

Chapter 29-5 Procedures and Enforcement

29-5.1 Reviewers and Decision-Making Bodies

This section of the Ordinance identifies officers and bodies authorized to review, recommend, or make decisions regarding required applications, permits, and approvals under this Ordinance. Any reference to an officer or body includes any agents, employees, subordinates, or others to which the named individual or body has lawfully delegated power to take the action.⁹²¹

(a) City Council⁹²²

The City Council is the governing body of the City. In connection with this Unified Development Ordinance, the Council's responsibilities include approving amendments to the City's adopted comprehensive plan, approving amendments to the text of this Ordinance, and approving amendments to the Official Zoning Map, appointing the members of the Commission and Board, and performing any additional duties set forth in this Code.⁹²³

(b) Planning and Zoning Commission (P&Z)

(1) Continued Existence, Membership, and Qualifications⁹²⁴

- (i) The City planning and zoning commission ("Commission") established prior to the effective date of this Ordinance shall continue in existence.
- (ii) The Commission shall consist of nine (9) members appointed by the Council for staggered terms of four (4) years. All members shall be appointed as provided for in this Ordinance for terms beginning on the first day of June.⁹²⁵
- (iii) The members of the Commission shall be qualified voters, residents of the City at least one year immediately prior to the date of their appointment, and shall hold no other office or position in the City administration. Appointments to fill vacancies shall be for unexpired terms only. All members shall serve without pay.⁹²⁶

(2) Powers and Duties⁹²⁷

The Commission shall:

- (i) Prepare and submit to the Council for its adoption a comprehensive plan for the physical development of the City and uses of land in the City. The plan may include the general

⁹²¹ New section.

⁹²² New section.

⁹²³ Reference to additional duties added since Module 2.

⁹²⁴ From current Secs. 20-36 and 20-37. Provisions stating that the City Manager will appoint a City department director as an advisor to the Commission are not necessary and were not carried over. Section 20-38 (Attendance; Forfeiture of Office) and 20-39 (Officers; Organization; Rules and Regulations; Quorum) were not carried over, as those should be in an administrative manual that can be amended without Council approval.

⁹²⁵ Specifics of staggered term dates deleted since Module 2.

⁹²⁶ Reference to service for 1 month after term if no replacement appointed was deleted since Module 2.

⁹²⁷ From Secs. 20-41 through 20-43.

location and character of residential, commercial, mixed use, industrial and other areas, the general location, character and extent of streets, bridges, parks, waterways and other public ways, grounds, and spaces, together with the general location of public buildings and other public property, public utilities, and the extent and location of any public housing or slum clearance projects.⁹²⁸

- (ii) Make recommendations in connection with the execution and detailed interpretation of the comprehensive plan.
- (iii) Act as a zoning commission, in accordance with the provisions of present or future state zoning enabling acts.
- (iv) Prepare and recommend to the Council rules controlling the subdivision of land.
- (v) Make recommendations regarding the approval or disapproval of plats for land subdivision. All such plats shall be referred to the Commission before the Council takes any action. Failure of the Commission to act within sixty (60) days shall be deemed a recommendation for approval.⁹²⁹
- (vi) Recommend to the Council such amendments or revisions to this Ordinance as the Commission shall deem necessary or desirable for the promotion of the health, safety, morals and general welfare of the inhabitants of the City. Such provisions may include regulations as to the location, width, height, and bulk of buildings; the size of yards, courts, and other open spaces surrounding buildings; and the use of buildings and land. The Commission shall hear applications for amendments, modifications or revisions of this Ordinance and shall forward such applications to the Council with its recommendations on the application. The recommendations of the Commission shall not be binding upon the Council, which may approve or disapprove the Commission's findings; however, no plan or ordinance related to zoning, nor any modification, amendment or revision of such a plan or ordinance, shall be finally considered by the Council unless it has been first submitted to the Commission for its examination and recommendation.
- (vii) Recommend from time to time any other legislation which may be desirable to further the purposes of City planning.
- (viii) Make such reports to the Council as it may deem proper or as required by the Council.
- (ix) Assume any other powers and perform any other duties as are provided for by the Charter of the City or by Council action.⁹³⁰
- (x) Adopt rules for the conduct of its business that are consistent with the purposes of the Commission and the requirements of this Ordinance, which shall be approved by Council ordinance.⁹³¹

⁹²⁸ Revised to include reference to mixed use development.

⁹²⁹ Wording revised since Module 2 to clarify that Commission's action is a recommendation, not decision.

⁹³⁰ Revised to clarify wording and add Council action.

⁹³¹ New provision.

(c) Board of Adjustment (BOA)⁹³²

(1) Continued Existence, Membership, and Qualifications⁹³³

- (i) The City Board of Adjustment (“Board”) established prior to the effective date of this Ordinance shall continue in existence.
- (ii) The Board shall consist of five (5) members who shall be residents of the City. The terms of office of the members of the Board shall be for five (5) years, except that the five (5) members first appointed shall serve respectively for terms of one (1), two (2), three (3), four (4), and five (5) years. Thereafter all members shall be appointed by the Council for terms of five (5) years each. No member shall serve more than two (2) consecutive full terms.
- (iii) Three (3) alternate members, who shall be residents of the City, shall be appointed by the Council to serve in the absence of, or disqualification of, the regular members. The first three (3) alternates appointed shall serve for terms of three (3), four (4), and five (5) years, respectively. Thereafter, all alternates shall be appointed for five-year terms.
- (iv) The vacancy of any member or alternate member shall be filled by appointment of the Council for the unexpired term only.

All members and alternates may be removed for cause by the Council, upon written charges after public hearing.

(2) Powers and Duties⁹³⁴

The Board shall have the following authority and duties:

(i) Appeals

To hear and decide appeals where it is alleged there is error in an order, requirement, decision or determination made by an administrative official in the administration or enforcement of this Ordinance, as described in Section 29-5.3(h).

(ii) Variances

To hear and decide applications for variances from the terms or conditions of this Ordinance under Section 29-5.4(d)(Variances).⁹³⁵

(iii) Other Powers

- (A) Assume any other powers and perform any other duties as are provided for by the Charter of the City, Council action, or state law.⁹³⁶

⁹³² From Sec. 29-31, with changes as noted.

⁹³³ Reference election of a chair for a 1 year term, and to the vote needed to decide an appeal, were not carried over, as those provisions should be in an administrative document that can be amended without Council approval.

⁹³⁴ From Sec. 29-31, with changes as noted. The power to determine the classification of uses was not carried over because that power is now granted to the Director under Sec. 29-3.1. Board power to grant temporary permits for commercial use in a residential development was deleted as obsolete.

⁹³⁵ Text in Sec. 29-31(g)(6)(c) listing standards for “appeals due to practical difficulties or unnecessary hardship” relate to Variances, and were moved to Sec. 29-5.4(d).

- (B) Adopt rules for the conduct of its business that are consistent with the purposes of the Board and the requirements of this Ordinance, which shall be approved by Council ordinance.⁹³⁷

(d) Historic Preservation Commission⁹³⁸

The membership, terms, powers, and duties of the Historic Preservation Commission are listed in Section 29-2.3(c)(2) as part of the Historic Preservation Overlay District.

(e) Community Development Department⁹³⁹

(1) Continued Existence and Purpose⁹⁴⁰

- (i) The Community Development Department (“Department”) established prior to the effective date of this Ordinance shall continue in existence.
- (ii) The purpose of the Department is to plan for the present and future development and improvement of the City in all phases of its activities. Such activities shall include, but not be limited to, traffic, transportation, playgrounds, parks, public buildings, housing, public monuments, works of art, public streets, public utilities, parking, and parking facilities.

(2) Powers and Duties of Department⁹⁴¹

The Department shall have the following authority and duties:

- (i) Advise the City Manager and the Council with respect to the planning affairs of the City, and shall furnish to the City Manager and Council at any time upon request, such information and particulars concerning planning as may be desired.
- (ii) Act upon all matters referred to it by the City Manager or the Council; and shall, if required or deemed necessary, report on those matters to the City Manager or the Council.
- (iii) Be the advisor and consultant to the Commission, and shall prepare and furnish to the Commission such reports, studies, plans, surveys or other data as may be necessary in aiding and assisting the Commission in the discharge of its duties.
- (iv) Assume any other powers and perform any other duties as are provided for by the Charter of the City or by Council action.⁹⁴²

⁹³⁶ Revised to clarify wording and add Council action. Wording clarified.

⁹³⁷ New provision.

⁹³⁸ Sec. 29-21.4.

⁹³⁹ Chapter 20, Article 2, with changes as noted.

⁹⁴⁰ Current Sec. 20-21.

⁹⁴¹ Integrates provisions of Sec. 20-21 and 20-35. Separate provisions on duties of the Director were not carried over, as this should be an administrative decision of the City Manager.

⁹⁴² Revised to clarify wording and add Council action.

(f) Public Works Departments

In addition to the Community Development Department, the Public Works Department has the following authorities and duties related to the administration and enforcement of this Ordinance.

- (i) The Director of the Public Works Department shall serve as the floodplain administrator for matters related to the administration of Section 29-2.3(d) (Floodplain Overlay District).⁹⁴³
- (ii) The Director of Public Works Department shall be responsible for the administration and enforcement of the standards in Sec. 29-4.6 (Storm Water and Natural Resources) of this Ordinance.⁹⁴⁴

29-5.2 Regulatory Procedures Table

Table 5.2-1: Approval Procedures Table						
H = Public Hearing D = Decision R = Recommendation A = Decision on Appeal						
DCD = Department of Community Development DPW = Department of Public Works						
Where an Appeal body is not shown, appeal is to the courts						
Procedure	Section 29-	Department	Board of Adjustment	Planning & Zoning Commission	Historic Preservation Commission	City Council
Zoning Compliance	5.4(a)	D-DCD	A			
Building Permit	5.4(b)	D-DCD	A			
Certificate of Occupancy	5.4(c)	D-DCD	A			
Variance [1]	5.4(d)		D			
Adjustment of Form-based Standards	5.4(e)					
	Minor	D-DCD	A			
	Major		D			
Sign Permit	5.4(f)	D-DCD	A			
Sign Plan Approval	5.4(g)		D			
Temporary Parking Permit	5.4(h)	D-DCD	A			
Floodplain Development Permit	5.4(i)	D-DPW	A			
Land Disturbance Permit	5.4(j)	D-DPW	A			
Stormwater Permit	5.4(k)	D-DPW	A			
Optional Development Standards Approval	5.4(l)		D			
Certificate of Appropriateness	5.4(m)		A		D	
Landmark and Historic District Designation	5.4(n)			R	R	D
Conditional Use Permit ⁹⁴⁵	5.4(o)			R		D ⁹⁴⁶
Subdivision of Land	5.4(p)					
	Tract Split	D-DCD				
	Administrative Plat Review	D-DCD				

⁹⁴³ From current Sec. 29-22(b)(2).

⁹⁴⁴ Current Sec. 12A-6.

⁹⁴⁵ Revised from a Board decision at recommendation of City Counsel.

⁹⁴⁶ Corrected since Module 3 to clarify that City Council, not HRC, makes these decisions.

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DCD = Department of Community Development DPW = Department of Public Works						
Where an Appeal body is not shown, appeal is to the courts						
Procedure	Section 29-	Department	Board of Adjustment	Planning & Zoning Commission	Historic Preservation Commission	City Council
Minor Subdivision - Concept		R				
Minor Subdivision - Final				R		D
Major Subdivision - Concept		R				
Major Subdivision - Preliminary				R		D
Major Subdivision - Final				R		D
Ordinance Text or Map Amendment	5.4(q)					
Concept Review		R				
Zoning Text or Map Amendment				R		D
Annexation of Land	5.4(r)			R		D
Comprehensive Plan Amendment	5.4(s)			R		D

[1] Exceptions: Decisions on variances from Subdivision Regulations are decided by the Commission; variances from the HP-O are decided by the Historic Preservation Commission; variances from some stream buffer standards are decided by the Director of Public Works.

29-5.3 Standard Regulatory Procedures

All applications under this Ordinance are subject to the procedural requirements in this Section 29-5.3 unless exempted by the terms of this Ordinance.

(a) Application - Materials and Fees Required

- (1) Unless otherwise indicated by a specific provision of this Ordinance, the applicant for a permit or approval under this Ordinance must be the owner of the property that is the subject of the application or a duly authorized agent of that owner. Applicants who are purchasers of the subject property under a contract must provide proof that the applicant is an authorized agent of the owner of the subject property for purposes of the application.⁹⁴⁷
- (2) Unless otherwise indicated by a specific provision of this Ordinance or another City ordinance or regulation, all applications for permits and approvals under this Ordinance shall be submitted to the City Clerk.
- (3) All applicants for a development permit or approval under this Ordinance shall be required to file an application containing all information required for that type of application by the Department, as those requirements may be revised from time.
- (4) All applicants for a development permit, approval, or appeal under this Ordinance shall be required to file an application fee calculated to reflect the time and expense for City staff to

⁹⁴⁷ Replaces Sec. 29-36, which states specific generic requirements. Because of changes in electronic submission and review procedures and requirements, these should be maintained outside the code so they can be easily updated as technology and available information evolves. Second sentence is new.

review and process that type of application, as established by resolution of Council from time to time⁹⁴⁸

(b) Complete Application Required

No application for a development permit, approval, or appeal under this Ordinance shall be reviewed by City staff, or scheduled for a public hearing before the Board or Commission or the Historic Preservation Commission, and no permit or approval under this Ordinance shall be issued, until the Department has confirmed that the application materials required by subsection (a) above is complete and the fee required by subsection (a) above has been paid. The burden of providing complete and accurate information required by the Department for that type of application shall be on the applicant. The Department shall make a determination of whether these conditions have been met, and shall notify the applicant in writing of any missing materials within 10 days after the application has been submitted.⁹⁴⁹

(c) Notice of Public Hearing⁹⁵⁰

(1) General

- (i) When this Ordinance requires that the Board, Commission, or Historic Preservation Commission to hold a public hearing prior to making a recommendation or decision, the following types of public notice shall be provided.
- (ii) The provisions of this subsection (c) shall be considered met if the City or the applicant has attempted to comply with the standards and has achieved substantial compliance and the requirements of due process have been satisfied, as determined in the sole discretion of the City. Unintentional mistakes in notice due to inaccurate records or failures of notification systems shall not require the delay or cancellation of a public hearing if substantial compliance and due process have been achieved.⁹⁵¹
- (iii) The City may decide to provide additional notice beyond that required by this Ordinance, and no mistake or omission in providing any additional notice will require the delay or cancellation of a public hearing.⁹⁵²
- (iv) When the application that is the subject of the public hearing involves one or more specific lots, tracts, parcels, or areas of land (as opposed to an Ordinance text amendment that affects all land in the City or in specific base or overlay zone districts, or affects all development of a certain type), the required notice shall contain an address or description of the general location of the real property to be affected, and a map of the real property to be affected and the surrounding area.⁹⁵³

⁹⁴⁸ Replaces Sec. 12A-36, which establishes a specific fee for land disturbance permits. The Stormwater Utility Fees in Chapter 12A, Article VIII will remain in that chapter.

⁹⁴⁹ New section, incorporating some text from Sec. 29-34(d).

⁹⁵⁰ From Sec. 29-34(a)(4), with changes as noted.

⁹⁵¹ Wording revised to clarify that substantial compliance and due process must be satisfied, as determined by the City in its sole discretion.

⁹⁵² New provision.

⁹⁵³ Text from Sec. 29-34(d) reworded for clarity.

- (v) Where the required notice will require publication or mailing expenses, those expenses shall be paid by the applicant before the public hearing may be held.⁹⁵⁴
- (vi) Unless otherwise indicated by a specific provision of this Ordinance or another City ordinance or regulation, all required notices under this Ordinance shall be the responsibility of the City Clerk.⁹⁵⁵

(2) Published Notice⁹⁵⁶

- (i) If the application is for an Ordinance Text or Zoning Map amendment, an appeal, variance, or other request for relief or action from the Board, or for any action authorized in this Ordinance for which public notice is required under applicable law, the Director or the Commission shall cause a notice of the date, time, and location of the public hearing to be published in a newspaper of general circulation within the City at least fifteen (15) days before the public hearing. The public notice shall include the current and proposed zoning district and the telephone number of the Department, and all other information required under applicable law.⁹⁵⁷

(3) Posted Notice⁹⁵⁸

- (i) If the application is for a Zoning Map amendment, a conditional use permit, or an appeal, variance, or other request for relief or action from the Board,⁹⁵⁹ the Director may, as a courtesy, place conspicuous notification signs facing each street abutting the property that is the subject of the application. The failure of the Director to place notification signs shall not affect the validity of any ordinance rezoning land.⁹⁶⁰
- (ii) When the application is for a Certificate of Appropriateness or a Certificate of Economic Hardship under Section 29-2.3(c) (Historic Preservation Overlay) the Director shall place a conspicuous notification sign facing a public street abutting the property that is the subject of the application. The sign face of notification signs shall be at least five (5) square feet. Notification signs shall contain, or have attached to them, information on the proposed change to the property, the date and time of the Historic Preservation Commission meeting, and the telephone number of the Department.

(4) Mailed Notice⁹⁶¹

- (i) If the application is for a Zoning Map amendment, a conditional use permit, or an appeal, variance, or other request for relief or action from the Board,⁹⁶² the Department shall

⁹⁵⁴ Requirement from O-P, C-P, and M-P now applies to all notices.

⁹⁵⁵ New provision to clarify current practice.

⁹⁵⁶ From Sec. 29-34(a)(4) and Chapter 20 (Street and Building Plans) revised for clarity and to add detail about the content of the notice.

⁹⁵⁷ Reordered and revised to increase the list of actions for notice is required, and to match current practice.

⁹⁵⁸ From Secs. 29-21.4(h)(2) and (j)(2) and 29-34(a)(4), reworded for clarity.

⁹⁵⁹ All listed items except zoning map amendment added to reflect current practice.

⁹⁶⁰ Details regarding content of sign and minimum size of sign were deleted, as City is moving towards generic "Notice" signs.

⁹⁶¹ From Secs. 29-31(g) and 29-34(a)(4), reworded for clarity, and to replace the general requirement of notice to the public and affected parties regarding appeals of decisions with this requirement of mailed notice. Appeals generally do not require published or posted notice. Text regarding courtesy mailings was deleted because courtesy notices are covered in another section of the Code.

send first class mail notice of the public hearing to the addresses of the residences of the land proposed to be rezoned and to the owners of all land within lines drawn parallel to and one hundred eighty-five (185) feet from the boundaries of the land proposed to be rezoned.

(5) Electronic Notice⁹⁶³

The Director may, as a courtesy, send electronic notice to any persons or organizations in the City, or to any governmental, public, or quasi-public organization regarding any matter related to this Ordinance that may affect the interests of that person or organization, or on any matter on which any such person or organization has requested notice. The failure of the Director to send such notice or the failure of any resident or property owner to receive such notice shall not affect the validity of any ordinance rezoning land.

(d) Decisions under this Ordinance

- (1) Unless otherwise indicated in a specific provision of this Ordinance, the Director, Department, Board, Commission, or Council authorized to make a decision under this Ordinance may approve the application, deny the application, or approve the application subject to conditions as stated in subsection (f) below.
- (2) When this Ordinance authorizes a Director, Department, Board, Commission, or Council to make a decision under this Ordinance, that decision shall be made pursuant to the specific criteria applicable to that application in Section 29-5.4 (Specific Regulatory Procedures). If Section 29-5.4 does not include specific criteria for that type of decision, Director, Department, Board, Commission, or Council shall make the decision based on whether the application complies with this Ordinance and any regulations authorized by this Ordinance, and will protect the public health, safety, and welfare.
- (3) Unless otherwise stated in this Ordinance, or unless a different condition is attached to a permit or approval, permits and approvals granted under this Ordinance are not affected by changes in ownership or tenancy of the property.⁹⁶⁴
- (4) The City's decision on an application for a Conditional Use Permit for an Adult Indoor Entertainment, Adult Retail, or Religious Institution use, or for a Sign Permit, shall be made within thirty (30) days after submittal of a complete application, unless extended upon consent of the Applicant, or by the City for good cause. If a decision on a Sign Permit is appealed to the Board, the Board shall hear and decide that appeal within thirty (30) days after the Director's decision on the Sign Permit.⁹⁶⁵

⁹⁶² All listed items except zoning map amendment added to reflect current practice.

⁹⁶³ New provision.

⁹⁶⁴ New provision to clarify current practice.

⁹⁶⁵ New section to comply with recent court decisions that land use decisions relating to uses and activities protected by the First Amendment include timeframes for decision and for appeals in order to avoid "chilling effects" on First Amendment rights.

(e) Conditions on Approvals⁹⁶⁶

- (1) The Department, Board, Commission, or Council may attach conditions to any permit or approval under this Ordinance, provided that the condition is required to bring the development proposed in the application into compliance with the requirements of this Ordinance.
- (2) In addition, the Board, Commission or Council may attach conditions to any permit or approval under this Ordinance, provided that the condition is required to bring the development proposed in the application into compliance with the adopted Comprehensive Plan of the City or to protect the public health, safety, or welfare.⁹⁶⁷

(f) Modifications of Approvals⁹⁶⁸

Permits and approvals issued under this Ordinance may be modified pursuant to this subsection (f).

(1) Minor Amendments

- (i) Minor amendments to a permit or approval issued under this Ordinance may be approved by the Director provided that the Director determines that the following criteria have been met.
 - (A) The amendment is necessary because of site conditions, development requirements, or user requirements that were not known, and could not reasonably have been known, at the time of the permit or approval that is the subject of the amendment;
 - (B) The amendment does not approve a land use that was not authorized by the permit or approval;
 - (C) The amendment does not increase the maximum height of the development;
 - (D) The amendment does not reduce any building setback adjacent to development containing residential uses by any amount, and does not reduce any building setback adjacent to development containing only non-residential uses by more than ten (10) percent (cumulative of any earlier amendments);
 - (E) The amendment does not change any other dimensional standard, or the minimum or maximum amounts of off-street parking, applicable to the property or development by more than ten (10) percent (cumulative of any earlier amendments).
 - (F) The amendment does not change any development limit specifically attached to a development approval by City Council.⁹⁶⁹

⁹⁶⁶ Replaces current Sec. 25-10 and now applicable to all types of approvals.

⁹⁶⁷ Revised to clarify that Board has this power as well, since prior draft, in response to public comment.

⁹⁶⁸ New provision.

⁹⁶⁹ Added per public comment.

- (G) The amendment is not inconsistent with any terms or conditions included in the permit or approval in order to protect the character or scale of any residential area within which, or near which, the development is located.
- (ii) The Director shall post a notice of the approved adjustment on the City's web site within five (5) days after making that decision.

(2) Major Amendments

All amendments to development approvals that do not qualify as Minor Amendments under subsection (1) above may only be approved by the Board, Commission, Historic Preservation Commission, or Council that issued the permit or approval, following the same procedure (including any required public notice or public hearing) used to issue that permit or approval.

(g) Appeals ⁹⁷⁰

Unless a different process is listed for a Specific Regulatory Procedure in Section 29-5.4, or an exception is listed in this Section 29-5.3(g), a decision of the Director or the Department made in the administration or enforcement of this Ordinance may be appealed to the Board as described below. Decisions of the Director or the Department in the application of the Subdivision Standards of Section 29-4.3 may not be appealed to the Board, but requests for adjustments to the Subdivision Standards may be made to the Commission and/or the Council during the Subdivision of Land process in Section 29-5.4(p).

- (1) Appeals to the Board may be taken by any person aggrieved, or by any officer, department, board or bureau of the City affected by any decision of an administrative official in the administration or enforcement of this Ordinance. The appeal shall be taken within a reasonable time, as provided by the rules of the Board, by filing with the officer from whom the appeal is taken and with the Board a notice of appeal specifying the grounds of the appeal, including the section of this Ordinance that is inconsistent with the decision being appealed.⁹⁷¹ The officer from whom the appeal is taken shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken. An applicant shall deposit a sum sufficient to pay the costs of advertising as required by statute and ordinance. The clerk shall inform applicants of the estimated cost of advertising and require a deposit sufficient to meet the costs upon filing. All unexpended portions of the deposit shall be returned to the applicant after the actual costs of advertising have been met.
- (2) An appeal stays all proceedings related to the action appealed from, unless the officer from whom the appeal is taken certifies to the Board, after the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property. In such case proceedings shall not be stayed

⁹⁷⁰ From current Secs. 12A-109, 20-4, 23-31, 29-21.3, and 29-31, with changes as noted. This procedure now also applies to subdivisions of land, because Chapter 25 currently does not contain an appeals process. The exception in Sec. 12A-109 not allowing appeals from nuisance abatement procedures has not been carried over. Secs. 23-31 and 29-31 combine procedures for appeals and variances; the variance content has been moved to Sec. 29-5.4(d). (Variance). Text regarding further appeals to the courts were deleted as unnecessary.

⁹⁷¹ Last clause added to require specificity in stating the grounds for appeal.

- otherwise than by a restraining order granted by the Board or by a court of record, on application or notice to the officer from whom the appeal is taken and on due cause shown.
- (3) The Board shall fix a reasonable time for the hearing of the appeal, give public notice of the hearing, as well as due notice to the parties in interest, and decide the appeal within a reasonable time. At the hearing any party may appear in person, by agent, or by attorney.
 - (4) In exercising the above-mentioned powers, the Board may reverse or affirm, wholly or partly or may modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as ought to be made, and to that end, shall have all powers of the administrative official from whom the appeal is taken. Any decision of the Board to reverse, or reverse in part, an order, requirement, decision, or determination shall be based on substantial evidence.⁹⁷²
 - (5) The decision of the Board on an appeal shall be in writing. Any decision of the Board on an appeal related to the denial or conditioning of a sign permit, or a conditional use permit for a Communications Antenna or Tower, Adult Retail use, or Adult Indoor Entertainment use shall be based on substantial evidence. Any decision of the Board on an appeal related to the denial or conditioning of a sign permit, or a conditional use permit for an Adult Retail use or an Adult Indoor Entertainment use shall be made within thirty (30) days after the filing of the appeal unless extended upon consent of the applicant or by the City for good cause.⁹⁷³

29-5.4 Specific Regulatory Procedures⁹⁷⁴

(a) Zoning Compliance⁹⁷⁵

Each application under this Ordinance that does not require one or more of the specific regulatory procedures in subsections (b) through (t) below shall be reviewed for zoning compliance. Zoning compliance checks shall be conducted by the Department, and applications shall be approved if they comply with this Ordinance. The Department's decision may be appealed to the Board pursuant to Section 29-5.3(g).

(b) Building Permit⁹⁷⁶

- (1) No erection, alteration, or enlargement of a building may begin until the owner of the property on which the building is or will be located, or their authorized agent, has applied to the Director for a building permit and the Director has issued a building permit authorizing

⁹⁷² Revised to clarify that reversals of appealed decisions must be based on substantial evidence.

⁹⁷³ Second sentence is new and reflects recent state and federal court decisions requiring time limits for these types of permits and appeals to avoid a "chilling effect" on free speech under the First Amendment.

⁹⁷⁴ Provisions from Sec. 20-56 on Public Housing Project Approval and Sec. 20-57 on approval of Urban Renewal Projects were not carried forward. Public Housing Projects and Urban Renewal Projects are treated like all other projects for purposes of development review and approval. Provisions in Secs. 20-1 through 20-3 on Street and Building Lines were not carried over as obsolete.

⁹⁷⁵ New section to describe current practice.

⁹⁷⁶ Clarifies and replaces Sec. 29-36 to reflect current practice, and incorporates provisions from Sec. 25-17.

Required application materials have been removed as more appropriate for an administrative manual that can be revised without Council action.

- the proposed erection, alteration, or enlargement. The Director shall issue a building permit if the application is consistent with the requirements of this Ordinance, all adopted and applicable building codes of the City, and all other regulations of the City.
- (2) For purposes of constructing a building, permits may be issued for a tract or parcel of land consisting of two (2) or more adjacent lots or one (1) lot and a portion of another lot and considered as a single lot provided that a revised plat showing the combined area is first approved and recorded using the Administrative Plat Review provisions of Section 29-5.4(p)(5).⁹⁷⁷
 - (3) Building permits may be issued on parts of lots in commercial and industrial subdivisions as specified in Section 29-5.4(r)(5)(Administrative Plat Review).
 - (4) Building permits may be issued on existing lots as defined in Section 29-1.13.
 - (5) No building permit shall be issued for construction of a new building on a lot that does not have access allowing vehicles, pedestrians, and bicycles to pass from a public street directly onto the lot, or from a public street to the lot over an irrevocable access easement suitable to the City counsel's office.⁹⁷⁸

(c) Certificate of Occupancy⁹⁷⁹

- (1) *Requirement.* No vacant land shall be occupied or used except for agricultural uses, and no building erected or structurally altered shall be occupied or used until a certificate of occupancy has been issued by the Director. A certificate of occupancy shall state that the building or proposed use of a building or land complies with this Ordinance and with all the building and health laws and ordinances of the City.⁹⁸⁰
- (2) *Vacant land.* A certificate of occupancy for the use of vacant land, or the change in the character of the use of land, shall be applied for before any such land shall be occupied or used, and a certificate of occupancy shall be issued within ten (10) days after the application has been made, provided such use is in conformity with the provisions of this Ordinance.
- (3) *Buildings.* A certificate of occupancy for a new building or the alteration of an existing building shall be applied for in writing coincident with the application for a building permit, and shall be issued within ten (10) days after the erection or alteration of such building or part of the building has been completed in conformity with this Ordinance. Pending the

⁹⁷⁷ Exceptions allowing building permits to be issued without a replat if the following conditions were met was deleted. "(1) Building(s) shall cross interior lot lines rather than being placed closer to a lot line than otherwise allowed, (2) Record lots that are not to contain a part of any building shall not be included as a means to achieve required lot area per family, (3) Lots containing off-street parking only associated with the building(s) or used by other activities in a lawful manner shall not be included as part of the building permit application, and (4) The development shall meet all other applicable requirements of City ordinances."

⁹⁷⁸ New provision.

⁹⁷⁹ From current Sec. 29-37. Provisions of subsection (d) and (f) giving child care facilities 45 days after adoption of the current zoning ordinance to confirm compliance with state laws, and requiring nonconforming uses to apply within 1 year after adoption of the current zoning ordinance, were deleted as no longer applicable.

⁹⁸⁰ Requirements for record-keeping of certificates were removed as more appropriate for an administrative manual. Provision requiring application for a Certificate of Occupancy before excavation was deleted as in error.

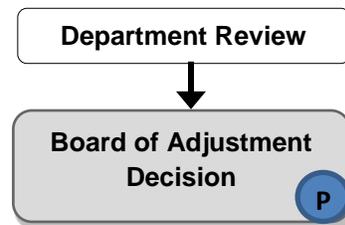
issuance of a regular certificate, a temporary certificate of occupancy may be issued by the Director for a period not exceeding six (6) months, during the completion of alterations or during partial occupancy of a building pending its completion. The temporary certificate shall not be construed as altering the respective rights, duties or obligations of the property owners or of the City relating to the use or occupancy of the premises, or any other matter covered by this Ordinance, and the temporary certificate shall not be issued except under such restrictions and provisions as will ensure the safety of the occupants.

(d) Variance⁹⁸¹

(1) Procedure

- (i) An applicant may apply for a variance from the substantive requirements of this Ordinance, but no variance may change the review and approval procedure for any type of application set forth in this Chapter 29-5.
- (ii) Applications for variances shall be decided by the Board pursuant to the criteria shown in subsection (2) below, with the following exceptions:
 - (A) No variances from the Subdivision Standards in Sec. 29-4.3 are permitted. Requests for deviations from the Subdivision Standards shall be considered by the Commission and decided by Council during the Subdivision of Land procedures in Section 29-5.4(p).
 - (B) Variances in the Historic Preservation Overlay District shall be approved as described in Sec. 29-2.3(c)(14)(Variances).
 - (C) Variances in the Floodplain Overlay District shall be approved as described in Sec. 29-2.3(d)(15)(Variance Procedures) and (16) (Conditions for Variances).
 - (D) Some variances from Stream Buffer regulations may be approved by the Director of Public Works, as described in subsection (2)(v) below.
- (iii) Any person or persons, jointly or severally aggrieved by any decision of the Board, any taxpayer, or any officer, department, board or bureau of the municipality, may appeal a decision of the Board to a court of competent jurisdiction.⁹⁸²

Variance



P = Public Hearing

(2) Criteria for Approval

The Board may approve an application for a variance from the terms and provisions of this Ordinance if it determines that all of the following are true.

⁹⁸¹ Combines and consolidates several variance procedures in Secs. 12A-110, 12A-241, 23-31, 25-20, 29-21.4(q), 29-22(b)(9), and 29-22(e)(5), with changes as noted. Text specifying application materials was not carried over, as more appropriate for an administrative manual.

⁹⁸² Clarification to reflect current procedure.

(i) General Criteria

- (A) The variance is required to address practical difficulties or unnecessary hardships related to the shape, size, terrain, location or other factors of the applicant's site, those difficulties or hardships are not generally applicable to property in the area, and the difficulties or hardships were not created by the actions of the applicant;
- (B) The variance will not have the effect of permitting a use of land that is not indicated as a permitted or conditional use in Sec. 29-2.3 (Permitted Use Table) in the zone district where the property is located, nor shall a variance be granted to modify a standard that operates as part of the definition of any use;⁹⁸³
- (C) The variance will not permit a development that is inconsistent with the adopted Comprehensive Plan;⁹⁸⁴
- (D) The variance is the least change from the requirements of this Ordinance necessary to relieve the difficulty or hardship;
- (E) The variance will not harm the public health, safety, or welfare or be injurious to other property or improvements in the area where the property is located.⁹⁸⁵

(ii) Sign Variance⁹⁸⁶

The Board may only grant a variance to the sign regulations in Section 29-4.10 if it also determines (in addition to the criteria in subsection (i) above) that variance will not change both the maximum size and the maximum height of freestanding signs.

(iii) Floodplain Regulations⁹⁸⁷

In addition to the findings in subsection (i) above, no variance to the Floodplain Overlay District regulations in Section 29-2.3(d) shall have any effect unless the record of the proceeding before the Board contains a written opinion of a registered professional engineer⁹⁸⁸ that the granting of the variance would not result in any increase in quantity or velocity of flow, degradation of water quality, or negative impacts upon adjoining or downstream properties, nor upon the stormwater system, which shall be accompanied with supporting documentation used by the engineer in rendering the opinion required by this section.⁹⁸⁹

(iv) Stormwater Management Regulations⁹⁹⁰

- (A) In addition to the findings in subsection (i) above, no variance to the stormwater management requirements in Section 29-4.6(a) shall have any effect unless the

⁹⁸³ Wording revised to clarify that variance cannot be used to vary or avoid the definition of a use.

⁹⁸⁴ This criteria is currently applicable only to subdivisions, but has now been included as a general standard.

⁹⁸⁵ Text referencing the spirit of the Ordinance and substantial justice were deleted as vague and obsolete.

⁹⁸⁶ From Chapter 20 and Section 23-9

⁹⁸⁷ Standard from current Sec. 29-22(e)(5) and 12A-110(b) with overlaps with general variance criteria removed.

⁹⁸⁸ All references to registered professional engineer changed to registered professional engineer (which is defined as someone licensed to practice engineering in Missouri) for consistency.

⁹⁸⁹ Wording revised to require the opinion and supporting data of a registered professional engineer to support the determinations.

⁹⁹⁰ 12A-110(c) and (d).

record of the proceeding before the Board contains a written opinion of a registered professional engineer that at least one (1) of the following conditions exist:⁹⁹¹

- 1) Alternative requirements for onsite management of stormwater discharges have been established in a stormwater management plan approved by the Director of Public Works.
 - 2) Provisions are made to manage stormwater by an existing offsite facility that is adequately sized to provide a level of stormwater control at least equal to that which would be afforded by onsite practices and there is a legally obligated entity responsible for long-term maintenance of the offsite facility.
 - 3) Meeting the minimum onsite management requirements is not feasible because of physical characteristics of the site.
- (B) In addition to the condition in subsection (A), the opinion of the registered professional engineer shall also state that the variance will not result in any of the following impacts in the downstream waterway:⁹⁹²
- 1) Deterioration of existing culverts, bridges, dams or other structures;
 - 2) Degradation of biological functions or habitat;
 - 3) Accelerated stream bank or stream bed erosion or siltation;
 - 4) Increased threat of flood damage.
- (C) The opinion of the registered professional engineer shall also state whether the variance will likely result in a lower level of stormwater control. If the variance will likely result in a lower level of stormwater control, the Board shall impose reasonable mitigation measures including, but not limited to, the following:⁹⁹³
- 1) The purchase and donation of privately owned lands or the grant of an easement to be dedicated for preservation or reforestation. These lands must be adjacent to a stream corridor in order to provide permanent buffer areas to protect water quality and aquatic habitat.
 - 2) The construction of a stormwater management facility or other drainage improvements on previously developed property, whether public or private, that currently lacks stormwater management facilities, designed and constructed in accordance with the standards and purposes of this Ordinance and the City's Stormwater Management and Water Quality Manual.
 - 3) At the applicant's request, monetary contributions to fund stormwater related studies and projects including regional wetland delineation studies, stream monitoring studies, hydrologic studies, stream assessment studies, including stream monitoring studies for water quality and macroinvertebrates, stream flow monitoring, threatened and endangered species studies and stream restoration projects. The monetary contribution shall be in accordance with a schedule established by the Director of Public Works and shall be based on the

⁹⁹¹ Wording revised to require the opinion of a registered professional engineer to support the determinations.

⁹⁹² Wording revised to require the opinion of a registered professional engineer to support the determinations.

⁹⁹³ Wording revised to require the opinion of a registered professional engineer to support the determinations.

cubic feet of storage required but not provided for the stormwater management of the property in question.

- (D) The opinion of the registered professional engineer shall be accompanied by supporting documentation used by the engineer in rendering the opinion required by this subsection (v).⁹⁹⁴

(v) Stream Buffer Regulations⁹⁹⁵

- (A) The Director of Public Works may grant a variance from the stream buffer regulations in Section 29-4.6(c) for projects or activities serving a public need where no feasible alternative is available; and for the repair and maintenance of public improvements where avoidance and minimization of adverse impacts to wetlands and associated aquatic ecosystems have been addressed. The Director of Public Works may attach conditions to a variance requiring site design, landscape planting, fencing, the placement of signs, and the establishment of water quality best management practices in order to reduce adverse impacts on water quality, streams, wetlands, and floodplains.

(e) Adjustment of Form-based Controls

(1) Minor

An applicant for a permit or approval in the M-DT zone district may apply for an adjustment to the form-based controls in Section 29-4.2 and the Director may approve the adjustment if the Director determines that all of the following criteria have been met:

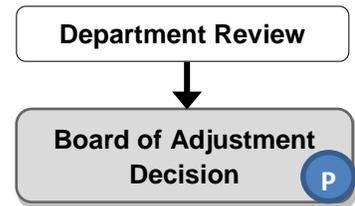
- (i) The proposed adjustment will not result in development that is inconsistent with the intended character of the M-DT zone district or the Regulating Plan for the block face including the applicant's property or the block face(s) immediately across the street(s) from the applicant's property.
- (ii) The proposed adjustment will result in a building and site design of equal or superior quality and visual interest to that required by the application of the form-based controls in Section 29-4.2.
- (iii) The proposed adjustment will not result in any of the following:
- (A) Change a minimum or maximum height requirement by more than five (5) percent;
 - (B) Change a finished floor elevation requirement by more than five (5) percent;
 - (C) Change a Street Wall height, length, or access gate requirement by more than ten (10) percent;
 - (D) Move a Required Building Line further from the street;
 - (E) Move a Required Building Line more than six (6) inches closer to the street;
 - (F) Reduce a minimum percentage of a building frontage that must be built to the Required Building Line by more than five (5) percent of the required length;

⁹⁹⁴ New provision.

⁹⁹⁵ From Sec. 12A-241, with changes as noted.

- (G) Move a Parking Setback Line more than five (5) feet closer to any street;
- (H) Increase the maximum average spacing of building entrances by more than ten (10) percent;
- (I) Change a minimum or maximum Fenestration requirement by more than five (5) percent; or
- (J) Change the minimum or maximum depth of a building projection by more than five (5) percent.

Major Adjustment of Form-based Controls



P = Public Hearing

(2) Major

All other variances from the form-based controls in Section 29-4.2 shall require an approval by the Board, after a public hearing, following the procedure in Section 29-5.4(d) but based on the criteria in Section 29-5.4(e)(1)(i) and (ii) above instead of the criteria in Section 29-5.4(d).

(f) Sign Permit⁹⁹⁶

(1) Applicability

- (i) A permit is required prior to the erection, construction, reconstruction, alteration, moving, conversion or maintenance of any sign, except those signs listed in subsection (ii) below or signs otherwise exempted in this Ordinance or other ordinances or regulations of the City.
- (ii) The following types of signs may be erected without the issuance of a permit or payment of a permit fee, but each such sign shall meet all the standards and requirements for that type of sign in Section 29-4.10 (Signs).
 - (A) Signs indicating a home or apartment or non-residential building or structure, or part of a home, apartment, building or structure, for sale, rent, or lease.
 - (B) Construction signs.
 - (C) Memorial signs or tablets when cut into masonry surface or when constructed of bronze or other incombustible material.⁹⁹⁷
 - (D) Government building signs erected on a municipal, state or federal building that announce the name, nature of the occupancy and information as to use of or admission to the premises.
 - (E) Official signs furnished by the superintendent of the Missouri State Highway Patrol designating an official vehicle inspection station in accordance with Section 307.365, R.S.Mo. One such sign shall be allowed for each street frontage at all such official vehicle inspection stations, in addition to the signs allowed by the following provisions.

⁹⁹⁶ Sec. 23-4 through 10, with wording clarified.

⁹⁹⁷ Reference to building names deleted.

- (F) Noncommercial signs.
- (G) Commercial flags allowed under Section 29-4.10(c)(11).
- (H) Signs prohibiting peddlers, solicitors, hawkers, itinerant merchants or transient vendors of merchandise, when placed upon private residential property.
- (I) "No Parking" signs that comply with Section 29-4.10(e)(8) or 14-561; provided the sign does not exceed eighteen (18) inches by twenty-four (24) inches in dimension.
- (J) Garage sale signs.

(2) Procedure

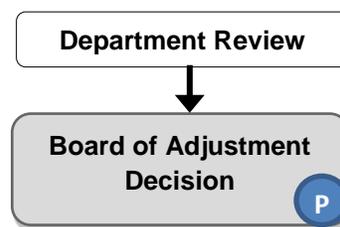
- (i) The Director shall approve the application if the Director determines that it complies with this Ordinance and all other ordinances and regulations of the City.
- (ii) No permit shall be issued for erection of a sign on property on which a sign plan has been approved under Section 29-5.4(d)(Variances), where the sign does not conform with the requirements of that plan, without the removal at the applicant's expense of all signs permitted by the plan and not otherwise permitted.
- (iii) A permit issued under this Section 29-5.4(f) shall become null and void six (6) months after the date of issuance if the work authorized by the permit has not been completed.
- (iv) The Director may revoke any permit issued pursuant to this Section 29-5.4(f) if the permit holder does not comply with any of the provisions of this Ordinance.

(g) Sign Plan Approval⁹⁹⁸

The Board may approve a sign plan allowing different numbers and types of signs permitted on a property if it determines that the following criteria are met. Sign plans are not allowed in a PD zone district; adjustments to permitted signs in PD zone districts require an amendment to the PD zone district approval.

- (1) No unlawful signs shall be permitted;
- (2) Each sign meets the size, setback and other limitations and requirements for that type or class of sign in Section 29-4.10;
- (3) The sign plan reduces the number of signs that would otherwise be permitted on the property;
- (4) The sign plan reduces the total square footage of signs that would otherwise be permitted on the property;
- (5) The sign plan does not violate the spirit or intent of Section 29-4.10; and
- (6) All nonconforming signs on the property or premises shall be brought into compliance with the requirements of this Ordinance.

Sign Plan Approval



P = Public Hearing

⁹⁹⁸ From Sec. 23-9, with wording clarified. Reference to continued validity of sign plans approved before Dec 16, 1991 remaining in effect was not carried forward as unnecessary.

(h) Temporary Parking Permit⁹⁹⁹

(1) Procedure

The Director may issue temporary permits to allow parking of motor vehicles in a yard area as prohibited in Section 29-4.4(f)(3)(Parking-Use of Yards), for a period of up to forty-eight (48) hours on Saturdays, Sundays, and holidays, if the Director determines that the criteria in subsection (2) have been met.

(2) Criteria for Approval

- (i) The parking is necessary for an event of City-wide or area-wide concern that will attract traffic that cannot be effectively served by existing accessible parking facilities.
- (ii) The permit will not permit parking in the yard area of a one-family, one-family attached or two-family dwelling.

(i) Floodplain Development Permit

Floodplain Development Permits shall be approved as described in Section 29-2.3(d) (Floodplain Overlay District).

(j) Land Disturbance Permit¹⁰⁰⁰

(1) Applicability¹⁰⁰¹

- (i) A land disturbance permit is required for any land disturbance activity, including but not limited to mechanized clearing of trees and construction of streets and utilities, on any site that results in a disturbed area one (1) acre or more in size, unless exempted by subsection (ii) below. The applicant for the permit shall be responsible for field verifying to the City the actual area being disturbed by staking the area to be disturbed prior to the disturbance. Redevelopment of tracts less than one (1) acre does not exempt the developer from the provisions of this 29-5.4(j) if that activity is part of a larger common plan of development or sale.
- (ii) A land disturbance permit shall not be required for:
 - (A) Sites less than one (1) acre or for individual lots in R-1 and R-2 zone districts except that erosion control provisions, grading limits, low floor elevation, and storm drainage work, including piping, swaling, and ditching, shall be shown on the plot plan and approved prior to issuance of a building permit. All land disturbance activity on such property shall conform to the provisions of the approved plot plan.
 - (B) Agricultural activities, except that a land disturbance permit is required for the mechanized clearing or removal of trees on sites of one (1) acre or more.
- (iii) No final plat shall be approved prior to approval of a site development plan encompassing the entire area being platted. No building permit shall be issued in a PD

⁹⁹⁹ Sec. 29-30(a)(8).

¹⁰⁰⁰ From Chapter 12A, Article 2.

¹⁰⁰¹ Sec. 12A-32 through 35, 69, and 70, with wording revised for clarity.

district prior to approval of a site development plan encompassing the entire area included in the plan.

- (iv) No permit for grading or constructing any public street shall be issued until the temporary erosion control measures set forth in the site grading and drainage plan, or in the plot plan for a site exempt from land disturbance permit requirements, have been properly installed.
- (v) The temporary erosion control measures described in the site grading and drainage plan, or in the plot plan for a site exempt from the land disturbance permit requirement, shall be properly installed before beginning any land disturbance activity and shall be properly maintained at all times until all land surfaces on the property become stable and non-erosive.
- (vi) All land disturbance activity on property for which a land disturbance permit has been issued shall conform to the requirements of the permit and to the provisions of the approved site development plan.

(2) Procedure

The Director of Public Works shall issue a land disturbance permit if the application conforms to the requirements of this Ordinance and all other City ordinances and regulations.

(k) Stormwater Permit¹⁰⁰²

(1) Applicability

- (i) No portion of a storm drainage system including stormwater management facilities may be constructed, reconstructed, altered, modified or repaired without first obtaining a permit from the Director of Public Works. No permit shall be issued until the Director of Public Works is satisfied that the plans for the work have been prepared in accordance with an approved stormwater management plan and with the Stormwater Management and Water Quality Manual and until the applicant has posted a performance bond, letter of credit, cash escrow or other performance security acceptable to the Director of Public Works, in the City's favor, assuring the construction, reconstruction, alteration, modification or repair of all stormwater management facilities authorized by the permit. The performance security shall be in the amount of the estimated cost of the project.
- (ii) No certificate of occupancy shall be issued for a structure on any property subject to the stormwater management requirements of this Ordinance until construction of the required stormwater management facilities is completed in accordance with the approved stormwater management plan. If completion of the work or structure is at a time of the year that completion of the required stormwater management facilities is not feasible, a performance bond or other acceptable financial instrument for the estimated cost of completion of the work may be accepted to allow the issuance of a certificate of occupancy.
- (iii) As built construction drawings that show the final design specifications and are certified by a professional engineer are required on all permanent stormwater management

¹⁰⁰² Chapter 12A, Secs. 92-94 with changes as noted.

facilities. The as built drawings must be submitted before City approval or acceptance of the facilities.

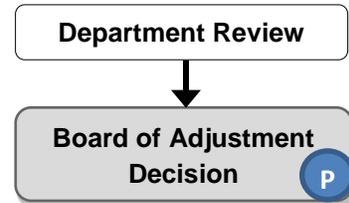
(I) Optional Development Standards Approval¹⁰⁰³

(1) Applicability

(i) The provisions of this section apply to:

- (A) Property owners in the R-2 zone district that apply to have the development of their property subject to the “cottage” development standards rather than the “current” development standards as shown in Tables 29-2-3 and 29-4.1-1.
- (B) Property owners in the M-N zone district that apply to have the development of their property subject to the “pedestrian” development standards rather than the “current” development standards as shown in Tables 29-2-7 and 29-4.1-2.
- (C) Property owners in the M-C zone district that apply to have the development of their property subject to the “transit” development standards rather than the “current” development standards as shown in Tables 29-2-8 and 29-4.1-2.

Optional Development Standards Approval



P = Public Hearing

- (ii) Any such application shall request that the City approve the application of all of the optional development standards available for the zone district in which the property is located, as listed in Tables 29-2-3, 29-2-7, 29-2-8, 29-4.1-1, and 29-4.1-2 respectively. The Board may not approve an application requesting application of some but not all of the optional development standards listed in the applicable tables for the zone district where the property is located.

(2) Procedure

- (i) The Department shall review the application and make a recommendation to the Board, which shall hold a public hearing on the application.
- (ii) If approved by the Board, the applicability of the optional development standards shall be indicated by recording a notice with the Boone County recorder of deeds.
- (iii) The owner of property for which optional development standards have been approved subject to this Section 29-5.4(I) may apply to have the “current” development standards reapplied to the property, and the Board may approve that application, through the same process and using the same criteria used to approve the optional development standards.

(3) Criteria for Approval

¹⁰⁰³ New section.

The Board may approve an application for optional development standards if it determines that the following criteria have been met:

- (i) The use of optional development standards is consistent with the intended character of the area as shown and described in the City’s adopted comprehensive plan;
- (ii) The use of the optional development standards will provide adequate off-street parking for the permitted uses available in the zone district where the property is located, and will not result in significant increases in off-site parking on sections of local neighborhood streets other than those immediately fronting the applicant’s property; and
- (iii) The use of the optional development standards will not create additional traffic congestion or risks to public health and safety in the surrounding area.

(m) Certificate of Appropriateness¹⁰⁰⁴

A certificate of appropriateness in the HP-O district shall be approved as described in Section 29-2.3(c)(8).

(n) Landmark and Historic District Designation¹⁰⁰⁵

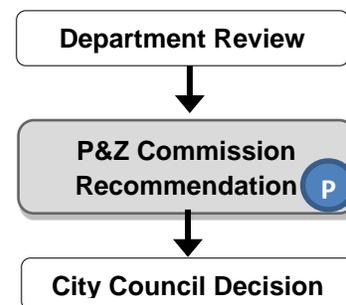
Designation of landmark and historic districts shall be approved as described in Sections 29-2.3(c)(5) and (6). If designated, the district shall be added to the list of approved districts in Section 2.3(c)(7).

(o) Conditional Use Permit¹⁰⁰⁶

(1) Procedure

- (i) The Department shall review the application and shall forward a recommendation to the Commission based on the criteria listed in subsection (2) below.
- (ii) The Commission shall hold a public hearing on the application and shall make a recommendation to the Council. The Commission’s recommendation shall be based on the criteria in subsection (2) below and shall be in writing.
- (iii) The after public hearing in front of the Commission, the Commission may make a tentative recommendation and direct the Department to draft a proposed written recommendation to be presented to Commission at its next meeting. Applicant may

Conditional Use Permit



(P) = Public Hearing

¹⁰⁰⁴ From Sec. 29-21.4.

¹⁰⁰⁵ From Sec. 29-21.4.

¹⁰⁰⁶ Replaces Sec. 29-23. Now requires approval by Council, rather than Board, per advice of City counsel.

also submit a proposed recommendation to the Commission. The Commission may accept, reject, amend or modify any proposed recommendation and adopt such proposed recommendation as its final written recommendation to the Council.

- (iv) The Council shall take final action on the application after considering the criteria in subsection (2) below. The Council's decision shall be in writing. The Council may accept, reject, amend or modify any written recommendation of the Commission and adopt such recommendation as its final written decision to the Council.
- (v) An application for a conditional use permit may be combined with an application for a variance, but the Board shall decide the application for a variance based on the criteria for approval in Section 29-5.4(d)(Variance) before the Commission holds its public hearing on the conditional use permit.
- (vi) A conditional use permit is to allow that use on a specific site and may not be transferred to any other site.

(2) Criteria for Approval¹⁰⁰⁷

After giving due consideration to the following criteria, the Council may grant a conditional use permit may be granted and may include any conditions deemed necessary to carry out the provisions and intent of this Ordinance.

(i) General Criteria

- (A) The proposed conditional use complies with all standards and provisions in this Ordinance applicable to the base and overlay zone district where the property is located;
- (B) The proposed conditional use is consistent with the City's adopted Comprehensive Plan;¹⁰⁰⁸
- (C) The proposed conditional use will be in conformance with the character of the adjacent area, within the same zoning district, in which it is located. In making such a determination, consideration may be given to the location, type and height of buildings or structures and the type and extent of landscaping and screening on the site;
- (D) Adequate access is provided and is designed to prevent traffic hazards and minimize traffic congestion;
- (E) Adequate utilities, storm drainage, water, sanitary sewer, electricity, and other infrastructure facilities are provided;¹⁰⁰⁹ and
- (F) The proposed variance will not cause significant adverse impacts to surrounding properties.¹⁰¹⁰

¹⁰⁰⁷ Revised for clarity and to require compliance with all City ordinances and regulations. Text requiring compliance with all other laws was deleted because addressed in Chapter 1; provisions for amendment of permits are now covered by Section 29-5.3(f).

¹⁰⁰⁸ New provision suggested in the Detailed Outline.

¹⁰⁰⁹ Revised to list required infrastructure review in more detail, in response to public comment.

¹⁰¹⁰ New provision to reflect general practice.

(ii) Criteria for Communication Antennas and Towers¹⁰¹¹

When considering a conditional use permit application for a Communications Antenna or Tower, the Board shall consider the following criteria in addition to those listed in subsection (i) above, and its decision shall be based on substantial evidence in the written record.

- (A) Whether or not existing towers are located within the geographic area necessary to meet the applicant's engineering requirements.
- (B) Whether or not existing towers, structures or buildings within the applicant's required geographic area are of sufficient height to meet system engineering requirements.
- (C) Whether or not existing towers or structures have sufficient structural strength to support the applicant's proposed antennas.
- (D) Whether or not the fees, costs, or other contractual terms required by the owner(s) of existing tower(s), structure(s) or building(s) within the required geographic area of the applicant or to retrofit the existing tower(s) or structure(s) are reasonable.
- (E) Whether or not there are other limiting conditions that render existing towers, structures or buildings within the applicant's required geographic area unsuitable.
- (F) Whether or not the proposal minimizes the number and size of towers or structures that will be required in the area.
- (G) Whether or not the applicant has previously failed to take advantage of available shared use opportunities provided by this section or otherwise.
- (H) Whether or not the applicant has provided sufficient evidence indicating that the tower will be made available for use by others, subject to reasonable technical limitations and reasonable financial terms.

(p) Subdivision of Land¹⁰¹²

(1) Applicability

- (i) The provisions of this Section 29-5.4(p) shall apply to all divisions of land within the City into new or different lots for development, except as noted in subsection (ii) below or as exempted by state or federal law or court decisions interpreting those laws.¹⁰¹³
- (ii) A transaction involving the sale or exchange of small¹⁰¹⁴ tracts or parcels of land to or between adjoining properties where such sale or exchange does not create additional lots or parcels for development and does not otherwise violate this Ordinance shall be exempt from the requirements of this Section 29-5.4(p).

¹⁰¹¹ From Sec. 29-21.3; overlaps with general criteria have been removed.

¹⁰¹² Materials from Chapter 25, Article III, reorganized and with changes as noted. Revised to clarify that criteria in both subsections (i) and (ii) must be met, per staff's request.

¹⁰¹³ New provision reflecting current practice.

¹⁰¹⁴ "Small" added since Module 3.

(2) General Provisions¹⁰¹⁵

- (i) No street shall be constructed nor shall any street be accepted or maintained by the City; no street lighting, water or sewer service shall be extended to or connected; no building, electrical, plumbing, occupancy or other permit or license shall be issued by any department of the City or by any officer or employee for the construction of any building or improvement on land which does not meet the definition of "lot" in Section 29-1.13. This requirement shall not apply to alterations of existing buildings that increase the gross floor area or building footprint by less than 10 (ten) percent of existing.¹⁰¹⁶
- (ii) All persons are hereby notified of the existence of the comprehensive plan of the City, as amended, and of any sites or areas within any proposed subdivision that may be designated on the comprehensive plan, as amended, as sites or areas for possible acquisition by condemnation or purchase by the City for public uses and purposes.
- (iii) The Council may allow the subdivider to place notes on the plat that are explanatory or that impose obligations on the property owner or that restrict use of the property. Obligations and restrictions set forth in notes on a plat may be eliminated only by ordinance or resubdivision, and such obligations and restrictions shall not be eliminated unless the Council determines that the elimination will not be detrimental to any land in the subdivision or to any neighboring property.
- (iv) The proposed name of the subdivision shall not duplicate or sound like the name of any other subdivision, any existing or platted street, or any established business or development in Boone County.
- (v) The criterion for approval of a major, minor, or administrative subdivision is whether the proposed preliminary or final plat conforms to this Ordinance and to all other City ordinances and regulations.¹⁰¹⁷
- (vi) Any requests for deviations from the Subdivision Standards of Section 29-4.3 shall be included in the preliminary plat application as a request for a "design adjustment". Recommendations on requests for design adjustments shall be made by the Director and the Commission, and shall be decided by Council, simultaneously with review and final decision on the plat.¹⁰¹⁸
- (vii) If a design adjustment(s) is requested, the Director or Commission may recommend approval of the design adjustment if it determines that the following criteria have been met, and the Council shall consider these criteria in making a decision on the requested design adjustment.
 - 1) The design adjustment is consistent with the City's adopted comprehensive plan and with any policy guidance issued to the Department by Council.

¹⁰¹⁵ Secs. 25-17, 25-19, 25-20.1, and 25-40.

¹⁰¹⁶ Revised since Module 3 to avoid inference that streets must be on platted lots.

¹⁰¹⁷ New provision to clarify current practice.

¹⁰¹⁸ New provision to clarify current practice. Subdivision variances are not permitted; instead, the applicant requests adjustments from Subdivision Standards during the plat review and approval process.

- 2) The design adjustment will not create significant adverse impacts on any lands abutting the proposed plat, or to the owners or occupants of those lands;
- 3) The design adjustment will not make it significantly more difficult for automobiles, bicycles, or pedestrians to circulate in and through the plat than if the Subdivision Standards of Section 29-4.3 were met.
- 4) The design adjustment is being requested to address a unique feature of the site, or to achieve a unique design character, and is not being requested to avoid installation of improvements or site features required of other subdividers.
- 5) The design adjustment will not create adverse impacts on public health and safety.¹⁰¹⁹

(3) Procedure

(i) Sequence of subdivision process¹⁰²⁰

- (A) An applicant for a minor subdivision shall apply for and secure approval of the proposed subdivision through a two-step process including: (1) concept review, and (2) final plat.
- (B) An applicant for a major subdivision shall apply for and secure approval of the proposed subdivision through a three-step process including: (1) concept review, (2) preliminary plat, and (3) final plat.
- (C) An applicant for an administrative subdivision shall apply for and secure approval of the proposed subdivision through a one-step process including (1) administrative plat approval.
- (D) A tract split is not a subdivision, but an alternative to subdivision that requires full completion of the subdivision process at a later time.¹⁰²¹ An applicant for a tract split shall apply for and secure approval of the split through a two-step process including: (1) concept review, and (2) tract split.

(ii) Coordination with PD Zoning¹⁰²²

- (A) Whenever a proposed development plan for a PD zone district requires a subdivision of land, approval of the subdivision of land shall be required in addition to approval of the PD zone district and development plan. Subdivision review may be carried out simultaneously with the review of the development plan, and the required information may be included in a single document that serves as both a development plan and a preliminary plat, as described in the following procedure:
 - 1) An application for approval of a development plan for a PD zone district shall include all information normally required for submission and approval of a preliminary subdivision plat.

¹⁰¹⁹ New section. The current code does not have criteria for consideration of requests to diverge from the Subdivision Standards (except the specific criteria for sidewalk variances in Sec. 29-4.3(d)).

¹⁰²⁰ Sec. 25-21.

¹⁰²¹ First sentence is new clarify that tract split is not itself a subdivision.

¹⁰²² Sec. 25-22. Wording revised to clarify that a single document can be used for both.

- 2) Commission review and recommendation of the preliminary plat shall be accomplished at the time of, and as a part of, its review and recommendation of the PD development plan.
- 3) Approval of the PD development plan shall constitute approval of the preliminary subdivision plat.

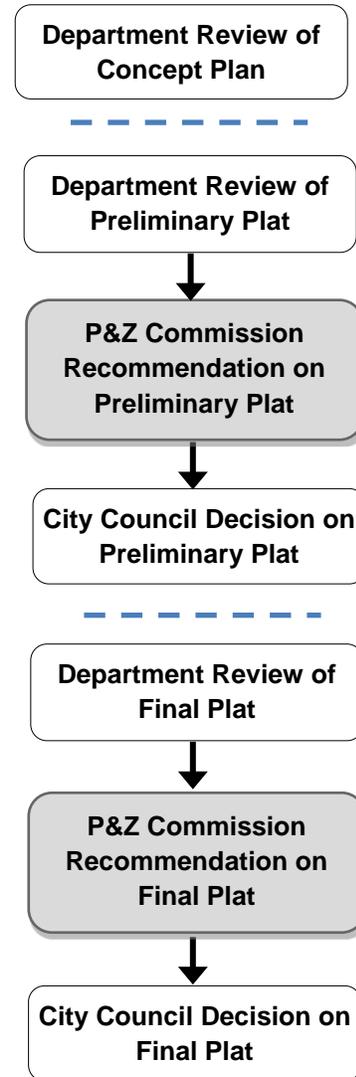
(iii) Concept Review¹⁰²³

Before preparing the preliminary plat of a major subdivision or the final plat of a minor subdivision, the subdivider shall discuss with the Director the procedure for adoption of a subdivision plat and the requirements as to general layout of streets and for reservations of land, street improvements, drainage, sewerage, fire protection and similar matters, the availability of existing services, and other requirements of this Ordinance or other City ordinances or regulations. The Director shall also advise the applicant, when appropriate, to discuss the proposed subdivision with those City officials who must recommend approval of certain aspects of the subdivision plat coming within their jurisdiction. The geographic scope of the review shall include the whole property held in common ownership for which whole or partial subdivision platting is desired by the subdivider, as well as the surrounding property that might reasonably be affected by subdivision of the subject property. The concept review is an informal discussion made available to the subdivider, and the subdivider may, after meeting with the Director, proceed to prepare and submit a preliminary plat for a major subdivision or a final plat for a minor subdivision.

(iv) Preliminary Plat Review¹⁰²⁴

- (A) The Director shall refer the preliminary plat to the appropriate City departments, together with an indication of its tentative agenda placement before the Commission, and shall receive reports from other departments as to the conformance of the proposed plat with this Ordinance and

Major Subdivision



P = Public Hearing

¹⁰²³ Sec. 25-23, expanded to include discussion of all City ordinances and regulations.

¹⁰²⁴ Sec. 25-25, with application materials removed for inclusion in an administrative manual.

other City ordinances and regulations. If a design adjustment(s) has been requested, the departments may comment on the proposed design adjustment.

- (B) The Director shall request the subdivider to make such changes to the plat as are necessary to comply with this Ordinance and other City ordinances and regulations, or to address any adverse impacts of proposed design adjustments.
- (C) The Director shall forward the plat to the Commission and advise the Commission of the conformance or nonconformance of the plat with this Ordinance and other City ordinances and regulations. If a design adjustment(s) has been requested, the Director may advise the Commission on any potential impacts of those design adjustments.
- (D) The Commission shall hold a public meeting on the preliminary plat and shall make a decision to recommend the plat (including any requested design adjustments) to Council for approval, conditional approval, or denial. The applicant shall be advised in writing of any revisions to the plat required by the Commission.¹⁰²⁵
- (E) Failure of the Commission to act within sixty (60) calendar days after the date of application of the plat shall be deemed a recommendation for approval (including any requested design adjustments), except that the Commission or Director, with the consent of the subdivider, may extend this period to a stated future date. For purposes of this provision, the date of application shall be deemed to be the filing deadline date for the Commission agenda following the date on which complete application materials are submitted.¹⁰²⁶
- (F) The Council shall take action on the plat (including any requested design adjustments) by resolution. If the Commission has recommended denial of the preliminary plat (or any requested design adjustments), the Council, by a vote of not less than two-thirds of its entire membership, may overrule the disapproval.
- (G) Approval of a preliminary plat by the Council shall confer upon the applicant for a period of three (3) years,¹⁰²⁷ beginning at the effective date of Council approval, the following rights:
 - 1) The terms and conditions under which the preliminary plat was given approval shall not be changed except as noted in subsection 3) below.
 - 2) The subdivider may submit on or before the expiration date a final plat for the whole or any part of the subdivision for approval.
 - 3) Each final plat for land included in the preliminary plat application shall comply with any new technical or engineering standards or requirements adopted by Council between the date of the preliminary plat approval and the date of each final plat application for land included in the preliminary plat.¹⁰²⁸

¹⁰²⁵ Replaces current language about marking up the tracing, since tracings are no longer used.

¹⁰²⁶ Time for action revised from 45 to 60 days to align with state statute. Second sentence is new.

¹⁰²⁷ Changed from 7 to 3 years, which is much more typical and avoids problems that arise when new standards are adopted between preliminary and final plat.

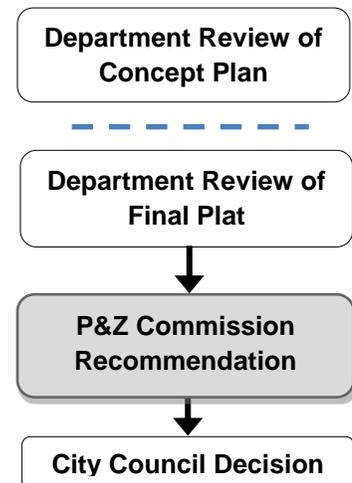
¹⁰²⁸ Second phrase is new. Columbia allows preliminary plats to be approved without construction or engineering drawings, so this requirement does not require changes to existing construction documents.

- 4) If the subdivider does not submit a final plat for any portion of the subdivided property before the expiration date, the preliminary plat approval shall expire and be of no force or effect.¹⁰²⁹
- 5) The time for filing of a final plat may be extended by the Council for a specified period on such terms and conditions as the Council may approve.

(v) Final Plat Review¹⁰³⁰

- (A) Following the approval of the preliminary plat of a major subdivision or completion of the concept review for a minor subdivision, the subdivider may file an application for final plat approval in order to complete the subdivision process. The application shall be in substantial compliance with the approved preliminary plat.
- (B) For a minor subdivision:
 - 1) The Director shall refer the final plat (including any requested design adjustments) to the appropriate City departments, together with an indication of its tentative agenda placement before the Council, and shall receive reports from the departments as to the conformance of the proposed plat with this Ordinance and other City ordinances and regulations. If a design adjustment(s) has been requested, the departments may comment on the proposed design adjustment.
 - 2) As a result of review by the other departments, the Director shall request the subdivider to make such changes necessary to cause the plat to be in conformance with this Ordinance and other City ordinances and regulations. If a design adjustment(s) has been requested, the Director may advise the Commission on any potential impacts of those design adjustments.
 - 3) The Commission shall make a decision to recommend the plat (including any requested design adjustments) to Council for approval, conditional approval, or denial. The applicant shall be advised in writing of any revisions to the plat required by the Commission.¹⁰³¹
 - 4) The Council shall take action on the plat (including any requested design adjustments) by resolution. If the Commission has recommended denial of the preliminary plat (or any requested design adjustments), the Council, by a vote of not less than two-thirds of its entire membership, may overrule the disapproval.

Minor Subdivision



- (C) For a major subdivision:¹⁰³²

¹⁰²⁹ Second sentence added for clarification at request of staff.

¹⁰³⁰ Sec. 25-27, with application materials removed for inclusion in an administrative manual. Text clarifies that minor subdivisions do not need to go through Commission review.

¹⁰³¹ Replaces current language about marking up the tracing, since tracings are no longer used.

¹⁰³² Prohibition on plat changes without re-approval by Council deleted because Administrative Plats allow that.

- 1) The Director shall refer the final plat (including any requested design adjustments) to the appropriate City departments, together with an indication of its tentative agenda placement before the Council, and shall receive reports from the departments as to the conformance of the proposed plat with this Ordinance and other City ordinances and regulations. If a design adjustment(s) has been requested, the departments may comment on the proposed design adjustment.
 - 2) As a result of review by the other departments, the Director shall request the subdivider to make such changes necessary to cause the plat to be in conformance with this Ordinance and other City ordinances and regulations. If a design adjustment(s) has been requested, the Director may advise the Commission on any potential impacts of those design adjustments.
 - 3) The Commission shall make a decision to recommend the plat (including any requested design adjustments) to Council for approval, conditional approval, or denial. The applicant shall be advised in writing of any revisions to the plat required by the Commission.¹⁰³³
 - 4) The Director shall forward the plat to the City Manager for Council consideration and advise the Council as to its conformance or nonconformance with this Ordinance and other City ordinances and regulations.
 - 5) The City Manager shall certify to the Council that the final plat is in accordance with the approved preliminary plat and that all conditions precedent established by the Council have been met.
 - 6) Following certification by the City Manager to the Council, the Council shall take action on the final plat.
- (D) The Council shall take action by ordinance on the final plat within forty-five (45) calendar days after its submission to the Council, and failure of the Council to act within that time period shall be deemed approval, except that the Council may extend this period to a stated future date with the consent of the subdivider or for good cause stated in writing to the subdivider.¹⁰³⁴

(vi) Signing and Recording¹⁰³⁵

After Council approval of a final plat, it shall be the responsibility of the City clerk to file the plat with the office of the county recorder of deeds. Simultaneously, the City clerk shall cause to be recorded all other documents required to be recorded with the plat, pursuant to Council approval and as determined by the City counselor.¹⁰³⁶

¹⁰³³ Replaces current language about marking up the tracing, since tracings are no longer used.

¹⁰³⁴ Revised to add ability of City to delay the period for good cause provided in writing.

¹⁰³⁵ Sec. 25-29, with wording revised for clarity. Details of mayor's signature and City clerk action were deleted as internal matters for inclusion in an administrative manual, and because technology is changing the way in which plat approvals are documented.

¹⁰³⁶ Requirement to distribute plats to other departments was deleted, as they are now maintained electronically.

(4) Resubdivision¹⁰³⁷

(i) Applicability

- (A) A change to an approved or recorded final plat will require review and approval of a resubdivision of the property if the change affects any street layout, any area reserved for public use,¹⁰³⁸ or any condition imposed by Council, or if the revised plat creates additional residential lots.¹⁰³⁹ Only that portion of the plat being changed must be resubdivided.
- (B) A change to an approved or recorded plat that does not change any street layout, any area reserved for public use,¹⁰⁴⁰ or any condition imposed by Council, and that does not create additional residential lots may be approved by the Director if it complies with this Ordinance and other City ordinances and regulations. If approved, the applicant shall be required to prepare a revised final plat document and the clerk shall record the revised final plat before the revisions shall be in effect.¹⁰⁴¹

(ii) Procedure for a Major Subdivision

- (A) If the Director determines the proposed resubdivision is in substantial conformance with a valid approved preliminary plat, the subdivider shall apply for and secure approval of a revised final plat from Council.
- (B) If the Director determines that proposed resubdivision is a substantial change from the approved preliminary plat, the subdivider shall apply for and secure approval of a revised preliminary plat from the Commission, and then approval of a final plat from Council, to complete the resubdivision. At the subdivider's option, the preliminary and final plat documents may be submitted at the same time and may be reviewed and considered for approval by City Council at the same time.¹⁰⁴²

(iii) Procedure for a Minor Subdivision

The subdivider shall apply for and secure approval of a revised final plat from Council, to complete the resubdivision.

(iv) Criteria for Approval

- (A) A resubdivision of land shall only be approved by the Council if the Council determines that:

¹⁰³⁷ Sec. 25-30, with changes as noted.

¹⁰³⁸ Phrase "any , any lot line, dimension or bearing" was removed, because almost all replats involve those changes, but those that do not create additional lots do not need re-approval by Council.

¹⁰³⁹ Phrase at the end of this sentence reading "provided that areas reserved for public use and dedicated to the City on the plat may be vacated by the Council without the need for a replat" was deleted as unnecessary.

¹⁰⁴⁰ Phrase "any , any lot line, dimension or bearing" was removed, because almost all replats involve those changes, but those that do not create additional lots do not need re-approval by Council.

¹⁰⁴¹ New provision.

¹⁰⁴² Revised to clarify that preliminary and final plats can be submitted and approved simultaneously.

- 1) The replat would not eliminate restrictions on the existing plat upon which neighboring property owners or the City have relied; or
- 2) Adequate utilities, storm drainage, water, sanitary sewer, electricity, and other infrastructure facilities are provided;¹⁰⁴³
- 3) The replat would not be detrimental to other property in the neighborhood, or, if detrimental, the benefits to the subdivider and the public, outweigh the detriment to the property in the neighborhood.

(5) Administrative Plat Review¹⁰⁴⁴

(i) Applicability¹⁰⁴⁵

- (A) The subdivider may file an administrative plat with the Director, if the plat meets the following criteria:
- 1) The plat does not create, vacate, or change the location and/or size of streets; and
 - 2) The plat does not create any additional residential lot or mixed use lots that will contain residential uses.

(ii) Procedure

- (A) The Director may approve the administrative plat if the Director determines that the revised lots and application materials, including but not limited to any utility construction documents, easements, and performance guarantees, comply with this Ordinance and all other City ordinances and regulations.
- (B) On approval of the administrative plat, the Director shall sign the plat and cause it to be recorded with the recorder of deeds.
- (C) No occupancy permit shall be issued for property included in the administrative plat unless and until the requirements of this Section 29-5.4(r)(5) are met and all required utility work is completed.

(6) Tract Split¹⁰⁴⁶

(i) Applicability

The tract split procedure is intended to simplify the orderly subdivision of large tracts of land for separate parcel sale through an administrative approval process. Preparation of a formal subdivision plat, Commission review, and Council approval are

¹⁰⁴³ New standard in response to public comment.

¹⁰⁴⁴ Sec. 25-31. Application requirements were deleted and will appear in an administrative manual. Clause allowing appeal of a denied administrative plat to Council were deleted. This decision of the Director should go to the Board like all other appeals of Director's decisions.

¹⁰⁴⁵ Text revised for clarity since Module 3.

¹⁰⁴⁶ Sec. 25-33, with wording clarified and simplified. Clause allowing appeal of a denied administrative plat to Commission and then to Council were deleted. This decision of the Director should go to the Board like all other appeals of Director's decisions.

not required at the tract split stage, but will be required when the parcels resulting from a tract split are further divided into individual lots or developed.¹⁰⁴⁷

(ii) Procedure

- (A) The Director shall complete a concept review of the application and consult with other City departments and public or quasi-public agencies as he may deem necessary to confirm compliance with this Ordinance and other City ordinances and regulations.
- (B) The Director shall approve or disapprove the request, and notify the subdivider in writing of the decision, within fourteen (14) calendar days after application filing.
- (C) If the Director determines that the application does not qualify for approval as a tract split, the application shall be treated as a minor or major subdivision, depending on the number of parcels being created and the need for improvements or dedication of land.¹⁰⁴⁸
- (D) The Director, on approval of a tract split, shall certify to the recorder of deeds that the tract split survey complies with all the provisions of this Ordinance.
- (E) Except as otherwise provided in this Ordinance, no permit for street or utility extension, nor permit for building development shall be issued for any of the parcels resulting from an approved tract split unless or until such parcel or portion of a parcel has received major or minor subdivision approval under this Section 29-5.4(r).

(iii) Criteria for Approval

The Director may approve a tract split if the Director determines that the following criteria have been met:

- (A) The property shall be divided into not more than five (5) parcels.
- (B) Adequate provision has been made for future subdivision of the resulting parcels for development, for the opening of future streets to serve the parcels, and for the extension of utilities or related public improvements and facilities, as required by the procedures, and subject to the standards and criteria, in this Ordinance.
- (C) The resulting parcel configuration does not adversely affect development of the balance of the tract or parcels, or of adjoining properties, and does not conflict with any provision of the comprehensive plan, this Ordinance, or other City ordinances or regulations.

(7) Monuments¹⁰⁴⁹

- (i) Monuments shall be selected from the types described by the "Minimum Standards for Property Boundary Surveys" of the Missouri Department of Natural Resources.

¹⁰⁴⁷ Minor wording revisions to match current practice.

¹⁰⁴⁸ New provision to clarify current practice.

¹⁰⁴⁹ Sec. 29-37. Specific application requirements will be removed and placed in an administrative manual. Since Module 3, exemption from platting interior lot corners in a PUD has been removed.

- (ii) Monuments shall be set or confirmed at all controlling corners on the boundary of the subdivision and all block corners, points of intersections, points of curvature and points of tangency within the subdivision.¹⁰⁵⁰
- (iii) On an individual lot within a subdivision, monuments shall be set or confirmed at all the corners of the lot.¹⁰⁵¹

(8) Completion and Dedication of Improvements

(i) Requirement¹⁰⁵²

- (A) The subdivider shall be required to complete all improvements and utilities required by the Council, and upon completion shall dedicate such improvements and utilities to the City, free and clear of all liens and encumbrances on the property,¹⁰⁵³ unless the existence of such liens and encumbrances are approved by the City.¹⁰⁵⁴ The subdivider shall construct and complete all required improvements and utilities before recording the final plat unless the subdivider provides a performance bond as described in subsection (B) below.
- (B) If completion and dedication of improvements and utilities as describe in subsection (A) above has not been completed prior to final plat approval, the Council may require a bond or such other surety as it may deem appropriate to secure construction to be completed within a reasonable period specified by the Council and expressed in the bond or other surety, in an amount and with surety and conditions satisfactory to the Council.
- (C) All required public improvements, including but not limited to streets and utilities, shall be installed or constructed in accordance with the design standards and requirements in this Ordinances and in related public improvements standard specifications or policies established by the City departments charged with responsibility for those improvements.¹⁰⁵⁵
- (D) Required improvements shall be inspected during construction and installation to ensure satisfactory completion of those improvements, in accordance with inspection requirements adopted by the Council or by the City departments charged with responsibility for those improvements.
- (E) Approval of a final plat, and acceptance of improvements shown on that plat by the Council, shall not prevent the Council from causing public improvements to be enhanced, enlarged or upgraded, in order to accommodate a higher level of service demand resulting from any subsequent change in the use of land within the

¹⁰⁵⁰ Since Module 3, requirement that this occur prior to plat approval by Council has been removed.

¹⁰⁵¹ Since Module 3, requirement that this occur prior to building permit has been removed.

¹⁰⁵² Sec. 25-57 and 25-60, with changes as noted. Enforcement text was moved to the enforcement section. Intent statements in 25-60 regarding continued implementation of City infrastructure programs and minimizing breakage of streets were deleted as unnecessary. They had no regulatory effect and are addressed in public works policies outside this Ordinance. Text revised to provide that performance contract (as an alternative to a performance bond) is no longer available per advice of City counsel.

¹⁰⁵³ Phrase “or public improvements dedicated” was removed at this point as unnecessary.

¹⁰⁵⁴ Text revised to allow City to consent to liens and encumbrances.

¹⁰⁵⁵ Compliance requirements now apply to all parts of this Ordinance (not just selected section).

subdivision, whether by benefit assessment, agreement among the parties or by such other mechanism as may be available now or may subsequently become available to the Council.

(ii) Failure to Complete Improvements¹⁰⁵⁶

If any improvement or utility is not completed or installed and duly accepted for dedication within the time period specified in the performance agreement or bond, either by reason of incompleteness or by reason of substandard construction, the Council may, at its option:

- (A) Declare any bond or other approved surety device to be forfeited, pursue legal and equitable action to obtain necessary funds from the sureties, and cause satisfactory completion and installation of all improvements and utilities previously required;
- (B) Declare an applicable improvements guarantee agreement to be breached and pursue legal and equitable action to cause satisfactory completion and installation of the improvements and utilities;
- (C) The Council may extend the time limit set for satisfactory completion of the improvements and utilities for one (1) year upon the request of the subdivider and showing of a reasonable necessity for such extension. The Council may approve no more than three (3) one-year extensions, and may approve no extension without a reasonable showing of the necessity for the extension. In the event that an extension of the time limit is granted, the Council may require further financial assurances for completion in the form of a performance bond or other acceptable surety device;¹⁰⁵⁷
- (D) Pursue any legal or equitable action necessary to ensure satisfactory completion of the improvements or utilities.

(iii) Reduction or Release of Guarantees¹⁰⁵⁸

In those cases where a performance or other surety guarantee has been made under subsection (i) above, the amount of guarantee may be reduced upon public acceptance of dedicated portions of the required improvements. The amount of surety shall not be reduced to an amount less than the estimated cost of constructing the required improvements which have not yet been accepted by the City. In no case shall the amount retained by the City be less than five (5)¹⁰⁵⁹ percent of the original amount, pending completion and acceptance of all of the required improvements. Upon acceptance of the dedication of the final portion of the improvements, the City shall authorize the release of the remaining portion of the improvements guarantee.

(q) Ordinance Text and Zoning Map Amendments

(1) General Zoning Map and Text Amendments

¹⁰⁵⁶ Sec. 25-58.

¹⁰⁵⁷ Revised to allow for three 1-year extensions instead of one 5-year extension.

¹⁰⁵⁸ Sec. 25-59, with changes as noted.

¹⁰⁵⁹ Reduced from 15% to conform to Sec. 89.410.4.

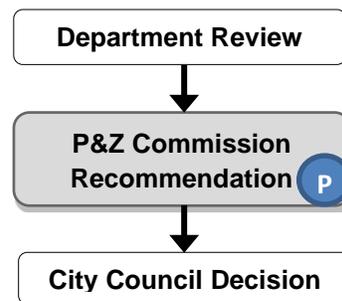
(i) Applicability¹⁰⁶⁰

- (A) Any person, firm, or corporation owning real property within the City, the Commission, or the Council may file an application to change the text of this Ordinance.
- (B) Any person, firm, or corporation owning real property within the City, or the Commission, or the Council, may file an application to change the boundaries of any base or overlay district on the Zoning Map, including but not limited to proposed changes in the Regulating Plan for the M-DT zoning district; provided that no person, firm, or corporation may file an application to change the boundaries of a base or overlay zone district or any portion of the Regulating Plan for property not owned by that person, firm, or corporation.
- (C) No application for a general Zoning Map or text amendment shall request changes in the alternative; the requested Ordinance text and/or boundary change shall be stated as a single proposal to the City. An applicant may include separate requests for changes to more than one section of the Ordinance, or to the Zoning Map as applied to more than one lot, tract or parcel in common ownership, so long as no changes are presented in the alternative.
- (D) No application to amend the Zoning Map may be filed if it is the same or substantially the same as an application submitted within the previous twelve (12) months that was denied by the Council or withdrawn by the applicant after a negative recommendation from the Commission. The Council may, in its sole discretion, authorize a resubmittal within the twelve (12) month period after reviewing a written request from the applicant that provides justification for the early resubmittal.

(ii) Procedure

- (A) The Department shall review the application and shall forward copies of the application and supporting documents to other City departments and public or quasi-public agencies affected by the requested change. The departments or agencies to which the application is sent shall, within ten (10)¹⁰⁶¹ days of receipt of the application and supporting materials, forward their recommendations to the Department. The failure of a department or agency to respond within ten (10) days shall be construed as that department or agency having no objections to the proposed change.¹⁰⁶²

**Ordinance Text or
Zoning Map
Amendment (General)**



P = Public Hearing

¹⁰⁶⁰ Consolidates Secs. 29-33 and 34, and replaces 25-9. Modified to provide that the Commission may also file applications for map or text amendment,. Prior draft language allowing individuals to file rezoning applications for property they do not own has been deleted.

¹⁰⁶¹ Reduced from 15 to 10 days to match current practice.

¹⁰⁶² Time for response reduced from 15 to 10 days and final sentence added.

- (B) The Department shall make a written recommendation to the Commission as to whether the proposed change conforms to the City’s adopted comprehensive plan, whether adequate utilities, storm drainage, water, sanitary sewer, electricity, and other infrastructure facilities are available to support development that would be enabled by a proposed zoning map change, and the expected results of the proposed change.¹⁰⁶³
- (C) The Commission shall hold a public hearing on the application and shall make a recommendation to the Council.¹⁰⁶⁴
- (D) The Council shall take final action on the application. The Council shall not approve a change to the Ordinance text or Zoning Map that allows less restrictive development, or that enlarges the area to be rezoned beyond the area that was the subject of the public notice and Commission public hearing.
- (E) If a protest against a change to the Zoning Map duly signed and acknowledged by the owners of thirty (30) percent or more, either of the area of land (exclusive of streets and alleys) included in such proposed change, or within an area determined by lines drawn parallel to and one hundred eighty-five (185) feet distant from the boundaries of the area proposed to be changed, the Zoning Map change amendment shall only be adopted if it receives the affirmative vote of two-thirds of the members of the Council then in office and not disqualified from voting under Section 2-53.1. An abstention shall not be counted either for or against the amendment. In order to be valid, protest petitions must be filed with the City clerk no later than noon on the Wednesday before the Council meeting at which the proposed amendment is scheduled to be considered for passage.¹⁰⁶⁵
- (F) The City manager may place a Council bill that changes the Zoning Map, including but not limited to a proposed change in the Regulating Plan for the M-DT zoning district, or approves a development plan, or amends this Ordinance, on the Council consent agenda if the City manager determines that the following criteria have been met:
- 1) The Commission has recommended approval of the application and less than twenty-five percent (25%) of the Commissioners present voted against the motion to recommend approval.
 - 2) The applicant agrees with the Commission recommendation, including but not limited to any conditions, limitations, or restrictions to the application as originally filed.
 - 3) No protest petition has been timely filed with the City clerk.

¹⁰⁶³ Provisions of current Sec. 29-34(a)(2) outlining details of Department review are not carried over given the general procedures in Sec. 29-5.3 above. Application requirements in Sec. 29-34(a)(3) were deleted for inclusion in an administrative manual. Revised to include additional information regarding infrastructure in response to public comments.

¹⁰⁶⁴ Requirement for scheduling on the “next regular meeting date” of the Commission were deleted, since public hearing scheduling is now addressed by Sec. 29-5.3(d).

¹⁰⁶⁵ Sec. 29-34(b). Specific protest provisions for PUD zone district have not been carried over. All PD rezonings are now subject to the same protest provisions applicable to standard rezonings.

- 4) The Commission has not recommended that the proposal be considered under old business.
- (G) Any Council bill to change the Zoning Map including but not limited to proposed changes in the Regulating Plan for the M-DT zoning district; placed on the consent agenda shall be removed and placed under old business at the request of a Council member. The Council may remove any such bill from the consent agenda and place it under old business at the Council meeting at which the Council bill is scheduled to be considered for passage.¹⁰⁶⁶

(2) Zoning Map Amendments to PD District¹⁰⁶⁷

(i) Applicability

- (A) Applications to change the Zoning Map to designate land into a PD zone district, or to modify a PD zone district, shall be made, reviewed, and decisions made as described in Section 29-5.4(q)(1) above, except to the extent those requirements are modified in this subsection (2).
- (B) Rezoning into a PD district requires Council approval of a Zoning Map amendment, a statement of intent for the proposed development, and a development plan for the property. The development plan shall be binding on the owner and its successors and assigns. Later development applications must be consistent with the approved development plan, or the development plan will need to be modified by Council action.¹⁰⁶⁸

(ii) Approval Procedure¹⁰⁶⁹

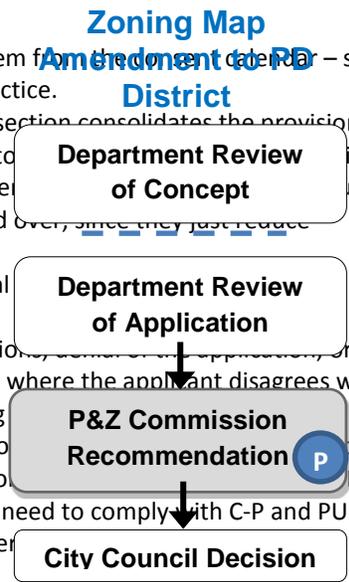
- (A) Before filing an application, the applicant must first meet with the Director for a concept review of the proposal. The concept review is an informal discussion to discuss land use and development concepts, consistency with the City’s adopted comprehensive plan, applicable sections of this Ordinance and other City ordinances and regulations, and other concerns about the impacts of the proposed change that

¹⁰⁶⁶ Wording revised to state that Council, not the public, must remove the item from the consent agenda – since this is an internal administration matter for Council. This matches current practice.

¹⁰⁶⁷ Consolidated from current Secs. 29-10, 29-13.1, 29-17, and 29-19.1. This section consolidates the provisions for rezoning to a PUD, O-P, C-P, or M-P districts into a single procedure to apply to PD districts. Overlaps and repetition with standard zoning map change procedures were removed. Provisions in Sections 29-10(g), 29-13.1(g), 28-17(g), 29-18, and 29-19.1 were not carried over, since they just reduce application requirements and can be addressed in an administrative manual.

¹⁰⁶⁸ Revised to clarify that the Statement of Intent is not binding. As a practical matter, the Statement of Intent is vague to guide future applications or decision-making.

¹⁰⁶⁹ Provisions in Sec. 29-10(e)(4) allowing requests for modification of conditions of approval, or withdrawal of the application were deleted as unnecessary since applications where the applicant disagrees with the conditions will be considered as old business under the standard rezoning process. Provisions allowing Council to withdraw a development plan within 2 years if development has not started would result in a “shell PUD”. The better practice would be for Council to rezone the property to a PD district. Provisions stating that approved C-P and PUD development does not need to comply with C-P and PUD regulations adopted later were not carried over, since the Ordinance no longer requires compliance with those regulations (they are in the development plans).



may be raised.

- (B) The application shall be accompanied by a development plan meeting the City’s requirements, and the application and development plan shall be reviewed by the Department and Commission, and shall be the subject of final action by Council, simultaneously. No application for a Zoning Map change to a PD district shall be approved without approval of an accompanying development plan.¹⁰⁷⁰
- (C) The application materials shall document whether adequate utilities, storm drainage, water, sanitary sewer, electricity, and other infrastructure facilities are available to support the proposed development.¹⁰⁷¹
- (D) The application or the required development plan shall list the permitted and conditional uses in the proposed PD district using the same names for uses, or combinations of those names, shown in Table 29-3.1-1 to the greatest degree practicable, and may not contain any permitted or conditional use that is not shown in Table 29-3.1-1, as that table appears at the time of the application.¹⁰⁷²
- (E) If the proposed PD development will require subdivision or resubdivision of land, the requirements of Section 29-5.4(r) regarding subdivision of land shall apply, but the application for a PD zone district and subdivision of land may be completed simultaneously as described in Section 29-5.4(r)(3)(ii). Any variances to the subdivision regulations proposed as part of the PD application shall be clearly stated on the PD development plan. Such variances shall be considered along with Commission and Council review of the plan.
- (F) No building permit shall be issued for any construction in a PD zone district until the development plan has been approved by the Council.
- (G) No building permit shall be issued for any construction in a PD zone district that requires subdivision or resubdivision of land until a final subdivision plat for the property on which permits are requested has been approved by Council.
- (H) If the PD includes buildings other than single-family detached dwellings or two-family dwellings, with each such dwelling located on an individual platted lot, no building or footing and foundation permit shall be issued until the site plan filed with the application for a building permit has been reviewed by the Director for compliance with the approved development plan.¹⁰⁷³
- (I) If construction consistent with the approved development plan has not begun within three (3) years¹⁰⁷⁴ after Council approval of the development plan or a major modification of the development plan, the development plan shall expire and be of no force or effect, and no permit for development within the PD zoning district shall be approved until a new development plan is approved pursuant to the same procedures used to approve the initial PD zoning district. Prior to expiration of the

¹⁰⁷⁰ This is a significant change from the current procedures, which allow for approval of a planned district first and a development plan later. This creates problems with “shell PUDs” that do not clarify what development is possible within the district.

¹⁰⁷¹ New criteria included in response to public comments.

¹⁰⁷² New general provision to replace the specific lists of uses for the four current planned districts.

¹⁰⁷³ Existing provisions combined and exemption of 1 and 2 family dwellings from site plan requirement clarified.

¹⁰⁷⁴ Revised from 5 years to align with revised expiration date for preliminary plats.

PD development plan, the Council may extend the time for a one (1) year period, on a one-time-only basis.¹⁰⁷⁵ A request for a time extension must be made in the form of a letter signed by the property owner or his agent.

(iii) Modification Procedure¹⁰⁷⁶

- (A) Minor changes to an approved development plan may be approved by the Director as described in Section 29-5.3(f). However the Director shall apply the following criteria to determine whether a proposed change is minor, instead of the criteria in Section 29-5.3(f)(1).
- (B) If the PD zone district contains any single-family detached dwellings or two-family dwellings, minor changes are those that:¹⁰⁷⁷
 - 1) Comply with the original statement of intent;
 - 2) Do not increase the project density in total or in areas of the PUD;
 - 3) Do not change the dwelling unit type (attached, detached, multi-family) being altered;
 - 4) Do not increase the height or size of any building;
 - 5) Do not change the size or nature of public or private infrastructure;
 - 6) Do not change the project amenities such as landscaping, open space, common area or recreational facilities;
 - 7) Do not rearrange the locations of buildings;
 - 8) Do not increase any parking area;
 - 9) Do not change the permitted use of any structure; and
 - 10) Do not create a potential increase in traffic.
- (C) If the PD zone district contains does not contain any single-family detached dwellings or two-family dwellings, minor changes are those that:
 - 1) Do not increase the height or size of any building;
 - 2) Do not increase any parking area;
 - 3) Do not rearrange the locations of buildings;
 - 4) Do not change the size or nature of public or private infrastructure; and
 - 5) Do not change the project amenities such as landscaping, open space, common area or recreational facilities.¹⁰⁷⁸

¹⁰⁷⁵ Text revised to clarify that extension may only be for 1 year, at request of staff.

¹⁰⁷⁶ C-P district procedures allowing Director to make modifications to development plans approved before Nov. 18, 1996 were deleted, since all minor modifications are now covered by 29-5.3(f).

¹⁰⁷⁷ Criteria for minor modifications in PD (residential) districts, clarified and reworded.

¹⁰⁷⁸ Current O-P criteria reworded for clarity and made generally applicable to all PDs not containing single-family or two-family development. Minor wording differences between O-P, C-P, and M-P removed.

- (D) Changes that do not meet the criteria for a minor change under subsection (B) or (C) above, as applicable, shall follow the same procedure as if it were a new development plan for the PD zone district.¹⁰⁷⁹

(3) Zoning Map Amendment to UC-O District¹⁰⁸⁰

Applications to change the Zoning Map to designate land into a UC-O zone district, or to modify a UC-O zone district, shall be made, reviewed, and decisions made as described in Section 29-5.4(q)(1) above, except to the extent those requirements are modified in this Section 29-2.3(a) (UC-O District).

(4) Zoning Map Amendment to SR-O District¹⁰⁸¹

Applications to change the Zoning Map to designate land into a SR-O zone district, or to modify a SR-O zone district, shall be made, reviewed, and decisions made as described in Section 29-5.4(q)(1) above, except to the extent those requirements are modified in this Section 29-2.3(b) (SR-O District).

(5) Zoning Map Amendment to R-MH District¹⁰⁸²

(i) Applicability

- (A) Applications to change the Zoning Map to designate land into an R-MH zone district, or to modify an R-MH zone district, shall be made, reviewed, and decisions made as described in Section 29-5.4(q)(1) above, except to the extent those requirements are modified in this subsection (5).
- (B) Applications to change the Zoning Map to designate land into an R-MH district require Council approval of both a Zoning Map amendment and a development plan for the property that shall be binding on the owner and its successors and assigns. Later development applications must be consistent with the approved development plan, or the development plan will need to be modified by Council action.

(ii) Procedure

- (A) Before filing an application, the applicant must first meet with the Director for a concept review of the proposal. The concept review is an informal discussion to discuss land use and development concepts, consistency with the City's adopted comprehensive plan, applicable sections of this Ordinance and other City ordinances and regulations, and other concerns about the impacts of the proposed change that may be raised.

¹⁰⁷⁹ Revised to clarify that Council decides all applications for major amendments.

¹⁰⁸⁰ Sec. 29-21.1 procedures have remained with the substantive controls for that district.

¹⁰⁸¹ Sec. 29-21.2 procedures have remained with the substantive controls for that district.

¹⁰⁸² Sec. 29-11(e), with wording revised and clarified for consistency with similar requirements for PD zoning.

Provisions allowing Council to withdraw a development plan within 2 years if development has not begun were deleted; the better practice would be for Council to rezone the property away from the PD district. Revisions to R-MH development plans are now subject to Section 29-5.3(f); existing modification provisions were not carried over. Text regarding right of the City to inspect, and duty of property owner to provide access to inspectors, was made generally applicable to all districts in the enforcement chapter.

- (B) The application shall be accompanied by a preliminary development plan meeting the City's requirements, and the application and development plan shall be reviewed by the Department and Commission, and shall be the subject of final action by Council, simultaneously. No application for a Zoning Map change to an R-MH district shall be approved without approval of an accompanying preliminary development plan.¹⁰⁸³
- (C) If Council approves the Zoning Map change ordinance and the preliminary development plan, with or without conditions, the applicant shall submit a final R-MH development plan to the Director. The Director shall approve the application if it complies with this Ordinance, all other City ordinances and regulations, and is consistent with the preliminary development plan as approved by Council.
- (D) If the proposed R-MH development will require subdivision or resubdivision of land, the requirements of Section 29-5.4(r) regarding subdivision of land shall apply, but the application for a R-MH zone district and subdivision of land may be completed simultaneously as described in Section 29-5.4(r)(3)(ii). Any variances to the subdivision regulations proposed as part of the R-MH application shall be clearly stated on the development plan. Such variances shall be considered along with Commission and Council review of the plan.
- (E) No building permit shall be issued for any construction in an R-MH zone district until the final development plan has been approved by the Director.
- (F) No electrical permit shall be granted for a manufactured home located in an R-MH district with an approved final development plan unless the placement of the manufactured home is in compliance with the approved final development plan.
- (G) No building permit shall be issued for any construction in an R-MH zone district that requires subdivision or resubdivision of land until a final subdivision plat for the property on which permits are requested has been approved by Council.

(iii) Enlarging existing manufactured home parks

Application to enlarge manufactured home parks existing on [effective date of adoption of 29-5.3(e)] shall be subject to all provisions of this section relating to requirements for adoption of a new R-MH zoning district. When a final development plan is approved for an extension of a manufactured home park existing on [effective date of adoption of 29-5.3(e)], the screening requirements of Section 29-2.2(a)(4) shall apply to the entire manufactured home park.

(r) Annexation of Land¹⁰⁸⁴

[New Section to be Inserted by Staff based on Current Practice]

¹⁰⁸³ This is a significant change from the current procedures, which allow for Council approval of an R-MH preliminary development plan first and Council approval of a final development plan later. The preliminary development plan now accompanies the rezoning ordinance, and approval of the final development plan is administrative, since the only question is whether the applicant made the changes to the preliminary development plan required by Council.

¹⁰⁸⁴ New section.

(s) Comprehensive Plan Amendment¹⁰⁸⁵

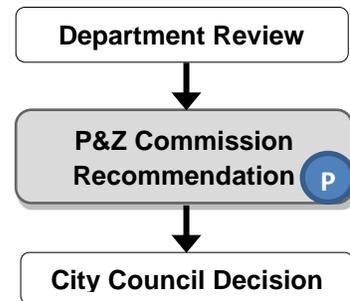
(i) Applicability

This procedure may be used to amend the City’s adopted comprehensive plan or to adopt a new comprehensive plan. An application to amend the comprehensive plan may be filed by the Commission, the Council, or any resident of the City. An application to adopt a new comprehensive plan may be filed by the Commission or the Council.

(ii) Procedure

- (A) The Director shall review the application and make a report to the Commission regarding the areas of change from the adopted comprehensive plan and the anticipated long-term impacts of those changes on the growth, development, and sustainability, and affordability of the City, the investment climate in the City, and the efficiency of City administration.
- (B) The Commission shall review the application, hold a public hearing on the proposed amendment, and make a recommendation to Council.
- (C) The Council shall take final action on the application.

Comprehensive Plan Amendment



P = Public Hearing

29-5.5 Nonconformities¹⁰⁸⁶

(a) Nonconforming Uses¹⁰⁸⁷

(1) Continuation, Changes, and Discontinuance

- (i) Any use of land or buildings that was legally created, or that was legal in Boone County on the date that land was annexed into the City, may be continued, and may be transferred or sold to other owners or tenants, whether or not that use complies with the provisions of this Ordinance for the zoning district in which it is located, subject to the following conditions.
 - (A) A nonconforming use of land outside of a building shall not be extended or enlarged beyond the area of land on which it occurred on the date it became nonconforming or the annexation date.
 - (B) A nonconforming use of land inside a conforming building may be extended throughout the building that existed on the date the use became nonconforming or the annexation. The Board may grant permission for an extension of a conforming building to allow expansion of a nonconforming use in that building by up to twenty-

¹⁰⁸⁵ New section.

¹⁰⁸⁶ Consolidates material from Secs. 29-28 and 23-3, with changes as noted.

¹⁰⁸⁷ Sec. 29-28, with changes as noted.

five (25) percent upon a showing that relocation of the use to a district in which it would be a permitted or conditional use would be impossible or impracticable.¹⁰⁸⁸

- (C) If a nonconforming use of land or buildings is discontinued for a period of more than twelve (12) months, any future use of such premises shall comply with the provisions of this Ordinance.
 - (D) A nonconforming use of a building may be changed to another nonconforming use that the Director determines will have fewer negative impacts on the surrounding area than the use it replaces, provided, that the original nonconforming use shall not be restarted.¹⁰⁸⁹
- (ii) A nonconforming use of land or buildings, if changed to a conforming use, may not be thereafter changed to a nonconforming use. A nonconforming use of buildings that is changed to a nonconforming use that the Director determines will have fewer negative impacts on the surrounding area may not thereafter be changed to any nonconforming use that the Director determines will have more negative impacts on the surrounding area.¹⁰⁹⁰

(2) Damage and Destruction¹⁰⁹¹

If a nonconforming use of land or buildings is damaged or destroyed by an act of God, nature, or a public enemy, the use may be restarted in substantially the same configuration as before the damage or destruction, provided the use is restarted within twelve (12) months after the damage or destruction.

(b) Nonconforming Structures

(1) Continuation and Change¹⁰⁹²

- (i) Any structure that was legally constructed, or that was legal in Boone County on the date that land was annexed into the City, may continue in use, and may be transferred or sold to other owners or tenants, whether or not that structure complies with the

¹⁰⁸⁸ Final sentence is from 29-28(a)(4) revised to clarify that it applies to expansion of nonconforming uses in conforming buildings and include a standard for extensions different from the “hardship” standard for variances.

¹⁰⁸⁹ Combines Sec. 29-28(e)(1) and (2); revised to clarify language, to provide the discontinuance must be for 12 months or more for the nonconforming use to be lost (as it is for buildings). Clause on expansion of nonconforming structures reading “provided no structural alterations, except those required by law or ordinance, are made to the building” was deleted; most new codes permit improvements to the building, but not expansion of the building. Revised to provide for Director’s decision and criteria for that decision, because current language allowing uses from a “more restrictive use classification” is outdated and will not work with the new use classifications. Limitation that this only occur if no structural alterations are made was deleted. Clarifies that this provision cannot be used to restart a non-conforming use that has closed.

¹⁰⁹⁰ Sec. 29-28(a)(3) with wording clarified and second sentence deleted as unnecessary (it simply restates standard nonconforming law).

¹⁰⁹¹ Sec. 29-29(b) revised to allow damaged nonconforming uses to restart if they do so promptly. The current ordinance prohibits restarting or change of a nonconforming use if it is damaged by more than 75% of its reasonable value.

¹⁰⁹² New section. The current ordinance only partially addresses continued use or expansion of nonconforming structures.

provisions of this Ordinance for the zoning district in which it is located, subject to the following conditions.

- (A) Any expansion of a nonconforming structure shall conform to the building setbacks and all other dimensional standards applicable to new construction on the site.
 - (B) If the structure is occupied by a nonconforming use, any expansion of the nonconforming use into the building expansion area will require approval of the Board pursuant to Section 29-5.5(a) above.
- (ii) Any structure, including fences, that was made nonconforming by its location in an area designated a scenic roadway area, if damaged or destroyed, may be rebuilt or replaced, providing such replacement does not exceed the size or height existing when the scenic roadway area designation became effective. Any rebuilding or replacement shall be done, considering their effect on the scenic road characteristics and current City standards that would be in conformance with the scenic road characteristics.¹⁰⁹³

(2) Damage and Destruction¹⁰⁹⁴

- (i) If a nonconforming structure is damaged or destroyed by an act of God, nature, or a public enemy, and the damage to the structure does not exceed seventy-five (75) percent of its reasonable value, excluding foundations, the structure may be reconstructed in substantially the same configuration as before the damage or destruction. If the damage to the structure exceeds seventy-five (75) percent of its reasonable value, excluding foundations, the structure may only be reconstructed in compliance with this Ordinance, as applied to the zone district where the structure is located.
- (ii) The provisions of subsection (i) shall not apply to structures containing only residential dwelling units (and permitted home occupations in those dwelling units), which may be reconstructed in substantially the same configuration as before the damage or destruction, regardless of the amount of damage or destruction.¹⁰⁹⁵

(c) Nonconforming Lots

- (1) A lot that does not conform to the standards in this Ordinance for the zoning district in which it is located may nevertheless be used for any use for which a conforming lot may be used, but must comply with all Dimensional Standards in Section 29-4.1, all Form-based Controls in Section 29-4.2, and all other provisions of this Ordinance applicable to property in that zoning district.

¹⁰⁹³ Relocated from SR-O district section since Module 2.

¹⁰⁹⁴ From Sec. 29-29(b) with changes. Subsection (a) now appears in Chapter 1; subsection (c) was deleted because the 10 year timeframe in which action under that subsection was to be taken has expired.

¹⁰⁹⁵ New provision.

- (2) If the State of Missouri or the City acquires a portion of a tract or parcel of land for right-of-way and the remaining property thereby becomes nonconforming for the zoning district in which it is located, the property shall be treated as a conforming property.¹⁰⁹⁶

(d) Nonconforming Site Features

Conforming land uses and structures on parcels or tracts of land that do not comply with one or more of the Parking and Loading standards in Section 29-4.4, the Landscaping and Screening standards in Section 29-4.5, or the Exterior Lighting standards in Section 29-4.7, may be expanded, revised, or redeveloped subject to the following conditions:

- (1) The expansion, revision, or redevelopment must be to land uses and structures permitted in the zoning district where the property is located;
- (2) The expansion, revision, or redevelopment must not increase any nonconformity with the standards in Sections 29-4.4, 4.5, or 4.7;
- (3) Any expansion or change in land uses that increases the amount of parking required on the property shall require that the net increase in required parking be provided on-site.
- (4) Any redevelopment of the property that results in the demolition of all or part of an existing primary structure and/or construction of new primary structures shall require that the property be brought into compliance with all applicable requirements of this Ordinance.

(e) Nonconforming Signs¹⁰⁹⁷

- (1) All signs which have been lawfully erected shall be deemed to be legal and lawful signs and may be maintained subject to the provisions of this Section 29-5.5(e).
- (2) Nonconforming signs that become deteriorated or dilapidated to the extent of over sixty (60) per cent of the physical value they would have if they had been maintained in good repair must be removed within sixty (60) days. Nonconforming signs that are damaged to the extent of sixty (60) per cent or less of their physical value must be repaired within sixty (60) days from date of notification, or must be removed. Nonconforming signs that are damaged, other than by vandalism, to the extent of over sixty (60) per cent of their physical value must be removed within sixty (60) days of receiving such damage or brought into compliance with the provisions of this chapter. Nonconforming signs that are damaged by vandalism to the extent of over sixty (60) per cent of their physical value must be restored within sixty (60) days or removed or brought into compliance with the provisions of this Section 29-5.59(e).
- (3) Nonconforming signs may not be enlarged or increased in height. Nonconforming signs that are enlarged or increased in height in violation of this section must be removed.

¹⁰⁹⁶ Sec. 29-28(e) revised for clarity and to delete provisions allowing reconstruction of the same building on the property. Most cities treat these types of properties the same as other properties for purposes of reconstruction and redevelopment.

¹⁰⁹⁷ Sec. 23-3, with changes as noted.

- (4) Nonconforming signs may not be relocated except when such relocation brings the sign into compliance with this Section 29-5.5(e). Nonconforming signs that are relocated in violation of this section must be removed.
- (5) Freestanding signs lawfully in existence on January 6, 1992, including freestanding signs existing pursuant to variances granted by the Board, that do not conform with the provisions of this Section 29-5.5(e) shall be removed, altered or replaced so as to conform with the provisions of this Section 29-5.5(e) no later than January 1, 2007. This subsection does not apply to billboards that were lawfully erected.
- (6) The sign face of a nonconforming sign may be altered if the sign face is not enlarged beyond the maximum area allowed by this Section 29-5.5(e).
- (7) On-premises wall, canopy and awning signs lawfully in existence on December 20, 1993, including signs existing pursuant to variances granted by the Board, that do not conform with the provisions of this Section 29-5.5(e) shall be removed, altered or replaced so as to conform with the provisions of this Section 29-5.5(e) no later than December 20, 2008.
- (8) On-premises wall, canopy and awning signs in the Central Business District that were lawful conforming signs on February 19, 2007 but that do not conform with the provisions of section 23-12 shall be allowed to remain in place as lawful nonconforming uses until structurally altered or replaced through the sign permitting process. Ordinary replacement of sign messages, including replacement of sign panels and repainting of signs, and other alterations not requiring the use of the sign permitting process are permitted alterations provided the activity does not increase the extent of nonconformity.
- (9) Lawful nonconforming signs in the Central Business District that were installed before 1956 that are deteriorated or damaged to any extent may be restored to their original condition. Any such sign that is destroyed may be replaced with a sign substantially the same as the original sign.

29-5.6 Violations, Enforcement, and Penalties

The provisions of this Ordinance shall be administered and enforced by the Director, except for the provisions of Sec. 29-4.6 (Storm Water and Natural Resources), which shall be administered and enforced by the Director of Public Works.¹⁰⁹⁸ The City building inspector and health officer shall have the power to enter at reasonable times upon any private or public property for the purpose of inspecting and investigating conditions relating to the enforcement of this Code. It shall be the duty of the property owner to give the health officer or building inspector free access to all spaces or lots under the owner's control for the purpose of inspection.¹⁰⁹⁹

(a) Violations¹¹⁰⁰

¹⁰⁹⁸ Carries forward general enforcement powers in Sec. 29-35, including separate enforcement authority for current Chapter 12A regulations.

¹⁰⁹⁹ Provisions of Sec. 29-11(e) (R-MH district) made generally applicable, to reflect current practice.

¹¹⁰⁰ Integrates and updates violation provisions from Chapters 12A, 23, 25, and 29, including Secs. 12A-10, and 29-39.

It shall be a violation of this Ordinance to:

- (1) Use any land or structure for a purpose not permitted by this Ordinance, or without any permits or approvals required from the City before commencing that use of land or structure;
- (2) Divide any land into smaller areas of land for development, whether through deed, survey, or other means, without compliance with the requirements of this Ordinance;
- (3) Expand, redevelop, or renovate any area of land or structure for which a permit or approval is required by this Ordinance without first obtaining those permits and approvals;
- (4) Operate any business or land use for which the City or the state or federal government requires a license, permit, or approval, without first obtaining those permits and approvals;
- (5) Park a motor vehicle in the residential yard in violation of Section 29-4.4(F)(3) and fail to remove it within five (5) days after notice from the City to do so, unless the property owner has first obtained a Temporary Permit for such parking under Sec. 29-5.4(g);¹¹⁰¹
- (6) Improve land or construct or modify structures in a manner that does not comply with any permits, approvals, or development plans, or that does not comply with any conditions on such permits, approvals, or development plans approved pursuant to this Ordinance;
- (7) Use land or construct or modify structures in any PD zoning district in a manner that is inconsistent with the Statement of Intent for that zoning district;
- (8) Obtain any permit or approval required under this Ordinance based on false statements or misrepresentation of facts in any application, documents, correspondence, testimony, or verbal communications with the City;
- (9) Continue a land use or construction, modification, use, or occupancy of a land or structures after the City has suspended a permit or approval or issued a stop work order, until the City reinstates the permit or approval or withdraws the stop work order;
- (10) Fail to install improvements required by this Ordinance or by an agreement between the City and the property owner or subdivider by the times required by this Ordinance or the agreement; and
- (11) Take any other act that is prohibited by this Ordinance, or fail to act when that act is required by this Ordinance.

(b) Enforcement¹¹⁰²

- (1) In order to enforce compliance with this Ordinance, the Director and the Director of Public Works, as applicable, are empowered to take the following actions.

¹¹⁰¹ Current provision made applicable to all residential uses instead of listing them (the current code lists most of them). Provisions of Sec. 29-30(7)(a) and (b) regarding proof of ownership of the vehicle and liability of all tenants and occupants for failure to cure a violation were not carried over.

¹¹⁰² Replaces and integrates Secs. 23-28 and 29, 25-13, 29-39, 12A-7 through 13, and 12A-132.

- (i) Cause a building or premises to be inspected for violations of this Ordinance, with such inspection occurring during normal business hours unless there is an imminent threat to public health or safety;
- (ii) Order in writing that the owner or occupant of the property on which a violation of this Ordinance is found correct that violation within a reasonable time;
- (iii) Order in writing that the owner or occupant of the property on which a sign has been erected, modified, repaired, or used in violation of this Ordinance remove the sign or bring it into compliance with this Ordinance within a reasonable time;
- (iv) Order that any sign that is not be removed within the time stated in the notice of violation be removed by the City, with costs of removal to be charged to the property owner as described in subsection (2) below;
- (v) Take action to prevent or to stop any use of land or structures, construction or repair of structures, or any division of land that constitutes a violation of this Ordinance, and/or to prevent the occupancy of the land or structure on which or in which the violation has occurred;
- (vi) Revoke or suspend any permit or approval obtained through a false statement or misrepresentation of fact, or if the permit holder fails to comply with the terms or conditions of the permit or approval, with reinstatement of the permit or approval to occur only after the violation of this Ordinance has been remedied;¹¹⁰³
- (vii) Refuse to issue any permit or approval, including but not limited to a building permit or certificate of occupancy, for any land use or structure that would violate this Ordinance, or that contains an existing violation of this Ordinance that has not been remedied after notice from the City;
- (viii) Remove any unlawful signs on street rights-of-way and property owned by the City;
- (ix) Authorize the City's legal officers to file a lawsuit or court proceeding to require compliance with this Ordinance and/or correction of any violation of this Ordinance or to require performance of claim damages for any failure to perform duties required by an agreement between the City and a property owner or subdivider related to a permit or approval under this Ordinance;
- (x) Bring an action to require the owner of any property designated as a landmark or located in a landmark district who performs work in violation of this Ordinance or the requirements of Section 29-2.3(c) to return the landmark or property to its appearance and setting prior to the violation, to the greatest extent practicable, and to impose a "demolition without a permit fee" under Chapter 6;¹¹⁰⁴ and
- (xi) Take any action permitted by state law or the City's charter to abate a violation of this Ordinance that constitutes a nuisance, including without limitation taking those actions listed in Secs. 12A-201 through 207 (Nuisances)¹¹⁰⁵

¹¹⁰³ From 12A-7 land disturbance permits, made applicable to all permits and approvals.

¹¹⁰⁴ Section has been moved from the HP-O district since Module 2, and has been revised to clarify that in addition to returning a historic property to its original state (to the greatest extent feasible), the violator will be fined.

¹¹⁰⁵ Provisions of Chapter 12A made generally applicable to the Ordinance.

- (2) The enforcement actions set forth in subsection (1) above are cumulative and not exclusive. The City may pursue any available civil remedies, in any order, and may pursue more than one remedy at a time, and the City's choice to pursue one type of enforcement does not limit its ability to pursue different or additional enforcement actions until the violation has been corrected.¹¹⁰⁶
- (3) If the Director orders the removal of a sign that violates this Ordinance, and that sign is later removed by the City pursuant to subsection (1)(iv) above, the Director shall submit the actual cost of such removal to the owner of the property. If the owner does not pay the cost within thirty (30) days of receipt, the Director shall certify the cost to the director of finance who shall cause a special tax bill against the property to be prepared and collected. The tax bill shall be due and payable from the date of issuance and shall be a lien on the property from the date of issuance until paid. Tax bills issued pursuant to this section shall bear interest from the date of issuance at the rate of nine (9) per cent per annum.¹¹⁰⁷
- (4) Any decision by the Director or the Director of Public Works to pursue any of the enforcement actions listed in subsection (1) (except orders for inspection, removal of signs on public rights-of-way and City owned property, and decisions to file an action in court) may be appealed the Board pursuant to Sec. 29-5.3(h) if filed within ten (10) days after notice of that decision. A timely appeal suspends the enforcement action pending the outcome of the appeal.

(c) Penalties¹¹⁰⁸

(1) Generally¹¹⁰⁹

The following provisions apply to all violations of this Ordinance unless an alternative penalty for a specific type of violation is listed in subsection (c)(2) below.

- (i) The owner or general agent of a building or premises where a violation of this Ordinance has occurred, or the lessees or tenant of an entire building or entire premises where such violation has occurred, or the owner, general agent, lessee or tenant of any part of the building or premises in which such violation occurred, or the general agent, architect, builder, contractor, or any other person who commits, takes part or assists in any such violation or who maintains any building or premises in which any such violation exists, shall be guilty of a misdemeanor.
- (ii) A first misdemeanor under subsection (c)(1)(i) above shall be punishable by a fine of not less than ten dollars (\$10.00) and not more than two hundred fifty dollars (\$250.00) for each and every day that such violation continues or by imprisonment for ten (10) days for each and every day such violation shall continue or by both such fine and imprisonment in the discretion of the court.
- (iii) For the second and subsequent offenses involving the same violation at the same building or premises, the punishment shall be a fine of not less than one hundred dollars

¹¹⁰⁶ From Sec. 12A-12, made generally applicable and updated.

¹¹⁰⁷ Sec. 29-32, simplified.

¹¹⁰⁸ Combines and updates provisions from Sec. 12A-11 and 12, 23-30, 25-62, and 29-39.

¹¹⁰⁹ From Sec. 29-39.

(\$100.00) or more than five hundred dollars (\$500.00) for each and every day that such violation shall continue, by imprisonment for ten (10) days for each and every day such violation shall continue, or by both such fine and imprisonment, in the discretion of the court.

- (iv) Any such person who, having been served with an order to remove any such violation, shall fail to comply with such order within ten (10) days after such service, or shall continue to violate any provision of the regulations made under authority of this chapter in the respect named in such order, shall also be subject to a civil penalty of two hundred fifty dollars (\$250.00).

(2) Special Penalties

(i) Violations of Section 29-4.3 (Subdivision Standards)¹¹¹⁰

- (A) Any person violating the provisions of Section 29-4.3 shall pay to the City a penalty not to exceed three hundred dollars (\$300.00) for each lot transferred or sold; the description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring shall not exempt the transaction from the penalty.
- (B) Any transfer or sale of land in violation of Section 29-4.3 shall be deemed to be null and void and the City may enjoin or vacate the transfer or sale by legal action, and may recover the penalty in such action.
- (C) Any person violating the provisions of Section 29-4.3, in a manner that does not involve the transfer of lots or parcels of land shall pay to the City a penalty not exceeding five hundred dollars (\$500.00) for each and every day that such violation shall continue, or by imprisonment not exceeding one (1) year, or by both such fine and imprisonment.¹¹¹¹

(ii) Violations of Section 29-4.6 (Storm Water and Natural Resources)¹¹¹²

Violations of Section 29-4.6 shall be punishable in the same manner as Class A misdemeanors under Chapter 16 of this Code, and every day the violation continues (after notice from the City) shall constitute a separate offense. In addition, every one thousand (1,000) square feet of climax forest removed, destroyed or damaged in violation of Section 29-4.6 shall constitute a separate offense.

(iii) Violations of Section 29-4.10 (Sign Standards)¹¹¹³

- (A) The owner or general agent of a building or premises where a violation of Section 29-4.10 exists, or the lessees or tenant of an entire building or entire premises where a violation of Section 29-4.10 exists, or the general agent, architect, builder, contractor or any other person commits, takes part or assists in any such violation or who maintains any sign or premises in which a violation of Section 29-4.10 exists, shall be guilty of a misdemeanor and shall pay to the City a fine of not less than ten

¹¹¹⁰ Sec. 25-62. Subsection C was not carried over because covered by general enforcement powers listed above.

¹¹¹¹ Revised to clarify that the fine accrues daily.

¹¹¹² From Sec. 12A-11.

¹¹¹³ From Sec. 23-30.

dollars (\$10.00) and not more than one hundred dollars (\$100.00) for each and every day that such violation continues, unless subsection (B) below applies.

- (B) If the violation of Section 29-4.10 is or was willful, the penalty for violation shall be a fine of not less than one hundred dollars (\$100.00) or more than two hundred fifty dollars (\$250.00) for each and every day that such violation shall continue or imprisonment for ten (10) days for each and every day such violation shall continue, or both such fine and imprisonment in the discretion of the court.
- (C) Any such person who, having been served with an order, within ten (10) days after such service shall continue to violate any provision of Section 29-4.10 in the manner named in such order, shall also be subject to a civil penalty of two hundred fifty dollars (\$250.00).

(iv) Violation of Section 29-4.4(F)(3) (Parking – Use of Yards)

Any person found in violation of Section 29-4.4(F)(3) shall be deemed guilty of a misdemeanor and shall be punished by a fine of not more than one hundred dollars (\$100.00) or by imprisonment of not more than thirty (30) days, or by both such fine and imprisonment.