

ALLISON E. FOLDS †  
S. SCOTT WALKER

**FOLDS & WALKER, LLC**  
ATTORNEYS AT LAW

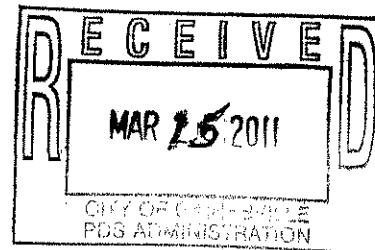
L. ALISON WALKER  
TOSHA D. FERNANDEZ  
NORMAN BLEDSOE  
SONDRA RANDON

527 EAST UNIVERSITY AVENUE  
POST OFFICE BOX 1775  
GAINESVILLE, FLORIDA 32602

TELEPHONE (352) 372-1282  
FAX (352) 375-9960

† Certified Family & Circuit  
Civil Mediator

March 15, 2011



Community Development Committee  
City of Gainesville, Florida  
c/o Mr. Erik Bredfeldt

**VIA HAND DELIVERY AND ELECTRONIC MAIL TO [ebredfeldea@cityofgainesville.org](mailto:ebredfeldea@cityofgainesville.org)**

Community Development Committee:

Thank you for the opportunity to allow me, on behalf of Mr. Bruce Baber, to present recommendations for a code amendment that would permit small-scale, in-home pet-sitting services in residential districts. The recommendations that follow are meant to be a starting point for the Community Development Committee (hereinafter "CDC") to analyze and modify at its will. I welcome any and all suggestions or concerns and I look forward to working with the CDC towards reaching a desirable and mutually agreeable recommendation to the City Commission.

In an effort to create a code amendment that conforms to existing ordinances and requires the least amount of "reconfiguring" of same, the CDC should consider either a "permitted use by right" or a "permitted use by special use permit" to allow for pet-sitting in residential areas. Section 5-3, Animals in Residential Areas, essentially creates the parameters for an ordinance allowing small-scale in-home pet sitting services in residential districts. Specifically, Section 5-3(a) states:

**Section 5-3 Animals in Residential Areas:**

- (a) No person shall keep or harbor any animal for use other than as a pet within any residential district, as defined in section 30-41(a)(1) of this Code, or mixed-use district, as defined in section 30-41(a)(4) of this Code, in the city, except if such use is allowed by right or special use permit, or if such use existed as a legal non-conforming use on October 23, 1995. (Emphasis added.)

The difference between a "use by right" and a "special use permit" is slight but significant. Although both uses by right and uses by special use permit both allow for City regulation and approval of use, a special use permit requires an applicant to submit to a lengthy process requiring a costly application, an in-depth review of plans, and approval from the Planning Board. It is my understanding that a use by right can be

granted if the applicant is in conformity with the regulations in Article VI of the Land Development Code and can be revoked if the operator is found in violation of regulations or other codes.

Currently, Residential Districts allow the following uses to apply for a special use permit: places of religious assembly, private schools, and public schools. See attached Ordinance 30-51(c)(2). Based on its low impact, neighborhood centric and limited operations, a small-scale in-home pet sitting business should not require the same amount of time, money, and effort that is required to open a school or a church in a residential neighborhood. See attached Ordinances 30-231 to 30-236, Special Use Permit Review Process.

A small-scale in-home pet sitting business has a similar impact in terms of noise and visits as a large-scale family child care center and would benefit from the regulations similar in scope and effect as a Home Occupation Permit. Accordingly, we would recommend the Committee propose an amendment that creates a permitted use by right to operate a small-scale in-home pet sitting business in residential districts.

#### **Create a regulated "Permitted Use by Right"**

Similar to the Use by Right for a Large Family Child Care Home in Residential Districts, a person would be able to operate a small-scale in-home pet sitting business out of their home in a residential district with specific restrictions to limit the scope and effect of the business similar to the Home Occupation Permit regulations. Please see attached applicable ordinances: 30-51(c)(1)(g); 30-117; and 30-23(c) definition of *Large Family Child Care Home* and 30-58. The use, *small-scale in-home pet-sitting services*, would be listed as a use by right in Section 30-51(c)(1), with corresponding regulations of the specific use in Article VI of the Land Development Code. Also, this use would need to be defined in Section 30-23(c).

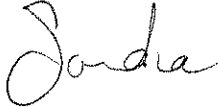
The recommended regulations and reasoning behind each recommended regulation of this use are as follows:

1. *Spacing*. Small-scale in-home pet sitting business shall not be located closer than 0.5 miles to another small-scale in-home pet sitting business.
  - It is important to regulate the distance between the businesses to limit the impact on neighborhoods.
2. *Primary residence on site*. The residence containing the small-scale in-home pet sitting business shall be the occupied and the primary residence of the operator.
  - This is to ensure that the operator of the business actually lives in the house in which the business is operated. It also creates accountability of the operator to his neighbors.
3. *Limit of pets*. The number of pets receiving care shall not exceed 12.
  - A limit on the amount of pets would create an objective regulation that is easy to follow and enforce. The number 12 was chosen for two

- reasons; first Bruce has, on average, cared for 12 dogs at a time without any problem.
- Another option would be to create a scaled approach to number limits based on certain factors, i.e. size of home, duration of business, location of home.
4. *Pets are required to be registered and vaccinated.* Every pet must be in compliance with all local and state regulations, pertinent to the keeping of domestic animals and shall not be construed as an exemption from such regulations.
    - This would ensure that the pets being cared for are up-to-date on all required vaccines (i.e. rabies) and are registered with a county animal services department.
  5. *Hours of operation for motor vehicle visits.* Motor vehicles shall be permitted from 7:00 am to 7:00 pm.
    - This would reduce early morning and evening disturbances arising from traffic and commotion from pet drop-offs and pick-ups.
  6. *Location of outdoor play area.* All outdoor play areas shall be located between the primary structure and the three feet (3') from the property line.
    - The buffer zone of 3' will limit noise to neighboring properties.
  7. *Restriction of use of outdoor play area.* Outdoor play areas shall only be used from dusk until dawn, but no earlier than 7:00 am and no later than 9:00 pm.
    - The time restrictions will limit noise to neighboring properties during the times people are most likely home.
  8. *Absence of code violations.* There shall be no active code violations associated with the site or any structures on the site. A code violation may result in a temporary suspension of the use or a permanent revocation of the use.
    - The code already regulates noise, odor, and other public nuisances, as well as animal control regulations. In the event an operator is found in violation of the Code, staff could have the ability to suspend or revoke the use by right indefinitely, similar to the three strike method in the Home Occupation Permit Ordinance 30-58(c)(6).
  9. *Staff approval of business plan and plot plan.* The operator shall submit for approval a business plan describing the scope and general business plan as well a plot plan showing all structures, dimensions, distances, driveways, play areas, drop-off areas, and other similar relevant information. The plot plan shall show that the existing paved driveway is used and not a new or altered driveway.
  10. *Sign prohibition.* Notwithstanding any other provision in this Code, there shall be no signage on the site.
    - This ensures that the business remains small and limited in scope and operation and is compatible with the character of a residential neighborhood.

Thank you for your time and consideration. Should you have any questions or concerns, please do not hesitate to contact me, via email or telephone. I look forward to meeting with the Community Development Committee on March 22, 2011.

Yours truly,

A handwritten signature in cursive script that reads "Sondra".

Sondra Randon, Esq.

Cc: Bruce Baber  
Commissioner Jeanna Mastrodicasa (e-mail only)  
Lawrence Calderon (e-mail only)  
Ralph Hilliard (e-mail only)

Enclosures as stated above

10 26 00 A

**Sec. 5-3.- Animals in residential areas.**

- (a) No person shall keep or harbor any animal for use other than as a pet within any residential district, as defined in section 30-41(a)(1) of this Code, or mixed-use district, as defined in section 30-41(a)(4) of this Code, in the city, except if such use is allowed by right or special use permit, or if such use existed as a legal non-conforming use on October 23, 1995.
- (b) Subsection (a) notwithstanding, no person shall keep or harbor fowl or livestock within any residential district, as defined in section 30-41(a)(1) of this Code, or mixed-use district, as defined in section 30-41(a)(4) of this Code, within the city, except if such use is allowed by right or special use permit, or if such use existed as a legal non-conforming use on October 23, 1995.

(Ord. No. 950797, § 1, 10-23-95; Ord. No. 000337, § 2, 10-9-00)

100686A

**Sec. 30-23.- Definitions.**

- (a) Whenever used in this chapter, unless otherwise indicated, the terms "code," "chapter," "article," "section" and "subsection" shall refer to the Code of Ordinances, City of Gainesville, Florida, and the referenced provisions thereof.
- (b) Any word or phrase used in this chapter which is not defined in this chapter or by textual definition or examples in the Standard Industrial Classification Manual shall have the common dictionary meaning most appropriate to the context in which such word or phrase is used.
- (c) Throughout this chapter, the following words and phrases shall have the meanings indicated unless the text of the article or section in which used clearly indicates otherwise:

*Abused person* means a person in need of and seeking refuge from actual or threatened physical or mental violence or abuse.

*Abut* means to physically touch or border upon, or to share a common property line.

*Abutting property* means property that is immediately adjacent to or contiguous with property regulated by this chapter.

*Accessory structure* means a subordinate structure, the use of which is incidental to that of the principal structure on the same lot.

*Accessory use* means an activity, or function that is incidental to, and on the same lots as, a principal use.

*Activity centers* means unified developments designated as mixed use medium, mixed use high and commercial (regional shopping center) on the future land use map of the comprehensive plan.

*Administered parking service* means a procedure where the parking of patron or employee vehicles is conducted by, and is the responsibility of, the owner or operator of the subject establishment. Administered parking, and designated dropoff areas must meet all vehicle circulation requirements of the city. The acceptable procedure for administered parking requires the patron to leave the vehicle with the owner, operator or representative of the establishment who then moves the patron's vehicle to a designated lot and returns the vehicle to the original location for vehicle pickup at the time the owner of the vehicle needs to depart. Designated arrival and departure areas and the location for storing vehicles must be clearly marked in accordance with all city requirements.

*Adult day care home* means an occupied dwelling in which one or more of the residents provides care or supervision for more than three natural persons, other than residents requiring such care or supervision and other than children provided for within the definition of a family day care home. The total number of natural persons so cared for or supervised shall not exceed five persons at any one time. Such homes shall be state-licensed adult day care facilities. Such uses shall not include nursing and personal care facilities, schools, rehabilitation centers, social service homes or halfway houses, or other similar activities or facilities which are not customarily incidental to residential use.

*Adverse impact* means any direct or indirect effect likely to cause, or actually causing, a decline in the stability, natural function or natural diversity of any environmental feature, or in the quiet, peaceful, safe or healthful use or occupancy of any on-site or off-site property.

*Adversely affected person* means any person who is suffering or will suffer an adverse effect to an interest protected or furthered by the local government comprehensive plan, including but not limited to: interests related to health and safety; densities or intensities of development; transportation facilities; recreational facilities; educational facilities; health care facilities, or services; and environmental or natural resources. The alleged adverse effect may be shared in common with other members of the community at large, but must exceed in degree the general interest in community good shared by all persons.

*Aircraft* means any motor vehicle or contrivance now known, or hereafter invented, used or designed for navigation of or flight in the air.

*Airport* means the Gainesville Regional Airport.

*Airport authority* means the Gainesville-Alachua County Regional Airport Authority.

*Airport elevation* means the highest point of an airport's usable landing area measured in feet from mean sea level.

*Airport obstruction* means any structure or tree or use of land which would exceed the federal obstruction standards as contained in 14 CFR 77.21, 77.23, 77.25, 77.28 and 77.29 and which obstructs the airspace required for flight of aircraft in taking off, maneuvering or landing at an airport; or, regardless of height, may otherwise be hazardous to or interfere with the taking off, maneuvering or landing of aircraft.

100686 A

*Illuminating Engineering Society of North America (IESNA)* means the recognized technical authority on illumination, whose mission is to advance knowledge and disseminate information for the improvement of the lighted environment to the benefit of society.

*Impervious* means material incapable of being penetrated, as by moisture, such as concrete or asphalt.

*Impervious ground coverage* means an area of ground covered by any part of a building, street, parking lot or any other structure, improvement, facility or material which is incapable of being penetrated, as by moisture.

*Impervious surface* means a surface that has been compacted or covered with a layer of material so that it is highly resistant to infiltration by water. It includes, but is not limited to, semi-impervious surfaces such as compacted clay, as well as most conventionally surfaced streets, roofs, sidewalks, parking lots and other similar structures.

*Improved street* means those streets where physical improvements such as clearing, grading, curb and gutter drainage and pavement are constructed as required by the standards of this chapter and the city.

*Improvement* means any manmade, immovable item which becomes part of, is placed upon, or is affixed to real estate.

*Improvements* means physical changes made to raw land and structures placed on or under the land surface, in order to make the land more usable. Typical improvements would be clearing and grubbing, grading, street pavements, curb and gutter, drainage ditches, street trees, storm and sanitary sewers, streetlights, fire hydrants, street name signs, permanent control points (PCP's), etc.

*Intensity of development or intensity of use* means the extent of development of any land, expressed as residential density or floor area ratio.

*Intersecting roadways*, in addition to meaning the intersection of roadways of public right-of-way may also mean a private driveway or a private roadway of a significant traffic generator and its intersection with a public street.

*Invasive, nonnative vegetation* means any plant not indigenous to Florida, which exhibits, or has the potential to exhibit, uncontrolled growth and invasion or alteration of the natural qualities and functions of any native habitat. Article VIII contains a listing of such plants.

*Junk* means all waste or scrap materials, including but not limited to all scrap metals; discarded rope, batteries, paper, trash and other natural or synthetic fibers; discarded glass, tinware and plastic; and discarded household goods and hardware. This term shall also include inoperable motor vehicles, machinery and appliances no longer used as such, to be used for scrap metal or stripping of parts, and parts of such vehicles, machinery or appliances.

*Junkyard (or salvage yard)* means an open area where junk is bought, sold, exchanged, stored, processed or handled as a principal or accessory use. This term shall also include operations primarily engaged in the dismantling, demolition or abandonment of automobiles or other vehicles or machinery or parts thereof.

*Land surveyor* means a land surveyor registered under F.S. Ch. 472 who is in good standing with the board of professional land surveyors.

*Land use element* means that portion of the comprehensive plan relating to permissible planned uses of land, entitled "future land use element."

*Land use plan* means the future land use element of the most recent city comprehensive plan adopted pursuant to F.S. Ch. 163, and all amendments thereto.

*Land use regulation* means any ordinance or resolution controlling the use, development, maintenance or transfer of real property.

*Landlord* means any person, owner, agent, individual, firm or corporation or any combination thereof who leases, sublets, rents or allows the occupancy of any single-family dwelling, two-family dwelling, three-family dwelling, four-family dwelling, multiple-family dwelling, roominghouse, dormitory or other dwelling unit to or by another person or persons not members of his/her family in designated districts whether or not for consideration.

*Landscape materials* means living trees, shrubs, vines, grasses, ground covers and other plants, sand, wood mulch, walls and fences, and other nonliving, durable materials commonly used in landscaping; landscape water features; and similar materials and design features; provided that visible synthetic materials shall not qualify.

*Large family child care home* means an occupied residence, licensed by the Alachua County Health Department as *large family child care home*, in which child care is regularly provided for children from at least two unrelated families and which receives a payment, fee, or grant for any of the children receiving care, whether or not operated for profit. The number of children receiving care shall be consistent with state and county regulations, and shall not exceed 12.

100686A

**Sec. 30-58.- Home occupation permits.**

- (a) *Findings.* The city recognizes that there are benefits to be gained from allowing residents to earn income from occupations conducted within their homes. These benefits include but are not limited to:
- (1) A reduction in work-related and other automobile trips.
  - (2) Permitting more citizens, including the handicapped, aged and mothers of small children, to participate in the workplace.
  - (3) Allowing many of these citizens to have jobs while meeting various family obligations.
  - (4) Providing individuals and families income necessary to own and properly maintain homes in the city's neighborhoods.
- (b) *Purpose.* At the same time the city recognizes that its residents should expect their neighborhoods to be quiet and safe places to live and that home occupations should not be allowed to alter the primarily residential character of these neighborhoods or to endanger the health, safety or morals of residents of the neighborhood. For these reasons, it is the purpose of this section to:
- (1) Protect residential areas from the adverse impacts of activities associated with home occupations.
  - (2) Permit residents of the community a broad choice in the use of their homes as a place of livelihood and the production or supplementing of personal and family income.
  - (3) Establish criteria, development standards and performance standards for home occupations conducted in dwelling units.

It is not the intent of this section to regulate the teaching of fine arts, family day care homes and community residential homes, as defined in article II.

- (c) *Permits.*
- (1) A person desiring a permit for a home occupation shall make an application in the departments designated by the city manager. A person may only apply for a home occupation permit to be used at his/her primary place of residence. An initial filing fee to cover the cost of an inspection issuing a permit shall be paid at the time of submitting the application, an annual permit processing fee shall be paid for each and every year, and an additional fee shall be paid every three years to cover the cost of reinspection. All fees shall be in accordance with Appendix A. Any person exempt from the payment of a license tax under the provisions of subsection 25-50(a) shall also be exempt from the payment of the above-mentioned fees. Such application for a permit shall include the following:
    - a. Name of applicant;
    - b. Location of dwelling unit where the home occupation will be conducted;
    - c. Total floor area of the dwelling unit;
    - d. Area of room or rooms to be utilized in the conduct of the home occupation;
    - e. A sketch with dimensions showing the floor plan and the area to be utilized for the conduct of the home occupation. This sketch will show the location and nature of all equipment to be utilized in the conduct of the home occupation, as well as the locations for storage of materials used in the conduct of the home occupation and the identity and nature of these materials; and
    - f. The exact nature of the home occupation.
  - (2) If the proposed home occupation complies with all of the requirements of subsection (d) of this section, the enforcing officer shall issue the home occupation permit. Once such home occupation permit is issued to an applicant, it cannot be transferred to another person through the sale, leasing or rental of the premises on which the home occupation is located or in any other manner, except that, in the case of death, should a surviving spouse or child residing at the same address desire to continue the home occupation, written notice to that effect shall be given to the enforcing officer and the permit may be transferred. Such home occupation permit cannot be used by the applicant for any premises other than that for which it was granted.
  - (3) All persons possessing a home occupation permit at the effective date of this section shall be phased into the annual process upon expiration of their current permit. Any home occupation permit issued after the effective date of this section shall expire on September 30, 1989, and be renewable for October 1 through September 30 for all successive years. The city shall not automatically renew each home occupation permit previously granted, but shall scrutinize all applications, either original or renewal, to ensure that permitted home occupations are in compliance with this section.
  - (4) Any person may seek revocation of a home occupation permit by making application therefor to the enforcing officer, who shall cause an investigation to be made to determine whether the permit holder is conducting such home occupation in a lawful manner as prescribed in this section. In the event that the enforcing officer determines that the permit holder is in violation of the provisions of this section, the permit shall be immediately revoked by the enforcing officer. The decision of the enforcing officer shall be subject to appeal to the board of adjustment as prescribed in section 30-354. During such an appeal, the action of the enforcing officer is stayed. If



100636 A

- the enforcing officer determines that the public safety is at risk, appropriate regulating agencies and authorities shall be immediately notified.
- (5) The following shall be considered as grounds for the revocation of a home occupation permit:
- a. Any change in use or any change in extent or nature of use, or area of the dwelling unit being used, that is different from that specified in the granted home occupation permit form, that is not first approved by the enforcing officer shall be grounds for the revocation of a home occupation permit. The operator of a home occupation must apply for a new home occupation permit prior to any such changes.
  - b. Any change in use, extent of use, area of the dwelling unit being used, or mechanical or electrical equipment being used that results in conditions not in accordance with the provisions of the required conditions of subsection 30-58(d) shall result in immediate revocation of the home occupation permit.
  - c. Failure to pay the annual permit processing fee or the reinspection fee required every three years shall result in the loss of the home occupation permit.
- (6) The following conditions shall apply for home occupation permits which have been revoked:
- a. Initial revocation: Reapplication may only occur when the condition(s) causing the revocation has been abated.
  - b. Second revocation: Reapplication may only occur after one year and when the condition(s) causing the revocation has been abated.
  - c. Third violation: The home occupation permit shall not be reissued.
- (d) *Required conditions.* All permitted home occupations shall comply with the following standards and criteria:
- (1) The home occupation shall be conducted only within the principal building, except for any related activities conducted off the premises.
  - (2) No more than one additional person other than the residents residing on the premises shall be employed or engaged in the home occupation at the premises.
  - (3) There shall be no alteration or change to the outside appearance, character or use of the building or premises, or other visible evidence of the conduct of such home occupation. There shall be no display of products visible in any manner from the outside of the dwelling.
  - (4) No home occupation shall occupy more space than 20 percent of the total floor area of a dwelling unit, exclusive of any open porch, attached garage or similar space not suited for or intended to be occupied as living quarters, provided that in no event shall such home occupation occupy more than 500 square feet. Rooms which have been constructed as additions to the dwelling unit and any attached garage or open porch which has been converted into living quarters shall not be utilized for such home occupation, nor shall they be considered as floor area, until two years after the date of completion thereof, as shown on the city's records.
  - (5) No commodities or goods of any kind shall be sold on the premises, nor displayed on the premises for sale elsewhere, with the following exceptions:
    - a. The sale and display of items produced or fabricated on the premises as part of the home occupation, such as art and handicrafts, is permitted.
    - b. Orders made by phone, mail or sales party may be filled on the premises.
    - c. If sales parties for the purpose of selling merchandise or taking orders take place at the location of the home occupation, such parties shall not take place more than four times in any one calendar year, and each party is limited to one 24-hour period.
  - (6) No equipment or process shall be used in such home occupation which creates noise, vibrations, heat, glare, fumes, dust, odors or electrical interference detectable to the normal senses outside the dwelling, or, in the case of attached dwelling units or multiple-family dwellings, detectable to the normal senses beyond the walls of the dwelling unit; nor shall there be any combustible materials located anywhere on the premises which are in violation of the city's fire code. In the case of electrical interference, no equipment shall be used which creates any visual or audible interference in any radio or television receivers off the premises, or causes fluctuations in line voltage off the premises.
  - (7) No articles or materials used in connection with such home occupation shall be stored on the premises other than in the principal building so used, and any area used for storage shall be counted toward the maximum permissible floor area used for such home occupation.
  - (8) No more than one automobile or truck, which shall not be larger than a stock three-quarter-ton panel or pickup truck, used in conjunction with such home occupation shall be permitted to park on the premises in question or off the premises in question and within view from surrounding properties. Such vehicle may only have two signs, not exceeding two square feet in area, each mounted flat against or painted on the sides.
  - (9) No home occupation shall be permitted which involves the visitation of clients, customers, salesmen, suppliers or any other persons to the premises which would generate vehicular traffic in excess of two vehicles concurrently or more than ten vehicles per day.
  - (10) Deliveries from commercial suppliers shall not be made more than twice a week to the dwelling unit in question, and the deliveries shall not restrict traffic circulation.
  - (11) In no case shall a home occupation be open to the public at times earlier than 7:00 a.m. nor later than 10:00 p.m.
  - (12) The total number of home occupations conducted within a dwelling unit is not limited, except that the cumulative

100686A

impact of all home occupations conducted within the dwelling shall not exceed the limits of one home occupation as established in subsection 30-58(d).

- (13) There shall be no illegal discharge of any materials, fluids or gases into the sewer system or any other manner of discharging such items in violation of any applicable government code.
- (14) Home occupations shall comply with all local, state or federal regulations pertinent to the activity pursued, and shall not be construed as an exemption from such regulations.

(Ord. No. 3777, § 1, 6-10-92)

Cross reference— Miscellaneous business regulations, Ch. 14.5.

100686A

**Gainesville, Florida, Code of Ordinances >> PART II - CODE OF ORDINANCES >> Chapter 30 - LAND DEVELOPMENT CODE >> ARTICLE VII. - DEVELOPMENT REVIEW PROCESS >> DIVISION 5. - SPECIAL USE PERMIT >>**

**DIVISION 5. - SPECIAL USE PERMIT<sup>[127]</sup>**

Sec. 30-231. - Intent.

Sec. 30-232. - Permit required.

Sec. 30-233. - Criteria for issuance.

Sec. 30-234. - Procedures for approval.

Sec. 30-235. - Amendments to and modification of permits.

Sec. 30-236. - Expiration, abandonment, revocation and extension of permits.

**Sec. 30-231.- Intent.**

- (a) It is the intent of this article to recognize and permit certain uses and developments which require special review, and to provide the standards by which the applications for permits for uses and development shall be evaluated.
- (b) It is further intended that special use permits be required for developments which, because of their inherent nature, extent and external effects, require special care in the control of their location, design and methods of operation in order to ensure conformance with the comprehensive plan.

(Ord. No. 3777, § 1, 6-10-92)

**Sec. 30-232.- Permit required.**

Those uses listed in article IV as permitted special uses in a zoning district may be established in that district only after issuance and recordation of a special use permit by the city plan board.

(Ord. No. 3777, § 1, 6-10-92)

**Sec. 30-233.- Criteria for issuance.**

No special use permit shall be approved by the city plan board unless the following findings are made concerning the proposed special use:

- (1) That the use or development complies with all required regulations and standards of this chapter and all other applicable regulations.
- (2) That the proposed use or development will have general compatibility and harmony with the uses and structures on adjacent and nearby properties.
- (3) That necessary public utilities are available to the proposed site and have adequate capacity to service the proposed use and development.
- (4) That the use or development is serviced by streets of adequate capacity to accommodate the traffic impacts of the proposed use.
- (5) That screening and buffers are proposed of such type, dimension and character to improve compatibility and harmony of the proposed use and structure with the uses and structures of adjacent and nearby properties.
- (6) That the use or development conforms with the general plans of the city as embodied in the city comprehensive plan.
- (7) That the proposed use or development meets the level of service standards adopted in the comprehensive plan and conforms with the concurrency management requirements of this chapter as specified in article III, division 2.

(Ord. No. 3777, § 1, 6-10-92)

**Sec. 30-234.- Procedures for approval.**

- (a) *Applications submittal requirements.* Application will be filed with the city's department of community development on the form prescribed. Applications must include a preliminary site plan. Any incomplete

100686A

applications will be returned to the applicant. The applicant must meet the requirements of section 30-350(b), citizen participation, in order for the application to be deemed complete.

- (b) *Preliminary conference with applicant.* The applicant for a special use permit shall meet with the technical review committee to discuss the procedures and requirements and to consider the elements of the proposed use and site and the proposed site plan. The applicant shall indicate whether any of the items required for a preliminary development plan are inapplicable or irrelevant to the proposed special use permit.
- (c) *Report to city plan board.* The department of community development shall submit to the city plan board a written analysis of the application and a recommendation based on the findings required in section 30-233 and development plan review process in article VII.
- (d) *Exception to preliminary development plan.* If any of the items required for the preliminary development plan is inapplicable or irrelevant to a proposed development, such item may be omitted upon approval of the department of community development, provided the applicant identifies in writing any missing item and includes a brief explanation of why it is inapplicable or irrelevant. The city plan board may, at the public hearing, approve the omission of items from the preliminary development plan if the board finds they are not relevant to a determination that the proposed use or development meets the requirements of section 30-233.
- (e) *Public hearing.* A public hearing before the city plan board is required in accordance with the policies of the city.
- (f) *Notice.* Notice shall be mailed at least ten days before the date of the hearing to all property owners within 400 feet of the property for which a special use permit has been requested. For this purpose, the owner of property shall be deemed to be the person so shown on the city's tax rolls.
- (g) *Burden of presenting evidence; burden of persuasion.*
  - (1) The burden of presenting a complete application to the board shall be upon the applicant.
  - (2) The burden of persuasion on the issue of whether the development, if completed as proposed, will comply with the requirements of this chapter remains at all times on the applicant.
- (h) *City plan board action.*
  - (1) In considering whether to approve an application for special use permit, the city plan board will consider the evidence presented in the public hearing and the department of community development's report and shall act on the application based on the findings required in section 30-233 and the development plan review process found in article VII. Such findings shall be based on competent material and evidence.
  - (2) Action on the application shall be one of the following:
    - a. Approval;
    - b. Approval subject to conditions; or
    - c. Denial, with a statement of the reasons for denial.
- (i) *Effect of denial or withdrawal on subsequent application.* No application for a special use permit shall be entertained within two years after the denial or withdrawal of a request for the same use for the same property. The city plan board may waive this time limitation by the affirmative vote of a super [sic] majority of the members provided 30 days have elapsed since the action of the city plan board to deny the original request, and the city plan board deems such action necessary to prevent an injustice.
- (j) *Amended application.* Amendment of a petition by the applicant may be permitted at any time prior to or during the public hearing, provided that no such amendment shall be such as to make the case different from its description in the notice of public hearing. If the amendment is requested by the petitioner after public notice of the hearing has been given, and such amendment is at variance with the information set forth in the public notice, the petitioner shall pay an additional fee, in the same amount as the original fee provided for in this article, to cover amended public notice. If the amended notice can be mailed and published ten days prior to the hearing originally scheduled, the hearing on the amended petition may be held on that date, otherwise the chairperson shall announce that the hearing originally scheduled on the case will be deferred to a future meeting, before which appropriate public notice will be given, and will state the reasons for the deferral.
- (k) *Notice of decision and issuance of permits.* The applicant will be notified by certified mail of final action and the special use permit will be filed with the department of community development.
- (l) *Appeal of decision.* Any affected person may appeal the city plan board's decision on an application for a special use permit to a hearing officer. The appeal must be filed within 15 days of the date notification of the decision is sent by certified mail to the applicant. The procedure for the appeal shall be the same as is provided in subsection 30-352.1(a) for appeals from decisions of the development review board. Judicial review shall be available as provided in section 30-352.1.
- (m) *Final development plan approval.* Prior to the issuance of any development order or building permit, final development plan approval will be required in accordance with applicable provisions of Article VII.

(Ord. No. 3777, § 1, 6-10-92; Ord. No. 3960, §§ 1, 2, 2-28-94; Ord. No. 3995, § 1, 7-25-94; Ord. No. 000902, § 2, 5-29-01)

### **Sec. 30-235.- Amendments to and modification of permits.**

- (a) Minor changes in the development plans associated with special use permits may be permitted in accordance with sections 30-157 and 30-158.

- (b) Regardless of the above, any change or amendment which modifies one of the following criteria shall constitute a modification of the special use permit and will be processed as a new application:
- (1) A change in the boundaries of the approved site, except for minor boundary adjustments;
  - (2) A change from the approved use;
  - (3) Either an increase of ten percent or more or incremental increases that total ten percent or more in the floor area or number of parking spaces as approved;
  - (4) Substantial changes in the approved location of principal and/or accessory structures;
  - (5) Structural alterations significantly affecting the basic size, form, style, ornamentation and appearance of principal and/or accessory structures as shown on the approved plans;
  - (6) Substantial changes in approved pedestrian or vehicular access or circulation; and
  - (7) Substantial change in the approved amount or location of landscape screens or buffers.

(Ord. No. 3777, § 1, 6-10-92)

**Sec. 30-236.- Expiration, abandonment, revocation and extension of permits.**

- (a) *Expiration.* Permits issued under this article will expire within 12 months, or an additional time period should the city plan board deem necessary, if the petitioner has taken no act in reliance on the issued permit.
- (b) *Abandonment of permits.* On request of the permit holder, the department of community development may approve the abandonment of a special use permit provided no construction has begun.
- (c) *Cessation of use.* If use granted by a special use permit pursuant to this article ceases for a continuous period of 12 months, the permit becomes void.
- (d) *Revocation of permit.* If any conditions of the special use permit are violated, the permit issuing authority may revoke the permit after giving proper notice to the grantee. The permit may be reinstated by the department of community development if the circumstances leading to the revocation are corrected.
- (e) *Extension of permit.* At the request of the applicant and for good cause shown, the board may, at a public hearing, extend the time of the permit's expiration, if no acts of reliance have occurred. The extension may only be granted if all the concurrency management requirements of this chapter can be met and if the extension would not be in conflict with any other ordinance of the city.

(Ord. No. 3777, § 1, 6-10-92)

**FOOTNOTE(S):**

<sup>(127)</sup> **Editor's note**— Section 1 of Ord. No. 990193, adopted Nov. 8, 1999, renumbered Ch. 30, Art. VII, Div. 4, "Special Use Permit" as Div. 5 as set forth herein. See the editor's notes to Divs. 4 and 6 of this article. ([Back](#))

100686A

**Sec. 30-51.- Single-family residential districts (RSF-1, RSF-2, RSF-3 and RSF-4).**

- (a) *Purpose.* The single-family districts are established for the purpose of providing areas for low density single-family residential development with full urban services at locations convenient to urban facilities, neighborhood convenience centers, neighborhood shopping centers and activity centers. These districts are characterized by single-family residential structures designed and located so as to protect the character of single-family residential neighborhoods.
- (b) *Objectives.* The provisions of these districts are designed to:
- (1) Protect and stabilize the essential characteristics of such existing development;
  - (2) Encourage such future development to occur on vacant land where the natural characteristics of such land are suitable for this type of development;
  - (3) Enable single-family development to occur at appropriate locations and with sufficient density so as to facilitate the provision of urban services and facilities in an economical and efficient manner;
  - (4) Encourage low density development where higher density development would be detrimental to the health, safety and welfare of the community by reason of environmental constraints, open space or other factors; and
  - (5) Discourage any activities not compatible with such residential development.
- (c) *Permitted uses.*
- (1) *Uses by right.*
    - a. Single-family dwellings and customary accessory buildings incidental thereto.
    - b. Occupancy of a single-family dwelling by one family.
    - c. Community residential homes, in accordance with article VI.
    - d. Family child care homes, in accordance with state law.
    - e. Adult day care homes, in accordance with article VI.
    - f. Home occupations, in accordance with article IV.
    - g. Large family child care homes, in accordance with article VI.
  - (2) *Uses by special use permit.*
    - a. Places of religious assembly, in accordance with article VI.
    - b. Private schools, in accordance with article VI.
    - c. Public schools, other than institutions of higher learning, in accordance with section 30-77, educational services district (ED).
- (d) *General requirements.* All structures and uses within this district shall also comply with the applicable requirements and conditions of section 30-56 and article IX.
- (e) *Dimensional requirements.* (See Table 1):

TABLE 1. DIMENSIONAL REQUIREMENTS FOR RSF DISTRICTS  
Principal Structures

	RSF-1	RSF-2	RSF-3	RSF-4
Maximum density	3.5 du/a	4.6 du/a	5.8 du/a	8 du/a
Minimum lot area	8,500 sq. ft.	7,500 sq. ft.	6,000 sq. ft.	4,300 sq. ft.
Minimum lot width at minimum front yard setback	85 ft.	75 ft.	60 ft.	50 ft.
Minimum lot depth	90 ft.	90 ft.	90 ft.	80 ft.
Minimum yard setbacks:				
Front	20 ft.	20 ft.	20 ft.	20 ft.
Side (interior)	7.5 ft.	7.5 ft.	7.5 ft.	7.5 ft.
Side (street)	10 ft.	10 ft.	7.5 ft.	7.5 ft.
Rear	20 ft.	20 ft.	15 ft.	10 ft.
Maximum building height	35 ft.	35 ft.	35 ft.	35 ft.

Accessory Structures<sup>1</sup>, Excluding Fences and Walls

Minimum front and side yard setbacks	Same requirements are for the principal structure.
Minimum yard setback, rear <sup>2</sup>	7.5 ft.

100686A

Maximum building height	25 ft.
Transmitter towers <sup>3</sup>	80 ft.

<sup>1</sup> Accessory screened enclosure structures whether or not attached to the principal structure may be erected in the rear yard as long as the enclosure has a minimum yard setback of three feet from the rear property line. The maximum height of the enclosure at the setback line shall not exceed eight feet. The roof and all sides of the enclosure not attached to the principal structure must be made of screening material.

<sup>2</sup> One preengineered or premanufactured structure of 100 square feet or less may be erected in the rear and side yards as long as the structure has a minimum yard setback of three feet from the rear or side property lines, is properly anchored to the ground, and is separated from neighboring properties by a fence or wall which is at least 75 percent opaque.

<sup>3</sup> In accordance with article VI.

(Ord. No. 3777, § 1, 6-10-92; Ord. No. 3955, § 10, 2-14-94; Ord. No. 960060, § 1, 6-8-98; Ord. No. 980990, § 1, 6-28-99; Ord. No. 041268, § 2, 8-22-05; Ord. No. 070619, § 1, 3-24-08)

.....