

~~ARTICLE VI~~ **Chapter 11-06** OPEN SPACE AND PUBLIC ZONES

~~11-06.0105-12.400.~~ - INTENT AND PURPOSE OF OPEN SPACE AND PUBLIC ZONES.

~~11-06.0205-12.410.~~ - USES.

~~11-06.030.~~ - STANDARDS - HEIGHT AND SETBACKS

~~11-06.040~~ - VISION CLEARANCE AREA REQUIREMENTS.

~~11-06.0105-12.400.~~ - INTENT AND PURPOSE OF OPEN SPACE AND PUBLIC ZONES.

~~This section of the zoning code is intended to assist in the implementation of the following Comprehensive Plan goal:~~

~~• Goal LU-5: Strengthen the City of Dayton's environmental quality of life while maintaining the character and quality of the community.~~

~~• Goal LU-6: Preserve and enhance Dayton's parks and open space areas.~~

~~• Goal CF-1: Sustain the facilities and services to meet existing needs and provide for future expansion.~~

The Open Space/Recreation (OR) Zone. The intent of the open space/recreation zone is intended to promote and preserve the unique landscape bordering the Touchet River and to encourage its traditional use for recreation.

The Public and Quasi-Public (PU) Zone. The intent of the public and quasi-public zones is to provide for the location of major facilities that are in public or semi-public ownership or are operated for the purpose of benefiting the public. Included are Dayton public parks, schools, government buildings, cemetery, hospital, golf course and utility stations.

~~11-06.0205-12.410.~~ - USES.

All uses in the open space and public zone shall either be permitted as a principal use, as an accessory use or as a conditional use, or prohibited as ~~indicated in Chart 410~~ listed in the chart below. If a use is not listed, it is prohibited unless the ~~city planner~~ Planning Director determines that a proposed use is similar in aspects such as size, density, effect and impact on surrounding users as a listed use. All restrictions that apply to a listed use shall apply to any use which is permitted as a similar use.

Chart 410 Uses in Open Space and Public Use Zones	ZONES	
	OS	PU
Community centers, theaters, lodge halls and museums	C	P
Fire and police stations	X	P
Governmental equipment repair and maintenance shops	X	P
Governmental offices	X	P
Hospital	X	P
Parks, playgrounds, golf courses and other outdoor recreation uses	P	P
<u>Open Space</u>	<u>P</u>	<u>P</u>
<u>Religious Facilities, faith centers and churches</u>	<u>C</u>	<u>P</u>
Schools	C	P
Utility transformers, pump station, etc.	C	P

P - Permitted principal use; X - Prohibited use; A - Accessory use; C - Conditional use

11-06.030. – STANDARDS –HEIGHT AND SETBACKS

The minimum lot setbacks and structure heights required or permitted are listed below. Greater standards may be required as part of a conditional use permit approval:

<u>STANDARDS</u>	<u>ZONES</u>	
	<u>OS</u>	<u>PU</u>
<u>Minimum front yard setback</u>	<u>25'</u>	<u>25'</u>
<u>Minimum rear yard setback, loading area may be in rear yard set back</u>	<u>20'</u>	<u>20'</u>
<u>Minimum side yard</u>	<u>20'</u>	<u>20'</u>
<u>Maximum structure or building height (exceptions listed below)</u>	<u>40'</u>	<u>40'</u>

Building height exceptions. The building height limitations above do not restrict the height of water reservoirs, church spires and other similar structures or facilities.

11-06.040 - VISION CLEARANCE AREA REQUIREMENTS.

At street intersections and at intersections of streets and alleys, in the area adjacent to each intersection shall be maintained in a clear and open condition to provide for safe vision of traffic on the intersecting streets. The area shall include all areas within a sight triangle, measured ten feet back from the intersecting property lines along each street front or alley property line. Within this triangle area no fences, bushes, structures or other vision obstructing elements may be more than three feet higher than the finished grade of the adjacent streets and no signs, tree limbs or other vision obstructing elements may be less than eight feet above the finish grade of the adjacent streets.

Chapter 11-07 OVERLAY ZONES, SPECIAL DISTRICTS AND DEVELOPMENT AGREEMENTS

11-07.010 - DOWNTOWN COMMERCIAL HISTORIC DISTRICT - DCHD

11-07.020 - SOUTH SIDE HISTORIC DISTRICT - SSHD

11-07.030 – WASHINGTON STREET HISTORIC DISTRICT - WSHD

11-07.060 – DEVELOPMENT AGREEMENTS

11-07.010 - DOWNTOWN COMMERCIAL HISTORIC DISTRICT (DCHD) OVERLAY ZONE

The intent of the DCHD is to maintain the historic and pedestrian nature of the downtown commercial core. The following restrictions are in addition to the limits included in the underlying zone:

- A. Exterior building material must be similar in appearance to the materials in the historic buildings within this zone
- B. The front of the principal building must be within ten (10) feet of the front property line,
- C. Outdoor sales, display and parking areas may not take up more than forty percent (40%) of the street front area,
- D. The front fifty (50) feet of the lot shall not be used for outdoor storage,
- E. Lot coverage 100% maximum is allowed
- F. No off street parking is required, and
- G. No temporary structures shall be installed and used in this zone for more than ninety (90) days of a calendar year.

11-07.020 - SOUTH SIDE HISTORIC DISTRICT (SSHD) OVERLAY ZONE

The intent of the SSHD Overlay Zone is to maintain the historic nature of the SSHD neighborhood. The following requirements are in addition to the applicable limits of the underlining residential zone:

- A. Exterior building material shall be similar in appearance to the materials of the historic buildings within the SSHD neighborhood. Siding material shall be installed horizontally.
- B. The style of new buildings shall be compatible and complementary with the historic buildings structures within the SSHD neighborhood.
- C. No temporary structures may be installed and used in this zone for more than sixty (60) days of a calendar year.
- D. Traditional street widths should be preserved to promote the historic nature of the neighborhood.
- E. New building construction shall retain similar setbacks on adjacent properties.
- F. The roof pitch on buildings shall be 6/12 or greater.
- G. There shall be a minimum eighteen inch (18") roof overhang on all new construction.
- H. New porch construction shall be compatible with adjacent historic buildings and porches within the SSHD neighborhood.
- I. No tent, steel, or pole structured buildings shall be allowed.

11-07.030 WASHINGTON STREET HISTORIC DISTRICT (WSHD) OVERLAY ZONE

The intent of the WSHD Overlay Zone is to maintain the historic nature of the WSHD neighborhood. The following requirements are in addition to the applicable limits of the underlining residential zone:

- A. Exterior building material shall be similar in appearance to the materials of the historic buildings within the WSHD neighborhood. Siding material shall be installed horizontally.
- B. The style of new buildings shall be compatible and complementary with the historic buildings structures within the WSHD neighborhood.
- C. No temporary structures may be installed and used in this zone for more than sixty (60) days of a calendar year.
- D. Traditional street widths should be preserved to promote the historic nature of the neighborhoods.
- E. New building construction shall retain similar setbacks on adjacent properties.
- F. The roof pitch on buildings shall be 6/12 or greater.
- G. There shall be a minimum eighteen inch (18") roof overhang on all new construction.
- H. New porch construction shall be compatible with adjacent historic buildings and porches within the SSHD and WSHD neighborhoods.
- I. No tent, steel, or pole structured buildings shall be allowed.

11-07.060 – DEVELOPMENT AGREEMENTS

Development agreements executed by the city are enter by reference:

ARTICLE VII—Chapter 11-08 OFF-STREET PARKING REQUIREMENTS

11-08.010 =INTENT AND PURPOSE OF THE PARKING REQUIREMENTS.

11-08.020 OFF-STREET PARKING—REQUIRED SPACES.

11-08.030 BARRIER-FREE PARKING SPACES—REQUIRED.

11-08.040 DIMENSIONS—PARKING SPACES AND LOADING BERTHS.

11-08.050 SHARED PARKING.

11-08.060 OFF-STREET PARKING—CHANGE OF USE.

11-08.070 OFF-STREET PARKING—EXISTING STRUCTURES.

11-08.080 IMPROVEMENT OF PARKING, OUTDOOR SALES AND OUTDOOR STORAGE AREAS.

11-08.010 =INTENT AND PURPOSE OF THE PARKING REQUIREMENTS.

~~This section of the zoning code is intended to assist in the implementation of the following Comprehensive Plan goal:~~
~~• Goal LU 5: Strengthen the City of Dayton's environmental quality of life while maintaining the character and quality of the community.~~

~~• Goal T 1: Provide for a convenient, safe and efficient transportation network.~~

The intent of the off-street parking and loading requirements is to ensure that, in most circumstances, each user will not reduce the adequacy of the public road and street network by providing adequate off-street parking and loading for the normal occupancy on their lot.

~~5-42-430-11-08.020~~

-OFF-STREET PARKING—REQUIRED SPACES.

The minimum number of off-street parking spaces required for specific uses are set forth ~~in Chart 430~~ in this section. Any use not specifically listed shall meet the requirements of the most similar identified use as determined by the ~~city planner~~ Planning Director. In the case of a mixture of uses on a single lot, the total requirement for off-street parking shall be the sum of the number of parking spaces required for each use subject to the conditions stated in DMC 11-08.050.

~~Chart 430~~ **Required Off-Street Parking**

Use Description	Required Off-Street Parking and Loading Spaces
A. Residential.	
1. Boarding houses, group homes and similar	1 for each two sleeping rooms
2. Duplex and multi-unit except housing for seniors	1½ for each dwelling unit
3. Nursing homes, and congregate care facilities	1 for each 5 beds
4. Multi-unit housing for seniors	1 for each dwelling unit
5. Single-family houses and mobilehomes <u>mobile homes</u>	2 for each dwelling unit
B. Commercial Uses.	
1. Vehicle sales and service:	
a. Car, pick-up, motorcycles, bicycles, boats and recreational vehicle sales	1 space for each 350 sq. ft. of gross building floor area (GBFA) plus 1 space per 1,000 square feet of outdoor display and sales area
b. Commercial truck and farm vehicle sales	1 space for each 500 sq. ft. GBFA plus 1 space per 1,500 square feet of outdoor display and sales area
c. Vehicle part sales	1 space for each 350 sq. ft. GBFA
d. Gas stations	1 space for each 250 sq. ft. GBFA
e. Repair services	1 space for each 500 sq. ft. GBFA
2. General retail sales and services:	
a. Grocery stores, department stores, general merchandise and similar	1 space for each 500 sq. ft. GBFA plus 1 space per 1,000 square feet of outdoor display and sales area. 1 loading space per 10,000 sq. ft. of GFA

b. Pedestrian oriented and low volume retail sales including books, music, stationary, jewelry, pet shops, printing, second hand shops and similar	1 space for each 750 sq. ft. GBFA plus 1 space per 1,500 square feet of outdoor display and sales area. 1 loading space per 15,000 sq. ft. of GBFA
c. Specialty retail sales and services that need customer and delivery access including florists, appliance, hardware, paint and glass, lumber, nurseries, bakeries and similar	1 space for each 350 sq. ft. of GBFA plus 1 space per 1,000 square feet of outdoor display and sales area. 1 loading space per 10,000 sq. ft. of GBFA
d. High volume retail stores including convenience stores and similar	1 space for each 250 sq. ft. GBFA plus 1 space per 500 square feet of outdoor display and sales area. 1 loading space per 5,000 sq. ft. of GBFA
3. Hospitality businesses:	
a. Recreational facilities including bowling alleys, billiard halls, miniature golf and similar	1 space for each 250 sq. ft. GBFA plus 1 space per 500 square feet of outdoor activity area
b. Eating/drinking establishments and recreation centers or similar	1 space for each 200 sq. ft. GBFA plus 1 space per 200 square feet of outdoor dining area
c. Lodging (hotels, motels, and bed and breakfast)	One space for each sleeping room
d. Theaters and similar places of public assembly	One space for every 5 seats
4. Professional and personal services:	
a. Day care centers	1 space for each 6 children plus 1 loading and unloading space for each 12 children
b. Businesses that provide high volume customer services on site including medical offices and clinics, dental clinics, banks and similar	1 space for each 250 sq. ft. of gross floor area (GBFA)
c. Businesses that provide moderate volume customer services on site including insurance, attorneys, real estate, vet clinics, kennels and similar	1 space for each 350 sq. ft. GBFA
d. Offices providing no or light customer services on site including administrative offices, wholesale sales, business consulting services and similar	1 space for each 500 sq. ft. GBFA
5. Other commercial uses:	1 space for each 500 sq. ft. GBFA
C. Community Facilities and Institutions.	
1. Governmental services:	
a. Police, fire and other facilities where services are provided on-site to the public	1 space for each 350 sq. ft. GBFA
b. Shops and maintenance facilities with no services provided to walk-in public	1 space for each 1,000 sq. ft. GBFA
2. Schools:	
a. Elementary and middle schools	1.25 space for each classroom
b. High schools	5 spaces for each classroom
c. Technical and advance education facilities	1 space for each 250 sq. ft. of GBFA

3. Hospitals	1 space for each 2 beds
4. Parks, playgrounds and golf courses	1 space for each 350 sq. ft. GBFA plus 1 space for each 10,000 sq. ft. of park area, plus 1 space for each 5 fixed seats in activity viewing areas
5. Community centers, religious facilities, and lodges/fraternal organizations	In assembly or theater areas with fixed seats, 1 space for each 5 fixed seats plus 1 for each 1,000 sq. ft. of other areas
D. Warehouse and Storage.	1 for each 5,000 sq. ft. of storage area. 1 loading space per 20,000 sq. ft. GBFA
E. Manufacturing.	
1. Small scale manufacturing in facilities in 5,000 square feet of covered area	1 space for each 1,000 sq. ft. of GBFA used for manufacturing. 1 loading space per 5,000 sq. ft. of GBFA
2. Moderate sized manufacturing facilities in 5,000 to 10,000 sq. ft. of covered area	1 space for each 1,500 sq. ft. of GBFA used for manufacturing and storage or 1 space for every 2 work stations, plus 1 space for each 500 sq. ft. of GBFA used for offices or sales area. 1 loading space per 5,000 sq. ft. of GBFA
3. Large scale manufacturing in facilities larger than 10,000 square feet including lumber mills, salvage and recycling, agricultural product processing and similar	1 space for each 2,000 sq. ft. of GBFA or 1 space for every 3 work stations, plus 1 space for each 500 sq. ft. of GBFA used for offices or sales area. 1 loading space per 10,000 sq. ft. GBFA

5-12-44811-08.030 - BARRIER-FREE PARKING SPACES—REQUIRED.

Unless more space is required under state rules and regulations, barrier-free parking spaces, accessible to disabled persons, shall be provided in every off-street parking facility with ten or more parking spaces at the rate of one accessible parking space for every 50 parking spaces.

5-12-450-11-08.040 DIMENSIONS—PARKING SPACES AND LOADING BERTHS.

- A. Required parking spaces shall be no less than 18 feet in length and no less than eight feet in width. The minimum width of two-way traffic circulation aisles shall be 20 feet and minimum width of one-way traffic aisles shall be 12 feet. Graveled parking areas providing required parking must have an area 25% greater than required for a paved parking area.
- B. Required loading spaces shall be a minimum of 25 feet in length, ten feet in width and 15 feet of unobstructed height. There shall be adequate access to each loading and unloading space and maneuvering space adjacent to the loading dock which shall not include space allocated for required off-street parking.
- C. Required barrier free parking spaces must be paved and be no less than 13 feet in width including the adjacent aisle and no less than 18 feet in length.

5-12-460-11-08.050 ~~Cooperative uses~~ SHARED PARKING.

Where adjoining parking facilities of two or more ownerships are developed and designed as one parking facility and where the parking spaces required for the uses total 15 or more spaces, a reduction of 20 percent of the combined total required spaces shall be permitted; provided, a record of the covenant or contract between the cooperating property owners is filed with the county auditor.

~~5-12-470~~11-08.060 **OFF-STREET PARKING—CHANGE OF USE.**

Any area once designated as required off-street parking shall not be changed to any other use until equal parking facilities are provided elsewhere and the approved site plan, if applicable, is amended to illustrate the change.

~~5-12-480~~11-08.070 **OFF-STREET PARKING—EXISTING STRUCTURES.**

Structures with uses that were lawfully developed prior to the adoption of ~~the ordinance codified in~~ this chapter shall not be required to comply with the off-street parking requirements in this section unless there is a change of use within the structure. If a new use requires more parking than the use in existence when these requirements were adopted, the ~~city planner~~Planning Director may include in the parking required to meet the off-street parking requirements:

1. The number of available on-street parking spaces adjacent to the building; and
2. The off-street parking spaces available to the use through a cooperative use agreement. Any off-site parking used to meet the off-street parking requirements shall be no more than 300 feet from the location of the use that the parking is serving.

11-08.080 **IMPROVEMENT OF PARKING, OUTDOOR SALES AND OUTDOOR STORAGE AREAS.**

Any parking, outdoor sales or outdoor storage areas larger than 2,500 square feet shall be improved in accordance with the following requirements:

- A. *Surface.* The area shall be surfaced with a durable and dustless (gravel, asphalt, concrete, etc.) surface, shall be graded and drained in a manner which disposes of the surface water without the water crossing the surface of any sidewalk, and shall be maintained in good condition, free of weeds, dust, trash, and debris.
- B. *Lighting.* Any lighting used to illuminate these areas shall be arranged so as to direct light away from any adjoining residential area.
- C. *Landscaping and screening.* One tree or evergreen shrub shall be planted and maintained for every 2,500 square feet of surface area. A five-foot-deep landscaped setback shall be maintained along all lot lines adjacent to a street or a residential zoned lot. A six-foot-high screen shall be installed around outdoor storage areas larger than 2,500 square feet. Whenever screening is required, the required perimeter screening may be either a six-foot-high sight-obscuring fence or a four-foot-high landscaped berm or a hedge which is at least two feet high when planted.

Chapter 11-09 NONCONFORMING USES AND STRUCTURES

11-09.010 INTENT ~~AND PURPOSE.~~

11-09.020 NONCONFORMING LOTS ~~of record.~~

11-09.030 NONCONFORMING ~~existing~~ **BUILDINGS AND STRUCTURES.**

11-09.040 NONCONFORMING ~~existing~~ **USES.**

~~5-12-500-11-09.010~~ INTENT AND PURPOSE.

~~Within the zones established by this ordinance or subsequent amendments thereto, there exists lots, structures and uses, which were lawfully established or created, but which would be prohibited, regulated or restricted under the terms of this ordinance or future amendments. It is the intent of this ordinance to permit lots, structures and uses of land and structures that were lawfully established prior to the adoption of this ordinance to continue to be used to permit non-conforming lots, structures and uses to continue while prohibiting further non-conformity. Non-conformities are declared by this ordinance to be incompatible with permitted uses, structure and lots in the zones involved.~~ These non-conforming lots, structures or use shall not be extended or enlarged unless after passage of this ordinance. To avoid undue hardship, nothing in this chapter shall deemed to require a change in the plans, construction or designated use of any building on which a building permit has been issued as long as substantial construction has been started within six months of the issuance of the permit provided that work is carried out diligently.

~~5-12-510-11-09.020~~ NONCONFORMING LOTS ~~of record.~~

If, on ~~or after the effective date of adoption of this chapter~~ **November 16, 2001**, a single lot is in separate ownership and is not contiguous with other lots owned by same owner, and if the lot is in a zone where single-family dwellings are permitted, a single-family dwelling and customary accessory buildings may be erected even if the lot fails to meet the zoning requirements for minimum area, or lot depth or lot width provided that the development shall conform to all other zoning requirements.

If two or more adjacent lots of record or combinations of lots and portions of lots are in single ownership ~~as of November 16, 2001~~ **at the time of passage of this zoning ordinance** no lot or portion of the lots shall be used or sold in a manner which diminishes compliance with lot width or depth or area requirements established by this chapter, nor shall any division of any parcel be made that creates a lot with width, or depth or area below the requirements stated in this chapter.

~~5-12-520-11-09.030~~ NONCONFORMING ~~existing~~ BUILDINGS AND STRUCTURES.

A. Where a lawful structure exists ~~as of November 16, 2001~~ **at the effective date of adoption of the ordinance codified in this chapter** that does not conform to the requirements in this ~~chapter~~ **title**, such structure may be continued to be used and maintained so long as it remains otherwise lawful, subject to the following provisions:

- A1.** No such nonconforming structure may be enlarged or altered in a way which increases its nonconformity, but any structure, or portion thereof may be altered to decrease its nonconformity. ~~The terms "enlarged and extended" as used herein mean the enlargement of a building or structure by increasing square footage, increasing building or structure height or the enlargement or extension thereof by the addition of accessory building or structures or other similar enlargements or extensions;~~
- B2.** If a nonconforming structure or nonconforming portion of structure is destroyed by any means to an extent that its replacement cost will exceed 75 percent of its value at the time of destruction, it may only be reconstructed in conformity with the provisions of this ~~chapter~~ **title**.

~~63.~~ If the structure is moved for any reason, for any distance, it must be brought into conform ~~with to~~ the regulations for the zone in which it is located.

B. Value. The value of a non-conforming building or structure shall be determined from the International Conference of Building Officials (ICBO) building permit valuation tables in use on the date the damage occurs. The owner of a damaged building or structure may obtain an independent appraisal from a certified professional appraiser.

C. Maintenance and Alterations.

1. Ordinary maintenance and repair of a non-conforming building or structure are allowed.
2. Alterations which conform to all provisions of Title 5, do not result in any enlargement or extension of a non-conforming lot, use, building or structure are allowed.
3. Alterations required by law to meet health and safety regulations are allowed.

D. Damage and Reconstruction

1. If any non-conforming structure located in a non-residential zone is destroyed or sustains damages amounting to seventy-five percent (75%) or more of its value, then any future use of the property formerly occupied by that building or structure shall conform to all requirements of Title 5.
2. If any non-conforming building or structure located in a nonresidential zone sustains damages amounting to less than seventy-five percent (75%) of its value, it may be reconstructed and used for the non-conforming use in existence at the time the damage occurred if the reconstruction begins within one (1) year from the date the damage occurred. The structure may be rebuilt having the same zoning non-conformities, but no more than as existed before the damage occurred. The damage to the structure must be the result of some unforeseen event such as a fire or flood or the result of natural deterioration, as opposed to voluntary demolition of part of the structure by the owner.
3. In any non-conforming residential structure located in a residential zone is destroyed or sustains damages up to one hundred percent (100%) of its value, the structure may be reconstructed having the same zoning non-conformities, but no more than as existed before the damage occurred. The damage to the structure must be the result of some unforeseen event such as a fire or flood, or natural calamity, as opposed to the voluntary demolition of all or part of the structure by the owner.

~~5-12-530-11-09.040~~ **-NONCONFORMING ~~existing~~ USES.**

~~If a lawful use exists at the effective date of adoption of this chapter that does not conform to the requirements in this chapter, the use may be~~ A non-conforming use may be continued so long as it remains otherwise lawful, subject to the following provisions:

- A. Nonconforming uses may not be enlarged, extended, expanded or moved in any way except as herein allowed, nor may the structure in which it is located be enlarged or extended in any way such as by increasing square footage, increasing building or structure height or the extension thereof by the addition of accessory buildings, or other similar extension. Changes in a non-conforming use such as the addition of more employees, the addition of more or better equipment, extending the hours of operation, and other similar changes which could or do result in an intensification of a non-conforming use are allowed and conditional use permits shall not be required for making any such change or changes to change the use to conform to the requirements in the zone in which it is located.
- B. When a nonconforming use is discontinued or abandoned for 12 consecutive months, the structure and land shall thereafter be used only in conformity with the regulations of the zone in which it is located. If any non-conforming use is not occupied or operated because its building has sustained damage amounting to less than seventy-five percent (75%) of its value, that use may be reestablished if construction of a new or repaired building begins within one (1) year of the date the damage occurred.

C. Conditional Uses. A legal use does not become nonconforming if the zone in which it is located is changed to a zone in which a conditional use permit is required for that use. However, the use may not be altered or changed; nor, may the building or structure in which it is located be enlarged or extended without obtaining a conditional use permit. Any use legally existing prior to the effective date of this Title, or prior to the effective date of subsequent amendments to the Title or the Official Zoning Map which is within the scope of uses permitted by a conditional use permit in the zone in which the property is located shall be deemed a conditional use without the necessity of a conditional use permit, provided that any expansion or alteration of said use shall conform to all regulations pertaining to conditional uses.

D. Conversions. A non-conforming use may be converted to another nonconforming use if the Dayton Hearing Examiner issues a conditional use permit for the conversion, pursuant to the procedures of DMC Title 10. The Commission may issue such a conditional use permit only after finding the following:

1. The structure housing the existing non-conforming use cannot reasonably be used for any permitted use because of its particular design; and,
2. The proposed use will be as compatible with uses permitted in the zone district as the existing non-conforming use; and,
3. Measures will be taken, where necessary, to protect the neighborhood from any detrimental effects to the public health and welfare that will or probably will result from the conversion of the non-conforming use.

In cases involving the conversion of a nonconforming use to another nonconforming use, it is not necessary for the hearing examiner to make findings as set forth in DMC 11-09.040 in addition to the findings required by this subsection.

ARTICLE IX—Chapter 11-10 VARIANCES AND CONDITIONAL USE AND VARIANCES

11-10.010 CONDITIONAL USE—INTENT.

11-10.020 CONDITIONAL USE FINDINGS OF FACT.

11-10.030 CONDITIONS AND PERIOD OF APPROVAL.

11-10.040 VARIANCES—INTENT.

11-10.050 CONDITIONS FOR GRANTING A VARIANCE.

11-10.060 VARIANCE FINDINGS OF FACT

11-10.070 APPLICATION.

11-10.080 CONDITIONAL USE AND VARIANCE REVIEW PROCESS

11-10.090. EXPIRATION.

11-10.100 REVOCATION

~~5-12.610. Variances—intent.~~

~~5-12.615. Conditions for granting a variance.~~

~~5-12.620. Application.~~

~~5-12.630. Zoning adjuster.~~

~~5-12.640. Public hearing.~~

~~5-12.650. Decisions on applications.~~

~~5-12.660. Appeals.~~

~~5-12.670. Notification of approval.~~

~~5-12.680. Compliance required.~~

11-01.010 CONDITIONAL USE—INTENT.

It is the intent of this title to allow for uses that are not permitted outright within a zone. Such uses typically require a special degree of control to make sure that they are consistent with the intent of the zone and compatible with other existing and permitted uses within the zone and to protect health, safety and general welfare of the public prior to the use being approved.

Only those uses listed as requiring a conditional use permit (CUP) within a particular zone qualify for this process. ~~Certain uses exist that are generally appropriate within a particular zoning district but because the use has the potential to create a disrupting influence upon the surrounding neighborhood, special consideration is required and conditions shall be established to provide for the compatibility of the conditional use and to protect health, safety and general welfare of the public prior to the use being approved.~~

11-10.020 CONDITIONAL USE FINDINGS OF FACT.

Conditional use permits may only be approved if findings of fact are drawn to support the following:

- A. The use will not have a substantively greater adverse effect on the health, safety or comfort of persons living or working in the area and will not be substantively more injurious, economically or otherwise, to property or improvements in the surrounding area than would any use generally permitted in the district. Among matters to be considered are traffic flow and control, access to and circulation within the property, off-street parking and loading, refuse and service area, utilities, screening and buffering, signs, yards and other open spaces, height, bulk, and location of structures, location of proposed open space uses, hours and manner of operation, and noise, lights, dust, odor, fumes and vibration;
- B. The proposal is in accordance with the goals, policies and objectives of the comprehensive plan;
- C. The proposal complies with all requirements of this title and Title 10;
- D. The proposal can be constructed and maintained so as to be compatible, harmonious and appropriate in design, character, and appearance with the existing or intended character of the neighborhood;
- E. The proposal will be supported by adequate public facilities and services and will not adversely affect the public infrastructure;
- F. The proposal will not cause or create a public nuisance; and
- G. The proposal's impacts can be appropriately mitigated through the application of conditions of approval, as applicable.

5-12.605—Conditions:

A conditional use may be authorized for a limited period of time and with conditions needed to protect the public interest and implement the intent of this title subject to the following provisions:

- A. The proposed use must be an identified and permitted conditional use in the applicable zone or other similar use in aspects such as size, density, effect and impact as a listed use;
- B. The building or part of building containing the proposed use or activity must be in compliance with all other requirements of the applicable zone and the Uniform Building Code and other applicable codes covering the proposed use; and

C. The proposed use, with the conditions, must not have a significant adverse effect on adjacent properties, the neighborhood or the general public.

11-10.030 CONDITIONS AND PERIOD OF APPROVAL.

- A. In order to mitigate any significant adverse impact, assure compatibility with the neighborhood, or support a finding of fact or prevent and abate public nuisances associated with the proposal, conditions may be imposed

which could increase requirements in the standards, criteria, or regulations of this title or other city legislation or adopted policies.

B. Conditional use permit approvals shall be valid for the specific use authorized on a property, subject to the revocation provisions of DMC 11-18.

A change in use shall cause the conditional use permit to automatically expire.

C. Conditional use permit approvals, or the portions thereof, that authorize hours of operation shall be valid for the specific use and hours of operation authorized on a property, subject to the revocation provisions of DMC 11-18.

~~5-12-618-11-10.040~~ **VARIANCES—INTENT.**

A variance on the dimensional or development requirements of this ~~chapter~~ title is intended to provide relief where, due to geographic, topographic or other similar conditions, complete compliance with all requirements of this ~~chapter~~ title prevents the use of a property which is generally available to other properties in the same zone.

~~5-12-615-11-10.050~~ **CONDITIONS FOR GRANTING A VARIANCE.**

A variance from the dimensional or development requirements of this ~~chapter~~ title may be granted only if the following facts and conditions exist:

~~(1)A.~~ Due to geography, topography, or other similar conditions, a strict application of the requirements of this title would deprive the subject property of rights and privileges enjoyed by other properties in the same zone;

B. Due to physical conditions, the development of the lot in strict conformity with the provisions of this title will not allow for reasonable use;

C. That the variance, if granted, will not alter the character of the neighborhood, or be detrimental to surrounding properties in which the lot is located;

~~(2)D.~~ The variance requested will not permit a condition which is materially detrimental to the public welfare, nor injurious to other properties and improvements in the vicinity of the subject property;

~~(3)E.~~ The variance is not required due to conditions created by the actions of the applicant, property owner or their agents; ~~and~~

~~(4)F.~~ The granting of the requested variance will not provide a special privilege to the property or the applicant that is denied by this ~~chapter~~ title to other lands, structures or buildings within the same zone.

G. The variance will not allow an increase in the number of dwelling units permitted by the zoning district.

H. The variance shall not allow a land use which is not permitted under the zoning district in which the property is located.

I. Justification for the issuance of a variance shall not be based on the illegal ~~Nonconforming~~ use of neighboring lands, structures or buildings in the same zone, and the illegal or permitted uses of lands, structures or buildings in other zones. ~~cannot be considered grounds for the issuance of a variance.~~

11-10.060 VARIANCE FINDINGS OF FACT

Before a variance can be granted or denied, the hearing body must find that:

A. The application is complete as required in Title 10;

B. The variance requested are within the conditions specified in section 11-10.060;

C. The variance is the minimum variance that will make possible the reasonable use of land, building or structure; and,

D. The granting of any particular variance will be consistent with the general purpose and intent of this title, is in compliance with the Comprehensive Plan and will not be injurious to any affected neighborhood or otherwise detrimental to the public welfare.

The hearing body may attach conditions to any variance if such conditions are necessary to protect the public welfare or the purpose of this title. If the hearing body finds that the applicant is not eligible for a variance or does not fulfill the requirements, the hearing body shall state the reasons for the denial of the variance.

11-10.070 ~~5-12-620~~ APPLICATION.

An application for a conditional use permit or variance may be initiated by a property owner or his authorized agent. The application must be on forms provided by the city as set forth in DMC Section 10-02.020.

~~include plans and information in sufficient detail to adequately show the nature and extent of the impact of the proposed use on the streets, utilities, surrounding property and neighborhood. The application generally must include a site plan, floor plan, elevations, and site and neighborhood photographs.~~

~~An application for a conditional use or variance shall be filed with the city planner on forms provided by the city. For other than city or governmental property, the application shall be accompanied by a fee established in the city's permit fee schedule.~~

~~The city planner shall review all applications for conformance with the requirements in this section and shall forward his findings and recommendations to the zoning adjuster prior to the public hearing on the conditional use or variance request.~~

5-12-630 Zoning adjuster:

~~To hear and decide on conditional use and variance applications, the City of Dayton establishes the office of zoning adjuster, as permitted in state law RCW 36.70.870, and designates the planning commission as the zoning adjuster.~~

5-12-640 Public hearing:

~~Before a conditional use or variance can be granted or denied, the application shall be considered at a public hearing held by the zoning adjuster. The public hearing shall be held within 60 days of the receipt of a complete application with all necessary information. The city clerk shall give notice of the hearing as specified in Article XI of this chapter. Prior to approval of a variance, the zoning adjuster must find that:~~

~~• The application is complete as required in section 5-12.520, and~~

~~• The variance requested are within the conditions specified in section 5-12.515, and~~

~~• The variance is the minimum variance that will make possible the reasonable use of land, building or structure, and~~

~~• The granting of any particular variance will be consistent with the general purpose and intent of this chapter, is in compliance with the Comprehensive Plan and will not be injurious to any affected neighborhood or otherwise detrimental to the public welfare.~~

~~The adjuster may attach conditions to any variance if the adjuster finds that such conditions are necessary to protect the public welfare or the purpose of this chapter.~~

~~If the adjuster finds that the applicant is not eligible for a variance or does not fulfill the requirements, the adjuster shall state the reasons for the denial of the variance.~~

5-12-650 Decisions on applications:

~~The zoning adjuster shall decide on all applications for a conditional use or variance within 30 days of the public hearing. The decision of the zoning adjuster shall be final unless an appeal is filed with the city clerk in writing within ten days after the decision was made.~~

5-12-660 Appeals:

~~Decisions of the zoning adjuster may be appealed by the applicant or by opponents of record as provided in RCW 36.70.880. An appeal must be filed in writing with the city clerk within ten days of the date the decision was made. Upon the filing of an appeal, the board of adjustment shall set a time and place at which the appeal will be considered. At least ten days' notice of the time and place of review shall be given to the zoning adjuster and the parties of record. The zoning adjuster shall transmit to the board of adjustment all of the records pertaining to the decision being appealed.~~

~~The board of adjustment may affirm, or modify the order, requirement, decision or determination being appealed and may establish additional orders, requirements or determinations that could have been made by the zoning adjuster.~~

~~The action of the board of adjustment is final and conclusive unless within ten days from the date of the board's action the applicant or adverse party makes an application with a court of competent jurisdiction.~~

~~**5-12.670 Notification of approval:**~~

~~Upon final approval of a conditional use permit or variance, the city planner shall send written notification of approval to the applicant. The notification shall include applicable conditions and time limits.~~

~~**5-12.680 Compliance required:**~~

~~Failure to comply with any condition or time limit imposed on a conditional use permit or variance shall void the permit or variance.~~

11-10.080 CONDITIONAL USE AND VARIANCE REVIEW PROCESS

An application for a conditional use permit and/or variance shall be processed in accordance with DMC Title 10 as a Type III application and follow the procedures for notice and review contained in Title 10. Except for minor variances with 10 percent or less deviation from the standard may be processed as a Type II application.

~~**5-12.690**~~**11-10.090. Expiration.**

In addition to any time limits established as a condition of a specific use, the conditional use permit or variance shall expire:

- A. If no building permit has been obtained within 12 months and all applicable construction including special conditions have not been completed within 24 months; or
- B. The authorized use is discontinued for a period of 12 months.

11-10.100 Revocation

The planning director may revoke or suspend any permit or variance granted under this title subject to Section 11-18.050.

11-14 ESSENTIAL PUBLIC FACILITIES

Sections:

11-14.010 PURPOSE.

11-14.020 LIST OF ESSENTIAL PUBLIC FACILITIES.

11-14.025 ESSENTIAL PUBLIC FACILITIES USE DESCRIPTIONS.

11-14.030 APPLICABILITY.

11-14.040 ESSENTIAL PUBLIC FACILITIES REVIEW PROCESS.

11-14.050 BURDEN OF PROOF.

11-14.060 DECISION.

11-14.010 PURPOSE.

The purpose of this chapter is to provide a process to site necessary public uses that may otherwise be difficult to site. This process involves the community and identifies and minimizes adverse impacts. Essential public facilities are defined in Section 11-01.050 DMC, Definitions. Essential public facilities which meet the definition but are not listed in Chapter 11-03 through 11-07 DMC shall also be reviewed according to the essential public facility review process.

11-14.020 LIST OF ESSENTIAL PUBLIC FACILITIES.

A use or facility may be added to the list of essential public facilities based on one of the following criteria:

- A. The use meets the definition of an essential public facility; and
- B. The use is identified on the state list of essential public facilities maintained by the State of Washington Office of Financial Management.

11-14.025 ESSENTIAL PUBLIC FACILITIES USE DESCRIPTIONS.

Essential public facilities uses are those uses typically difficult to site. All essential public facilities shall be subject to review in accordance with Title 10 and Chapter 11-14.

- A. Correctional Institutions. Correctional institutions use type means a facility operated by a government agency, designed, staffed and used for the incarceration of persons for the purposes of punishment, correction and rehabilitation following arrest or conviction of an offense.
- B. Halfway houses, overnight shelters, or transitional housing which do not meet the definition of group home and do not include facilities protected by Washington's law against discrimination, the Fair Housing Act or Fair Housing Act amendments. Halfway houses, overnight shelters, or transitional housing include, but are not limited to, facilities where one or more individuals reside for the purposes of incarceration, sex offender housing including secure community transition facilities, or drug or alcohol abuse treatment for a person or persons currently using alcohol or drugs. These are essential public facility and subject to review in accordance with this chapter. Individuals may be provided with a combination of personal care, social or counseling services and transportation.
- C. Organic Waste Processing Facilities. Organic waste processing facilities use type refers to any solid waste facility specializing in the controlled decomposition of organic solid waste and which requires a solid waste permit under Chapter 70.95 RCW. Typical uses include MSW composting facilities, composting facilities, and soil treatment facilities.
- D. Recycling Processor. Recycling processor use type refers to any large-scale buy-back recycling business or other industrial activity which specializes in collecting, storing and processing any waste, other than hazardous waste or municipal garbage, for reuse and which uses heavy mechanical equipment to do the processing. Examples include facilities where commingled recyclables are sorted, baled or otherwise processed for transport off site.
- E. Sewage Treatment Facilities. Sewage treatment facilities use type refers to facilities used to treat any liquid or waterborne waste of domestic origin or a combination of domestic, commercial or industrial origin, and which by its design requires the presence of an operator for its operation, including alternative treatment works and

package treatment plants. Also included are all of the various types of associated equipment, structures, and operations as they are currently constructed and operating or will result from technology, including, but not limited to, administrative offices, storage, laboratories, headworks, sedimentation basins, clarifiers, digesters, and biosolid handling including piping, filters, pumps, together with public walkways, recreational and educational uses, and parking lots. It shall not include any facility used exclusively by a single-family residence, septic tanks with subsoil absorption, industrial pretreatment facilities, or privately owned treatment plants.

F. Waste Disposal Facilities. Waste disposal facilities use type refers to permanent disposal sites for solid waste. Typical uses include wood waste, inert/demolition waste, municipal solid waste, special waste and biosolids landfills, and waste-to-energy facilities.

G. Waste Transfer Facilities. Waste transfer facilities use type refers to solid waste facilities where solid waste is collected or subjected to interim processing before being transported to a permanent disposal site. Typical uses include recycling collection sites, drop box transfer stations, transfer stations, recyclables recovery facilities, waste separation recovery facilities, moderate risk waste facilities, and tire piles.

11-14.030 APPLICABILITY.

A. Listed Essential Public Facilities. All listed essential public facilities shall be reviewed through the essential public facility review process.

B. Unlisted Facilities. The planning director shall make a determination that a facility be reviewed pursuant to this section based on the following criteria:

1. The facility is a type difficult to site because of one of the following:

a. The facility needs a type of site of which there are few sites;

b. The facility can locate only near another public facility;

c. The facility has or is generally perceived by the public to have significant adverse impacts that make it difficult to site;

d. The facility is of a type that has been difficult to site in the past;

e. It is likely that the facility will be difficult to site; or

f. There is a need for the facility and the City of Dayton is in the facility service area.

11-14.040 ESSENTIAL PUBLIC FACILITIES REVIEW PROCESS.

A. Agencies planning on siting essential public facilities shall submit an application to the department. The application shall be on a form provided by the city and shall be accompanied by the following documents and information as are determined to be necessary by the director.

B. Essential public facilities shall be reviewed as follows:

1. Essential public facilities shall require a conditional use permit.

2. If an essential public facility is not listed within the zoning district, then the use shall be limited to the Industrial Zone –. Essential public facilities that are not expressly listed in a zoning district are subject to either:

a. Conditional use permit process; and

b. Comprehensive plan/rezone process.

3. In addition to a conditional use permit, all essential public facilities shall be subject to review in accordance with the requirements of this title.

C. An applicant may have one or more alternative sites considered during the same process.

D. The director has the authority to require the consideration of sites outside of the City of Dayton. Alternative sites shall cover the service area of the proposed essential public facility.

E. An amplified public involvement process shall be required. The purpose of the public involvement process is to involve affected persons of likely and foreseeable impacts if the involvement process has the potential to lead to

more appropriate design/location or if that process could lead to development of incentives to address modifications to the facility which would make the siting of that facility more acceptable.

F. The applicant shall propose an acceptable public involvement process to be reviewed and approved by the director.

G. Public involvement activities shall be conducted and paid for by the applicant.

H. The public involvement process shall be initiated by the applicant as early as possible.

I. The director may require a multidisciplinary review process if the facility serves a regional, countywide, statewide, or national need.

J. An analysis of the facility's impact on city finances shall be undertaken. Mitigation of adverse financial impacts shall be required.

K. The following criteria shall be used to make a determination on the application:

1. The federal, state, regional, or local agency (applicant) shall provide a justifiable need for the essential public facility and for its location within the City of Dayton.
2. The impact of the facility on the surrounding uses and environment, the city and, if applicable, the region.
3. Whether the design of the facility or the operation of the facility can be conditioned, or the impacts otherwise mitigated, to make the facility compatible with the affected area and the environment.
4. Whether the factors that make the facility difficult to site can be modified to increase the range of available sites or to minimize impacts in affected areas and the environment.
5. Whether the proposed essential public facility is consistent with the City of Dayton comprehensive plan.
6. If a variance is requested, the proposal shall also comply with the variance criteria.
7. Essential public facilities shall also comply with all other applicable state siting and permitting requirements.

11-14.050 BURDEN OF PROOF.

The applicant has the burden of proving that the proposed use meets all criteria set forth in DMC 11.40.040(K).

11-14.060 DECISION.

The Hearings Examiner may approve an application for an essential public facility, approve with conditions or require modification of the proposal to comply with specified requirements or local conditions. The Hearing Examiner may deny an application for an essential public facility if the placement of the use would be unreasonably incompatible with the surrounding area or incapable of meeting the criteria required for approval or with specific standards set forth in this code.

~~ARTICLE X—~~Chapter 11-16 AMENDMENTS AND REZONES

11-16.010 - Amendments and rezones

11-16.020. - Application contents.

11-16.030. - Rezone findings.

~~5-12.700. — Amendments and rezones — Intent.~~

~~5-12.710. — Initiation.~~

~~5-12.720. — Petition contents.~~

~~5-12.730. — Review of petition.~~

~~5-12.740. — Recommendation of the planning commission.~~

~~5-12.750. — Action by the city council.~~

~~5-12.700~~11-16.010 - ~~Amendments and rezone requests—Intent.~~

~~It is the intent of this section to provide for changes. Proposed changes in to zoning district boundaries or any other provisions herein when necessary to correct the Zoning Code to bring it into when in compliance with the Comprehensive Plan or when necessary to protect the public interest or to benefit the public shall follow the process requirements set forth in Title 10 for Type IV, site specific rezone requests. Specific requests for rezones that do not comply with the Comprehensive Plan may be submitted with a docketed request for amendment to the Comprehensive Plan by submittal of an application for an amendment as set forth in Title 10, for Type V, legislative actions. Amendments to the text of Title 11 may be requested as set forth in Title 10 as a Type V application.~~

~~5-12.710—Initiation:~~

~~A request for an amendment of the text of this chapter or a request for a revision in the zone boundaries may be initiated by the following actions:~~

- ~~A. A petition filed with the city planner by one or more owners of the property that would be affected by the proposed amendment or zone change; or,~~
- ~~B. A resolution of intention by the city council or planning commission.~~

~~5-12.720~~11-16.020. - ~~Petition~~APPLICATION CONTENTS.

~~A petition for amendment Type IV rezone application shall include a description of the proposed amendment. If the amendment will change the zoning for a specific property, the petition must include a legal description of the affected property to be rezoned, shall indicate the existing zone designation for of the affected property and the zone designation of all adjacent property, and shall include a map of the affected neighborhood area. The petition application shall state the reasons for the requested action, information on the a statement specifying conformance of the proposed revision with the Comprehensive Plan and any perceived benefits to the public the action would cause. Petitions shall include the signatures and addresses of the petitioner all property owner(s) and shall be filed with the city on city application form(s) planner together with any required fee. Docketed applications must meet the requirements of~~

~~5-12.730~~11-16.030. - ~~Review of petition~~REZONE FINDINGS.

~~Upon receipt of an application or motion for amendment, the city planner shall review the proposed amendment for conformance with the Comprehensive Plan. The city shall make findings of fact that support the conclusion that the requested reclassification is in the public interest and the proposed rezone is consistent with the Dayton Comprehensive Plan prior to rezone approval.~~

~~The city planner shall forward the petition and his findings to the planning commission. The planning commission shall review the petition to determine~~

~~• If the proposed amendment appears to be in conformance with the comprehensive plan, a public hearing shall be scheduled to occur within 60 days of the filing of the petition or receipt of the resolution. The city clerk shall give notice of the hearing as specified in Article X of this chapter.~~

~~• If the proposed amendment does not appear to be in conformance with the comprehensive plan, the proposed zoning revision must be rejected. Amendment to the zoning code or zoning map may be considered only if the planning commission finds that the proposed amendment appears to be in conformance with the comprehensive plan. Amendments of the Comprehensive Plan must be combined and reviewed no more than once per year, except in response to an emergency declared by the city council, and all proposals shall be considered concurrently.~~

~~**5-12-740—Recommendation of the planning commission:**~~

~~Within 90 days of receipt of the application or motion for amendment, the planning commission must forward its findings and recommendation to the city council.~~

~~(Ord. of 11-16-2001)~~

~~**5-12-750—Action by the city council:**~~

~~The city council shall review the petition, the findings from the city planner and the recommendations from the commission. After receipt of the report from the planning commission, or if a recommendation and report is not received within the time period required, the city council may adopt or modify the proposed zoning revision only if the council finds that the revision is in conformance with the Comprehensive Plan.~~

~~Action by the council shall be final and conclusive unless, within 21 days from the date of the action, the applicant or a party adversely affected makes proper application to the appropriate court.~~

~~**ARTICLE XI—Chapter 11-18 ADMINISTRATION AND ENFORCEMENT**~~

~~5-12-840, 11-18.010 - APPEALS OF ADMINISTRATIVE DECISIONS OR REQUESTS FOR INTERPRETATIONS.~~

~~5-12-810, 11-18.020. - Administrative-APPLICATION REVIEW FEES.~~

~~5-12-820, 11-18.030- VIOLATION—~~etice~~—ENFORCEMENT AUTHORITY, NOTICE AND PENALTIES.~~

~~11-18.040 - REVOCATION OF PERMIT OR VARIANCE.~~

~~11-18.050 - 5-12-850 SEVERABILITY.~~

~~5-12-800. —Public hearings.~~

~~5-12-830. —Violation—Penalty.~~

~~**11-18.010 - - Appeals of administrative decisions or requests for interpretations.**~~

~~Appeals of administrative decisions that relate to interpretations of this title or the Comprehensive Plan and requests for interpretations of this title or the Plan shall follow the procedures and requirements set forth in DMC Title 10, Administration of Development Regulations.~~

~~**5-12-800—Public hearings.**~~

~~When a public hearing involving real property is required under the terms of this chapter, notice of such hearing shall be given in the following manner:~~

~~Hearings for which notice has been given in accordance with this section, may be continued for good cause by giving verbal notice of the time, the date, and the place such hearing is continued to those present at the hearing.~~

~~**11-18.020 - 5-12-810— Administrative-APPLICATION AND REVIEW FEES.**~~

It is the intent of the schedule of fees to reasonably recover costs of administration, inspection, publication of notice; environmental checklists and similar items associated with special requests for development permits, variance ~~and~~, special permits ~~and~~ appeals. The city council shall establish a schedule of fees pertaining to matters of this ~~chapter title~~. The schedule of fees shall be made available at City Hall by the city clerk and may be altered by amendment only by the city council. Any administrative city official shall be exempt from such fees when initiating requests on behalf of the city.

~~11-18.030 - 5-12-820~~

VIOLATION—~~Notice~~ENFORCEMENT AUTHORITY, NOTICE AND PENALTIES.

It is the intent of this section to establish ~~consistent administrative~~ procedures for ~~remedial action~~ code enforcement toward violations of this ~~chapter title~~. The ~~city planner~~ Planning Director shall be responsible for the investigation of potential violations of this ~~chapter title~~ and shall follow the notice requirements and procedures of Chapter 9-26, for violations of the Zoning Code. Penalties for violations are set forth on DMC Chapter 9-26. ~~shall have the authority to initiate corrective action as provided herein. Notice of violation of this chapter shall be in the form of a certified letter or a personally delivered letter to the property owner or responsible party of the violating property, use or situation. The letter shall identify the property on which the violation is located and shall describe the applicable section of this chapter which is being violated. A description of the specific violation and a brief statement of the action necessary to achieve compliance with this chapter shall be included within the letter. Notice shall be complete and considered received upon any one of the following:~~

- ~~(1) Actual receipt of the letter;~~
- ~~(2) Refusal of the letter; or~~
- ~~(3) Passage of 14 days from the date of mailing the letter.~~

~~The responsible party shall be given a reasonable amount of time, not to exceed 60 days, to remedy any violation of this chapter. Failure to comply with the notice of violation within the time allotted shall result in penalties and/or any further enforcement action considered necessary to achieve compliance with this chapter.~~

~~5-12-830 - Violation - Penalty:~~

~~Any violation of this chapter shall be considered a misdemeanor and be punishable by a fine of a maximum of \$500.00 and/or 30 days in jail. Each day a violation continues beyond any time allotted for compliance to this chapter shall be considered a separate offense. The city planner shall have the authority and responsibility to file such citations with the municipal court. The filing by the city planner shall constitute a lawful complaint for initiating criminal charges for violations of this chapter.~~

~~5-12-840 - Appeals of administrative decisions or requests for interpretations:~~

~~Appeals of administrative decisions that relate to interpretations of this chapter or the Comprehensive Plan and requests for interpretations of this title or the Plan shall be heard and decided by the planning commission. The commission has the authority to reverse or affirm or modify an administrative interpretation of the provisions of this title.~~

~~Requests for reviews of administrative procedures used in applying or enforcing this chapter shall be reviewed by the mayor.~~

11-18.040 REVOCATION OF PERMIT OR VARIANCE.

The planning director may revoke or suspend any permit or variance granted under this title if any of the following conditions is found to exist:

- A. Fraud in obtaining the permit;
- B. Concealment or misrepresentation of any material fact on the application or on any subsequent applications or reports;
- C. The operation is found to be in violation of the approved plans, conditions of approvals, time limits or the terms of the permit and the owner has failed to correct the violation after proper notice thereof.

The decision of the Planning Director is appealable as set forth in Title 10 as a Type II application.

~~5-12-850~~**11-18.050. - SEVERABILITY.**

If any provision of this ~~chapter title~~ or its application to any person or circumstance is held invalid, the remainder of this ~~chapter title~~ or the application of the provision to other persons or circumstances shall not be affected.