendment.
 - (b) During the 30 days prior to the public hearing, the text of the proposed amendment, maps or plans, if applicable, and the maps, plans and reports that constitute the recommendation of the Planning Commission shall be on file for public examination in the office of the Zoning Administrator.

§ 150.2208 ACTION BY COUNCIL.

After the conclusion of the public hearing required in Section 150.2207,

Council shall consider the proposed amendment according to the following:

(a) Council's action shall either:

- (1) Adopt the recommendation of the Planning Commission;
- (2) Deny the recommendation of the Planning Commission; or
- (3) Adopt some modification thereof.

(b) Required Vote for Adoption.

- (1) If Council votes to uphold the recommendation of the Planning Commission, the proposed amendment shall be adopted when approved by a majority vote of the membership of Council.
- (2) If Council votes to overrule or depart from the recommendation of the Planning Commission, the proposed action shall be adopted when approved by not less than 5 concurring votes of the membership of Council.

(c) Any such proposal may be amended prior to the voting thereon by Council without further notice or postponement if such amendment to the proposal is germane to the subject matter thereof and is in accordance with the recommendation of the Planning Commission. Council approval, with modification of the recommendation of the Planning Commission, shall not be considered as overruling or departing from the Planning Commission's recommendation and requires a simple majority to approve.

(d) If City Council fails to act within 120 days of the public hearing, or an extended period as may be agreed upon, then the applicant may deem the zoning amendment denied.

**CHAPTER 150.30
Enforcement and Penalties**

150.3001	Enforcement by Zoning Administrator.	150.3005	Violation considered a nuisance.
150.3002	Construction and use shall comply with regulations.	150.3006	Inspection of property.
150.3003	Violations.	150.3007	Stop work order.
150.3004	Complaints regarding violations.	150.3008	Notice of Violation.
		150.3009	Remedies.
		150.3010	Penalties.

§ 150.3001 ENFORCEMENT BY ZONING ADMINISTRATOR.

The provisions of this Zoning Code shall be administered and enforced by the Zoning Administrator.

§ 150.3002 CONSTRUCTION AND USE SHALL COMPLY WITH REGULATIONS.

All buildings and structures and uses of land, buildings and structures shall be located, erected constructed reconstructed enlarged, changed, maintained ,demolished or partially demolished, or used according to the regulations and provisions set forth in this Zoning Code and any amendments thereto. Zoning certificates issued by the Zoning Administrator on the basis of approved plans and applications authorize only the use and arrangement set forth in such approved plans and applications, or amendments thereto. Use, arrangement ~~or~~ construction or demolition contrary to that authorized shall be deemed a punishable violation of this Zoning Code.

§ 150.3003 VIOLATIONS.

It shall be unlawful to:

(a) Use or occupy any land or place; build, erect, alter, remodel, restore, or rebuild thereon any building or structure; permit any building or structure to remain on such land; or use, occupy, or operate such building or structure, in any way or for any use or purpose which is not permitted by the provisions of this Zoning Code; or

(b) Use or occupy any parcel of land; use or occupy a new building; or enlarge, substitute, or otherwise change the use, occupancy, or configuration of any land or building, without having received a zoning certificate, conditional use permit, certificate of approval or demolition permit, or certificate of occupancy indicating compliance with the provisions of this Zoning Code from the Zoning Administrator; or

(c) Aid, assist, or participate with any person in placing, building, erecting, altering, remodeling, restoring, ~~or~~ rebuilding, or demolishing any building or structure or part of a building or structure which is not permitted by the provisions of this Zoning Code; or

(d) Violate or fail to perform any condition, stipulation or safeguard set forth in any certificate issued pursuant to this Zoning Code, or continue to use or occupy the premises or building as previously authorized by such certificate beyond the duration limit therein stated; or

(e) Continue construction, demolition, renovation, or improvements contrary to a Stop Work Order or Notice of Violation; or

(f) Knowingly make any materially false statement of fact in an application to the Zoning Administrator for a zoning certificate, conditional use permit, certificate of occupancy, demolition permit, or in the plans or specifications submitted to the Zoning Administrator in relation to such application; or

(g) Violate any provision of this Zoning Code, or any other section of Title XV of the Montgomery Code of Ordinances.

§ 150.3004 COMPLAINTS REGARDING VIOLATIONS.

Whenever a violation of this Zoning Code occurs, or is alleged to have occurred, any person may file a complaint. Such written complaints shall fully state the causes and basis of the complaint and shall be filed with the Zoning Administrator.

§ 150.3005 VIOLATION CONSIDERED A NUISANCE.

Any building erected, altered, moved, demolished or partially demolished or converted, or any use of land or premises carried on in violation of any provision of this Zoning Code may be declared to be a nuisance. Any building or land use activity considered to be a possible violation of any provision of this Zoning Code that is observed by any City official shall be reported to the Zoning Administrator.

§ 150.3006 INSPECTION OF PROPERTY.

The Zoning Administrator shall inspect any building or structure erected, altered, moved, demolished or partially demolished or converted, or any use of land or premises carried on in alleged violation of any of the provisions of this Zoning Code.

§ 150.3007 STOP WORK ORDER.

Subsequent to a determination that construction work or demolition work is being done contrary to this Zoning Code, the Zoning Administrator, or his or her designee, shall issue a stop work order and post it on the premises involved. Removal of a stop work order, except by the order of the Zoning Administrator or designated agent, shall constitute a punishable violation of this Zoning Code.

§ 150.3008 NOTICE OF VIOLATION.

Upon finding a violation, the Zoning Administrator shall order, in writing, the owner, agent, occupant or operator of such building or premises to correct, within a stated reasonable time, all conditions that are found to be in violation of this Zoning Code. After such a notice is served, no work, except to correct the violation or comply with the notice shall proceed on any building or premises included in the violation.

§ 150.3009 REMEDIES.

The Zoning Administrator may issue a revocation notice to revoke a permit or administrative approval that was issued contrary to this Zoning Code or based upon false information or misrepresentation in the application.

In case any building or structure is or is proposed to be located, demolished, partially demolished, erected, constructed, reconstructed, enlarged, changed, maintained, or used, or any land is or is proposed to be used in violation of any regulations, provision, amendment or supplement of this Zoning Code, the City Council, the Law Director, or the Zoning Administrator or any adjacent property owner who would be specifically damaged by such violation may, in addition to other remedies provided by law, institute injunction, mandamus, abatement, or any other appropriate action or proceeding to prevent, enjoin, abate, or remove such unlawful location, erection, construction, reconstruction, enlargement, change maintenance or use.

(c) In addition to any criminal penalties provided under Section 150.3010, any person who violates Section 150.1804 (C) or any similar section of the Code governing the moving, demolition, or partial demolition of a city designated landmark property without appropriate permit shall be required to repair or restore

any such property to return it to its former location and/or conditions, or such person shall forfeit and pay to the city civil penalties equal to the greater of the fair market value of the any such landmark property or portion of a landmark property which was demolished, partially demolished, destroyed, or moved in violation of Section 150.1804, or similar section, or \$10,000. These civil penalties shall represent compensation to the Montgomery community for the loss of the landmark treasures the community has worked to preserve and protect. The monies shall be deposited to the Montgomery Historic Trust Fund and the monies shall be used for the purposes of that fund which include preservation of historic landmarks and community education. This section may be enforced in a civil action initiated by the Law Director at the request of City Council.

§ 150.3010 PENALTIES.

Failure to correct the conditions in violation with the provisions of this Zoning Code, as ordered by the Zoning Administrator, shall constitute a misdemeanor. Upon conviction of such violations, the responsible person or party shall be fined no more than one thousand dollars (\$1,000) or imprisoned for not more than 180 days or both. Each day such violation continues shall be deemed a separate offense. Any other person who commits, participates in or assists in the continuation of said violation may each be found guilty of a separate offense and suffer the penalties provided.