

# ORDINANCE NO. 21: ZONING

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An ordinance regulating and restricting the height, number of stories, bulk and size of buildings, and other structures, hereinafter erected or altered, the percentage of lot that may be occupied, the size, depth and width of yards, courts and other open space, the density of population and the location and use of building, structures and land for trade, industry, residence or other purposes; creating districts for said purposes and establishing the boundaries thereof; defining certain terms used herein; and providing for the method of administration and amendment, for the board of adjustment, and for the imposition of penalties.

This ordinance shall supersede any prior ordinance/s that references the material herein.

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**ARTICLE I - GENERAL**

**SECTION 1. Short Title.**

This ordinance shall be known as the "Zoning Ordinance". The map herein referred to, which is identified by the title of "Zone Map of Kingwood, West Virginia", and which is hereby declared to be a part of this ordinance, shall be known as the "Zone Map".

**SECTION 2. Districts.**

The City of Kingwood is hereby divided into six (6) Zoning Districts and six (6) Height and Area Districts, which shall be known as:

ZONING DISTRICTS

- R-1 Single-Family Residential
- R-2 Two-Family Residential
- R-3 Apartment Residential
- B-1 Neighborhood Highway Commercial
- B-2 Central Business District
- I-1 Industrial

HEIGHT AND AREA DISTRICTS

- R-1 30 foot Districts (Residence)
- R-2 30 foot Districts (Residence)
- R-3 40 foot Districts (Residence)
- B-1 50 foot Districts
- B-2 50 foot Districts
- I-1 100 foot Districts

**SECTION 3. Boundaries of Districts**

The location and boundaries of Districts are and shall be as shown on the Zone Map; provided that, where the designation on the Zone Map indicates a District boundary approximately on a street or alley, or lot line, Such district boundary shall then be construed to be located on said street, alley or lot line.

The location, clarification and/or addition of zoning districts should be specifically described in writing within this ordinance. The Zone Map as hereinbefore referred to shall identify location and boundaries of each zoning district as specifically described in writing within this Ordinance. Should a specific tract or area of real estate not be included within this Ordinance in a written description identifying its placement within a specific zoning district, the Zone Map designation as to zoning district for said specific tract or area of real estate shall determine the actual zoning district of the real estate in question. Should the Zone map identify a use different from the use identified by the written description within this Ordinance, the Zone map shall supersede the written description and the written description shall be altered accordingly.

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## ZONING DISTRICTS

### **SECTION 3A – B-1 Neighborhood Highway Commercial.**

All real estate fronting upon and abutting to West Virginia State Route 7 within the city limits of the Municipality of Kingwood, with the exception of that real estate identified in Section 3B herein, shall be designated as B-1 (neighborhood highway commercial).

The B-1 designation for this specifically identified property shall extend from West Virginia State Route 7 to the right-of-way of any city street running parallel or perpendicular to State Route 7, provided that said property designated as B-1 shall be contiguous to that property abutting to and fronting on State Route 7 without interruption, and all of said property shall be titled in the name of the same individual, firm, or corporation. Any lot or lots adjoining property which fronts and abuts to State Route 7 may be designated B-1 in order to enlarge the B-1 property, provided said lot or lots are contiguous and do not extend beyond a public street or alley. All property so designated as B-1 within this Section 3A must have primary and direct access from State Route 7 with the additional right to have access and egress to said lot from any perpendicular street abutting to said lot, if applicable and desired by property owner.

There shall be no access to a business located upon a lot or lots abutting to and fronting on State Route 7 for public or commercial use from a parallel street abutting said B-1 property, unless said property abutting to the opposite side of said parallel street has been designated as a similar zoning district to that of B-1. Private access to the property from parallel streets shall be permitted for non-truck and non-public use. Rules pertaining to parallel streets as hereinbefore set forth shall also apply to any form of advertising conducted by said business located on B-1 property abutting and fronting on State Route 7.

**SECTION 3B – B-2 Central Business District**

All property abutting to and fronting on West Virginia State Route 7 extending from the corner of Morgantown Street and Main Street and running east to Morgan Street shall be designated as B-2 (central business district). All other applicable restrictions as set forth in Section 3A herein shall apply to said property abutting to and fronting on State Route 7 and designated as B-2.

**SECTION 3C – Privacy Border Requirement**

When a zoning district designated as B-1, B-2, and I-1 abuts to any R-designated zoning district (R-1, single family residential; R-2, two family residential; R-3, apartment residential), a privacy border may be required by the Common Council of the City of Kingwood in order to protect the integrity of the R designated neighborhood. Said privacy border requirement, if appropriate, shall be set forth in the building permit issued by said Council.

**SECTION 3 D – Specific Property Changes**

- 1) Properties west of and abutting North Price Street that are not already deemed as R-1 will go from R-3 to R-1.
- 2) Properties south and east of Pleasantdale Road change from I-1 to R-1
- 3) Two properties extending west from intersection of Charles/Murdock Street and Sisler Street change from R-3 to R-2.
- 4) Properties abutting the eastern side of Chestnut Avenue change from R-1-R-3.
- 5) Corner property abutting Spring Hill Drive and Morgantown Street from most northern, abutting to the most southern abutting Beverly Street change from R-1 to B-1.
- 6) Properties abutting the western side of Tunnelton Street to the junction of Tunnelton

Street to Shower Bath Road change from R-3 to B-1.

7) Properties between South Price Street and Morgan Street abutting High Street and extending to properties abutting Route 26 change from R-1 to B-1.

8) Properties abutting Route 26 south of intersection of Lincoln Avenue change from R-1 to B-1.

9) Properties abutting Route 26 and Kingwood Avenue change from R-1 to B-1.

10) Properties encompassed by Brown Ave., Tunnelton Street, Price Street and Shower Bath Road that abut Tunnelton Street change from B-2 to B-1.

11) Property from Pleasantdale Road to parallel to Shaffer Street abutting North Price Street to North Sigler Street change from R-3 and B-1 to I-1.

12) Properties south of and encompassed by Big Four Road change from R-3 to B-1.

13) Property east of and abutting Big Four Road and railroad bed change from R-3 to I-1.

14) Property (Matthews parking lot) which extends northward behind five R-3 properties that abut Sisler Street change from R-3 to R-1.

#### **SECTION 4. Application of Regulations**

Hereafter, no land shall be used or occupied and no building shall be erected, altered, used or occupied, except in conformity with the regulations herein established for the district in which such land, building or structure is located.

## SECTION 5. Definitions

For the purpose of this ordinance, certain terms and words are herein defined. Words used in the present tense include the future; the singular number includes the plural and the plural the singular; the words "used for" include the meaning "designed for"; the word "building" includes the word "structure".

Alley -- Any roadway or public way dedicated to public use and twenty (20) feet or less in width.

Community Garage -- A group of private garages, either detached or under one roof, arranged in a row or around a common means of access, and erected for the use of residents in the immediate vicinity.

Court -- An open, unoccupied space, other than a yard, on the same lot with a building, unobstructed from the lowest level to the sky.

Corner Lot -- A lot abutting on two or more streets at their intersection.

Curb Level -- The elevation of the top of the curb or the established curb grade opposite the center of the building or portion thereof under consideration.

Dead space -- Any area that is enclosed, preventing reasonable access or usage without easement

Depth of Lot -- The mean horizontal distance between the front line and rear lot line.

Dwellings -- One-Family-Dwelling - A separate, detached building designed for and occupied exclusively as a residence for one family.

Family -- An individual; or two or more persons related by blood, marriage, adoption or foster relationship, living together; or a group of two or more individuals, not related by blood or marriage, but living together as a single, non-profit housekeeping unit whose

relationship is of a permanent and distinct domestic character, with a demonstrable and recognizable bond where each party is responsible for the basic material needs of the other.

Filling Station -- A building or lot where motor vehicles are supplied with gasoline and lubricants and shall be understood to include facilities for washing and greasing such motor vehicles.

Front Yard -- A yard across the full width of the lot, extending from the front line of the building to the front line of the lot.

Half-Story -- A story under a gabled, hipped or gambrel roof, the wall plates of which on at least two (2) opposite exterior walls are not more than three and one-half (3 1/2) feet above the finished floor of such story.

Height of Building -- The vertical distance measured from the curb level to the highest point on the roof adjacent to the street wall for flat roofs; to the deck line for mansard roofs; and to the mean height between eaves and ridge for gabled, hipped or gambrel roofs.

Height of Terrace -- The difference in elevation between the curb level and the top of the terrace at the center of the building wall.

Inner Court -- A court not extending to a street or alley or to a front or rear yard.

Interior Lot -- A lot the side lines of which do not abut on a street.

Lot -- A parcel of land which is or may be occupied by a building and accessory buildings, including the open spaces required under this ordinance.

Mechanical Equipment -- Equipment including, but not limited to, HVAC units, refrigeration units, compressors, generators, etc.

Mixed Occupancy -- Occupancy of a building or land for more than one use.

Multiple Dwelling - A dwelling designed or occupied otherwise than as a One-Family Dwelling, or a Two-Family Dwelling. The term "Multiple Dwelling", shall be understood to include apartment houses, tenement houses and all other family dwellings of similar character where apartments or suites are occupied and used as separate and complete housekeeping units; but not to include hotels or apartment hotels.

Non-Conforming Use -- A use of a building or land not in conformity with the regulations of the District in which it is situated.

Outer Court -- A court extending to a street or alley or to a front or rear yard.

Porch -- A roofed, open structure projecting from the front, side or rear wall of a building, and having no enclosed features of glass, wood, or other material more than thirty-six (36) inches above the floor thereof, except the necessary columns to support the roof.

Principle street – The frontage on which the dwelling unit's street address is located, or if there is no dwelling unit, the street that is most logically considered as providing the primary front-door access to the property.

Private Garage -- A garage for housing automobiles only, with a capacity for not more than two (2) motor vehicles. A garage exceeding a two (2) vehicle capacity, intended primarily for housing of cars belonging to occupants of the premises, shall be considered a private garage if the lot whereon such garage is located contains not less than sixteen hundred (1600) square feet for each vehicle capacity.

Public Garage -- A building where automobiles are stored for a fee. A public garage may contain filling station facilities for the cars stored therein. A public garage may contain a room or rooms for displaying cars for sale.

Rear Yard -- A yard across the full width of the lot, extending from the rear line of the building to the rear line of the lot.

Retail Beer Outlet -- Retail beer outlet shall mean any person, firm, partnership, association or corporation selling, serving, delivering or otherwise dispensing cereal malt beverages or products of the brewing industry, commonly referred to as beer, lager beer, ale or other mixtures and preparations produced by the brewing industry.

Secondary front yard – Applying to a corner lot, the area between the secondary street right-of-way and the dwelling unit or in the event that there is no dwelling unit, the secondary front yard shall be the property line that is adjacent to the secondary street right-of-way.

Secondary street – A street that abuts a property that also abuts a “principle street”

Service Station -- A building where automobiles are serviced or repaired. A service station may be located in a public garage. When in a separate building, it may contain filling station facilities for the cars being serviced therein.

Side Yard -- A yard between the side lines of the building and the adjacent side line of the lot, extending from the front yard to the rear yard. If there be no front yard, the side yard shall be considered as extending to the front line of the lot; and, if there be nor rear yard, the side yard shall be considered as extending to the rear of the lot.

Signboard -- Any structure or part thereof on which lettered or pictorial matter is displayed for advertising or notice purposes.

Street -- Any roadway or public way dedicated to public use, except an alley.

Story -- That portion of a building included between the surface of any floor and the surface of the next floor above it, or if there be no floor above it then the space between such floor

and the ceiling next above it.

Structure -- Anything constructed or erected, the use of which demands its permanent location on the land; or anything attached to something having a permanent location on the land.

Structural Alterations -- Any change in the supporting members of a building such as bearing walls, columns, beams or girders.

Telephone Exchange Building -- A building, with its equipment, used or to be used for the purpose of facilitating transmission and exchange of telephone messages between subscribers, and other business of the telephone company; but, in a Residence District, as established by this ordinance, not to include public business facilities, repair facilities, storage or plant materials or spare parts (other than those carried for the particular building) or storage of equipment, automobiles or trucks or housing, or quarters for installation, repair or trouble crews.

Temporary Sign -- A sign which offers premises for development, sale, lease, or rent, or is otherwise for a temporary purpose, such as a special event, grand opening, public election or referendum, etc.

Terrace -- A natural or artificial embankment between a building and its lot lines.

Through Lot -- An interior lot having frontage on two streets.

Two-Family-Dwelling - A separate, detached building designed for and occupied exclusively as a residence for two families.

Unit of Property -- Unit of property shall be any lot or group of continuous lots under one ownership.

Visibility Triangle -- The area at an intersection encompassed by the triangle formed by

measuring twenty feet linearly along the property lines parallel to the public right of way. There shall be no visible obstructions within the visibility triangle between the heights of thirty-six and one hundred and twenty inches.

Width of Court -- The least horizontal dimension of a court at its lowest level.

Yard -- An open, unoccupied space, other than a court, on the same lot with a building, unobstructed from the ground to the sky, except as otherwise provided herein.

## **ARTICLE 2 - ZONING REGULATIONS**

### **SECTION 1. R-1 Single Family Residence District**

In a R-1 Single Family Residence District, land may be used and buildings may be erected, altered or used only for the following:

1. One-Family Dwelling
2. Church or other place of worship.
3. School; including such adjacent buildings necessary to house supplies, facilities or classrooms.
4. Library.
5. Museum.
6. Park (not including an amusement park operated for profit.)
7. Playground or athletic field.
8. Country Club.
9. Home garden, home green house or home nursery.
10. Accessory use incident to any of the principal uses above listed and not involving the conduct of a business. House trailers shall not be considered an accessory use.

### **SECTION 2. R-2 Family Residence District**

In an R-2 Two Family Residence District, land may be used and buildings may be erected, altered, or used only as follows:

1. Any use permitted in an R-1 Single Family Residence District.
2. Two-Family dwelling.

### **SECTION 3. R-3 Apartment Residential District**

In an R-3 Apartment Residential District, land may be used and buildings may be erected, altered, or used only as follows:

1. Any use permitted in an R-1 Single Family Residence District.
2. Multiple Dwelling.
3. Lodging house or boarding house.
4. Clubhouse (not including a club the chief activity of which is a service customarily carried on as a business).
5. Hospital, other than a hospital for persons suffering from insanity or from diseases such as are commonly isolated in a separate building.
6. Public or semi-public institution, educational or charitable (not including a jail, reformatory or other correctional institution).
7. Electric sub-station without rotary machinery; or gas regulating station.
8. Accessory uses incident to any of the principal uses above listed and not involving the conduct of a business. House trailers shall not be considered as accessory use.

### **SECTION 4. Accessory Uses, Residence Districts**

In an R-1, R-2, or R-3 Residence District, accessory uses shall be uses customarily incident to the principal uses listed as permitted. They shall be understood to include, among other things:

1. HOME OCCUPATION/BUSINESSES: No portion of a retail or service oriented occupation, profession, trade or business which involves personal contact with any party not residing within the residence shall be performed or conducted at a residence located within the R-1, R-2, and R-3 zoning designations, with the provision that a day care provider who is not required to obtain

a State license shall be permitted to operate within a personal residence within said zoning designations and shall be exempt from this section regarding residential businesses.

Should a home occupation/business qualify under the above guidelines, (i.e. Avon salesman, house painter, arts and crafts person), the following provisions shall be applicable to such occupations/businesses:

a) No person other than members of the family residing at the residence shall be engaged in such occupation.

b) The use of the dwelling unit for the home occupation shall be clearly incidental and subordinate to its use for residential purposes by its occupants and not more than twenty percent (20%) of the floor area of the dwelling unit shall be used in the conduct of the home occupation.

c) There shall be no change in the outside appearance of the building or premises or other visible evidence of the conduct of such home occupation.

d) The home occupation shall be conducted only within the principal structure.

e) There shall be no sales conducted or service performed at the residence.

f) No equipment or process shall be used in home occupations which creates noise, vibration, glare, fumes, odors, or electrical interference detectable to the normal senses on lots separate from the residence. In the case of electrical interference, no equipment or process shall be used which creates visual or audible interference in any radio or television receivers on lots separate from the residence.

g) No outdoor storage shall be allowed in connection with any home occupation.

h) No form of any type of advertisement, including signs or display of items, shall occur within the residence or upon the grounds of said residence.

i) No form of public advertisement (i.e. newspaper, telephone book or flyers) shall be used in reference to the home occupation/business.

2. A private garage, or a separate building, may not be located closer to the street than existing adjacent structures.

3. A name plate not exceeding two (2) square feet in area.

4. A sign or bulletin board, not exceeding twelve (12) square feet in area, so placed as not to interfere with front yard requirements nor obstruct the view across the corner or intersecting streets; and erected upon the premises of a church or similar institution for the purpose of displaying the name and activities thereof, or the services herein provided.

5. Should a violation of this Article 2, Section 4 occur, any person aggrieved or with knowledge of said violation shall notify the Common Council of the Municipality of Kingwood of such unlawful action. Said Council shall immediately give written notice by Certified Mail with Return Receipt to the property owner of said residence requesting that the unlawful act cease. Should said property owner fail to cease said unlawful act within twenty (20) days of receipt of said notice, said Council shall immediately institute an action for an injunction, abatement or any other appropriate action or proceeding to prevent, enjoin, abate or remove such unlawful use.

## **SECTION 5. B-1 Neighborhood-Highway Commercial**

In a B-1 Neighborhood-Highway Commercial District, land may be used and buildings may be erected, altered or used for local retail or personal service establishments with adequate off-street parking and amenities to serve customers and employees as follows:

1. Barber shops and beauty parlors
2. Eating and drinking establishments excepting night clubs and similar establishments.
3. Food stores, drug stores.

4. Hardware stores
5. Laundries, hand or automatic
6. Electronics stores
7. Business and professional offices
8. Banks and other financial institutions
9. Hotels and motels
10. Automobile sales rooms and public home sales
11. Medical and dental office buildings and testing laboratories.
12. Farm machinery sales
13. Video lottery or gaming establishment. An establishment at which any form of

gambling or games of chance are permitted or played, including but not limited to “video lottery” machines that are licensed or regulated under the provisions of the Limited Video Lottery Act codified in West Virginia Code §29-22B-101 et seq., as amended. Regulated establishments do not include those establishments which solely sell lottery tickets. Provided that, no video lottery or gaming establishment shall be located within three hundred (300) feet of any residential zone, public or private educational institution, church, or other place of public worship, public park or playground, community center or facility, recreation center or facility, public building, public arena or other similar structure, or any other existing video lottery or gaming establishment, as measured in a straight line, without regard to intervening structures or objects, from the nearest portion of the building used as a video lottery or gaming establishment to the nearest property line of a lot within a residential zone or the nearest property line of any church, educational institution, the nearest boundary of a public park or playground, community center or facility,

recreation center or facility, public building, public arena or other similar structure, or other such video lottery or gaming establishment. Provided further that, nothing in this article shall be construed to limit or prohibit charitable organizations from holding charitable bingo or charitable raffles conducted pursuant to the provisions of Article Twenty and Article Twenty- One of Chapter Forty-Seven of the West Virginia Code, as amended. Any property owner who has on the property an existing video lottery or gaming establishment having been in operation on the date this article becomes effective shall be considered “grandfathered”, so that such use may continue as a non-conforming use under the laws and ordinances that regulate such non-conforming uses.

14. Other business uses which primarily serve highway traffic such as restaurants including diners, automobile repair and service stations and used car lots.

## **SECTION 6. B-2 Central Business District**

In a B-2 Central Business District, land may be used and buildings may be erected, altered or used for local retail or personal service establishments without the requirement of off-street parking and amenities to serve customers and employees as follows:

1. Any use permitted in the B-1 Commercial District, except video lottery or gaming establishments.

## **SECTION 7. I-1 Industrial District**

In an Industrial District, land may be used and buildings may be erected, altered or used for any industrial purpose except the following prohibited uses:

1. Abattoir (slaughterhouse)
2. Acetylene gas (manufacture of compound acetylene in excess of fifteen (15) pounds

pressure per square inch).

3. Acid manufacture.
  4. Animal fertilizer manufacture
  5. Asphalt manufacture or refining
  6. Brick, tile or terra-cotta manufacture.
  7. Celluloid manufacture or storage.
  8. Cement, lime or gypsum or plaster of paris manufacture
  9. Chlorine or bleaching power manufacturing or refining
  10. Coke ovens
  11. Coal tax products manufacture
  12. Creosote manufacture or treatment plant
  13. Distillation of bones, coal or wood
  14. Dye-stuff manufacture
  15. Emery cloth or sand paper manufacture
  16. Fat rendering, soap, tallow, lard, or grease manufacture or refining
  17. Garbage, offal, dead animals, or refuse incineration, reduction or storage
  18. Gas manufacture or storage in excess of 10,000 cubic feet
  19. Gasoline service station. (Permitted under conditions prescribed in Article 3, Section
- 6).
20. Gasoline storage in excess of an amount necessary for use or sale at retail on the premises.
  21. Glue, size or gelatin manufacture
  22. Gunpowder, fireworks or other explosive manufacture or storage

23. Iron or steel foundry, blast furnace, rolling mill
24. Iron or steel works if of a character cited in Item 42, of this section
25. Match manufacture
26. Oilcloth or linoleum manufacture
27. Ore reduction and general smelting operations
28. Paint, oil, shellac, turpentine or varnish manufacture
29. Petroleum refining or storage in excess of an amount necessary for use on the premises.
30. Paper and pulp manufacture
31. Potash manufacture
32. Printing manufacture
33. Rock or slag crushing
34. Rubber caoutchouc or gutta percha manufacture or treatment
35. Soda ash, caustic soda or washing compound manufacture
36. Stone quarry
37. Slag dump
38. Stock yards
39. Tanning, curing or storage of raw hides or skins
40. Tar distillation or manufacture
41. Tar roofing or tar waterproofing manufacture

And, in general, those uses which may be noxious or

offensive, by reason of the emission of odor, dust, smoke  
gas, vibration or noise.

In an Industrial District, land may be used and buildings may be erected, altered or used for  
the following conditional uses by variance:

1. Video lottery or gaming establishment
2. Night clubs and similar establishments

## **ARTICLE 3 - EXCEPTIONS TO ZONING REGULATIONS**

### **SECTION 1. Two Family or Multiple Dwelling in R-1 Residence**

#### **District**

In an R-1 Single Family Residence District, any structure permitted in an R-2 and R-3 District may be erected on a lot the side of which adjoins a B-1 or B-2 or Industrial District, provided that the height of the dwelling, the lot area per family housed thereon, and the open spaces on the lot are in accordance with the regulations herein prescribed for the Height and Area Districts in which such dwelling is located.

### **SECTION 2. Community Garages - Residence Districts**

In any Residence District, a Community Garage may be erected in the interior of a block, provided:

- (a) That no portion of such building shall be nearer than sixty (60) feet to the frontage of the block or nearer than forty (40) feet to a street line along the side of the block.
- (b) That no portion of such building shall be less than fifteen (15) feet from the center of an alley.
- (c) That no portion of such building shall be nearer than two hundred (200) feet to an existing dwelling.

### **SECTION 3. Garages Accessory to Multiple Dwellings**

In an R-3 Residence District, a garage with storage space to the extent of nor more than one car for each family may be erected upon the same lot with a multiple dwelling, for the housing of automobiles for those who have residence in such dwelling, provided:

- (a) A garage, if a separate building, must be constructed to conform with the line of existing adjacent structures.
- (b) That no repair facilities are maintained and no repairs except those of minor nature be made.
- (c) That any door for vehicles, opening upon a street, shall be at least twenty (20) feet from the street line and an open, unoccupied space shall be maintained between said door and the street line. The height of such open, unoccupied space shall not be less than twelve (12) feet and the other dimensions shall be such that no part of the building encroaches on the triangular area circumscribed by lines joining the center of the doorway and the two points on the street line, one on each side of the center line of the doorway and twelve (12) feet there from.

### **SECTION 4. Public Garages: Business Districts**

In B-1 and B-2 Districts a Public Garage may be established, erected or enlarged, provided:

- (a) That no entrance or exit of such garage, for vehicles, shall be within two hundred (200) feet of the entrance to any school, playground, church, hospital or public library, or within one hundred (100) feet of any Residence District established by this ordinance.
- (b) That nor repair facilities shall be maintained on the front portion of the lot, or in the front portion of the first story of the building, within thirty (30) feet of the street.
- (c) That any door for vehicles, opening upon a street, shall be at least twenty (20) feet from the street line and an open, unoccupied space shall be maintained between said door and the street

line. The height of such open, unoccupied space shall be not less than twelve (12) feet and other dimensions shall be such that no part of the building encroaches on the triangular area circumscribed by lines adjoining the center of the doorway and two points on the street line, one on each side of the center line of the doorway and twelve (12) feet therefrom.

## **SECTION 5. Service Stations: Business Districts**

In B-1 and B-2 Districts, a Service Station may be established, erected or enlarged, provided:

(a) That no entrance or exit of such service station, or garage, for vehicles shall be within two hundred (200) feet of the entrance to any school, playground, church, hospital or public library, or within one hundred (100) feet of any Residence District established by this ordinance.

(b) That no repair facilities shall be maintained on the front portion of the lot, or in the front section of the first story of the building within thirty (30) feet of the street.

(c) That any door for vehicles, opening upon a street, shall be at least thirty (30) feet from the street line and an open, unoccupied space shall be maintained between said door and the street line. The height of such open, unoccupied space shall be not less than twelve (12) feet and other dimensions shall be such that no part of the building encroaches on the triangular area circumscribed by lines joining the center of the doorway and two points on the street line, one on each side of the center line of the doorway and twelve (12) feet therefrom.

## **SECTION 6. Filling Station: Business Districts**

A Filling Station may be established, erected or enlarged in any B-1 or B-2 Districts, or in any Industrial District, provided:

(a) That no equipment for the service of gasoline or oil be placed closer than fifteen (15) feet to any street line.

(b) That no portion of such building or its equipment be within forty (40) feet of any Residence District established by this ordinance.

(c) That any door for vehicles, opening upon a street, shall be at least thirty(30) feet from the street line and an open, unoccupied space shall be maintained between said door and the street line. The height of such open, unoccupied space shall not be less than twelve (12) feet and other dimensions shall be such that not part of the building encroaches on the triangular area circumscribed by lines joining the center of the doorway and two points on the street line, one on each side of the center line of the doorway and twelve (12) feet therefrom.

#### **SECTION 7. Retail Beer or Alcoholic Beverage: Business Districts**

In the B-1 and B-2 Business Districts, retail beer or alcoholic beverage outlets may be established, erected or enlarged, provided that no entrance or exit of such retail beer or alcoholic beverage outlet shall be within three hundred (300) feet of the entrance to any school, playground, church, or public library; or within one hundred (100) feet of any Residence District established by this ordinance.

#### **SECTION 8. Manufacturing in Business Districts**

In a B-1 or B-2 District, manufacturing not prohibited in an Industrial District, and not otherwise excepted by this ordinance, may be established and maintained subject to the following limitations:

(a) Such manufacturing processes shall not occupy the front portion of the first story of a building, within thirty (30) feet of any street line.

(b) Such manufacturing processes shall not occupy an area exceeding fifty (50) per cent of the floor area of the building.

(c) Such manufacturing processes shall not be located within one hundred (100) feet of any Residence District, as established by this ordinance.

## SECTION 9. Off-Street Parking

No application for a building permit or use and occupancy permit shall be approved for residential or business unless there is included with the plan for such building, improvement, or use, a plot plan showing the required space designated for off-street parking. The plot plan shall clearly show the size and location of parking spaces, width and arrangement of access driveways, and arrangement of walls, fences and screen planting.

A minimum number of off-street parking spaces shall be provided in accordance with the following schedule where (1) means (per) in spaces per unit.

<u>USE</u>	<u>SPACES REQUIRED</u>
Automobile service station	1/2 employees plus 1/owner or manager
Banks or offices	1/300 sq. ft. of floor area
Beauty parlors or barber	1/300 sq. ft. of floor area shops
Boarding, rooming or lodging houses	1/guest sleeping room
Bowling alleys	5/alley
Car wash - machine	1/3 employees plus 1/owner or manager and reserve spaces equal to 5 times capacity of machine wash
Car wash - stall or by hand	1/stall
Churches	1/4 seats in auditorium or 1/12 seats in classrooms, whichever is greater
Commercial recreation uses	1/4 persons in designated capacity of facility
Convalescent, nursing, doctor and other health homes and institutions	1/4 beds plus 1/12 employees plus 1/staff
Dormitories, fraternity, and sorority houses	1/3 beds plus 1/manager and 1/2 full-time employees
Funeral homes or mortuaries	8/parlor or chapel, plus 1/funeral vehicle
Hotels	1/2 sleeping rooms and 1/3 employees
Industrial manufacturing and wholesale establishments	1/2 employees on largest shift or 1/1,700sq. ft. whichever is larger
Hospitals	1/2 beds plus 1/3 employees, plus 1/doctor
Medical Clinics	4/doctor
Laundromats	1/2 washing machines

Libraries and Museums	1/250 sq. ft. of area open to public, plus 1/500 sq. ft. of other gross floor area
Motels and Tourist Courts	1/sleeping room or suite plus 1/owner or manager
Private clubs, lodge halls, and union headquarters	1/rooming unit plus spaces equal to 30 percent of capacity in persons
Residential structures	2/single-family detached; 1-1/2/dwelling unit for all other
Restaurants, nightclubs, taverns and lounges	1/100 sq. ft. of floor area plus 1/4 employees
Retail stores, supermarkets, department stores and personal service shops	1/200 sq. ft. of gross floor area
Schools (public or private): elementary, high school, college, university or other institution of higher learning	1/2 teachers, employees, or administrators plus 1/6 seats in assembly hall OR 1/2 teachers, employees, and administrators plus 1/10 students
Theaters, auditoriums, and places of assembly with fixed seats	1/4 seats plus 1/2 employees
Trailer or monuments sales, auctions	1/2,500 sq. ft. of lot area
Video Lottery Establishment	1/100 sq. ft. of floor area plus 1/employee or 1/licensed gaming machine plus 1/employee, whichever is larger

Reasonable and appropriate off-street parking requirements for structures and land uses which do not fall within the categories listed above shall be determined by the city council, who shall consider all factors entering into the parking needs of each use.

The off-street parking requirements for two or more uses may be satisfied by providing a common facility containing not less than the sum of the number of space required for each of the uses.

In cases of development of properties where several uses could effectively use the same parking area, because of different periods of peak demand, the applicant may appear before the Board of Zoning Appeals to present a modified parking plan. The Board is authorized to approve such plans, when appropriate, after referral to the Planning Commission. The Board shall require written evidence of an agreement for joint use, and may impose any necessary additional conditions.

Following are the design and development standards for off-street parking spaces:

1. One automobile parking space shall consist of at least 200 square feet of area, with a minimum width of 9 feet. Adequate interior driveways and entrance and exit driveways shall be provided.
2. All parking areas designed to accommodate more than four cars shall be surfaced with materials which will eliminate problems of dust and mud, and shall be so drained as to prevent erosion damage to abutting properties or streets.
3. When lighting of parking areas is provided, installations shall be arranged so as not to reflect or to cause glare into abutting residential lots or adjacent streets.
4. No sign of any kind, other than one designating entrances, exits, or conditions of use shall be maintained on a parking area on that side which abuts or faces any premises situated in any residential zone. Such signs shall not exceed eight (8) square feet in area, nor shall there be more than one such sign for each entrance or exit.
5. Parking areas shall be designed with careful regard given to orderly arrangement, topography, amenity of view, ease of access, and as an integral part of the overall site design.
6. If any proposed parking area is to have a capacity of 20 or more automobiles, at least 5 percent of the total area of the lot is to be planted with trees, shrubs, and other landscape materials.
7. Off-street parking areas for more than 5 vehicles shall be effectively screened on each side which adjoins or faces an institutional premise or any premises located in a residential district. The screening shall consist of a masonry wall, solid fence, dense plantings, or other landscape feature of acceptable design. A wall or fence shall not be

less than 3 feet or more than 6 feet six inches in height.

## **SECTION 10. Signs and Advertising Structures**

A separate building permit shall be required for any such sign, pennant, or notice not specifically included in an original building permit, except as provided hereinafter.

### **Signs Exempt from Regulations:**

The following signs are exempt from the regulations contained in this article:

1. Signs advertising the sale or lease of property.
2. Signs indicating the architect, engineer, project name, source of financing and contractor when displayed during the construction period and on a construction site and removed thirty days after construction is completed.
3. Governmental signs and legal notices.
4. Directional signs not exceeding six square feet in area.
5. Flags of any country, state or unit of local government.
6. Memorial plaques and historical signs.
7. Any lettering or design painted or applied directly to the surface of windows of a structure.
8. Signs associated with churches and similar places of worship, located in a non-residential district, not exceeding ninety-six square feet.
9. Signs associated with public and nonprofit schools, not exceeding ninety-six square feet.
10. Political signs.
11. Signs hanging or standing inside a building, not attached to a window or door, visible from a public street.
12. Any signs inside an athletic field or other enclosed outdoor space.
13. Business signs of less than 48 square inches

**Temporary Signs:**

1. All temporary signs shall be permitted for a maximum of thirty (30) days prior to the event they advertise. A building permit is not required for temporary signs.
2. All temporary signs must be removed within forty-eight hours after the conclusion of the event. Any temporary sign still in place after said period may be confiscated by the City and the owner of the sign may be subject to prosecution.

**Signs Not To Create a Traffic Hazzard:**

No sign or banner shall be erected in the visibility triangle as defined in this Ordinance. Any such signs shall be removed at the direction of the Mayor of the City. If not removed by the owners or occupants of the property within ten days, the Mayor may cause the property owner to be cited for a violation of this ordinance.

**Banners:**

1. Any business activity located in a B-1, B-2 or I-1 District, with a permitted permanent sign, may display banners. All banners must be attached to a permanent structure and no part of the banner or rope/string used to anchor the banner shall extend past the confines of the permanent structure. This section will allow a banner to be placed between the permitted poles or structures of a permitted permanent sign. The total square feet of banners shall not exceed the total square footage of current permitted signage.
2. No banner shall be erected in the visibility triangle as defined in this Ordinance. Any such banners shall be removed at the direction of the Mayor of the City. If not removed by the owners or occupants of the property within ten days, the Mayor may cause the property

owner to be cited for a violation of this ordinance.

### **Menu Board Sign**

Menu boards shall be allowed only as an accessory use to a restaurant permitted to have a drive-thru window provided that:

1. Such signs shall not exceed 32 square feet in area and six feet in height;
2. Such signs shall not be legible from a public right-of-way or adjacent property;
3. There shall be no more than one such sign per property;
4. The color of such signs shall be neutral or earth tone or have architectural ties to the main building;
5. Such signs may have changeable copy; and
6. Such signs may be internally or directly illuminated.

Menu board signs will not count against the total of otherwise allowed signage.

### **Prohibited Signs and Devices:**

1. Spotlights, floodlights, luminous tubes or lighted signs installed in any way which will permit the direct rays of such light to penetrate into any residence.
2. Signs that project above the roofline on which it is mounted unless attached properly to withstand applicable wind loads as regulated in the State Building Code.
3. Any sign that copies or imitates an official sign or purports to have official status.
4. Beacons.
5. Windblown devices.
6. Any sign that obstructs or substantially interferes with any window, door, fire escape, stairway, ladder, or opening intended to provide air, ingress, or egress to any building.

7. Off-premise and billboard signs of any kind except those allowed under this section.
8. Pylon signs, except those allowed under this section.
9. No sign or banner except for authorized traffic signs shall be erected at the intersection of any streets in such a manner as to create a traffic hazard by obstructing the visibility triangle, as defined in this ordinance, or at any location where it may interfere with, obstruct the view, or be confused with any authorized traffic sign.
10. Signs that flash, blink, rotate, or scroll

#### **Signs Generally:**

1. Outdoor advertising signs and structures, where permitted, shall be set back from the established right-of-way line of any street or thoroughfare, at least as far as the required front yard depth for a principal building in such districts; provided that for every square foot by which such signs or billboards exceed 80 square feet, such setback shall be increased by 1/2 foot but need not exceed 100 feet, except that at the intersection of any state or federal highways with a major secondary thoroughfare, the setback of any outdoor advertising sign or billboard shall not be less than 100 feet from the established or planned future right-of-way of such highway or street.
2. In any nonresidential district there shall be permitted signs, including signs painted on buildings, for identification purposes or advertising products processed, manufactured or sold on the premises either on the building appurtenant thereto or on the ground, a distance not more than 100 feet from said building; provided such signs do not exceed 50 square feet in area for each 25 feet of frontage; provided that such signs shall not exceed 2 per business and the total area of all such signs shall not exceed 1,000 square feet. Such signs shall

require a separate building permit if not submitted at the time of the submission of permit application for the primary application for the primary land use.

3. No such billboard, sign, or advertising structure, other than signs flat against the face of a commercial building, shall face any public square or entrance to any public park, public or parochial school, library, church, or similar institution, within 200 feet thereof.
4. The front and back of a sign may be used for sign purposes, provided that one face may not exceed the limits specified herein, nor may the area of the total sign faces exceed twice these limits.
5. No billboard or outdoor advertising structure not pertaining to the use of any property shall be painted or located on any wall, building, or fence, or erected upon the roof of any building.

#### **Area Computation of Signs**

1. **Area Computation of Individual Signs:** The area of a sign face (which is also the sign area of a wall sign or other sign with only one face) shall be computed by means of the smallest rectangle that will encompass the extreme limits of the writing, representation, emblem or other display, together with any material or color forming an integral part of the background of the display or used to differentiate the sign from the backdrop or structure against which it is placed, but not including any supporting framework, base, bracing or decorative fence or wall when such fence or wall otherwise meets the regulations of this Ordinance and is clearly incidental to the display itself.
2. **Area Computation of Multi-faced Signs:** Where the sign faces of a double-faced sign are parallel or the interior angle formed by the faces is 60 degrees or less, only one display face shall be measured in computing sign area. If the two faces of a double-faced sign are

of unequal area, the area of the sign shall be the area of the larger face. In all other cases, the areas of all faces of a multi-faced sign shall be added together to compute the area of the sign. Sign area of multi-faced signs is calculated based on the principle that all sign elements that can be seen at one time or from one vantage point should be considered in measuring that side of the sign.

#### **Removal of Signs upon Discontinuation of Use.**

1. Whenever the use of a building or premises by a specified business or other establishment is discontinued by the owner or occupant for a period of 90 days, the signs pertaining to that business or establishment that were installed by the occupant or owner, as well as all signs which do not conform to the standards of this Ordinance, shall be removed.
2. Any signs not removed within 30 days following the 90 day period may be confiscated by the City and the owner of the sign may be subject to prosecution.

#### **SECTION 11. Planned-Unit Development**

A planned-unit development may be allowed in any district by the Board of Zoning Appeals, subject to the following conditions:

1. **Application.** In areas where planned-unit developments are proposed, the owner or owners of the property shall file applications to the Board of Zoning Appeals. Such applications shall be accepted for consideration under the following conditions:
  - a. The area proposed shall be in one ownership or, if in several ownerships, the proposal for a special exception use shall be filed jointly by all of the owners of the properties included in the plan.
  - b. The minimum size of an area proposed for planned-unit development shall be 5

acres.

- c. The area shall be adaptable to a planned-unit development. It shall not have running through it a major thoroughfare, railroad, or other physical feature which will tend to destroy the neighborhood cohesiveness.
- d. The area is or can be served with adequate public or community water and sewerage service meeting Health Department standards.
- e. The area is situated so that existing or programmed roads will be adequate to serve the traffic generated by the development.

2. **Data to Accompany Application.** Together with the application for a special exception for a planned-unit development, there shall be submitted a tentative, overall development plan, which shall show:

- a. Topography
- b. Proposed street system
- c. Proposed lot layout
- d. Proposed reservation for parks, playgrounds, school sites, and other open spaces.
- e. Types of dwellings and portions of the area proposed therefore.
- f. Proposed location of dwellings and parking areas.
- g. A tabulation of overall density per gross acre.
- h. Preliminary plans and elevations of the several dwelling types.

3. **Density of Development.** The overall density of a planned-unit development shall not exceed by more than 10 percent the overall density that it would be possible to achieve were the site developed in the conventional fashion in compliance with the ordinary regulations or the district in which it lies. Area used or reserved for large regional parks, land subject to recurring

flood, and swamp or marsh land shall not be included when computing the density.

4. **Application and Review Procedure.** Upon receipt of application for a special exception permit for a planned-unit development, the board of Zoning Appeals shall take the matter under consideration. The Board shall consider the location, arrangement, and size of lots and reservation of open space; the location, width and grade of streets; the location, arrangement, and height of buildings; the gross density proposed for the entire area; and such other features as will contribute to the orderly and harmonious development of the area, with due regard to the character of the neighborhood and its peculiar suitability for any one or more of the proposed uses.

5. **Modification of Design Requirements.** In review of a planned-unit development plan, the Planning Commission may waive or modify the area, yard, height, and other design requirements for the type of development in the community if such modification will increase the amenities of the development without sacrificing public health and welfare requirements.

## **ARTICLE 4 - NONCONFORMING USES**

### **SECTION 1. General**

(a) The lawful use of land existing at the time of the adoption of this ordinance, or of an amendment thereto, although such use does not conform to the provisions hereof, may be continued; but if such nonconforming use be discontinued, any future use of said land shall be in conformity with the provisions of this ordinance.

(b) This lawful use of a building, existing at the time of the adoption of this ordinance, or of an amendment thereto, although such use does not conform to the provisions hereof, may be continued and such use may be extended throughout the building, provided that no structural

alterations be made other than those ordered by the Mayor to assure the safety of the building; and provided further that such extension does not displace any residence use in a Residence District established by this ordinance.

(c) A nonconforming use of a building may be changed to another nonconforming use of the same or of a more restrictive classification, provided that no structural alterations be made other than these ordered by the Mayor to assure the safety of the building; and provided further that such extension does not displace any residence use in a Residence District established by this ordinance.

(d) Whenever a nonconforming use of a building has been changed to a more restricted use or to a conforming use, such use shall not thereafter be changed to a less restricted use.

(e) Whenever a nonconforming use of a building or portion thereof has been discontinued for a period of at least one (1) year, such nonconforming use shall not thereafter be reestablished, and the future use shall be in conformity with the provisions of this ordinance.

## **ARTICLE 5 - SCHEDULE OF HEIGHT AND AREA CONTROLS**

### **R1 - Single-Family, Residential**

- 1) 10,000 sq.ft. minimum lot area
- 2) 10,000 sq.ft. minimum lot area dwelling unit
- 3) 50 ft. minimum lot width
- 4) 100 ft. minimum lot depth
- 5) 30/2 1/2 maximum height (feet/stories)
- 6) 25 ft. Minimum front yard
- 7) 10/20 minimum side yard (one/both)

- 8) 25 ft. minimum rear yard
- 9) 25 maximum lot coverage (percent)

**R2 - Two-Family, Residential:**

- 1) 6,000 sq. ft. minimum lot area
- 2) 6,000 sq. ft. minimum lot area dwelling unit
- 3) 50 ft. minimum lot width
- 4) 100 ft. minimum lot depth
- 5) 30/2 1/2 maximum height (feet/stories)
- 6) 25 ft. minimum front yard
- 7) 10/20 ft. minimum side yard (one/both)
- 8) 25 ft. minimum rear yard
- 9) 40 maximum lot coverage (percent)

**R2 - Detached Single-Family, Two-Family:**

- 1) 6,500 sq.ft. minimum lot area
- 2) 3,250 sq. ft. minimum lot area dwelling unit
- 3) 65 ft. minimum lot width
- 4) 100 ft. minimum lot depth
- 5) 30/2 1/2 maximum height (feet/stories)
- 6) 20 ft. minimum front yard
- 7) 10/25 ft. minimum side yard (one/both)
- 8) 25 ft. minimum rear yard
- 9) 40 maximum lot coverage (percent)

### **R3 - Apartment, Residential, Detached, Single-Family:**

- 1) 6,000 sq. ft. minimum lot area
- 2) 6,000 sq. ft. minimum lot area dwelling unit
- 3) 50 ft. minimum lot width
- 4) 100 ft. minimum lot depth
- 5) 30/2 1/2 maximum height (feet/stories)
- 6) 20 ft. minimum front yard
- 7) 10/20 minimum rear yard
- 8) 25 ft. minimum rear yard
- 9) 40 maximum lot coverage (percent)

### **R3 - Two-Family:**

- 1) 6,500 sq. ft. minimum lot area
- 2) 3,250 sq. ft. minimum lot area dwelling unit
- 3) 65 ft. minimum lot width
- 4) 100 ft. minimum lot depth
- 5) 40/3 maximum height (feet/stories)
- 6) 20 ft. minimum front yard
- 7) 10/25 ft. minimum side yard (one/both)
- 8) 25 ft. minimum rear yard
- 9) 40 maximum lot coverage (percent)

### **R3 - Multi-Family:**

- 1) 10,000 sq. ft. minimum lot area

- 2) 1,500 sq. ft. minimum lot area dwelling unit
- 3) 100 ft. minimum lot width
- 4) 100 minimum lot depth
- 5) 40/3 maximum height (feet/stories)
- 6) 40 ft. minimum front yard
- 7) 10/25 ft. minimum side yard (one/both)
- 8) 30 ft. minimum rear yard
- 9) 35 maximum lot coverage (percent)

### **B1 - General Commercial:**

- 1) 6,000 sq. ft. minimum lot area
- 2) No minimum lot area
- 3) 50 ft. minimum lot width
- 4) 60 ft. minimum lot depth
- 5) 50/4 maximum height (feet/stories)
- 6) No minimum front yard footage unless adjacent to residential - then 10 ft.
- 7) No minimum side yard footage unless adjacent to residential - then 10 ft.
- 8) 15 ft. minimum rear yard
- 9) 60 maximum lot coverage (percent)

### **B2 - Central Business District:**

- 1) No minimum lot area
- 2) No minimum lot area dwelling unit
- 3) No minimum lot width

- 4) 100 ft. minimum lot depth
- 5) 50/4 maximum height (feet/stories)
- 6) 10 ft. minimum front yard
- 7) Minimum side yard footage for one/both - none but 10 ft. if provided.
- 8) 25 ft. minimum rear yard
- 9) 70 maximum lot coverage (percent)

### **I1 - Industrial:**

- 1) 10,000 sq. ft. minimum lot area
- 2) No minimum lot area dwelling unit
- 3) 80 ft. minimum lot width
- 4) 100 ft. minimum lot depth
- 5) 100/6 maximum height (feet/stories)
- 6) 25 ft. minimum front yard
- 7) 10 ft. plus 5 ft. for story in excess of 2 stories
- 8) 25 ft. minimum rear yard
- 9) 50 maximum lot coverage (percent)

### **Permitted uses by district:**

#### DISTRICT:

R-1, Single Family or Residential

#### PURPOSE:

To delineate those areas where predominantly residential development has occurred or will be likely to occur in accordance with the General Development Plan of the City of Kingwood.

PERMITTED PRINCIPAL USES:

Single-family dwelling, public parks, playgrounds, recreational areas, public elementary and high schools and private schools having curricula comparable to that offered in the public school. Churches and similar places of worship.

POTENTIAL ACCESSORY USES:

Private garage, private recreation facilities designed and intended for the sole use of the residents therein. Signs. Other customary accessory uses and buildings.

SPECIAL USES (BY VARIANCE): Planned unit developments.

DISTRICT:

R-2, Two-Family Residential

PURPOSE:

N/A

PERMITTED PRINCIPAL USES:

Any use permitted in R-1 Residential Districts Two-Family dwellings.

POTENTIAL ACCESSORY USES:

Any accessory use permitted in R-1 Residential Districts, Customary home occupations.

SPECIAL USES (BY VARIANCE):

Nursery school.

DISTRICT:

R-3, Apartment Residential.

PURPOSE:

To upgrade the character of all residential areas in the City by requiring standards of land use and lot and building bulk and size which more accurately reflect existing development. To protect

the integrity of residential areas by prohibiting the incursion of incompatible non-residential areas.

PERMITTED PRINCIPAL USES:

Any use permitted in R-1 Residential Districts Apartments.

POTENTIAL ACCESSORY USES:

Any accessory use permitted in R-2 Residential Districts.

SPECIAL USES (BY VARIANCE):

Any special use permitted in R-2 Residential Districts.

Mobile Homes. Farms.

DISTRICT:

B-1 Neighborhood Highway Commercial.

PURPOSE:

To delineate predominantly retail shopping areas outside of the central business districts. Off street parking and amenities to serve customers and employees required.

PERMITTED PRINCIPAL USES:

Any local retail or personal service establishment, such as:

Barber shops and beauty parlors, eating and drinking establishments except nightclubs and similar establishments. Food Stores, drug stores, Hardware stores, Laundries, hand or automatic. Radio and television stores. Business and Professional offices. Banks and other financial institutions. Hotels and motels. Auto sales rooms and public home sales. Farm machinery sales. Other business uses which primarily serve Highway traffic such as restaurants, diners, auto repair and service stations. Used car lots. Video lottery or gaming establishment.

POTENTIAL ACCESSORY USES:

Signs, OffStreet Parking, Indoor storage areas, other accessory uses customarily appurtenant.

SPECIAL USES (BY VARIANCE):

Automobile service station, dry cleaning and clothes pressing establishments, social hall, lodges, fraternal organizations.

DISTRICT:

B-2 Central Business

PURPOSE:

To delineate a centralized area where shopping, recreation and cultural facilities are provided for the City as a whole. Off street parking not essential.

PERMITTED PRINCIPAL USES:

Business offices and office equipment and business machine sales and service. Funeral parlors, indoor amusement enterprises including theaters, bowling alleys, billiard parlors, etc.

POTENTIAL ACCESSORY USES:

Any accessory use permitted in the B-1 Business District, excepting video lottery or gaming establishment.

SPECIAL USES (BY VARIANCE):

N/A

DISTRICT:

I-I Industrial

PURPOSE:

To delineate areas best suited to industrial development because of location, topography, existing facilities and relationship to other land uses.

PERMITTED PRINCIPAL USES:

Any manufacturing, assembly or other industrial or research operation meeting the requirements of the performance standards of this enclosed storage of goods and materials, distribution plants, wholesale business.

POTENTIAL ACCESSORY USES:

Signs, customary accessory uses incidental to a permitted use.

SPECIAL USES (BY VARIANCE):

Open storage essential to any permitted principal use that for special reasons cannot be enclosed in a building. Extraction of stone sand and gravel. Video lottery or gaming

establishment. Night club or similar establishment.

## **ARTICLE 6 – APPLICATION OF HEIGHT REQUIREMENTS**

### **SECTION 1. General Requirements**

The height limitation of this ordinance shall be applied as follows:

(a) A cellar or basement, when designed for occupancy as a dwelling, unless two-thirds (2/3) of its height be below curb level, shall be counted as a story; when otherwise designed and used, it shall not be counted as a story.

(b) On a corner lot having two (2) or more frontages, the height shall be taken from a level midway in elevation between the highest curb level and the lowest curb level; and this height limitation shall apply upon such lot not farther than to the center line of the block, beyond which any portion of the same lot shall have a height limitation similar to that applying upon the property next adjacent thereto.

(c) On a through lot, the height limit, including all exceptions thereto, beginning at either frontage, shall apply to a depth not exceeding one-half the depth of the lot.

(d) On an interior lot, the height limit, including all exceptions thereto, shall apply to a depth equal to one-half the depth of the block as measured from frontage to frontage on a line projected through the center of the lot in question. Any rear portion of such lot beyond the center line of the block shall have a height limit similar to that applying upon the lot immediately abutting in the rear thereof.

(e) Regardless of how a lot lays, the building thereon shall not exceed a maximum

height of fifty (50) feet.

## **ARTICLE 7 - EXCEPTIONS TO HEIGHT LIMITATIONS**

### **SECTION 1. Height of Monuments, Spires, etc.**

In any Height and Area District, the height limitation of the District may be exceeded by a monument, shaft, spire, dome or tower, if erected for ornamental purposes only.

### **SECTION 2. Height of Special Buildings**

In any Business or Industrial District, the height limitations of the District may be exceeded by buildings requiring special design on account of their particular use in industry or commerce, such as chimneys, stacks, grain elevators, detached water or wireless towers provided that they otherwise comply with the regulations herein prescribed.

### **SECTION 3. Appurtenances to Buildings**

In any Height and Area District, chimneys, stacks elevator bulkheads, penthouses, gas or water towers, stage towers or scenery lofts, electric signs, wireless towers, and other necessary mechanical appurtenances, where permitted by the Use Regulations and erected upon and as an integral part of the building, may be erected or extended above the height limit of the District; provided that any such building shall set back from the vertical plane of the permitted building line one (1) foot horizontally for each two (2) feet of extra height.

### **SECTION 4. Allowance for Terraces**

On a lot where terraces exist, the height of the building located thereon may be

increased above the height limitations of the District a distance equal to the height of the terrace above the curb, provided that the depth of the front yard be not less than the height of the terrace above the curb.

## **ARTICLE 8 - APPLICATION OF AREA REGULATIONS**

### **SECTION 1. General**

(a) No yard, court or other open space, provided about any building for the purpose of complying with this ordinance, shall be considered as a yard, court, or other open space for another building.

(b) In measuring the width and depth of the yards prescribed herein, a cornice projecting not more than thirty (30) inches, or a fence, shall not be held to reduce such required dimensions.

(c) A porch may be erected in a front yard or rear yard, provided that it be not closer to an adjoining property line than the required width of the side yard.

### **SECTION 2. Front yards**

(a) In any Residence District where forty (40) percent or more of the property fronting upon one side of a street between two intersecting streets, and located in such District, has been improved with buildings at the time of the passage of this ordinance, and a front yard of greater depth than the minimum or of less depth than the minimum, required by the Schedule of Height and Area Regulation, has been provided for the majority of such buildings, such minimum may be disregarded; but no building hereafter erected or altered in such Residence District between the existing buildings and the street corner shall be placed nearer to the street than the minimum prescribed in this ordinance of the average distance already established by the buildings already erected, whichever is greater; but the minimum depth of front yard for a dwelling on a lot between two adjoining lots, on each of which a building exists at the time of the passage of the ordinance, shall be the average

of the depths of front yards observed by such buildings.

Where less than forty (40) percent of such property has been improved with buildings, or where dwellings do not front upon a street, the minimum depth of front yard shall be as required by the Schedule of Height and Area Regulations.

(b) For a corner lot in a 30-foot or 40-foot Height and Area District, the minimum depth of yard along either frontage shall be the depth of yard which is required along the same street for the adjoining lot; provided that nothing in this provision shall be so interpreted as to reduce the buildable width of a corner lot of record at the time of passage of this ordinance to less than twenty-five (25) feet; or, in a Residence District, to require more than one yard adjacent to the street lines in excess of twenty-five (25) feet in depth (or width); or, in a Business District, to require a yard along either frontage to be more than fifteen (15) feet in depth (or width).

(c) When a dwelling in a 100-foot District fronts on an alley the front line of such dwelling shall be at least fifteen (15) feet from the center of such alley.

(d) In a Business District located within a Height and Area District where front yards are required, the depth of front yard need not exceed that required by this ordinance for buildings in an adjoining Residence District and located in the same block and fronting on the same street.

(e) In a 40-foot District, where all the lots fronting on one side of a street between two intersecting streets are within a Business District and at least twenty (20) per cent of such lots are improved with commercial buildings at the time of the passage of this ordinance, a front yard greater in depth than the average distance already established by such existing commercial buildings shall not be required.

(f) In a 40-foot District, where part of the lots fronting on one side of a street between two intersecting streets are within a Business District and part within a Residence District, a front yard provided for a lot in such Business District need not exceed the least depth already established by an existing building which fronts on the same street as the lot in question and is located between said lot and the adjacent Residence District in the same block.

### **SECTION 3. Side Yards**

(a) The width of a side yard shall be taken as the least distance from any part of, or point on, the building to the adjacent side line of the lot.

(b) In any District other than a Residence District, a building other than a dwelling shall not require a side yard except when bordering on a Residence District, in which case a side yard shall be provided adjacent to such District and equal in width to that required therein.

(c) The width of any side yard, if one is provided, whether or not one be required by the Schedule of Height and Area Regulations, shall not be less than ten (10) feet.

### **SECTION 4. Rear Yards**

(a) The depth required by the Schedule of Height and Area Regulations for rear yards shall be the depth exclusive of any portion used for accessory buildings.

(b) In computing the depth of rear yard for any building where such yard opens into an alley, one-half the width of such alley may be considered as a portion of the yard.

(c) In measuring the depth of rear yards, in cases where the rear lot line is not parallel with the street line, average dimensions may be used.

(d) In a Business District located within a fifty (50) foot Height and Area District, a

building used in whole or in part as a dwelling shall require a rear yard when bordering on a Residence District, in which case a rear yard at least fifteen (15) feet in depth shall be required adjacent to such District.

(e) In any Residence District, now dwelling shall be so located on a lot that the rear thereof faces a street line unless such dwelling be located thirty (30) feet or more from such street line.

## **SECTION 5. Courts**

(a) Except as herein prescribed, an outer court is not required in any District, but if provided, it's width shall be not less than ten (10) feet, nor less than one-fourth (1/4) of it's length nor less than two (2) inches for each foot of height of such court measured from the bottom thereof to the top of the highest wall abutting it; except that, in determining the width of an outer court adjoining a side yard, the width of such yard may be counted.

(b) Except as herein prescribed, an inner court is required, but if provided its width shall be not less than ten (10) feet nor less than three (3) inches for each foot of the height of such court measured from the bottom thereof to the top of the highest wall abutting it.

(c) In any Business District or Industrial District, when a portion of the building above the ground floor, but not the ground floor itself, is used as a dwelling, an outer court in the rear thereof shall be provided for the stories used for residence purposes. Such court shall be open and unobstructed for the full width of the lot and at least fifteen (15) feet in depth.

## **SECTION 6. Lot Area Per Family**

(a) Nothing in the area requirements of this ordinance, relating to lot area per family,

shall be held to prohibit the erection of a one-family dwelling upon a lot, the area of which is less than that prescribed as the lot area per family, provided that such lot at the time of the passage of this ordinance, was held under a separate ownership from the adjoining lots; or provided that, at the time of the passage of this ordinance, such lot is shown to be a separate and distinct numbered lot, by a plan of lots which has been recorded and which depicts streets and alleys which have been legally dedicated to the public use.

(b) In any District, the minimum lot area per family required under the Schedule of Height and Area Regulations may be reduced ten (10) per cent for a corner lot.

## **SECTION 7. Accessory Buildings**

(a) In any Residence District, any accessory building shall be at least ten (10) feet from an adjoining rear alley except garages, which shall not be less than ten (10) feet from the property line of the adjoining alley.

(b) In an R-1, R-2 or R-3 Residence District, no accessory building shall be less than ten (10) feet from any lot line and no closer to the street than existing adjacent structure.

(c) In an R-1, R-2 or R-3 Residence District, accessory buildings on a corner lot, the rear line of which, is the side line of another lot shall not be closer to the side street than the depth of front yard required in the District in which said adjoining lot is situated. Such accessory building shall also be at least ten (10) feet from said common lot line.

## **ARTICLE 9: WALLS AND FENCES**

All proposed walls and fences shall comply with the requirements of this section.

### **SECTION 1: Wall and fence height measurement**

1. Measured from unaltered existing grade. The height of all walls and fences shall be measured from the existing grade as it existed on the date of passage. The height of all walls and fences shall be measured from the existing grade to the highest point of the wall or fence in order to prevent the artificial raising of the grade in order to allow for a higher wall or fence. Where the existing grade changes the fence height shall change with the grade.
2. Measured in a continuum. The height shall be measured in a continuum at each point along the wall or fence, excluding posts and/or decorative post caps not to exceed 4 inches above the applicable height limit.

### **SECTION 2: Height limits for walls and fences**

1. Walls and fences adjacent to intersections. All districts. All walls and fences adjacent to a street intersection must comply with a 20ft visibility triangle, measured as 20ft linearly along the property lines parallel to the public right-of-way.
  - a) Wall and fence height in the visibility triangle shall not exceed the height of 36 inches above the center grade of the adjacent street.
2. R1, R2, and R3 Districts

a) Front yard. Wall and fence height in the front yard shall not exceed the height of 42 inches unless it meets the following requirements:

- i. A fence or wall may only be erected to the maximum height of 54 inches if the wall or fence consists of open spaces distributed uniformly along its surface, with at least a 50/50 ratio of open to closed area, or minimally above a height of 42 inches, so that vision through the fence is not materially obstructed from any angle so as to obstruct vehicular or pedestrian traffic on adjacent streets or public ways.

b) Within the limits of the secondary front yard:

- i. No solid wall or fence in the secondary front yard shall exceed the height of 42 inches unless all of the following conditions are met, in which case the wall or fence shall not exceed the height of 78 inches:

1. The fence is set back a minimum of 10ft from the property line;  
and,

2. The area between the public right of way and the fence shall be landscaped as follows:

- i. Properly maintained turf, shrubs, shredded mulch, stone or groundcover plants shall be required between the wall or fence and right of way line. Wildflowers and weeds are not acceptable groundcover plants.

ii. Trees or shrubs shall not extend into any portion of the public right of way or in any way intrude into the 20 foot visibility triangle.

ii. No wall or fence shall exceed the height of 42 inches unless all of the following conditions are met, in which case the wall or fence shall not exceed the height of 54 inches:

1. A fence or wall may be erected to the maximum height of 54 inches if the wall or fence consists of open spaces distributed uniformly along its surface, with at least a 50/50 ratio of open to closed area, or minimally above a height of 42 inches.

c) Within the limits of the side and rear yard: Walls and fences may be erected to the height of 78 inches above grade, provided the wall or fence is 5ft from a public right-of-way. Walls and fences within 5ft of a right-of-way shall conform to the requirements of the secondary front yard requirements and in no case shall a wall or fence encroach upon the 20ft visibility triangle as defined in Section 2.1. No wall or fence shall exceed the height of 78 inches above grade unless the following requirements are met:

- i. All abutting property owners submit a written statement that they do not object to the plan.
- ii. The elevation of the subject property is generally 1 or more feet lower in elevation than abutting properties, or the health and safety of the owner/occupant of the subject property is endangered by uses on any abutting property.

### 3. B1, B2, I1 Districts

a) Properties in B1, B2 and I1 districts that are primarily residential in usage shall follow the proscribed guidelines of R1, R2 and R3 districts.

b) Wall and fence height along a street frontage shall not exceed the height of 42 inches unless it meets the following requirements:

i. Street frontage in front of structure: A fence or wall may be erected to the maximum height of 54 inches if the wall or fence consists of open spaces distributed uniformly along its surface, with at least a 50/50 ratio of open to closed area, or minimally above a height of 42 inches, so that vision through the fence is not materially obstructed from any angle so as to obstruct vehicular or pedestrian traffic on adjacent streets or public ways.

ii. A wall or fence not located in front of a structure, but along a street frontage (e.g. located in front of a parking lot), shall not exceed a maximum height of 78 inches.

c) Within the limits of the side and rear yard: Walls and fences may be erected to the height of 102 inches above grade, provided the wall or fence is 5ft from a public right-of-way. Walls and fences within 5ft of a right-of-way shall conform to the requirements of the secondary front yard requirements and in no case shall a wall or fence encroach upon the 20ft visibility triangle as defined in Section 2.1. No wall or fence shall exceed the height of 102 inches above grade unless the following requirements are met:

i. All abutting property owners submit a written statement that they do not object to the plan.

- ii. The elevation of the subject property is generally 1 or more feet lower in elevation than abutting properties, or the health and safety of the owner/occupant of the subject property is endangered by uses on any abutting property.
- d) When abutting a residential zoning district (R1, R2, R3), the minimum height for a wall or fence shall be equivalent to the maximum height of a wall or fence as given in the standards for the abutting residential zoning district.
- e) Refuse containment and mechanical equipment: Trash containers, mechanical equipment, loading docks, loading facilities and outdoor storage as a conditional use shall be located in the side or rear yard and be screened from view. Mechanical equipment shall be setback a minimum of 3 feet from the property line.
  - i. All trash dumpsters, trash pads, loading, building service, and outside storage areas shall be screened from residential uses and public streets. Such screening may be achieved by using a minimum 72 inch high, completely opaque fence or wall. Height of screen shall be measured from the grade of the nearest street.
  - ii. All dumpster enclosures require approval from City Supervisor to ensure clearances and orientation allow for servicing of the dumpster.
  - iii. The City Supervisor shall have discretion to modify these requirements on a case by case basis if existing circumstances prevent compliance.

### **SECTION 3: Setback Requirements**

1. Dead space. No property owner shall erect or allow to be erected any fence or wall that would create a dead space of less than 2ft between any existing fence, wall or structure.
2. All Districts
  - a. Front yard and secondary front yard. Walls and fences shall be set back a minimum of 24 inches from the public right of way.
  - b. Side yard. Walls and fences shall be set back a minimum of 24 inches from the property line.
  - c. Rear yard. Walls and fences must be set back 24 inches from the property line, provided that the rear property line does not face a public street or right-of-way. If the rear property line faces a public street or right-of-way, setback is determined by Section 2.2.c
3. Within the limits of the front, side and rear yard, a fence may be built to the property line if all abutting property owners submit a written statement that they do not object to the plan.
  - a. Maintenance and upkeep of a fence built to the property line is the responsibility of the property owner who erects the fence.

### **SECTION 4: General Requirements**

1. **Pools.** For the purpose of this article, “pool” means any in-ground or above-ground swimming pool, pond or water feature.
  - a. A fence must enclose any pool that is 24 inches or more in depth.

- i. The fence must be located at least 4 feet from the pool, be non-climbable and at least 4 feet in height, with no openings that would allow the passage of a 4 inch diameter sphere.
  - ii. It is the responsibility of the property owner to ensure that the fence is constructed to prohibit unauthorized access to the pool.
  - iii. The supportive walls of an above-ground pool may function as an approved barrier if it is durable, solid, non-climbable, and at least 3 feet high. The wall of the pool must not be within 4 feet of any other wall, tree, deck, fence or other climbable object. Ladders, stairs or other means of accessing the pool must be removed or secured to prevent access when the pool is not in use.
  - iv. Setback requirements
    1. 5 feet from the edge of the pool water to any side or rear property line;
    2. Front setbacks shall conform to the front minimum building setback for the zoning district in which the pool is located setbacks are measured from the edge of the pool water to a front property line
2. **Fence orientation.** Fencing shall be constructed with the structural members or framing facing inward toward the property.
  3. **Underground utilities.** Property owners shall be responsible for locating all underground utilities prior to construction by calling MISSWV (811).

4. **Easements and right-of-ways.** Walls and fences shall not be placed over any established easements or right-of-ways.
5. **Surveys.** It is strongly recommended that prior to construction of a wall or fence, the owner obtain a survey of the property to ensure that the wall or fence will be located within property boundaries.
  - a. The issuance of a building permit does not constitute verification that the wall or fence will be located within the property lines and the City of Kingwood shall bear no responsibility if the wall or fence is improperly located on adjacent property.
6. **Permit required.** No property owner shall construct or allow to be constructed or place any wall or fence without first obtaining a building permit from the City of Kingwood. Permit application shall include a sketch of site plan with a list of materials.
7. **Specifically prohibited.** No fence in any district shall be permitted to utilize barbed wire, razor wire or concertina wire or carry electric current.
8. **Material requirements:** Walls and fences shall be constructed from durable materials appropriate to the purpose. Property owners shall ensure that any new or existing fence is structurally sound and properly maintained.
  - a. Suitable materials include:
    - i. Commercially available wood, vinyl or composite fencing panels
    - ii. Decorative chain-link fencing (vinyl coated). Regular uncoated chain link fencing may only be used within the limits of the side or rear yard.

iii. Decorative masonry block, brick or stone. Regular CMU block must be finished with stucco, brick or cultured stone.

iv. Groomed hedges

v. Wrought iron or aluminum

vi. Commercially available split-rail fencing

b. Materials not specifically intended for the construction of a fence or walls are prohibited. Such materials include:

i. Scrap wood, pallets, logs

ii. Metal panels, extrusions or forgings

iii. Agricultural materials including barbed wire, razor wire, cattle or livestock panels, t-posts, etc.

iv. Any other material that is not intended for the use as a wall or fence.

9. **Kennels:** Any kennel, dog run or other animal containment structure is to be located in the side or rear yard area. The height, setback and composition of said structure shall conform to the height, setback and composition requirements of any other wall or fence.

10. **Prohibited as primary structure.** Fences are only permitted as an accessory structure with permitted uses and may not be placed on a stand-alone vacant lot.

## **SECTION 5: Temporary enclosures and structures**

1. Temporary walls and fences: Temporary walls or fences may be permitted for reasons of crowd control, safety, construction or security. Said temporary walls or fences shall not be permitted for a duration exceeding 2 weeks without a specific waiver from the common council of the City of Kingwood and all temporary walls and fences shall first require the obtaining of a permit from the City of Kingwood.
2. Temporary structures: Temporary structures such as construction trailers, leased storage pods, shipping containers, etc. may be permitted for reasons of construction or renovation. Application for permit for said structures must include an estimated date for removal of temporary structure/s.
  - a. “Temporary structures” does not include manufactured sheds or accessory buildings that are built on skids. See Article 8, Section 7 “Accessory Buildings”.

## **SECTION 6: Fences built prior to passage of ordinance**

1. Any fence built prior to passage of this ordinance is not required to be brought into compliance with the articles of this ordinance unless upgrades or repairs are required to existing fence in excess of either 50% of total value of fence, or 50% of total area of fence  
  
City Supervisor will make determination whether repairs or upgrades exceed the 50% threshold. If threshold is met or exceeded, fence must be brought into compliance with the articles of this ordinance.

## **ARTICLE 10 ADMINISTRATION**

### **SECTION 1. Administrative Officer**

It shall be the duty of the Mayor to enforce the provisions of this ordinance.

### **SECTION 2. Plats**

All applications for building permits shall be accompanied by a plat in duplicate, drawn to scale showing the actual dimensions of each lot to be built upon, the size and location of each building to be erected upon each lot, and such other information as may be necessary to enable the Mayor to determine that the proposed building and use of land will conform to the provisions of this ordinance. A record of such applications and plats shall be kept in the office of the Mayor.

### **SECTION 3. Building Permit**

(a) No excavation for foundation, nor the erection, construction or structural alteration of any buildings or part of a building, or occupancy of streets or alleys with building materials or temporary buildings for construction purposes shall be undertaken until a permit therefore shall have been issued by the Mayor. No such permit shall be issued before the application has been made for a building permit.

(b) No vacant land shall be occupied or used and no building hereafter erected, structurally altered or changed in use shall be used or changed in use until a building permit shall have been issued by the Mayor.

(c) A building permit for the use or occupancy of vacant land, or for a change in the

use of land, or of an existing building, shall be applied for and issued before any such land shall be occupied or used, or such land or building changed in use, and such permit shall be issued within ten (10) days after application has been made, provided that such proposed use is in conformity with the provisions of this ordinance.

#### **SECTION 4. Interpretation - Purpose**

(a) In interpreting and applying the provisions of this ordinance, they shall be held to be the minimum requirements for the promotion of public health, safety or general welfare. Where this ordinance imposes greater restrictions upon the use of a building or land or upon the height, bulk or size of a building or requires larger open spaces than are imposed or required by other ordinances, rules, regulations or permits, or by easements, covenants, or agreements impose greater restrictions upon the use of a building or land, or upon the height, bulk or size of a building, or require larger open spaces than are required under the regulations of this ordinance, such provisions shall govern.

(b) All buildings for which permits have been obtained and the construction of which or a portion of which has been begun, or for which a contract or contracts have been let pursuant to a permit issued prior to the passage of this ordinance, must be completed and used in accordance with the plans for which said permit was granted. No occupancy of an unfinished structure will be permitted.

(c) All permits for buildings issued within sixty (60) days prior to the passage of this ordinance are hereby declared void, provided that such building or its use does not conform to the provisions of this ordinance; if, at the time of the passage of this ordinance; (1) no

substantial construction has been made; or (2) no contract or contracts have been let pursuant to said permit.

(d) If, after the issuance of a permit, the operations authorized thereunder are not commenced within six (6) months after the date of the permit, or if, after the commencement of operations, the work is discontinued for a period of six (6) months, such permit shall be void; work may not again be commenced until a new permit has been issued as for the original work, and building materials and equipment on the ground shall be removed or stored according to the requirements of the Mayor.

(e) The Mayor may issue a permit for the use of land or the erection or use of a building, such as real estate office of a contractor's office, or storage yard, for commercial or industrial purposes in a Residential District, in cases where such use is incidental and reasonably necessary for the development of the district for residential purposes, and where the proposed use is clearly of a temporary nature, to be abandoned as the adjacent area becomes occupied for residential purposes. Any permit so authorized shall be only for such limited period of time as the Mayor shall determine is reasonable, considering the character of the district in question, and in no case, for a period of more than one (1) year.

## **ARTICLE 11 - CHANGE AND AMENDMENTS**

### **SECTION 1. Procedure**

(a) The Town Council may, from time to time, amend, supplement or change the rules and regulations and districts fixed by this ordinance.

(b) Petitions, duly signed, may be presented to the recorder of the municipality requesting an amendment, supplement or change of the rules and regulations and districts of the zoning ordinance by:

1. The Planning Commission; or
2. The owners of fifty percent (50%) or more of the real property area to which the petition relates.

(c) Amendments, supplements or changes or the rules and regulation and districts of the zoning ordinance shall be considered as amendments to this ordinance. Any proposed ordinance for the amendment, supplement, change or repeal of this ordinance not originating upon petition of the planning commission shall be referred to the planning commission for consideration and report before any final action is taken by the Town Council. Prior to the submission to the Town Council of a planning commission petition or a report on a proposed ordinance referred to it for an amendment, supplement, change or appeal or this zoning ordinance, the planning commission shall give notice and hold a public hearing upon the proposed amendment, supplement, change or appeal of the zoning ordinance, with such notice being given at least fifteen (15) or more days prior to the date set for such hearing by causing a Class I legal advertisement to be published in compliance with the provisions of Chapter 59, Article 3, of the West Virginia Code.

(d) City Council shall take final action upon such proposed amendment, supplement or

change within forty-five (45) days after filing of petition for same with the Town Recorder; and if council shall fail to take action upon such petition within said time the petition shall be deemed to have been rejected.

(e) Any changes hereafter made under the provisions of this article which pertains only to changes in the Zone Map or District boundaries, may be done by order of Council.

## **ARTICLE 12 - BOARD OF ZONING APPEALS**

### **SECTION 1. General**

The Town Council shall create and maintain a Board of Zoning Appeals consisting of five members to be appointed by the Town Council.

(a) The members of the Board of Zoning Appeals shall be individuals who are freeholders and residents of the municipality and at least three fifths (3/5) of such members must have been residents of the municipality for at least three years preceding the time of their appointment. No member of the Board of Zoning Appeals shall be a member of the Planning Commission nor shall any member hold other elective or appointive office in the municipal or county government. Members of the Board shall be compensated at a rate of \$50 per meeting attended, up to 7 meetings per year, and shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their official duties.

(b) Upon the creation of a Board of Zoning Appeals, the members shall be appointed for the following terms: One for a term of one year; two for a term of two years; and two for a term of three years. The terms shall expire on the first day of January of the first, second and third year, respectively, following their appointment. Thereafter, as their terms expire, each new appointment shall be for a term of three years.

(c) If a vacancy occurs, by resignation or otherwise, among the members of the Board of Zoning Appeals, the governing body of the municipality or the county court, as the case may be, shall appoint a member for the unexpired term.

## **SECTION 2. Meetings**

(a) Meetings of the Board shall be held at the call of the chairman and at such times as the board may determine. The chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses.

(b) All meetings shall be open to the public. The board shall adopt its own rules of procedure and shall keep a record of its proceedings showing the vote of each member on each question, or if absent or failing to vote, indicating such fact; and shall keep records of its examinations and other official actions. Every rule or regulation, every amendment or repeal thereof and every order, requirement, decision or determination of the board shall be filed immediately in the office of the board and become a public record.

## **SECTION 3. Appeals**

(a) An appeal taken from any order, requirement, decision or determination made by an administrative official or board charged with the enforcement of this ordinance shall be filed with the Board of Zoning Appeals.

The appeal shall specify the grounds thereof and shall be filled within such time and in such form as may be prescribed by the board by general rule and regulation.

The administrative official or board from whom or which the appeal is taken shall, upon request of the Board of Zoning Appeals, transmit to it all documents, plans and papers constituting the record of the action from which an appeal was taken.

(b) The Board of Zoning Appeals shall fix a reasonable time for the hearing of an appeal.

Public notice of the hearing shall be given in the manner specified in Section eighteen, Article 24, Chapter 8 of the West Virginia Code, and due notice shall be given additionally to the interested parties. The Board of Zoning Appeals may require the party taking the appeal to assume the cost of public notice and due notice to interested parties. At the hearing, any party may appear in person by agent or by attorney at law admitted to practice in this State.

(c) When an appeal has been taken and filed with the Board of Zoning Appeals, all proceedings and work on the premises in question shall be stayed unless the official or board from whom or which the appeal was taken shall certify to the Board of Zoning Appeals that by reason of facts stated in the certificate a stay would cause imminent peril to life or property. If such certificate be filed, proceedings or work on the premises shall not be stayed except by a restraining order which may be granted by the circuit court of the county in which the premises affected are located, upon application therefore, on notice to the official or board from whom or which the appeal is taken and the owner of the premises affected and on due cause shown.

#### **SECTION 4. Powers, Authority and Duties**

The Board of Zoning Appeals, after public hearing, may reverse, affirm or modify the enforcement order by City Officials of Zoning appealed to them.

The Board of Zoning Appeals may hear and decide on requests for conditional uses of property after a favorable report is made by the Planning Commission.

The Board of Zoning Appeals may decide on variances to zoning ordinance but must first prepare findings and find:

1. That there are exceptional or extraordinary circumstances or conditions

applicable to the property or to the intended use that do not apply general to the other property of class use in the same vicinity and district.

2. That such variance is necessary for the preservation and enjoyment of a substantial property right possessed by other property in the same vicinity but which is denied to the property in question.

3. That the granting of such variance will not be materially detrimental to the public welfare of injurious to the property or improvements in such vicinity in which the property is located.

4. That the granting of such variance will not alter the land use characteristics of the vicinity and diminish the marketable value of adjacent land and improvements or increase the congestion in the public streets.

5. In granting variances, the Board of Appeals may impose such reasonable and additional stipulations and conditions as it may deem necessary and proper to carry out the purpose of the ordinance.

6. Where the street layout actually on the ground, or as recorded, differs from the street layout as shown on the Zone Map the Board shall interpret the map in such a way as to carry out the intent and purpose of this ordinance and the map for the particular section or district in question.

7. If, after a permit has been authorized by the Board, such permit is not lifted from the office of the Mayor within a period of six (6) months from the date of authorization, then such authorization shall be null and void and no permit shall be issued thereunder.

In the exercise of its powers, the Board may, among other variances, modifications and

interpretations, authorize a permit to be issued:

1. For a sand, gravel or clay pit, stone quarry or mine, together with the necessary accessory buildings, in a zone restricted against such use by this ordinance, for such period or under such conditions as are reasonable, considering the character of the Zone in question.

2. For a reasonable extension of the regulations of either Zone over a lot divided by a Zone boundary line, when all parts of such lot are held under the same ownership at the time of the passing of this ordinance.

3. For such reasonable variation of the regulations herein set forth as the Board may deem necessary to the appropriate development of a lot adjacent to a lot the development of which at the time of passage of this ordinance does not conform to the regulations of this ordinance.

4. For a reasonable enlargement of a building existing at the time of the passage of this ordinance and used for trade, business or industry, but located in a district restricted against such use; or for reasonably necessary additional buildings for any such use, upon the same lot or plot of ground as that upon which such existing building and use obtain.

5. For a reasonable extension of a building or use into a more restricted Zone immediately adjacent thereto, but such extension shall not be for more than fifty (50) feet beyond the boundary line of the Zone in which said building or use is thus authorized.

6. For such variation of the area requirements of this ordinance as the Board may deem necessary to secure an appropriate improvement of a lot of such area, size or shape

that it cannot be reasonably improved without modification of the strict application of the provisions of this ordinance; provided that such lot, at the time of the passage of this ordinance either was held under a separate ownership from the adjoining lots, or was shown on a recorded plat to be a separate and distinct numbered lot.

7. For the reconstruction of a building in a Zone restricted against its use, when such building has been partially destroyed by fire or other calamity, provided that the application for permit for such reconstruction be made within one (1) year of the date of such fire or calamity.

8. For redemption of a non-conforming use of a building in a residential Zone, when such non-conforming use of the building has been discontinued for a period exceeding one year, provided that such use has not been followed by a more restricted use, and that it is not reasonably practicable to utilize the lot upon which such building is located for a conforming use.

9. For the erection or use of a building in any Zone by a public service corporations, when such erection or use is reasonable necessary for the service of the public, and not unreasonably detrimental to the character of the development.

10. For a hospital in a R-1 Residence Zone, where on account of ample area of site and adequate open spaces on all sides of the proposed building, the residential character of the neighborhood will not be affected.

11. For a municipal utility building in any Zone.

12. For a community garage, in a Residence Zone, located within two hundred

(200) feet of an existing dwelling, or for a public garage in a Business Zone, within two hundred (200) feet of the entrance to a school, church, hospital, playground or public library. In passing upon such appeal, the Board shall give weight to the consent to such variation from the provisions of this ordinance, as shown by the signatures of the owners in interest and number of sixty (60) percent of all the property within two hundred (200) feet of the proposed building.

13. For a detached private garage built in a terrace on the front of a lot in a Residence Zone where the topographical conditions are such as to make it impracticable to construct such garage as required.

14. For a front yard of less depth than that required by this ordinance where topography or existing development makes strict compliance unreasonable or substantially impossible.

15. For an arrangement and size of yards varying from the specified in the Schedule of Height and Area Regulations in case of a group of buildings on a parcel of land, forming in effect a multiple dwelling made up of separate units, provided that the depth of yard adjacent to a street line and the required lot area per family as specified in this ordinance shall be complied within the location of said buildings.

16. For reasonable variation of the Height and Area Regulations herein set forth as the Board may deem necessary for the suitable use of a telephone exchange building located in a Residence Zone; where the Board determines such variation is reasonably necessary for the public convenience or welfare, harmonious to the purposes of the Zone, and not unreasonably injurious to the property of the Zone, in which the building is or is to be located.

## **ARTICLE 13. VIOLATION - PENALTY**

### SECTION 1. Violation - Penalty

Any person, firm or corporation, violating any of the provisions of this ordinance, shall for each violation, upon conviction thereof, pay a penalty of not less than ten (10) nor more than three hundred (300) dollars, with costs recoverable before the Mayor. Each day that a violation is permitted to exist shall constitute a separate offence.

## **ARTICLE 14. VALIDITY**

### SECTION 1. Validity

If any section, clause, provision or portion of this ordinance be held to be invalid or unconstitutional by any court of competent jurisdiction, such holding shall not affect or impair the validity of any other article, section, clause, provision or portion of this ordinance. All provisions contained in Chapter 8, Article 24 of the Code of West Virginia of 1961 in addition to the terms and provisions hereof and not in conflict with the same, are herein made a part of this Zoning Ordinance.

## **ARTICLE 15. CONFLICT**

### SECTION 1. Conflict

All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

### SECTION 2. Effective Date

This ordinance shall be in effect from date of adoption

## **ARTICLE 16. PLANNING COMMISSION**

### **SECTION 1: General**

The City of Kingwood does hereby create a planning commission for the City to promote the orderly development of its jurisdiction. Said commission shall serve in an advisory capacity to the governing body of the City and shall have certain regulatory powers over land planning. The planning commission, along with the governing body of this City, shall have the authority to carry out the objectives and overall purposes of the West Virginia Code §8A-1-1 et. seq.

### **SECTION 2: Membership**

- 1) The Planning commission shall have seven members. Each member must be:
  - a. a resident of the municipality; and,
  - b. qualified by knowledge and experience in matters pertaining to the development of the municipality.
- 2) At least three-fifths of all of the members must have been residents of the municipality for at least three years prior to nomination or appointment and confirmation.
- 3) The members of the planning commission must fairly represent different areas of interest, knowledge and expertise, including, but not limited to, business, industry, labor, government and other relevant disciplines. Two members must be a member of the municipal governing body (being one in the same as administrative department) or a designee. One appointment represents the governing body and the other represents the administrative department. The term of membership for

these two members is the same as their term of office.

- 4) Should there be members of the community that may at times appear before the planning commission and do have experience and expertise that would be advantageous to the commission, such act shall not be a conflict of interest in the appointment to the commission. If such person is appointed, this member must recuse himself or herself from any vote, discussion, participation or other activity regarding the conflicting issue.

- 5) The remaining members of the planning commission first selected shall serve respectively for terms of one year, two years and three years, divided equally or as nearly equally as possible between these terms. Thereafter, members shall serve three-year terms. Vacancies shall be filled for the unexpired term and made in the same manner as original selections were made.
- 6) The members of the planning commission shall be compensated at a rate of \$50 per meeting attended, up to 14 meetings per year, and shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their official duties.
- 7) Nominations for the planning commission membership shall be made and confirmed by the governing body.
- 8) Should any member of the commission fail to attend meetings, neglect his duties to the commission or commit malfeasance of his appointment, the commission shall report such actions to the governing body. Thereafter, the governing body shall provide written notice of such alleged actions to the effected member and advise that such actions may result in the member's removal from the commission. Should the member object, he/she shall have an opportunity to address the governing body on the issues prior to any final decision being made by the governing body.

### **SECTION 3: Meetings**

- 1) The planning commission shall meet at least quarterly and may meet more frequently at the request of the president or by two or more members.
- 2) Notice for a special meeting must be in writing, include the date, time and place of the

special meeting, and be sent to all members at least two days prior to the special meeting.

- 3) Written notice of a special meeting is not required if the date, time and place of the special meeting were set in a regular meeting.
- 4) The planning commission must have quorum to conduct a meeting. A majority of the members of a planning commission is a quorum. No action of a planning commission is official unless authorized by a majority of the members present at a regular or properly called special meeting.

#### **SECTION 4: Officers**

- 1) At its first regular meeting each year, a planning commission shall elect from its members a president and vice president. The vice president shall have the power and authority to act as president of the planning commission during the absence or disability of the president.

#### **SECTION 5: Governing Body's Duties**

The City governing body shall provide the planning commission with:

- 1) Suitable location for holding of meetings and the preservation of plans, maps documents and accounts; and,
- 2) Appropriate money to defray the reasonable expenses of the planning commission.

The planning commission is authorized to accept gifts, funds and donations which will be deposited with the appropriate governing body in a special non-reverting planning commission fund to be available for expenditures by the planning commission for the purpose designated by the donor.

## **SECTION 6: Powers and Duties of Planning Commission**

The planning commission has the following powers and duties:

- 1) Exercise general supervision for the administration of the affairs of the commission;
- 2) Prescribe rules and regulations pertaining to administration, investigations and hearings; provided, that the rules and regulations are adopted by the governing body;
- 3) Supervise the fiscal affairs and responsibilities of the commission;
- 4) With consent from the governing body, hire employees necessary to carry out the duties and responsibilities of the planning commission, provided that the governing body sets the salaries;
- 5) Keep an accurate and complete record of all planning commission proceedings;
- 6) Record and fill all bonds and contract;
- 7) Take responsibility for the custody and preservation of all papers and documents of the planning commission;
- 8) Make recommendations to the governing body concerning planning;
- 9) Make an annual report to the governing body concerning the operation of the planning commission and the status of planning within its jurisdiction;
- 10) Prepare, publish and distribute reports, ordinances and other material relating to the activities authorized under this Ordinance.
- 11) Invoke any legal, equitable or special remedy for the enforcement of the provisions of this Ordinance, rule and regulation or any action taken thereunder.
- 12) Prepare and submit an annual budget to the governing body.
- 13) Delegate limited powers to a committee composed of one or more members of the commission; and,

14) Contract for special or temporary services and professional counsel with the approval of the governing body.

AMENDED AND REENACTED this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Jean-Manuel Guillot, Mayor

Attest: \_\_\_\_\_ Recorder

1st Reading: \_\_\_\_\_

2nd Reading: \_\_\_\_\_