



**PLANNING COMMISSION AGENDA
REGULAR MEETING
MONDAY, OCTOBER 17, 2016**

**STUDY SESSION: 4:30 P.M. – CITY COUNCIL CHAMBERS
MEETING: 5:00 P.M. – CITY COUNCIL CHAMBERS**

1. Call to Order.
2. Roll Call.
3. Dispense with the reading and approve the minutes of the September 19, 2016, Regular Meeting as prepared.
4. Review and consider amendments to Article 7 of the draft Unified Development Ordinance.
 - Staff report and presentation
5. Adjournment.

THIS MEETING WAS PRECEDED BY PUBLICIZED NOTICE IN THE FREMONT TRIBUNE, THE AGENDA DISPLAYED IN THE LOBBY OF THE MUNICIPAL BUILDING AND POSTED ONLINE AT WWW.FREMONTNE.GOV IN ACCORDANCE WITH THE NEBRASKA OPEN MEETINGS ACT, A COPY OF WHICH IS POSTED CONTINUALLY IN THE COUNCIL CHAMBERS FOR PUBLIC INSPECTION, AND SAID MEETING IS OPEN TO THE PUBLIC. A COPY OF THE AGENDA WAS ALSO KEPT CONTINUALLY CURRENT AND AVAILABLE TO THE PUBLIC IN THE PRINCIPLE OFFICE OF THE DEPARTMENT OF PLANNING, 400 EAST MILITARY AVENUE. THE PLANNING COMMISSION RESERVES THE RIGHT TO ADJUST THE ORDER OF ITEMS ON THIS AGENDA.

PRESENT: Chairman, Dev Sookram, Commissioners, Amber Barton, Brad Fooker, Marty Gifford, Rol Horeis, Carl Nielsen, Aaron Rix, and Mitch Sawyer, and Planning Director, Troy Anderson.

ABSENT: Commissioner Brian Wiese.

1. Call to Order. Chairman Sookram called the meeting to order at 5:00 p.m.
2. Roll Call. A roll call showed eight (8) members present and one (1) member absent – a quorum was established.

Chairman Sookram then read the following statement: This meeting was preceded by publicized notice in the Fremont Tribune, the agenda displayed in the lobby of the Municipal Building and posted online at www.fremontne.gov in accordance with the Nebraska open meetings act, a copy of which is posted continually in the council chambers for public inspection and said meeting is open to the public. A copy of the agenda was also kept continually current and available to the public in the principle office of the Department of Planning, 400 East Military Avenue. The Planning Commission reserves the right to adjust the order of items on this agenda. This meeting is hereby declared to be duly convened and in open session.

3. Dispense with the reading and approve the minutes of the August 15, 2016, Regular Meeting as prepared.

Chairman Sookram read the item into the record. Hearing no discussion, Sookram entertained a motion.

Motion: It was moved by Commissioner Fooker, and seconded by Commissioner Sawyer, to dispense with the reading of the minutes and approve the minutes as provided. A roll call vote showed all members present voting aye – the motion carried unanimously.

4. Consider a petition of the owners of approximately 4.5 acres described as a part of the Southeast Quarter of the Northwest Quarter of Section 18, Township 17 North, Range 9 East of the 6th P.M., Dodge County, Nebraska, and more generally located at 1800 Deer Run, for annexation into the City of Fremont's corporate limits.

Chairman Sookram read the item into the record.

Planning Director, Troy Anderson read Staff's Report.

Sookram then proceeded to open the floor to public hearing.

Hearing none, Sookram closed the floor to public hearing and opened the floor to Commission discussion and action. Hearing no discussion, Sookram entertained a motion.

Motion: It was moved by Commissioner Fooker, and seconded by Commissioner Sawyer, to recommend approval of the Annexation. A roll call vote showed all members present voting aye – the motion carried unanimously.

5. Consider a petition of the owners of approximately 0.5 acres described as a part of the South Half of the Northwest Quarter of Section 7, Township 17 North, Range 9 East of the 6th P.M., Dodge County, Nebraska, and more generally located at 3400 N Luther Rd., for annexation into the City of Fremont's corporate limits.

Chairman Sookram read the item into the record.

Planning Director, Troy Anderson read Staff's Report.

Sookram then proceeded to open the floor to public hearing.

Hearing none, Sookram closed the floor to public hearing and opened the floor to Commission discussion and action. Hearing no discussion, Sookram entertained a motion.

Motion: It was moved by Commissioner Barton, and seconded by Commissioner Gifford, to recommend approval of the Annexation. A roll call vote showed all members present voting aye – the motion carried unanimously.

6. Consider a request of Dodd Engineering & Surveying, LLC, on behalf of Deer Pointe Corporation, owner of approximately 4.5 acres located at 1800 Deer Run, for approval of a Final Plat to be known as Deer Pointe Fourth Addition to the City of Fremont, Nebraska.

Chairman Sookram read the item into the record.

Planning Director, Troy Anderson read Staff's Report.

Sookram then proceeded to open the floor to Commission discussion and action. Hearing no discussion, Sookram entertained a motion.

Motion: It was moved by Commissioner Sawyer, and seconded by Commissioner Rix, to recommend approval of the Final Plat. A roll call vote showed all members present voting aye – the motion carried unanimously.

7. Review and consider amendments to Articles 6 and 7 of the draft Unified Development Ordinance.

Chairman Sookram read the item into the record.

Planning Director, Troy Anderson introduced proposed amendments to Articles 6 and 7 of the draft Unified Development Ordinance (UDO) including:

1. Reorganization;
2. Removing redundant language;
3. Revising language to remain consistent with industry standards;
4. Removing site plan review from Commission powers – except when forwarded by the Zoning Administrator;
5. Revising "Director" to read "Zoning Administrator" to coincide with industry standard;

6. Differentiating between areas of responsibility associated with public off-site improvements and private on-site improvements;
7. Removing the Building Official responsibilities – these are covered by the International Code Council and are typically outside the scope of zoning regulations;
8. Transferred a number of permit review authorities from the Commission to the Zoning Administrator; and
9. General word-smithing.

Hearing no further comments, Sookram concluded discussion of the item and proceeded to the next item on the agenda.

8. Adjournment. Hearing no further business, Chairman Sookram adjourned the meeting at approximately 5:09 p.m.

APPROVED:

Dev Sookram, Chairman

ATTEST:

Troy Anderson, Planning Director

Staff Report

TO: Planning Commission
FROM: Troy Anderson, Director of Planning
DATE: October 17, 2016
SUBJECT: Draft Unified Development Ordinance (UDO) Amendments – Article 7

Background: Staff has prepared the following amendments to Article 7 of the Draft UDO for review and consideration. Last month we introduced Article 7 pertaining to *administrative bodies* and *permits and procedures* (generally). This month we concluded Article 7 including a more detailed analysis of *permits and procedures*, particularly as that relates to Table 813.02 *Administrative Permits* and Table 813.03 *Public Meeting Approvals*. The most significant revisions include:

- Reorganization;
- Struck eligible applicants from the variance, appeal, and interpretation process;
- Struck some of the timing, orders, and annotation requirements associated with the variance, appeal, and interpretation process;
- Struck language relating to deposits required for applications received which are outside the scope of authority;
- Struck language which may have been contradictory to the public notice requirements;
- Struck the conversion of nonconformities procedure;
- Struck Planning Commission authorization to reduce required yards;
- Struck language that will appear in the adopting ordinance and need to be codified; and
- General word-smithing.

~~{Sec. 15-7}~~ §11-815 Administrative Permits and Procedures

~~{15-7}~~ 11-815.01. Certificate of Zoning Compliance (Permitted and Limited Uses)

- A. **Generally.** Zoning compliance is an administrative procedure in which the ~~{Director}~~ Zoning Administrator verifies that an application for development approval of a permitted use, limited use, or a building or structure that is permitted without site plan approval, complies with the requirements of this ~~{UDO}~~ UDC. A certificate of zoning compliance may be issued simultaneously with building permits or other required permits.
- B. **Decision.** The ~~{Director}~~ Zoning Administrator shall approve or deny the application.

~~{15-7}~~ 11-815.02. Temporary Use Permit

- A. **Generally.** Administrative approval of ~~{a}~~ temporary use permits are applicable to public and commercial events ~~[with an expected peak attendance of less than 1,500 persons and for neighborhood events]~~, neighborhood events, and construction, storage, and refuse collection uses as set out in Section 15-305, Temporary Uses.
- B. **Approval Criteria.** Temporary use permits shall be administratively approved if it is demonstrated that they meet the applicable substantive requirements of this ~~{UDO}~~ UDC, particularly those specified for the proposed temporary use in Subsection 15-305.02., Public and Commercial Events ~~[and]~~, Subsection 15-305.03., Public Interest or Special Events, Subsection 11-405.04., Neighborhood Events, and Subsection 11-405.05., Construction, Storage, and Refuse Collection Uses.
- C. **Procedure.** Applications for administrative approval of temporary use permits are processed according to the sequential steps set out in Section 15-714, Standardized Development Approval Procedures, and shall be referred to other departments and agencies, as applicable, and then decided by the ~~{Director}~~ Zoning Administrator.
- D. **Decision.** The ~~{Director}~~ Zoning Administrator shall approve, approve with conditions, or deny the application.

~~{15-7}~~ 11-815.03. Right-of-Way Encroachment

- A. **Generally.** Within the DC district, encroachments into the public right-of-way are permitted subject to the standards set out in Subsection 15-404.01., Development Standards, Subsection E., DC District Setbacks.
- B. **Approval Criteria.** Right-of-way encroachments may be approved by the ~~{Director}~~ Zoning Administrator if it is demonstrated that they meet the substantive requirements of this ~~{UDO. Those that do not meet the substantive requirements of this UDO are subject to a variance}~~ UDC.
- C. **Procedure.** Applications for right-of-way encroachments are processed according to the sequential steps set out in Section 15-714, Standardized Development Approval Procedures, and shall be referred to other departments and agencies, as applicable, and then decided by the ~~{Director}~~ Zoning Administrator, in coordination with the Public Works Director.

Commented [AT1]: No they're not.

~~{15-7}~~ 11-815.04. Minor Changes to a Planned Development ~~[Plans]~~, Preliminary Plat, or Final Plat

A. **Generally.** ~~{Subject to advance notice of and recommendation by the Planning Commission, }~~The ~~{Director}~~**Zoning Administrator** is authorized to approve minor changes or modifications to a planned development, preliminary **plat**, or final ~~{plan}~~**plat** in accordance with this Subsection.

Commented [AT2]: Isn't this contradictory to Zoning Administrator authorization – either have the Commission approve or the Zoning Administrator, not both.

B. **Minor Modifications Defined.** ~~{Subject to advance notice of and recommendation by the Planning Commission, }~~The ~~{Director}~~**Zoning Administrator** is delegated the authority to approve an application to change or modify a planned development, preliminary **plat**, or final ~~{plan}~~**plat** if it is demonstrated that the proposed change or modification will result in substantial adherence to the previous approval ~~{or planned development ordinance}~~. In making this determination, the ~~{Director}~~**Zoning Administrator** ~~{shall}~~**may** refer any application for change or modification to the Planning Commission for review and recommendation. The minor changes or modifications must demonstrate the following:

Commented [AT3]: Isn't this contradictory to Zoning Administrator authorization – either have the Commission approve or the Zoning Administrator, not both.

1. Development density and intensity have not materially changed, in that:
 - a. The number of buildings is not increased by more than **ten (10)** percent.
 - b. The height of the building(s) is the same or less.
 - c. The number of units is the same or fewer.
 - d. The aggregate lot coverage and floor area ratio are the same or less.
 - e. Density or intensity (floor area ratio) may be transferred from one building to another ~~{on}~~**or** from one stage of development to another, provided that the total floor area is not changed and the conditions of **Subsection** B.1.a. through B.1.d. above, are met.
2. Design has not materially changed, in that:
 - a. The roadway patterns, including ingress-egress points, are in the same general location as shown on the original plans, and are no closer to the rear or interior side property lines than shown on the original plans.
 - b. The parking area is in the same general location and configuration.
 - c. The building setbacks are the same or greater distance from perimeter property lines, except that the building setbacks for detached single-family development, lot line, townhouse, and cluster development may be decreased, provided that such decrease is limited such that the resulting setback distance will be greater of either:
 1. The district regulation; or
 2. Any condition or restrictive covenant regulating the setback for which a substantial compliance determination is sought.
 - d. The landscaped open space is in the same general location, is the same or greater amount, and is configured in a manner that does not diminish a previously intended buffering effect.
 - e. The proposed perimeter walls and/or fences are in the same general location and of a comparable type and design as previously approved.
 - f. Elevations and renderings of buildings have substantially similar materials and architectural expressions as those shown on the approved plans.
 - g. Recreational facilities either remain the same or are converted from one recreational use to another.
 - h. Recreational facilities may be added.
3. The proposed changes do not have the effect of creating any noncompliance or nonconformity with the strict application of the ~~{UDO}~~**UDC** that were not previously approved at a public hearing,

or of expanding the scope of existing variances or other approvals such that they would differ to a greater degree from the strict application of the ~~{UDO}~~UDC.

- C. **Criteria.** In reaching a determination as to whether a change is minor and may be approved by the ~~{Director with the recommendation of the Planning Commission}~~Zoning Administrator or a major change or modification requiring a Planning Commission recommendation and City Council approval, the ~~{Director}~~Zoning Administrator shall use the following criteria:
1. Any increase in intensity or use shall constitute a modification. An increase in intensity of use shall be considered to be an increase in usable floor area, an increase in the number of dwelling or lodging units, or an increase in the amount of outside land area devoted to sales, displays, or demonstrations.
 2. Any change greater than **ten (10)** percent in parking areas resulting in an increase or reduction in the number of spaces approved shall constitute a major change.
 3. Structural alteration significantly affecting the basic size, form, style, and location of a building, as shown on the approved plan, shall be considered a major change.
 4. Any reduction in the amount of open space or bufferyard, or any change in the location or characteristics of open space, shall constitute a major change.
 5. Any change in use from one use group to another shall constitute a major change.
 6. Any change in pedestrian or vehicular access or circulation shall constitute a major change.
- D. **Procedure.** Applications for minor modifications or changes to a planned development, preliminary **plat**, or final ~~{plan}~~plat are processed according to the sequential steps set out in **Section 15-714, Standardized Development Approval Procedures**, and shall be referred to other departments and agencies, as applicable~~, and then decided by the Planning Commission~~.
- E. **Decision.**
1. ~~{With the recommendation of the Planning Commission,}~~The ~~{Director}~~Zoning Administrator shall approve, approve with conditions, or deny the application.
 2. The ~~{Director}~~Zoning Administrator shall refer the application to the Planning Commission if the ~~{Director}~~Zoning Administrator finds that the proposed development entails a major change or modification in the planned development preliminary or final plan.

~~{15-7}~~11-815.05. Administrative Plat

- A. **Generally.** Notwithstanding other provisions of this ~~{UDO}~~UDC or other laws to the contrary, the administrative procedures for approving or certifying certain plats involving minor modification of existing parcels of land are established in this Subsection.
- B. **Qualifications.** The criteria for administrative plat approval include those set out in **Subsection 15-505.02., Administrative Plats**.
- C. **Notation.** All plats approved or certified by an administrative procedure provided for in this Subsection shall note such fact on the plat, which shall be recorded in the conveyance records of the Dodge County ~~{Clerk of Court}~~Register of Deeds.
- D. **Review.** The ~~{Director}~~Zoning Administrator, together with the Director of Public Works and other warranted staff members, shall review the administering plat for its conformance with the requirements and standards of this ~~{Ordinance}~~UDC.

- E. **Approval.** The ~~{Director}~~Zoning Administrator is authorized to approve administrative plats if the application complies with the standards set out in Subsection 15-505.02., *Administrative Plats*. However, the ~~{Director}~~Zoning Administrator, at his or her discretion, may refer the application to the Planning Commission for review and decision.
- F. **Procedures.** The procedures for an Administrative Plat shall be generally the same as that for after approval of a final plat and after approval of a final plat and submission of the required certifications, as set out in Subsection 15-716.05., *Final Plat*.

~~15-715.06. Neighborhood Conservation Building or Improvement Plans~~

- ~~A. **Generally.** There are special standards applicable to vacant lots and for the redevelopment or expansion of existing buildings in the NC district and its sub-districts. Generally, the lot and building standards are equivalent to those that now exist or those that existed prior to the effective date of this UDO.~~
- ~~B. **Compliance with Standards.** New development, redevelopment, and building modifications or expansions shall comply with the standards set out in Table 15-403.01., *Lot and Building Standards for Existing Neighborhoods*.~~
- ~~C. **Alternate Standards.** For proposed building modifications or expansions that do not comply with the above standards, there are alternate standards set out in Subsection 15-403.02., *Alternate Setback Standards*.~~
- ~~D. **Approval Criteria.** Building modifications or expansions that comply with Subsections B. and C., above, may be approved by the Director if it is demonstrated that they meet the substantive requirements of this UDO. Those that do not meet the substantive requirements of this UDO are not subject to the variances if the modification or expansion cannot be approved pursuant to the standards of Section 15-403, *Standards for Established Neighborhoods*.~~
- ~~E. **Procedure.** Applications for building modifications or expansions are processed according to the sequential steps set out in Section 15-714, *Standardized Development Approval Procedures*, and shall be referred to other departments and agencies, as applicable, and then decided by the Director.~~

~~15-715.07]~~11-815.06. Grading, Excavating, and Land Clearing Permit

- A. **Generally.** For the purpose of protecting significant stands of trees and managing stormwater runoff and erosion, land may not be clear cut in preparation for development. Instead, a **grading, excavating, and** land clearing permit shall be requested and issued before removing any vegetative cover, **grading,** excavating, filing, or generally disturbing the land.
- B. **Compliance with Standards.** In order to issue a **grading, excavating, and** land clearing permit, the ~~{Director}~~Zoning Administrator must determine the extent of compliance with the ~~criteria~~ set out in Subsection 15-614.02., *Land Clearing* and Subsection 15-614.03., *Tree Protection*.
- C. **Determination.** A determination of **grading, excavating, and** land clearing may be found by the ~~{Director}~~Zoning Administrator according to the findings set out in Subsection 15-614.02., *Land Clearing, D., Determination of Land Clearing*.
- D. **Approval Criteria.** The ~~criteria~~ for which a **grading, excavating, and** land clearing permit may be issued are set out in Subsection 15-614.02., *Land Clearing, C., Land Clearing or Tree Removal Permit Required*.

Commented [AT4]: We'll need to incorporate those Sections relating to grading, excavating, and site drainage as those subsections are introduced.

Commented [AT5]: We'll need to incorporate those Sections relating to grading, excavating, and site drainage as those subsections are introduced.

- E. **Procedure.** Applications for land clearing are processed according to the sequential steps set out in [Section 15-714, Standardized Development Approval Procedures](#), and shall be referred to other departments and agencies, as applicable, and then decided by the [{Director}Zoning Administrator](#).

~~[15-715.08]~~**11-815.07. Floodplain Development Permits**

- A. **Generally.** All development proposed within a special flood hazard area and all development constructed, installed, commenced, improved, or maintained within a special flood hazard area after the effective date (to the extent permitted by this [{UDO}UDC](#)), is required to obtain a floodplain development permit from the [{Director}Zoning Administrator](#), acting as the Floodplain Administrator, in accordance with the procedure established in this Subsection, and the applicant for approval of such development shall pay the fee established by the City Council.
- B. **Standards of Issuance.** Approval or denial of a floodplain development permit by the [{Director}Zoning Administrator](#), acting as the Floodplain Administrator, shall be based on all applicable provisions of [Section 15-524, Floodplain Management and Flood Damage Prevention](#), and the following relevant factors:
1. The danger to life and property due to flooding and erosion damage;
 2. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 3. The danger that materials may be swept onto other lands to the injury of others;
 4. The compatibility of the proposed use with existing and anticipated development;
 5. The safety of access to the property in times of flood for ordinary and emergency vehicles;
 6. The costs of providing governmental service during and after flood including maintenance and repair of street and bridges and public utilities and facilities such as gas, sewer, and water systems;
 7. The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters expected at the site;
 8. The availability of alternative locations, not subject to flooding or erosion damage for the proposed use; and
 9. The relationship of the proposed use to the Comprehensive Plan for that area.
- C. **Procedure.** Floodplain development permits are processed by the [{Director}Zoning Administrator](#), acting as the Floodplain Administrator, who may accept the review, comment, and recommendations of the Director of Public Works and others, as applicable.
- D. **Permit Issuance.** No permit for any construction or development in any flood hazard area shall be issued until a floodplain development permit has been issued by the [{Director}Zoning Administrator](#).

~~[15-715.09]~~**11-815.08. Sign Permit**

- A. **Generally.** A sign permit is required as set out [Section 15-622, Application](#). Set out in [Section 15-620, Signs](#), [{UDO}UDC](#) regulations about the height and area of signs, which vary by the type of sign. If a proposed sign meets all standards of this [{UDO}UDC](#), or all standards set out in an approved sign design program for the property, as set out in [Section 15-627, Sign Design Program](#), then the [{Director}Zoning Administrator](#) will issue the sign permit.

- B. **Procedure.** Sign permits are an administrative procedure in which the ~~Director~~[Zoning Administrator](#) verifies that an application for approval of a sign complies with the requirements of ~~Section~~ 15-620, *Signs*, which may include a sign design program approved by the Planning Commission. Sign permits may be issued simultaneously with building permits or other required permits.

~~15-715.10. Certificate of Historic Appropriateness (as applicable)~~

- A. ~~**Permit Issuance.** No building permit application shall be accepted nor shall any such permit be issued, and no work shall be performed until after approval of a certificate of appropriateness, and not until five business days have elapsed from its transmission to the Building Official by the Director, with any advice as to the conditions which may have been attached to such a certificate.~~
- B. ~~**Procedure.** In issuing a Certificate of Historic Appropriateness, applications are processed according to the sequential steps set out in Section 15-714, *Standardized Development Approval Procedures*. The certificate of historic appropriateness may be issued by the Director, after a public hearing and approval by the Planning Commission as set out in Section 15-703, *Bodies Established and Authorized*.~~
- C. ~~**Project Phasing.** Certificates of Historic Appropriateness may be issued for distinct and separate phases of an ongoing project.~~
- D. ~~**Submission of New Application.** If the Planning Commission recommends and the City Council determines that a Certificate of Historic Appropriateness should be denied, a new application affecting the same property may be submitted to the Director only if a substantial change is made in the plans for the proposed work (see Subsection 15-714.13, *Successive Application*).~~
- E. ~~**Resubmission of a Denied Application.** A property owner or his/her agent or representative may resubmit the same application for a Certificate of Historic Appropriateness affecting the same parcel or project after 12 months have passed. If, in the opinion of the Director, there are substantial changes and improvements in the application for a project, the Director, shall allow an owner to resubmit an application for Certificate of Historic Appropriateness affecting the same parcel or lot after a waiting period of 10 days from the date of the initial denial.~~

~~15-715.11. Building Permit~~

- A. ~~**Generally.** Procedures shall be according to those set out in the applicable uniform building code.~~
- B. ~~**Building Permits Required.** No building or other structure shall be erected, moved, expanded, or structurally altered without a permit, issued by the Building Official. Nor shall any manmade change begin on improved or unimproved real estate including, but not limited to, mining, dredging, filling, grading, paving excavations, or drilling operations, without a permit, issued by the Building Official. No building permit shall be issued except in conformity with the provisions of this UDO or after written order from the BOA.~~
- C. ~~**Application.** All applications for building permits shall be accompanied by plans in duplicate, drawn to scale of not less than one-eighth inch to one foot, showing the actual dimensions and shape of the lot to be built upon; the exact size and location of the buildings already existing, if any; and the for the location of dimensions of the proposed building alteration. The application shall include such other information as lawfully may be required by the Building Official including existing or proposed building or alteration; existing rental units the building is designated to accommodate; conditions existing on the lot; and such other matters as may be necessary to determine conformance with and provide for enforcement of this UDO.~~

Commented [AT6]: Outside the scope of the UDC.

- ~~D. **Standards for Issuance.** The Building Official issues building permits upon a finding that the proposed building or structure, or improvements to an existing building or structure, complies with:~~
- ~~1. Approved plans for development (e.g., site plans), or the absence of a requirement for previously approved plans, this UDO (including but not limited to setbacks, building coverage, height, and design); and~~
 - ~~2. All applicable uniform building codes.~~
- ~~E. **Decision.** Decisions shall be rendered according to the procedures set out in the applicable uniform building code.~~
- ~~F. **Plans.** One copy of the plans shall be returned to the applicant by the Building Official after he or she has marked the copy as approved or disapproved and attested to same by his or her signature on the copy. The second copy of the plans, similarly marked, shall be retained by the Building Official.~~
- ~~G. **Expiration.**~~
- ~~1. If the work described in any building permit has not begun within 90 days from the date of issuance, the building permit shall expire and be cancelled by the Building Official. Written notice shall be given to the persons affected.~~
 - ~~2. If the work described in any building permit has not been substantially completed within one year of the date of issuance, the building permit shall expire and be cancelled by the Building Official. Written notice shall be given to the persons affected, together with notice that further work as described in the canceled permit shall not proceed unless and until a special building permit has been obtained.~~

~~15-715.12. Design Review~~

Commented [A7]: Not a permit type.

- ~~A. **Generally.** Set out in 15-420, *Design Standards* is Section 15-421, *Single Family and Two Family Housing* and Section 15-422, *Residential Infill Standards*. The provisions of these sections set out the specific requirements and design standards for single family and two family dwelling types.~~
- ~~B. **Approval of Application.** If the design plans for single family and two family residences, including roof massing, façade planes, setbacks, orientation, height and scale, roof type and pitch, materials, access, and garages are in substantial compliance with the standards of this UDO, the Director may approve and transmit the plans to the Building Official along with any advice as to conditions which may have been attached to such approval.~~
- ~~C. **Review of the Planning Commission.** If in the determination of the Director, a building is not in substantial compliance with the standards of this UDO, the Director may forward the building design plans for the consideration and approval or denial of the plans by the Planning Commission.~~
- ~~D. **Denial and Appeal of Application.** In the event the building design plans are deemed nonconforming and therefore, denied by the Director or the Planning Commission, the owner or the agent or representative may appeal the decision in writing to the City Council. In the event of an appeal, the City Council shall consider and act on the appeal at its next regularly scheduled meeting. The appeal decision of the City Council shall be final.~~
- ~~E. **Submission of New Application.** If the Director determines that the building design plans should be denied, a new application affecting the same property may be submitted only if substantial change is made in the plans for the proposed work as set out in Subsection 15-714.13., *Successive Application*.~~
- ~~F. **Procedures.** Upon application submission, the Director will review the building design plans for their conformance with the standards of this UDO. Applications for design review of single family and two-~~

family residences are processed according to the sequential steps set out in Subsection 15-714.02., ~~Pre-Application Conference~~ through Subsection 15-714.07., ~~Staff Review and Referral~~, and then decided by the Director.

- G. ~~**Review Criteria.** The review criteria used to determine conformance with the standards of this UDO shall include those set out in Section 15-421, *Single-Family and Two-Family Housing*.~~

15-715.13. Certificate of Occupancy

- A. ~~**Generally.** Procedures shall be according to the procedures set out in the applicable uniform building code.~~
- B. ~~**Certificates of Occupancy for New, Altered, or Nonconforming Uses.** It shall be unlawful to install permanent utilities in or to use or occupy or permit the use or occupancy of any part of any building or premises hereafter erected, created, changed, converted, or wholly or partly altered or enlarged in its use or structure until a certificate of occupancy has been issued by the Building Official stating that the proposed use of the building or land conforms to the requirements of this UDO.~~
- C. ~~**Application Required.** No permit for erection, alteration, moving, or repair of any building shall be issued until an application has been made for a certificate of occupancy and the certificate is issued in conformity with the provisions of this UDO upon completion of the work.~~
- D. ~~**Standards for Issuance.** No certificate of occupancy for any building or structure, erected, altered, or repaired after the adoption of this UDO shall be issued unless such building or structure was erected, altered, or repaired in compliance with the provisions of this UDO, applicable building codes, approval conditions, and other pertinent ordinances. Certificates of occupancy may be issued as follows:~~
- ~~1. Certificates of occupancy shall be issued for buildings, structures, or parts thereof, or uses of land if after inspection it is found that such buildings, structures, or parts thereof, or such use of land, comply with provisions of this UDO, the building code, approval conditions, and all other pertinent ordinances.~~
 - ~~2. A temporary certificate of occupancy shall be issued for a period not exceeding six months, only in the case of an addition to an existing single-family residence. Then, and only then, may a temporary certificate be issued to allow occupancy while work is in progress, provided that all necessary precautions have, in the opinion of the Building Official, been taken to ensure safety to the occupants.~~
 - ~~3. The Building Official may issue a partial certificate of occupancy for part of the building, structure, or lot prior to the occupancy of the entire building, structure, or lot, provided that such portions of the building structure, or lot are in conformity with the provisions of this UDO, applicable building codes, approval conditions, and all other pertinent ordinances. However, partial certificates of occupancy shall not be issued for single-family or two-family dwellings.~~
- E. ~~**Decision.** Decisions shall be rendered according to the procedures set out in the applicable uniform building code. If the Building Official refuses a certificate of occupancy for cause, the Building Official shall notify the applicant of the refusal and the cause.~~
- F. ~~**Records.** The Building Official shall maintain a record of all certificates of occupancy, and copies shall be furnished upon the request to any person.~~
- G. ~~**Violation.** Failure to obtain a certificate of occupancy shall be a violation of this UDO, and punishable under Subsection 15-733.02., *Violations*.]~~

~~[Sec. 15-7]~~ §11-816 Public Meeting and Hearing Permits and Procedures

~~15-716.01. Certificate of Zoning Compliance (Limited Uses)~~

- A. ~~Generally.~~ Zoning compliance is a public meeting procedure in which the Planning Commission verifies that an application for development approval of a limited use complies with the requirements set out in Section 15-304, *Limited and Conditional Uses*. A certificate of zoning compliance must be issued prior to the issuance of a building permit or other required permits.
- B. ~~Decision.~~ The Director shall recommend and the Planning Commission shall approve or deny the application.

Commented [AT8]: Administrative – see previous Section.

~~15-716.02. Temporary Use Permit (including construction, storage, and refuse collection uses)~~

- A. ~~Generally.~~ Public meeting approval of temporary use permits are applicable to public and commercial events with an expected peak attendance of more than 1,500 persons and for construction, storage, and refuse collection uses, as set out in Section 15-305, *Temporary Uses*.
- B. ~~Approval Criteria.~~ Temporary use permits may be approved if it is demonstrated that they meet the applicable substantive requirements of this UDO, particularly those specified for the proposed use in Subsection 15-305.02., *Public and Commercial Events* and Subsection 15-305.05., *Construction, Storage, and Refuse Collection Uses*.
- C. ~~Procedure.~~ Applications for administrative approval of temporary use permits are processed according to the sequential steps set out in Subsection 15-714.02., *Pre-Application Conference*, through Subsection 15-714.10., *Public Meetings and Hearings*, and shall be referred to other departments and agencies, as applicable, and then decided by the Planning Commission.
- D. ~~Decision.~~ The Planning Commission shall approve, approve with conditions, or deny the application.

Commented [AT9]: Administrative – see previous Section.

~~15-716.03. Site Plan~~

- A. ~~Generally.~~ Site plans require public meeting approval by the Planning Commission for site development features and to possibly mitigate unfavorable effects on surrounding property.
- B. ~~Administration.~~ The Director shall review, evaluate, and recommend all site plans to the Planning Commission for their review and approval, approval with conditions, or disapproval. An applicant shall appeal the denial of a site plan application to the City Council.
- C. ~~Uses Requiring Site Plan Review.~~ All multifamily, nonresidential, mixed use, and industrial uses are subject to site plan review.
- D. ~~Action and Appeal.~~ The Planning Commission must act upon a complete application (see Subsection 15-714.05., *Application Completeness Review*) within 20 business days of the filing date. The Planning Commission may approve, approve with conditions, or deny a site plan based on applicable substantive compliance with this UDO. In the case where the Planning Commission denies a site plan, the applicant may appeal the denial to the City Council, which must be filed within 10 days of the action. The City Council will consider the appeal at the first regularly scheduled meeting after the filing of the appeal.
- E. ~~Standards.~~ A site plan must comply with the standards of this UDO and shall:

Commented [AT10]: Administrative – see previous Section.

1. ~~Be used to implement the design objectives of any adopted subarea plans (e.g., Downtown) in a manner that is consistent with the standards of this UDO.~~
2. ~~Be designed to minimize impacts on the reasonable development expectations or the use and enjoyment of adjacent land or the public interest, consistent with the applicable standards of this UDO.~~
3. ~~Not materially and adversely affect the public health or safety through interpretations of the standards of this UDO that do not give full effect to other provisions that would be protective to health and safety if applied.~~
4. ~~Recognize the limits of existing and planned infrastructure, by thorough examination of the availability and capacity of water, sewer, drainage, and transportation systems to serve present and future land uses.~~
5. ~~Provide for compatibility between the proposed development, surrounding land uses (existing or planned), and the natural environment.~~
6. ~~Provide for efficient and adequate provision of public services and solid waste removal.~~
7. ~~Protect public health and safety against natural and man-made hazards which include, but are not limited to, traffic noise, water pollution, and flooding.~~
8. ~~Provide for accessibility within the proposed development and appropriate connectivity or buffering or both between the development and existing adjacent uses.~~
9. ~~Minimize disruptions to existing physiographic features, including vegetation, streams, lakes, soil types, and other relevant topographical elements.~~

~~15-716.04~~ **11-816.01. Preliminary Plat**

- A. **Pre-Application Conference.** Whenever any subdivision of land is proposed in the form of a cluster or planned development, or within a special or overlay district, the subdivider is required to discuss the project with the ~~{Director}~~[Zoning Administrator](#) prior to submitting a preliminary plat.
- B. **Procedures.** The subdivider shall have a preliminary plat prepared by a registered engineer ~~[, together with improvements, plans]~~, and other materials as may be required by the City, which is provided with the application available from the Planning Department. The procedure for review and approval of a preliminary plat consists of the following:
1. After a pre-application conference, as applicable, prepare and submit to the ~~{Director}~~[Zoning Administrator](#) for the review, consideration, and ~~[tentative]~~ approval of the Planning Commission a preliminary plat of the proposed subdivision;
 2. ~~[After tentative approval of the preliminary plat by the Planning Commission, the Director will provide the tentatively approved preliminary plat to the Mayor, who has 14 days after receiving the decision of the Planning Commission to sign the plat.]~~
 - a. ~~[If the Mayor disagrees with the decision of the Planning Commission, the reasons will be stated in writing and provided to the Planning Commission chairperson within 14 days after receiving the plat from the Planning Commission;~~
 - b. ~~[If the Mayor does not sign the plat within the 14 day period specified in 2.a. above, the preliminary plat is automatically approved.]~~
 3. ~~After tentative approval of the preliminary plat, submit detailed construction drawings for the review, consideration, and approval of the Director of Public Works that are in accordance with this UDO and all other standards and requirements of the City.~~

Commented [AT11]: Preliminary Plats are not signed.

Commented [AT12]: So what's the consequence? If the Mayor doesn't agree, he/she has to provide a reason why but there's no consequence because if he/she doesn't "sign" - again preliminary plats are not signed - then the plat is approved anyway? What's the point?

4. ~~After approval of the detailed construction drawings by the Director of Public Works, either construct the improvements for the inspection and approval of the Director of Public Works, or post a performance bond that assures that all improvements will be completed per the approved detailed construction drawings.~~
5. ~~After tentative approval of the Planning Commission, Mayor, and Director of Public Works, the preliminary plat is approved. Approval of the preliminary plat does not constitute acceptance or approval of the final plat.~~
6. ~~After acceptance of the preliminary plat, submit an application for final plat within two years from the date of preliminary plat approval, or request an extension of time from the Planning Commission. The]~~Approval of the preliminary plat shall lapse unless a final plat is submitted within two **(2)** years from the date of preliminary plat approval.
7. ~~[The third step is the preparation and submission of the final plat to the Planning Commission. This final plat becomes the instrument to be recorded in the office of the Dodge County Clerk of Court, when duly signed by the chairman of the Planning Commission.]~~

Commented [AT13]: We'll identify the subdivision improvement plans and final plat procedures in the coming section.

~~[15-716.05]~~11-816.02. Final Plat

- A. **Generally.** A final plat is required for submittal upon review by the ~~[Director]~~**Zoning Administrator** and approval by the Planning Commission and ~~[signature of the Mayor of a preliminary plat]~~**City Council**. Based on its consistency and conformance with the preliminary plat, the Planning Commission may recommend and the City Council disapprove a final plat or approve the final plat pending required changes.
- B. **General Obligation Debt Criteria.** Prior to submission of a final plat to the City Council for consideration, the subdivision application shall meet the following criteria:
 1. The general obligation debt of any Sanitary Improvement District (SID) shall not exceed four **(4)** percent of the proposed valuation of the project; and
 2. The subdivider/owner shall submit, as part of the final plat application, an estimate of the projected value of **the** SID, along with a letter from the fiscal agent of the SID stating that they have reviewed and agree with such projection; and
 3. If the bids for any improvement of the SID exceed the original source and use of funds submittal by more than **ten (10)** percent upon approval of the final plat, the change shall be considered "substantial" and the project shall be directed back to the City Council for consideration and approval of such excess along with submission of an amended source and use of funds; and
 4. Any new and/or unanticipated construction costs of the SID which were not included in the original source and use of funds submittal shall be directed back to the City Council for consideration and approval of such new and/or unanticipated construction costs along with submission of an amended source and use of funds; and
 5. If the actual construction costs of an improvement of the SID are less than the approved source and use of funds, those savings shall not be considered expendable funds to be applied for other SID projects without written authorization of the City Council. Project cost saving shall be distributed proportionally between special assessment and general obligation debt, as applicable, based on the originally approved apportionment; and
 6. Any development plan which includes distinct construction phases may seek the City Council's approval of the overall development plan and planned construction phases. The anticipated overall and phased construction costs shall be included in the original source and use of funds submittal. Following completion of the initial phase of construction and before proceeding with

any subsequent phase of development, the fiscal agent of the SID shall submit an amended source and use of funds to the City Council for consideration and approval, specially noting changes in labor and material costs, as compared to the original source and use of funds submittal, if any.

C. **Procedures.** The subdivider shall have a final plat prepared by a registered engineer **and submitted** within two **(2)** years from the date of preliminary plat approval ~~[, or request an extension of time from the Planning Commission].~~ The procedure for review and approval of a final plat consists of the following:

1. Upon receipt of a final plat application, the ~~{Director}~~**Zoning Administrator** will coordinate the drafting of the ~~Subdivision Agreement~~ and the review of any agreements drafted by the applicant. The ~~{Director}~~**Zoning Administrator** will be responsible for the internal and external distribution and management of the agreements within the review of the respective departments. Prior to consideration of the final plat by the City Council, all parties other than the City must sign all agreements, which are subject to approval by the City Council.
2. All developments shall include a review and signature of the proposed financing by the Director of Public Works prior to the final plat application being considered by the City Council. Cost estimates shall be detailed and include a breakdown of all the proposed project costs including, but not limited to, construction costs, professional engineering costs, coordinating professional engineering costs, professional administration and construction engineering costs, professional legal services costs related to construction and levying of special assessments, professional legal services costs related to contract charges and reimbursable charges, and professional financial services costs and interest. The proposed financing shall comply with the provisions of this ~~{UDO}~~**UDC**.
3. After approval of the detailed ~~{construction drawings}~~**subdivision improvement plans** by the Director of Public Works, a final plat application may be submitted. The final plat shall conform substantially to the approved preliminary plat. The final plat may constitute only a portion of the approved preliminary plat that is proposed to be recorded and developed; provided, however, that such portion conforms substantially to all requirements of this ~~{UDO}~~**UDC** and other standards and requirements of the City.
4. After submission of a final plat application:
 - a. ~~The Planning Commission may recommend and the City Council shall approve or disapprove the final plat [within 60 days from the date a completed application was received by the Director].~~
 - b. ~~Within 14 days after receipt of the affirmative decision of the City Council, the Mayor has 14 days to sign the plat.~~
 - c. ~~[Failure by the City Council to act on the final plat within 60 days shall be deemed approval of it.] If the plat is disapproved, the grounds for disapproval shall be stated upon the records of the City Council in writing [If the Mayor does not sign the plat within the 14-day period specified in Subsection 2.b., above, the final plat is automatically approved].~~
5. After approval of the final plat, submit the following certificates that shall be on each sheet that is filed with the Dodge County ~~{Clerk of Court}~~**Register of Deeds**:
 - a. Certificate showing the applicant is the landowner and dedicates street and other rights-of-way and any sites for public use;

Commented [AT14]: Elaborate.

Commented [AT15]: Elaborate.

- b. Certification by a registered land surveyor as to the accuracy of the survey and plat and the placement of monuments;
 - c. Certification by the ~~{Director of Public Works}~~Planning Commission Chairperson, or any other official or body authorized by law to act prior to the approval of the plat, that the subdivider has complied with one (1) of the following alternatives:
 - 1. Installation and an acceptable inspection by the Director of Public Works, or an appointee, of all improvements in accordance with the requirements of ~~{the UDC}~~ this UDC and the detailed construction drawings;
 - 2. Posting of a performance bond in sufficient amount as to assure the completion of all required improvements and detailed construction drawings as approved by the Director of Public Works. For any bond there shall be submitted with the plat a certificate of the City Attorney as to the sufficiency of the bond offers, which shall be no less and may be more than one hundred (100) percent of the estimated contract amount.
 - d. Certification of approval to be signed by the Mayor.
6. After approval of the final plat and submission of the required certifications:
- a. Submit ~~{a film positive}~~ two (2) paper sets of the approved final plat, with any corrections and/or changes required by the City Council, to the ~~{Director}~~ Zoning Administrator, who shall collect a filing fee according to the fee schedule promulgated by the City Council, as amended from time to time.
 - b. The ~~{Director}~~ Zoning Administrator, or an appointee, shall ~~{make seven blue-line prints of the approved final plat and }~~ obtain the signatures of the ~~{Director of Public Works, }~~ Planning Commission Chairperson and Mayor on the ~~{film positive and }~~ prints.
 - c. The ~~{Director}~~ Zoning Administrator, or an appointee, shall have the plat duly recorded in the office of the ~~{Clerk of Court}~~ Register of Deeds of Dodge County, Nebraska ~~{, within 10 working days of the date on which the fee specified in 4.a. above, has been collected, not counting the day on which the fee was received.}~~
 - ~~d. [After the recording of the final plat, the Director, or an appointee, shall distribute the blue-line prints of the recorded final plat, which shall show all signatures and the file number of the Clerk of Court, as follows:
 - 1. One print shall be provided to the Dodge County Clerk of Court's Office;
 - 2. One print shall be provided to the Dodge County Tax Assessor's Office;
 - 3. One print shall be provided to the City Department of Permits;
 - 4. One print shall be provided to the Director of Public Works;
 - 5. One print, plus the film positive, shall be retained by the Director;
 - 6. Two prints shall be mailed to the subdivider by U.S. certified mail, return receipt requested, and the signed receipt showing that delivery of the prints was accomplished shall be made a part of the permanent record of the subdivision. If the subdivider desires additional prints of the recorded final plat, they may be obtained from the Planning Department for a fee as promulgated by the City Council, as amended from time to time; and
 - 7. If the return receipt is not received within 30 calendar days of the date of mailing of the copies, the Director, or an appointee, shall notify the subdivider, verbally or in writing, and two additional copies of the recorded, signed final plat shall be mailed to the subdivider by U.S. certified mail, return receipt requested, and these actions shall also]~~

be noted on the permanent record of the subdivision. This procedure shall be repeated until a signed return receipt has been received by the Director.]

- e. ~~Failure by the subdivider to pay the fee specified in Subsection 4.a. above, within 30 days after approval of the final plat, the subdivider having been duly notified of the approval, shall render the final plat null and void and the subdivider shall be so notified by the Director by U.S. certified mail, return receipt requested. This action shall be so noted on the permanent record of the subdivision request.]~~

Commented [AT16]: Failure ... to pay the filing fee will result in the refusal to receive the plat documents.

- 7. If approval of the final plat is contingent upon an agreement to be affected after discussion between the subdivider and any department of the City, and such agreement is not reached or is not expected to be reached within ~~[the 30-day period required in Subsection 4.e. above, the City Council may, but does not have to, extend, once only, the final date on which the subdivider must pay the fee specified in 4.a. above, to avoid the final plat becoming null and void by not more than 30 days, upon a favorable vote on such action by a majority of the authorized membership of the City Council in a convened legal session];~~ **two (2) years, approval of the final plat shall be considered null and void.**

[15-716.06. Design Review]

Commented [AT17]: Not a permit type.

~~A. **Procedures.** This Subsection sets out the procedures for the review of site and building design plans in accordance with the standards set out in 15-420, *Design Standards*, particularly including:~~

- ~~1. *Section 15-424, Multi-Family Housing;* and~~
- ~~2. *Section 15-425, Nonresidential and Mixed-Use Development,* particularly including:
 - ~~a. *Subsection 15-425.01., Purpose;*~~
 - ~~b. *Subsection 15-425.02., Application;*~~
 - ~~c. *Subsection 15-425.03., Façade Treatments;*~~
 - ~~d. *Subsection 15-425.04., Finish Materials;*~~
 - ~~e. *Subsection 15-425.05., Building Form and Design;* and~~
 - ~~f. *Subsection 15-425.06., Mechanical Equipment.*~~~~

~~B. **Planning Commission Consideration.** Upon application submission, the Director will review the site and building design plans for their conformance with the standards set out in the above Sections. The Director will transmit the site and building design plans to the Planning Commission for the review and consideration.~~

~~C. **Review Criteria.** The review criteria used to determine conformance with the standards of this UDO shall include, but are not limited to, the following:~~

- ~~1. **Site Design Standards:**
 - ~~a. *Compatibility of the proposed use and building by consideration of its scale and massing in the context of adjacent, existing buildings;*~~
 - ~~b. *Number, location, width, spacing, and surfacing of driveways;*~~
 - ~~c. *Site standards set out in Section 15-304, Limited and Conditional Uses, as applicable;*~~
 - ~~d. *Number, location, dimensions, and setbacks of the required on-site parking and loading, together with the location, number, width, spacing, alignment, corner clearance, and design of driveways and the fixture type, height, location, and maximum illumination of exterior lighting for nonresidential uses, subject to the standards of 15-600, *Parking, Loading, and Access* and 15-630, *Exterior Lighting;* and*~~~~

~~e. Type, quantity, and placement of development and bufferyard landscaping, subject to the standards of 15-610, *Landscaping and Buffering*.~~

~~2. Building Design Standards:~~

~~a. Generally:~~

- ~~1. Exterior wall and building trim materials;~~
- ~~2. Building wall design and articulation to address monotony and blank walls;~~
- ~~3. Roof type and materials, including its pitch, overhangs, eave lines, and projections;~~
- ~~4. Building massing, including the lengths of uninterrupted wall planes and offsets that penetrate the roofline;~~
- ~~5. Design of large buildings to appear as multiple structures through the use of varied roof forms, building projections, vertical or horizontal offsets, or architectural details;~~
- ~~6. Exterior floor to floor height of each story and the delineations between individual floors;~~
- ~~7. Building projections on the front facade below the eave line, which may consist of stoops, bay windows, covered porches, extruded entrances, or pedestrian arcades;~~
- ~~8. Heights, widths, and materials of porches and arcade columns;~~
- ~~9. Building wall articulations, which may include, among other treatments, a porch, stoop, balcony, windows and casings, cornices, lintels, columns, pilasters, etc.~~
- ~~10. Details of front entrances;~~
- ~~11. Fenestrations including the design and placement of doors and windows;~~
- ~~12. Level of quality and architectural interest of buildings;~~
- ~~13. Type, height, and style of building, site, and pedestrian lighting;~~
- ~~14. Orientation of buildings and building features to the street, e.g. overhead doors;~~
- ~~15. Location and screening treatments of ground, building, or roof-mounted mechanical and utility equipment;~~
- ~~16. Other building form and design treatments as contextually appropriate.~~

~~b. Multi-family Units with three or more dwelling units:~~

- ~~1. Exterior wall and building trim materials;~~
- ~~2. Continuity and cohesiveness of the building architecture and its features and patterns with that of the adjacent buildings;~~
- ~~3. Articulation of building facades and use of building elements for the purpose of creating visual interest and avoiding monotony;~~
- ~~4. Roof type and materials, including its pitch, overhangs, eave lines, and projections;~~
- ~~5. Sizes and locations of windows and their relative percentage of the front façade, together with their accentuations, (e.g. shutters, awnings, or decorative framing); and~~
- ~~6. Quality, sustainable finish materials of all building walls and roofs and their compatibility with that of the adjacent and surrounding buildings.~~

~~D. Decision. The Planning Commission shall approve, approve with conditions, or deny the application.~~

~~E. Approval of Design Plans. If the site and building design plans are in substantial compliance with the standards of this UDO and thus, approved by the Planning Commission, the Director may transmit the design plans to the Building Official along with any advice as to conditions which may have been attached to such approval by the Planning Commission.~~

~~F. **Denial and Appeal of Application.** In the event the site and building design plans are deemed nonconforming and therefore, denied by the Planning Commission, the owner or the agent or representative may appeal the decision in writing to the City Council. In the event of an appeal, the City Council shall consider and act on the appeal at its next regularly scheduled meeting. The decision of the City Council shall be final.~~

~~G. **Submission of a New Application.** If the Planning Commission determines that the site and building design plans should be denied, a new application affecting the same property may be submitted only if substantial change is made in the design plans (see Subsection 15-714.13., *Successive Application*).~~

~~15-716.07. Petition to Designate Historic Properties or Districts~~

~~A. **Generally.** The procedures of this Section are used for the petition of property owners to designate historic properties or districts. In addition to consideration and approval of petitions by property owners, the City Council, upon a public hearing and recommendation of the Planning Commission, may designate historic properties and districts as set out in Section 15-716.15., *City Designation of Historic Properties or Districts*.~~

~~B. **Initiation by Petition or Motion.** A property owner shall submit an application to the Planning Commission in order to be considered for designation as a historic property. The application shall be in the form and be filed in the manner required by the Director, which is available in the Planning Department.~~

~~C. **Map Designation.** All locally designated historic properties and districts shall be clearly shown on the Official Zoning Map.~~

~~D. **Criteria for Historic Designation.** A property may be designated historic if it:~~

- ~~1. Has significant inherent character, interest, or value as part of the development or heritage of the community, state, or nation; or~~
- ~~2. Is the site of an event significant in history; or~~
- ~~3. Is associated with a person or persons who contributed significantly to the culture and development of the community, state, or nation; or~~
- ~~4. Exemplifies the cultural, political, economic, social, ethnic, or historic heritage of the community, state, or nation; or~~
- ~~5. Individually, or as a collection of resources, embodies distinguishing characteristics of a type, style, period, or specimen in architecture or engineering; or~~
- ~~6. Is the work of a designer whose work has influenced significantly the development of the community, state or nation; or~~
- ~~7. Contains elements of design, detail, materials, or craftsmanship which represent a significant innovation; or~~
- ~~8. Is part of or related to a square, original town, or other distinctive element of community planning; or~~
- ~~9. Represents an established and familiar visual feature of the neighborhood or community; or~~
- ~~10. Has yielded, or may be likely to yield, information important in pre-history or history.~~

~~E. **Procedure.**~~

- ~~1. Applications for designation of historic properties or districts are processed according to the sequential steps set out in Subsection 15-714.02., *Pre Application Conference*, through~~

Commented [AT18]: Combined with "City Designation of Historic Properties or Districts" below. The process should be the same regardless of whether or not the designation is initiated by the property owner or the City.

~~Subsection 15-714.10., *Public Meetings and Hearings*, and shall be referred to other departments and agencies, as applicable, and then decided by the City Council.~~

~~2. Generally, the following steps must be followed:~~

- ~~a. The petition or motion is referred to the Director for review and recommendation.~~
- ~~b. Once the application is submitted and processed, the Planning Commission shall conduct a public hearing whereas the owner(s), interested parties, or technical experts may present testimony or documentary evidence which will become part of a record regarding the historic, architectural, or cultural importance of the proposed property or district. Written notice shall be given and official signs shall be posted as is provided in Section 15-714.09., *Public Notice*. At the hearing, the Director shall make a presentation and a recommendation to the Planning Commission. Following the hearing and deliberation, the Planning Commission shall forward a recommendation to the City Council.~~
- ~~c. Upon submission by the Planning Commission, the City Council shall give notice and conduct its hearing on the proposed designation. Written notice shall be sent and official signs shall be posted in the same manner as for the Planning Commission's hearing. At the hearing, the Director shall present the Planning Commission's recommendation.~~

~~F. **Nominated Historic Properties.** The City Council may, without a petition, when brought to its attention or on its own motion, consider, propose, and act to designate historic properties or districts, as set out in Section 15-716.15., *City Designation of Historic Properties or Districts*. In such case, the City Council's approved motion to do so will substitute for the property owner's application referred to in this Subsection. However, no recommendation may be forwarded to the City Council unless the Planning Commission's recommendation is supported by a two-thirds majority vote.~~

~~G. **Decision.**~~

- ~~1. The City Council shall approve or reject the petition or motion.~~
- ~~2. The City Council shall cause the designation to be filed with the Dodge County Clerk of Court, the tax records of the City of Fremont, and the Dodge County Tax Assessor's Office.~~

~~H. **Tax Incentives and Funding.** In order to qualify for any special funding or tax incentives, historic properties, and contributing resources in historic districts, must maintain the characteristics on the basis of which they were designated, must be properly maintained, and follow all relevant guidelines established by the City.~~

~~15-716.08. **Nomination to the National Register of Historic Places**~~

~~A. **Generally.** The procedures of this Subsection are used to nominate historic buildings to the National Register of Historic Places. In addition to consideration and approval of petitions by property owners, the Planning Commission may review, evaluate proposed nomination, and make recommendations to the Nebraska State Historic Preservation Office for consideration.~~

~~B. **Initiation by Petition or Motion.** A property owner shall submit an application to the Planning Commission in order to be considered for nomination to the National Register of Historic Places. The application shall be in the form and be filed in the manner required by the Director.~~

~~C. **Standards for Designation.** The standards for nomination to the National Register of Historic Places is considered by the State Historic Preservation Office.~~

~~D. **Procedure.**~~

Commented [AT19]: Can be combined with the "City Designation of Historic Properties or Districts" process below.

1. ~~In nominating a property to the National Register of Historic Places, petitions or motions are processed according to the sequential steps set out in Section 15-714, *Standardized Development Approval Procedures*, and shall be then referred to the State Historic Preservation Office.~~
2. ~~Generally, the following steps must be followed according to general procedures of Section 15-714, *Standardized Development Approval Procedures*:~~
 - a. ~~The petition or motion is referred to the Director for review and recommendation.~~
 - b. ~~Once the application for nomination is submitted and processed, the Planning Commission shall conduct a public hearing whereas the owner, interested parties, or technical experts may present testimony or documentary evidence which will become part of a record regarding the historic, architectural, or cultural importance of the proposed property and its nomination to the National Register of Historic Places. Written notice shall be given and official signs shall be posted as provided in Section 15-714.09, *Public Notice*. At the hearing, the Director shall make a presentation and make a recommendation to the Planning Commission. Following the hearing and deliberation, the Planning Commission shall forward a recommendation to the Nebraska State Historic Preservation Office for consideration.~~

15-716.09. Sign Permit in Special Areas

- ~~A. **Generally.** A sign permit is required as set out in Section 15-622, *Application*. Set out in Subsection 15-625.03, *Special Area Sign Standards*, is regulations about the type, sizes, heights, and areas of attached, temporary, wall, projecting, directory and upper floor, and menu holder signs for the Downtown Commercial (DC) district, U.S. Highway Frontages, and Off-Premise Signs. For new or replacement signs, as well as any improvements, modifications, alterations, or enhancements of existing signs, a sign permit application shall be submitted for the review and recommendation of the Planning Commission and consideration and approval of the City Council.~~
- ~~B. **Procedure.**~~
1. ~~In reviewing, considering, and approving a sign permit within downtown, along U.S. highways, and for off-premise signs, the application is processed according to the sequential steps set out in Subsection 15-714.02, *Pre-Application Conference*, through Subsection 15-714.10, *Public Meetings and Hearings*, and shall be referred to other departments and agencies, as applicable, and then decided by the City Council, upon the recommendation of the Planning Commission, as set out in Subsection 15-713.03, *Public Meeting and Hearing Approvals*.~~
 2. ~~Applications for sign permits shall be submitted to the Director, who will review the sign application and plans for their conformance with the standards set out in Subsection 15-625.03, *Special Area Sign Standards*. The Director will transmit the application and plans to the Planning Commission for their review and recommendation of the Planning Commission and consideration and approval of the City Council. Sign permits may be issued simultaneously with building permits or other required permits.~~
- ~~C. **Decision.** The City Council shall approve, approve with conditions, or deny the application.~~

Commented [AT20]: Be careful of subjective sign review.

15-716.10. Minor Adjustments

- ~~A. **Generally.** This Subsection sets out the required review and approval procedures for minor adjustments from otherwise applicable standards that may be approved by the Planning Commission or City Council.~~

Commented [AT21]: See comment from Table 11-813.03.

- ~~B. **Purpose.** Minor modifications are to be used when the small size and the minimum impact of the modification requested, and the unlikelihood of any adverse effects on nearby properties or the neighborhood, makes it unnecessary to complete a formal variance process and where the modification maintains the intent of this UDO and other plans of the City.~~
- ~~C. **Standards for Approval.** Unless otherwise specified, allowed, or restricted elsewhere in this UDO, as part of the review and approval of any procedure set forth in this UDO, the Planning Commission or City Council may approve minor adjustments if the decision-making body finds that the requested adjustment:~~
- ~~1. Is consistent with the stated purposes of this UDO;~~
 - ~~2. Meets all other applicable building and safety codes;~~
 - ~~3. Does not encroach into a recorded easement or cross a building line;~~
 - ~~4. Continues to advance the welfare of the area and the City;~~
 - ~~5. Will have no adverse impact on the health, safety, or general welfare of surrounding property owners or the general public, or such impacts will be substantially mitigated; and~~
 - ~~6. Is necessary to either:~~
 - ~~a. Compensate for some practical difficulty or some unusual aspect of the site of the proposed development not shared by landowners in general; or~~
 - ~~b. Accommodate an alternative or innovative design practice that achieves to the same or better degree the objective of the existing design standard to be considered.~~
- ~~D. **Limitations and Prohibitions.** The Planning Commission shall only approve minor adjustments for landscaping and buffering or parking and loading (excluding access and lighting) standards.~~
- ~~1. In no circumstance shall the following be considered a minor adjustment:~~
 - ~~a. A change in permitted uses or mix of uses;~~
 - ~~b. A change in the boundaries of a district reflected on the Official Zoning Map;~~
 - ~~c. To physically extend a nonconforming use of land;~~
 - ~~d. A building height that encroaches into a height hazard zone of the airport unless otherwise approved.~~
 - ~~e. An adjustment from the limited or conditional use standards set out in Section 15-304, *Limited and Conditional Uses*.~~
 - ~~f. A change in conditions attached to the approval of any plat, plan, or permit; or~~
 - ~~g. Any decision by the Board of Adjustment.~~
- ~~E. **Procedure.** The Planning Commission or City Council may initiate or approve a minor adjustment at any time before it takes action, or as part of taking action, on a preliminary plat, or permit under its jurisdiction.~~
- ~~F. **Annotation.** City staff shall specify any approved minor adjustments and the justifications for such adjustment on the plan, plat, or permit for which the adjustments were sought.]~~

11-816.03. Text Amendment

- A. Generally. The City Council may amend the text of this UDC in accordance with the procedures set out in this Subsection and **Section** 15-714, *Standardized Development Approval Procedures*, to implement the Comprehensive Plan, as may be amended from time to time, conform to State or

Federal legal requirements, address changing or changed conditions, or otherwise advance the public health, safety, and welfare of the City.

- B. Initiation of Amendment. Petitions for amendments to this UDC shall be made to the Zoning Administrator. The City Council and any other body that is described in [Section 15-703, Bodies Established and Authorized](#), may initiate an amendment.
- C. Criteria for Text Amendments. Recommendations and decisions regarding petitions for amendments to text of this UDC are legislative in nature, but shall be based on consideration of all the criteria that the proposed amendment:
1. Will help to implement the Comprehensive Plan, or, if it addresses a topic that is not addressed or not fully developed in the Comprehensive Plan, the proposed amendment does not impair the implementation of the Comprehensive Plan when compared to the existing UDC.
 2. Is consistent with the stated purposes of this UDC.
 3. Will maintain or advance the public health, safety, or general welfare.
 4. Will help to mitigate adverse impacts of the use and development of land on the natural or built environment, including, but not limited to mobility, air quality, water quality, noise levels, stormwater management, wildlife protection, and vegetation; or will be neutral with respect to these issues.
 5. Will advance the strategic objectives of the City Council, such as fiscal responsibility, efficient use of infrastructure and public services, and other articulated City objectives.
- D. Procedure. Text amendments are processed according to the sequential steps set out in [Subsection 15-714.02., Pre-Application Conference](#), through [Subsection 15-714.10., Public Meetings and Hearings](#), and shall be decided by the City Council after recommendation of the Planning Commission, as set out in [Subsection 15-713.03., Public Meeting and Hearing Approvals](#). The Planning Commission shall hold a public hearing. The procedure shall incorporate the following additional requirements:
1. **Staff Review.** The Zoning Administrator shall review each proposed amendment in light of the criteria of [Subsection C.](#), above, and refer the application to other departments or entities as deemed necessary. Based on the results of those reviews, the Zoning Administrator shall provide a report and recommendation to the Planning Commission.
 2. **Planning Commission Recommendation.**
 - a. The Planning Commission shall hold a public hearing on the proposed text amendment. Following the public hearing, the Planning Commission shall make a final report to the City Council.
 - b. Upon receiving the report of the Planning Commission, the Zoning Administrator shall draft an ordinance, submit it to the City Attorney for approval as to form, and shall forward the ordinance to the City Council for consideration.
 3. **City Council Action.** Upon receipt of the final report from the Planning Commission, the City Council shall vote to approve, approve with amendments, or reject the proposed amendment, based on the approval criteria in [Subsection C.](#), above. The City Council also may refer the proposed amendment back to the Planning Commission for further consideration, continue a public hearing, or postpone action on an application for a period not to exceed ninety (90) days (or shorter period if the application is being processed concurrently with a plat and the plat application is still pending at the time the amendment is postponed).

- E. No Retroactive Cure of Violations. The amendment of text of this UDC may transform a legally nonconforming situation into a conforming one. However, no petition for a text amendment shall be used to cure a violation of any party of this UDC.

11-816.04. Zoning and Zoning Changes (including Planned Developments and Planned Development Amendments)

- A. Generally. The boundaries of any zoning district in the City may be changed, or the zoning classification of any lot or tract may be changed, as provided in this Subsection.
- B. Initiation of Zoning Change.
1. A zoning change (rezoning) may be initiated by the owner of the property to be rezoned or their authorized agent or representative, the City Council, the Planning Commission, or by the Zoning Administrator. Zoning change applications by property owners and their agents or representatives shall be submitted on a form approved by the Zoning Administrator, which is available in the offices of the Zoning Administrator.
 2. The Zoning Administrator may require the submission of such other information as may be necessary to permit the informed exercise of judgment under the criteria for the review of a zone change application. Such information shall be related to the scale, location, and impacts of the zone change application and may include, by way of illustration and not limitation, analysis of the capacity of the land to support development (e.g., soil characteristics and hydrology) or the additional impacts (or reduction in impacts) that may be created by changing the district designation, in terms of: traffic (trip generation), drainage (flooding and storm surge), visual, aesthetic, and land use adjacency impacts, water and wastewater use and availability, and other information determined by the City as necessary to make an informed analysis and decision.
- C. Criteria for Approval. The Planning Commission may recommend approval, and City Council may grant the approval of a zoning change request if it is demonstrated that:
1. The proposed zoning is preferable to the existing zoning in terms of its likelihood of advancing the goals, objectives, and policies of the Comprehensive Plan or another adopted land use or area plan, including but not limited to redevelopment plans;
 2. The proposed zoning is consistent with the future land use plan of the Comprehensive Plan;
 3. The proposed change is consistent with the implementation of existing or pending plans for providing streets, water and wastewater, other utilities, and the delivery of public services to the area in which the parcel proposed for a zoning change is located;
 4. The range of uses and the character of development that is allowed by the proposed zone will be compatible with the properties in the immediate vicinity of the parcel proposed for a zoning change, and the lot or tract proposed for a zoning change has sufficient dimensions to accommodate reasonable development that complies with the requirements of this UDC, including parking and buffering requirements; and
 5. The pace of development and/or the amount of vacant land currently zoned for comparable development in the vicinity suggests a need for the proposed rezoning in order to ensure an appropriate inventory of land to maintain a competitive land market that promote economic development.
- D. Procedures. Applications for zoning changes are processed according to the sequential steps set out in Subsection 15-714.02., Pre-Application Conference, through Subsection 15-714.10., Public

Meetings and Hearings, and shall be referred to other departments and agencies, as applicable, and then decided by the City Council, upon the recommendation of the Planning Commission, as set out in Subsection 15-713.03., Public Meeting and Hearing Approvals. The Planning Commission shall hold a public hearing. The procedure shall incorporate the following additional requirements, which supersede any conflicting provisions in Section 15-714, Standardized Development Review Procedures:

1. A pre-application conference is required for planned unit developments, or for rezoning to a special or overlay district. A conference is optional for all other application types.
 2. If the Zoning Administrator requires additional information pursuant to Subsection B.2., above, the Zoning Administrator may suspend the process and notify the applicant regarding the specific information requested.
 3. The applicant shall provide the additional information within thirty (30) days of the date of the Zoning Administrator's request. If the materials are not submitted within said time period, the application shall be rejected.
 4. The Planning Commission shall hold a public hearing on the proposed zoning change and issue a final report to the City Council.
 5. The Director shall forward the final report from the Planning Commission to the City Council with a recommendation.
- E. Joint Hearing. After publishing notice as set out in Subsection 15-714.09., Public Notice, the City Council may hold a public hearing pertaining to zoning that is required by this UDC or the statutes of Nebraska jointly with any public hearing required to be held by the Planning Commission, but the City Council shall not take action until it has received the final report of the Planning Commission.
- F. Decision.
1. The City Council shall hold a public hearing on the application at which time they will consider the recommendation of the Planning Commission and take one of the following actions:
 - a. Approve the zoning change by ordinance;
 - b. Approve the zoning change by ordinance with modifications;
 - c. Deny the zoning change; or
 - d. Refer the proposed zoning change back to the Planning Commission for further consideration.
 2. The City Council shall support its decision to deny the zoning change with written findings of fact regarding the approval criteria in Subsection C., above.
- G. Protest Petition. In case of a protest against such zoning change, signed by the owners of twenty (20) percent or more either of the area of the lots included in such proposed change, or of those immediately adjacent on the sides and in the rear thereof extending three hundred (300) feet therefrom, and of those directly opposite thereto extending three hundred (300) feet from the street frontage of such opposite lots, and such change is not in accordance with the Comprehensive Plan, such amendment shall not become effective except by the favorable vote of three-fourths of all the members of the City Council.
- H. Effective Date. In accordance with this Subsection, no amendment, supplement, or change of the UDC or Official Zoning Map shall become effective unless and until the Planning Commission has

[submitted its report and recommendations to the City Council, the City Council has held a public hearing, and a final vote has been taken on the zoning change application by the City Council.](#)

~~[15-716.11]~~ **11-816.05. Conditional Use Permit**

- A. **Generally.** A conditional use is a use that is allowed within a district, but which is subject to specific standards and a public meeting process in order to reduce the potential for incompatibility with other uses within the district. These uses commonly have the potential for various adverse impacts such as traffic congestion, noise, visual and aesthetic impacts, which if unmitigated, could undermine the integrity of the district. The designation of a conditional use means that it is only allowed in a proposed location if all of the conditions applicable to the use, set out in [Section 15-304, Limited and Conditional Uses](#), the criteria of [Subsection B.](#), below, and all of the other applicable requirements of this ~~(UDO)~~UDC or conditions of the Planning Commission are met.
- B. **Criteria for Approval.** In addition to the applicable standards of this ~~(UDO)~~UDC, including those set out in [Section 15-304, Limited and Conditional Uses](#), all conditional uses shall comply with the following standards:
1. The conditional use shall not be of a type that would tend to undermine the implementation of an adopted plan that includes the parcel proposed for development.
 2. The conditional use shall be compatible with surrounding land uses and the natural environment, and will not materially detract from the character of the immediate area or negatively affect the planned or anticipated development or redevelopment trajectory.
 3. There is no practicable alternative location where the use is permitted as-of-right within [one thousand \(1,000\) feet](#) of the ~~(parcel)~~lot or tract proposed for development, or, if such a location exists, the proposed location is more favorable in terms of:
 - a. Providing a needed community service;
 - b. Providing a critical mass of jobs that are likely to pay more than the median wages for the region;
 - c. Providing a balance of land uses, ensuring that appropriate supporting activities, such as employment, housing, leisure-time, and retail centers are in close proximity to one another; or
 - d. Making more efficient use of public infrastructure, such as off-peak street capacity.
 4. The approval of the conditional use will not create a critical mass of similar conditional uses that is likely to discourage permitted uses by making the vicinity less desirable for them.
 5. The conditional use and any conditions of development shall adequately protect public health and safety against natural and man-made hazards which include, but are not limited to, traffic noise, water pollution, airport hazards, and flooding.
 6. The conditional use will not use an unfairly disproportionate share of public services that would compromise the delivery of those services to other uses in the vicinity. Applicable public services include, but are not limited to, utilities, police protection, fire protection, schools, parks, and libraries.
- C. **Procedure.** In issuing a conditional use permit, applications are processed according to the sequential steps set out in [Subsection 15-714.02., Pre-Application Conference](#), through [Subsection 15-714.10., Public Meetings and Hearings](#), and shall be referred to other departments and agencies, as applicable, and then decided by the City Council, upon the recommendation of the Planning Commission, as set out in [Subsection 15-713.03., Public Meeting and Hearing Approval](#).

- D. **Decision; Conditions of Approval.** The ~~{Director}~~Zoning Administrator may recommend, and the Planning Commission may attach, conditions of approval to the conditional use in order to mitigate its impacts (or reasonably foreseeable impacts) such that it complies with the criteria of Subsection B., above, and/or to assure and monitor continued compliance with this ~~{UDO}~~UDC. Conditions shall be roughly proportional to the impacts to which they are addressed, taking into account the mitigating effects of applicable requirements set out in Section 15-304, *Limited and Conditional Uses*. The subject matter of conditions, by way of illustration and not limitation, may include:
1. Additional landscaping or buffering, or landscaping improvements;
 2. Building or façade improvements;
 3. Limitations on the use or related activities;
 4. Noise abatement measures;
 5. Limitations on lighting, such as lighting curfews or restrictions on levels of illumination;
 6. Measures to control, mitigate, or direct traffic;
 7. Parking, loading, and site circulation adjustments;
 8. Restrictions on outdoor displays, sales, or storage;
 9. Standards and assurances regarding the maintenance of property;
 10. Restrictions on signage that relate only to the sign structure, materials, lighting, placement, size, or type, but not to the content of messages displayed (unless such messages are not protected speech); and
 11. An expiration date for the permit, before which the permit must be renewed in order for the conditional use to continue to operate.
- E. **Annotation of Official Zoning Map.** If the application is approved, the Official Zoning Map shall be annotated to reference the approval by case number.

~~15-716.12, Major Changes to Planned Development Preliminary or Final Plans~~

- A. ~~**Generally.** Planned development final plans that contain no changes, modifications, or additions from the approved planned development preliminary plan shall be recommended for approval by the Planning Commission and approved by the City Council if each body determines that all submission requirements have been met.~~
- B. ~~**Substantial Compliance.** A planned development final plan that contains modifications from the approved planned development preliminary plan but is in substantial compliance with the preliminary plan, as set out in Subsection 15-715.04., *Minor Changes to a Planned Development Plans, B., Minor Modifications Defined*, may be approved by the Planning Commission without a public hearing, provided that the Planning Commission determines that all submission requirements have been met. For the purposes of this Subsection, lack of “substantial compliance” shall have the same meaning as a “major change”. Any determination made by the Planning Commission under this Subsection may be appealed to the City Council according to the procedures set out in Subsection 15-717.05., *Appeals to City Council*.~~
- C. ~~**Determination of Major Change.** In the event the Planning Commission determines that the proposed planned development final plan is not in substantial compliance with the approved preliminary plan, the application may not be considered except at a public hearing, subject to Subsection 15-714.09., *Public Notice*. The provisions of Subsection B., above, relating to consideration of the proposed final plan at a public hearing and appeal of the Planning Commission’s determination shall be applicable~~

Commented [AT22]: Redundant to the zoning change process.

~~to consideration of final plans that are determined to be not in substantial compliance with the preliminary plan.~~

~~D. **Criteria.** In reaching a determination as to whether a change is minor and may be approved by the Director as set out in Subsection 15-715.04., *Minor Changes to a Planned Development Plans* or a major change or modification requiring a Planning Commission recommendation and City Council approval, the Director shall use the following criteria:~~

- ~~1. Any increase in intensity or use shall constitute a modification requiring a Planning Commission recommendation and City Council approval. An increase in intensity of use shall be considered to be an increase in usable floor area, an increase in the number of dwelling or lodging units, or an increase in the amount of outside land area devoted to sales, displays, or demonstrations.~~
- ~~2. Any change greater than 10 percent in parking areas resulting in an increase or reduction in the number of spaces approved shall constitute a major change.~~
- ~~3. Structural alterations significantly affecting the basic size, form, style, and location of a building, as shown on the approved plan, shall be considered a major change.~~
- ~~4. Any reduction in the amount of open space or bufferyard, or any change in the location or characteristics of open space, shall constitute a major change.~~
- ~~5. Any change in use from one use group to another shall constitute a major change.~~
- ~~6. Any change in pedestrian or vehicular access or circulation shall constitute a major change.~~

~~E. **Procedure.** Applications for major modifications to planned development preliminary or final plans are processed according to the sequential steps set out in Subsection 15-714.02., *Pre-Application Conference*, through Subsection 15-714.10., *Public Meetings and Hearings*, and shall be referred to other departments and agencies, as applicable, and then decided by the City Council, upon the recommendation of the Planning Commission, as set out in Subsection 15-713.03., *Public Meeting and Hearing Approvals*.~~

~~F. **Decision.** The Planning Commission shall recommend and the City Council shall approve, approve with conditions, or deny the application.~~

~~15-716.13. Zone Change (Rezoning, including Planned Developments)~~

Commented [AT23]: Relocated to coincide with Table 11-813.03.

~~I. **Generally.** The boundaries of any zoning district in the City may be changed, or the zone classification of any parcel of land may be changed, as provided in this Subsection.~~

~~J. **Initiation of Zone Change.**~~

- ~~3. A zone change (rezoning) may be initiated by the owner of the property to be rezoned or their authorized agent or representative, the City Council, the Planning Commission, or by the Director. Zone change applications by property owners and their agents or representatives shall be submitted on a form approved by the Director, which is available in the Planning Department.~~
- ~~4. The Director may require the submission of such other information as may be necessary to permit the informed exercise of judgment under the criteria for the review of a zone change application. Such information shall be related to the scale, location, and impacts of the zone change application and may include, by way of illustration and not limitation, analysis of the capacity of the land to support development (e.g., soil characteristics and hydrology) or the additional impacts (or reduction in impacts) that may be created by changing the district designation, in terms of: traffic (trip generation), drainage (flooding and storm surge), visual, aesthetic, and land use adjacency impacts, water and wastewater use and availability, and other information determined by the City as necessary to make an informed analysis and decision.~~

~~K. **Criteria for Approval.** The Planning Commission may recommend approval, and City Council may grant the approval of a zone change request if it is demonstrated that:~~

- ~~6. The proposed zoning is preferable to the existing zoning in terms of its likelihood of advancing the goals, objectives, and policies of the Comprehensive Plan or another adopted land use or area plan, including but not limited to redevelopment plans;~~
- ~~7. The proposed zoning is consistent with the future land use plan of the Comprehensive Plan (a future land use plan amendment may be processed concurrently with the zone change);~~
- ~~8. The proposed change is consistent with the implementation of existing or pending plans for providing streets, water and wastewater, other utilities, and the delivery of public services to the area in which the parcel proposed for a zone change is located;~~
- ~~9. The range of uses and the character of development that is allowed by the proposed zone will be compatible with the properties in the immediate vicinity of the parcel proposed for a zone change, and the parcel proposed for a zone change has sufficient dimensions to accommodate reasonable development that complies with the requirements of this UDO, including parking and buffering requirements; and~~
- ~~10. The pace of development and/or the amount of vacant land currently zoned for comparable development in the vicinity suggests a need for the proposed rezoning in order to ensure an appropriate inventory of land to maintain a competitive land market that promote economic development.~~

~~L. **Procedures.** Applications for zone changes are processed according to the sequential steps set out in Subsection 15-714.02., *Pre-Application Conference*, through Subsection 15-714.10., *Public Meetings and Hearings*, and shall be referred to other departments and agencies, as applicable, and then decided by the City Council, upon the recommendation of the Planning Commission, as set out in Subsection 15-713.03., *Public Meeting and Hearing Approvals*. The Planning Commission shall hold a public hearing. The procedure shall incorporate the following additional requirements, which supersede any conflicting provisions in Section 15-714., *Standardized Development Review Procedures*:~~

- ~~6. A pre-application conference is required for cluster, planned, and traditional neighborhood developments, or for rezoning to a special or overlay district. A conference is optional for all other application types.~~
- ~~7. The period for completeness review is 20 days from the date of receipt of the zone change application. If the Director requires additional information pursuant to Subsection B.2., above, the Director may retain the application and notify the applicant regarding the specific information requested.~~
- ~~8. The applicant shall provide the additional information within 25 days of the date of the Director's request. If the materials are not submitted within said time period, the application shall lapse.~~
- ~~9. The Planning Commission shall hold a public hearing on the proposed zone change and issue a final report to the City Council. The Planning Commission may defer its report for no longer than its next meeting to have an opportunity to consider revisions to the submittal that are requested from or volunteered by an applicant, which may have a direct bearing on the proposed zone change.~~
- ~~10. The Director shall forward the final report from the Planning Commission to the City Council with a recommendation.~~

~~M. **Joint Hearing.** After publishing notice as set out in Subsection 15-714.09., *Public Notice*, the City Council may hold any public hearing pertaining to zoning that is required by this UDO or the statutes~~

of Nebraska jointly with any public hearing required to be held by the Planning Commission, but the City Council shall not take action until it has received the final report of the Planning Commission.

N. Decision.

3. ~~The City Council shall hold a public hearing on the application at which time they will consider the recommendation of the Planning Commission and take one of the following actions:~~
 - e. ~~Approve the zone change by ordinance;~~
 - f. ~~Approve the zone change by ordinance with modifications;~~
 - g. ~~Deny the zone change; or~~
 - h. ~~Refer the proposed zone change back to the Planning Commission for further consideration.~~
4. ~~The City Council shall support its decision with written findings of fact regarding the approval criteria in Subsection C., above.~~

O. Protest Petition. ~~In case of a protest against such zone change, signed by the owners of 20 percent or more either of the area of the lots included in such proposed change, or of those immediately adjacent on the sides and in the rear thereof extending 300 feet therefrom, and of those directly opposite thereto extending 300 feet from the street frontage of such opposite lots, and such change is not in accordance with the Comprehensive Plan, such amendment shall not become effective except by the favorable vote of three fourths of all the members of the City Council.~~

P. Effective Date. ~~In accordance with this Subsection, no amendment, supplement, or change of the UDO or Official Zoning Map shall become effective unless and until the Planning Commission has submitted its report and recommendations to the City Council, the City Council has held a public hearing, and a final yeas and nays vote has been taken on the zone change application by the City Council.~~

Q. Methods for Expediting. ~~In order to expedite the process set out in Subsection D. above, the City Attorney will convert each proposal for amendment, supplement, or change of the UDO or Official Zoning Map into correct ordinance form, upon receipt of the Planning Commission's recommendations, and enter it on the consent calendar as introduced "by request" by the Mayor, and seconded "by request" by the City Council member whose ward is affected; or, if it affects more than one ward, as seconded "by request" by the City Council member at large receiving the most votes when elected.~~

15-716.14. Text Amendment

F. Generally. ~~The City Council may amend the text of this UDO in accordance with the procedures set out in this Subsection and Section 15-714, *Standardized Development Approval Procedures*, to implement the Comprehensive Plan, as may be amended from time to time, conform to State or Federal legal requirements, address changing or changed conditions, or otherwise advance the public health, safety, and welfare of the City.~~

G. Initiation of Amendment. ~~Petitions for amendments to this UDO shall be made to the Director. The City Council and any other body that is described in Section 15-703, *Bodies Established and Authorized*, may initiate an amendment by motion.~~

H. Criteria for Text Amendments. ~~Recommendations and decisions regarding petitions for amendments to text of this UDO are legislative in nature, but shall be based on consideration of all the criteria that the proposed amendment:~~

Commented [AT24]: Relocated to coincide with Table 11-813.03.

- ~~6. Will help to implement the Comprehensive Plan, or, if it addresses a topic that is not addressed or not fully developed in the Comprehensive Plan, the proposed amendment does not impair the implementation of the Comprehensive Plan when compared to the existing UDO.~~
 - ~~7. Is consistent with the stated purposes of this UDO.~~
 - ~~8. Will maintain or advance the public health, safety, or general welfare.~~
 - ~~9. Will help to mitigate adverse impacts of the use and development of land on the natural or built environment, including, but not limited to mobility, air quality, water quality, noise levels, stormwater management, wildlife protection, and vegetation; or will be neutral with respect to these issues.~~
 - ~~10. Will advance the strategic objectives of the City Council, such as fiscal responsibility, efficient use of infrastructure and public services, and other articulated City objectives.~~
- ~~I. **Procedure.** Text amendments are processed according to the sequential steps set out in Subsection 15-714.02., *Pre Application Conference*, through Subsection 15-714.10., *Public Meetings and Hearings*, and shall be decided by the City Council after recommendation of the Planning Commission, as set out in Subsection 15-713.03., *Public Meeting and Hearing Approvals*. The Planning Commission shall hold a public hearing. The procedure shall incorporate the following additional requirements:~~
- ~~4. **Staff Review.** The Director shall review each proposed amendment in light of the criteria of Subsection C., above, and refer the application to other departments or entities as deemed necessary. Based on the results of those reviews, the Director shall provide a report and recommendation to the Planning Commission.~~
 - ~~5. **Planning Commission Recommendation.**~~
 - ~~e. The Planning Commission shall hold a hearing on the proposed text amendment. Following the hearing, the Planning Commission shall make a final report to the City Council.~~
 - ~~d. If no final report is made within 45 days of the Planning Commission's hearing, then the Planning Commission may request an extension of time from the City Council. Such request shall be within the 45-day period. If no final report is made and no extension is granted, the City Council may act on the proposed amendment without a recommendation from the Planning Commission.~~
 - ~~e. Failure of the Planning Commission to issue a final report to the City Council shall be interpreted as a final report with no recommendation.~~
 - ~~f. Upon receiving the report of the Planning Commission, the Director shall draft an ordinance, submit it to the City Attorney for approval as to form, and shall forward the ordinance to the City Council for consideration.~~
 - ~~6. **City Council Action.** Upon receipt of the final report from the Planning Commission, the City Council shall vote to approve, approve with amendments, or reject the proposed amendment, based on the approval criteria in Subsection C., above. The City Council also may refer the proposed amendment back to the Planning Commission for further consideration, continue a public hearing, or postpone action on an application for a period not to exceed 90 days (or shorter period if the application is being processed concurrently with a plat and the plat application is still pending at the time the amendment is postponed).~~
- ~~J. **No Retroactive Cure of Violations.** The amendment of text of this UDO may transform a legally nonconforming situation into a conforming one. However, no petition for a text amendment shall be used to cure a violation of any party of this UDO.~~

~~15-716.15]~~**11-816.06. [City] Designation of Historic Properties or Districts**

- A. **Generally.** The procedures of this Subsection are used for the petition of property owners to designate historic property or districts. In addition to consideration and approval of petitions by property owners, the City Council, following a public hearing and upon recommendation of the Planning Commission, ~~to~~ may designate historic properties or districts.
- B. **Initiation by Petition.** A property owner may submit an application to the Zoning Administrator for consideration and recommendation of designation as a historic property by the Planning Commission. The application shall be in the form and in the manner required by the Zoning Administrator, which is available in the offices of the Zoning Administrator.
- C. **Initiation by Motion.** ~~[The Planning Commission may review and recommend to the City Council the designation of historic properties or districts.]~~
- D. ~~**Nomination of Historic Properties or Districts.** [The City Council may, without a petition, when brought to its attention or on its own motion], consider, propose, and [act]move to [designate]consider designation of historic properties or districts. In such a case, the City Council's approved motion to do so will substitute for the property owner's application. All relevant procedures outlined in this Subsection shall then be followed. [However,]No [recommendation]action may be [forwarded to]taken by the City Council to designate historic properties or districts unless and until a recommendation of the Planning [Commission's recommendation is supported by a two-thirds majority vote]Commission is received.~~
- E. **Notification.** Owners of properties proposed to be designated as a historic property or included in a designated historic district shall be notified in writing thirty (30) days prior to consideration by the Planning Commission.
- F. ~~**Owner Approval or Opposition.** Owners may appear before the Planning Commission to voice approval or opposition to a historic district designation. Any property owner may object to the decision by the City Council to designate their property as part of a historic district by filing suit against the City before the Courts of the State of Nebraska.~~ Criteria for Historic Designation. A property may be designated historic if it:
- a. Has significant inherent character, interest, or value as part of the development or heritage of the community, state, or nation; or
 - b. Is the site of an event significant in history; or
 - c. Is associated with a person or persons who contributed significantly to the culture and development of the community, state, or nation; or
 - d. Exemplifies the cultural, political, economic, social, ethnic, or historic heritage of the community, state, or nation; or
 - e. Individually, or as a collection of resources, embodies distinguishing characteristics of a type, style, period, or specimen in architecture or engineering; or
 - f. Is the work of a designer whose work has influenced significantly the development of the community, state or nation; or
 - g. Contains elements of design, detail, materials, or craftsmanship which represent a signification innovation; or
 - h. Is part of or related to a square, original town, or other distinctive element of community planning; or

Commented [AT25]: Redundant. This is the textbook purpose of a public hearing.

Commented [AT26]: This is true, but I'm not sure it needs to be codified.

- i. Represents an established and familiar visual feature of the neighborhood or community; or
- j. Has yielded, or may be likely to yield, information important in pre-history or history.

G. Procedure.

1. In designating a historic property or district, ~~{motions}~~applications are processed ~~[and decided by the City Council after recommendation of the Planning Commission]~~ according to the sequential steps set out in Subsection 15-714.02., Pre-Application Conference, through Subsection 15-714.10., Public Meetings and Hearings, and shall be referred to other departments and agencies, as applicable, and then decided by the City Council.
2. Generally, the following steps must be followed according to the general procedures of Section 15-714, Standardized Development Approval Procedures:
 - a. The ~~{motion}~~application is ~~{referred}~~submitted to the ~~{Director}~~Zoning Administrator for review and recommendation.
 - b. Once the application is submitted and processed, the Planning Commission shall conduct a public hearing ~~{whereas}~~wherein the owner, interested parties, or technical experts may present testimony or documentary evidence which will become part of a record regarding the historic, architectural, or cultural importance of the proposed property or district. ~~{Written}~~Notice shall be given ~~[and official signs shall be posted]~~ as is provided in Subsection 15-714.09., Public Notice ~~[with the words, "NOTICE OF HISTORIC PROPERTY OR DISTRICT DESIGNATION." At the hearing, the Director shall make a presentation and make a recommendation to the Planning Commission].~~ Following the hearing and deliberation, the Planning Commission shall forward a recommendation to the City Council.
 - c. ~~{Upon submission by the Planning Commission,}~~The City Council shall also give notice and conduct ~~{its}~~a public hearing on the proposed property or district designation. ~~{Written}~~Notice shall be sent ~~[and official signs shall be posted]~~ in the same manner as for the Planning Commission's hearing. At the hearing, the ~~{Director}~~Zoning Administrator shall present the Planning Commission's recommendation.

H. Decision.

1. The City Council shall approve or reject the ~~{motion}~~application.
2. The City Council shall cause the designation to be filed with the Dodge County ~~{Clerk of Court}~~Register of Deeds, the tax records of the City of Fremont, and the Dodge County Tax Assessor's Office.

I. Tax Incentives and Funding. In order to qualify for any special funding or tax incentives, historic properties, and contributing resources in historic districts, must maintain the characteristics on the basis of which they were designated, must be properly maintained, and follow all relevant guidelines established by the City.

~~{15-716.16}~~**11-816.07. Certificate of Historic Appropriateness (as applicable)**

A. Permit Issuance. No building permit application shall be accepted nor shall any such permit be issued, and no work shall be performed until after approval of a certificate of appropriateness after a public hearing by the Planning Commission, and not until five (5) business days have elapsed from its transmission to the Building Official by the ~~{Director}~~Zoning Administrator with any advice as to conditions which may have been attached to such a certificate.

- B. **Exemption.** A public hearing for an application for a certificate of appropriateness is not required in the instance where the Planning Commission determined that the application is not a substantive change and that the certificate complies with the standards of this ~~{UDO}~~UDC and other applicable guidelines and ordinance provisions.
- C. **Procedure.** In issuing a Certificate of Historic Appropriateness, applications are processed according to the sequential steps set out in **Subsection 15-714.02.**, *Pre-Application Conference*, through **Subsection 15-714.10.**, *Public Meetings and Hearings*. The certificate of historic appropriateness may be issued by the ~~{Director}~~Zoning Administrator, after a public hearing and approval by the Planning Commission.
- ~~D. **Timing.** Within not more than 45 days after the filing of an application the Planning Commission shall make its findings and decision, giving consideration to the factors. Written notice of the decision shall be given to the applicant setting out the reasons for the Planning Commission's decision.~~
- E. **Approval.** Evidence of approval shall be by the issuance of a certificate of appropriateness. The Planning Commission shall cause to have a record kept of all applications and all proceedings and decisions. The Planning Commission shall have the right to make such recommendations for changes and modifications as it may deem to be necessary in order to enable the applicant to meet its requirements.
- F. **Project Phasing.** Certificates of Historic Appropriateness may be issued for distinct and separate phases of an ongoing project.
- G. **Submission of a New Application.** If the Planning Commission determines that a Certificate of Historic Appropriateness should be denied, a new application affecting the same property may be submitted to the ~~{Director}~~Zoning Administrator only if substantial change is made in the plans for the proposed work (see **Subsection 15-714.13.**, *Successive Application*).
- H. **Resubmission of a Denied Application.** A property owner or his/her agent or representative may resubmit the same application for a Certificate of Historic Appropriateness affecting the same parcel or project after **twelve (12)** months have passed. If, in the opinion of the ~~{Director}~~Zoning Administrator, there are substantial changes and improvements in the application for a project, the ~~{Director}~~Zoning Administrator, shall allow an owner to resubmit an application for Certificate of Historic Appropriateness affecting the same parcel or lot after a waiting period of **ten (10)** days from the date of the initial denial.
- I. **Appeal of Decision.** In the event an applicant for a Certificate of Historic Appropriateness disagrees with the determination of the Planning Commission regarding the issuance of a certificate, the applicant may file an appeal as set out in **Subsection 15-717.05.**, *Appeals to City Council*.
- J. **Hardship Waiver.** See **Subsection 15-717.04.**, *Hardship Waiver for Certificates of Appropriateness (as applicable)*.

~~{Sec. 15-7}~~11-817 Variances, Appeals, and Interpretations

~~{15-7}~~11-817.01. Eligible Applicants

- A. **Generally.** There are certain eligible applicants who may initiate an application for variances, appeals, and interpretations from the standards, requirements, and terms of this ~~{UDO}~~UDC. Parties not listed in **Table 15-717.01.**, *Eligible Applicants*, may petition the City Council to initiate a change, but the City Council is not bound to act on behalf of the petitioner.

B. **Eligibility.** The following applicants may make application for variances and appeals to the standards, requirements, and terms of this ~~UDO~~UDC:

Table 15-7 11-817.01. Eligible Applicants		
Eligible Applicant	Variance	Appeal
Property Owner	Yes	Yes
Agent or Representative of Property Owner	Yes	Yes
Option Holder	No	No
Aggrieved Party	No	Yes
Director	No	Yes
Planning Commission	No	No
City Council	No	No

Commented [AT27]: Who would the Director/Zoning Administrator make an appeal of, himself?

~~15-7~~11-817.02. Variances

- A. **Generally.** The variance process is intended to provide limited relief from the requirements of this ~~UDO~~UDC in those cases where strict application of a particular requirement will create an unnecessary hardship by preventing the use and development of land in a reasonable manner that is otherwise allowed under this ~~UDO~~UDC.
- B. **Exceptions.** Some variances are not within the jurisdiction of the Board of Adjustment (“BOA”), and are therefore, not subject to this Subsection. These variances ~~are~~include, but are not limited to:
1. Building code variances (variances to the requirements of adopted standardized building codes and amendments to such codes that are adopted by the City), which are subject to the requirements of **Chapter 9, Building Regulations, Municipal Code**, or where such Chapter is silent, the adopted standardized code.
 2. Variances from the terms of one or more conditions of approval imposed by a development review body described in **Section 15-700, Administrative Bodies**. Modifications to conditions of approval shall be sought from the body that granted the approval.
 3. Variances that would have the effect of making existing nonconforming or illegal construction (buildings and structures), site improvements, parking, or landscaping conforming. Nonconforming situations are subject to the requirements of **Section 15-720, Nonconformities**.
 4. Variances to the requirements of **Section 15-524, Floodplain Management and Flood Damage Prevention**, which are handled by the ~~Director~~Zoning Administrator, in consultation with the Director of Public Works, as set out in **Subsection 15-703.05., Director of Public Works**.
- C. **Prohibitions.**

1. Variances shall not be used to allow a use in a district in which the use is prohibited or which would constitute a change in district boundaries (variances to [Section 15-300, Land Uses](#)).
 2. Variances shall not be used to modify any requirements that are set out in [Section 15-304, Limited and Conditional Uses](#), with respect to an application for conditional use approval.
 3. State and/or Federal laws and/or regulations may not be varied by the City unless such authority is expressly granted to the City.
- D. **Authority of BOA.** Variances are processed by the BOA as a public hearing meeting approval. The BOA may approve, approve with conditions, or deny a variance. The BOA may impose such conditions and restrictions upon the premises benefited by a variation as may be necessary to comply with the standards established in this Subsection, to reduce or minimize the effect of such variations upon other property in the neighborhood and to better carry out the general intent of this ~~UDO~~UDC.
- E. **Obligation of Applicant.** It is the obligation of an applicant, who bears the burden of proof, to present facts about the circumstances which would justify a variance in convincing fashion so that the decision-making authorities (e.g., Board of Adjustment, Planning Commission, or ~~Director~~Zoning Administrator) may be satisfied that the request is not injurious from a public health, safety, and general welfare perspective, and that the effect of the variance will not negatively impact the immediate or general environs of the City.
- F. **Criteria for Issuance.** The BOA may grant a variance from the strict application of this ~~UDO~~UDC if the variance is not prohibited by [Subsection C.](#), above, and the BOA makes findings based upon the evidence presented to it in each specific case that all of the following are demonstrated:
1. Strict application of the zoning regulations will produce undue hardship;
 2. Such hardship is not shared generally by other properties in the same zoning district and within the same vicinity;
 3. The authorization of such variance will not be of substantial detriment to adjacent property and the character of the district will not be changed by the granting of the variance;
 4. The granting of such variance is based upon reason of demonstrable and exceptional hardship as distinguished from variations for purposes of convenience, profit, or caprice;
 5. The condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable a general regulation to be adopted as an amendment to the zoning regulations; and
 6. The granting of the variance will not cause substantial detriment to the public good and will not substantially impair the intent and purpose of this ~~UDO~~UDC or other ordinances/resolutions.
- G. **Conditions for Variances in the Floodway Overlay (FW) District.**
1. Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre ~~or~~ less in size, contiguous to and surrounded by lots with existing structures constructed below the base flood level providing [Subsections 2. through 6.](#), below, have been fully considered. As the lot size increases beyond the one-half acre, the technical jurisdiction required for issuing the variance increases.
 2. Variances may be issued for the reconstruction, rehabilitation, or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set out in this Subsection.
 3. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

4. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
5. In addition to the criteria out for variances in **Subsection 15-703.03**, *Board of Adjustment*, variances shall only be issued upon:
 - a. A showing of good and sufficient cause;
 - b. A determination that failure to grant the variance would result in exceptional hardship to the applicant; and
 - c. A determination that the granting of the variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
6. Any applicant to whom a variance is granted shall be given a written notice over the signature of a community official and maintained with the record of all variance actions that:
 - a. The issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance; and
 - b. Such construction below the base flood level increases risks to life and property.
- H. **Reports to the City Council.** When an application for a variance is denied for failure to meet the requirement of special conditions, then the BOA ~~shall~~ may report to the City Council as to whether it is appropriate and reasonably practicable to formulate a general regulation for such conditions, or situations, and amend the ~~UDO~~UDC accordingly.
- I. **Notification.** All applicants requesting a variance from the provisions of this ~~UDO~~UDC shall be notified in writing of the final action taken by the authorized governmental authority.
- J. ~~[Timing. An approved amendment by the City Council to the text or map shall become effective immediately after such adoption. Any amendment to the Official Zoning Map shall be made by the Director, or an appointee, within seven days thereafter.]~~
- K. ~~[Order to Issue Permit. An approved variance shall be accompanied by an order of the BOA to direct the issuance of a permit.]~~
- L. ~~[Annotation and Recording. Variance approvals shall be recorded by the Director at the applicant's expense. Upon recording, the Director shall annotate the Official Zoning Map with the case number and the variance.]~~

Commented [AT28]: Contrary to State Statute.

Commented [AT29]: Or what?

Commented [AT30]: Why?

Commented [AT31]: Why?

~~[15-7]~~11-817.03. Administrative Appeals

- A. **Qualification.** Appeals to the BOA may be taken by any person aggrieved or by any officer, department, board, or bureau of the City affected by any decision of the ~~Director~~Zoning Administrator or other staff person set out in **Section 15-703**, *Bodies Established and Authorized*.
- B. **Notice of Appeal.** Appeals shall be taken within a reasonable time, as provided by the rules of the BOA, by filing with the officer from whom the appeal is taken, and with the BOA a notice of appeal specifying the grounds for the appeal.
- C. **Transmission of Records.** The officer from whom the appeal is taken shall transmit to the BOA all the papers constituting the record upon which the action appealed from was taken, after all transcript costs and all other costs of appeal are paid by the person or entity taking the appeal, and the appellant.

- D. **Re-Hearing.** Requests for re-hearing of an appeal shall not be granted by the BOA unless the applicant has additional relevant evidence to present which was not presented at the first hearing. Only on request for a re-hearing shall new evidence be allowed. Requests shall be filed with the Zoning Administrator within ten (10) days of the BOA decision being rendered.
- E. **Stay of Proceedings.** An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the BOA after the notice of appeal shall have been filed, that by reason of facts stated in the certificate, a stay would in his or her opinion, cause imminent peril of life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order that may be granted by the BOA or by a court of record on application or notice to the officer from whom the appeal is taken and on due cause shown.

~~F. **Required Deposit.** Any person requesting an appeal for a condition which is in violation at the time of filing of the appeal or which would become in violation during the pendency of the appeal if the appeal had not been filed, must deposit with the Director a fee in the amount reflected on the fee schedule established by the City Council, as amended from time to time. If the BOA rules against the applicant, the deposit shall be forfeited if the BOA specifically finds that the appeal was for a matter over which the BOA has no authority to act. If, in the opinion of the Director or City Attorney, the BOA has no authority to act on the matter requested, the applicant shall be so notified in writing at the time of the application on a form to be provided by the Director and signed by the applicant. If the deposit is not forfeited, it shall be returned to the applicant within 10 days after the BOA's decision on the matter.~~

Commented [AT32]: Appeals for a condition ... will not be received by the City as the BOA does not have authority to act on these matters. Furthermore, any appeal for which the Board of Adjustment, Planning Commission, or City Council does not have authority to act will not be received by the City and therefore no deposit is required.

~~[15-7]~~ **11-817.04. Hardship Waiver for Certificates of Appropriateness (as applicable)**

- A. **Generally.** The relief available in this Subsection is intended only for applicants whose applications for a Certificate of Historical Appropriateness are denied.
- B. **Economic Hardship Waiver.** Within ten (10) ~~[calendar]~~ days of receipt of written notification from the Planning Commission of the denial of a Certificate of Historical Appropriateness to demolish a historic resource or any part of it, an aggrieved applicant may file an economic hardship waiver application with the ~~[Director]~~ Zoning Administrator. Within sixty (60) ~~[calendar]~~ days of the applicant's receipt of the denial, documentation and exhibits shall be submitted to the ~~[Director]~~ Zoning Administrator by the applicant, including, without limitation:
1. Appraisal of the property by a licensed real estate appraiser;
 2. Estimated costs for appropriate rehabilitation prepared by a licensed architect or engineer with experience in historic preservation;
 3. Documentation of consideration of alternative uses for the property; and
 4. Documentation of public advertisement to solicit a buyer willing to appropriately rehabilitate the property.
- C. **Waiver Required.** If a Certificate of Historical Appropriateness is denied, then no building permit or demolition permit shall be issued unless the Planning Commission makes a finding that hardship exists and approves a waiver.
- D. **Standards for Approval of Waiver.** Applicants for economic hardship waivers must prove with adequate and sufficient documentary and other evidence, that:

Commented [AT33]: It's assumed calendar days unless otherwise specified as "business" days.

1. The owner cannot make reasonable beneficial use of or, for income-producing properties, the property is not capable of yielding a reasonable return, regardless of whether that return represents the most profitable return possible;
 2. Reasonable efforts to find a party interested in acquiring the property and preserving it have failed; and
 3. The property cannot be adapted for any other use, whether by the current owner or by a purchaser, which would render it capable of yielding a reasonable return.
- E. **Good Faith Required.** The applicant shall consult in good faith with the Planning Commission, local preservation groups and interested parties in a diligent effort to seek an alternative that will result in preservation of the historic resource.
- F. **Waiver Procedures.**
1. The Planning Commission shall hold a public hearing on the hardship waiver application no later than the second regular Planning Commission meeting ~~{from the date the completed application is received by the Director}~~ **following the sixty (60) day discovery period.**
 2. The applicant shall be given written notice of the time and place of the meeting ~~{by regular mail sent at least five business days before the meeting to the address on the application.~~
 3. ~~Published and posted notice with the words, "NOTICE OF HARDSHIP APPLICATION FOR WAIVER OF CERTIFICATE OF APPROPRIATENESS" are required}~~ according to the standards of Subsection 15-714.09., *Public Notice* ~~{with the number and location of signs to be determined by the Director}~~.
 4. Following the hearing the Planning Commission shall decide whether to grant or deny the hardship application.
 5. ~~{In the event the Planning Commission does not act within 120 calendar days of the receipt of the application, the hardship application shall be deemed approved and a Certificate of Historical Appropriateness granted.}~~
- G. **Written Decision Required.** ~~{A}~~ Written notice of the Planning Commission's decision ~~{stating the reasons for granting or denying the hardship application}~~, shall be ~~{sent}~~ **provided** to the applicant ~~{by certified mail within five business days after it is rendered}~~.
- H. **Appeal to City Council.** An applicant who is dissatisfied with any action of the Planning Commission relating to the issuance or denial of a Certificate of Historical Appropriateness or a waiver of the same that is aggrieved by such decision of the Planning Commission may present to the City Council a petition, duly verified, setting forth that such decision is unjust, in whole or in part, and specifying the grounds of injustice. Such petition shall be presented to the City Council within ~~{five business}~~ **ten (10)** days after the final decision of the Planning Commission, and not thereafter. The City Council shall give notice, follow publication procedure, hold hearings, and make its decision according to **Section 15-717.05., Appeals to City Council.**

~~{15-7}~~ **11-817.05. Appeals to City Council**

- A. **Generally.** Appeals from decisions of the Planning Commission are heard by the City Council as provided in **Subsection C.**, below.
- B. **Jurisdiction; Limitation of Jurisdiction.** The City Council may decide appeals of dispositive decisions of the Planning Commission which are made during the processing of applications for approvals pursuant to this ~~{UDO}~~ **JDC**. An asserted error in any order requirement, permit, decision,

Commented [AT34]: Or what? It still doesn't change the decision.

determination, refusal, or interpretation made by the Planning Commission in interpreting the provisions of this ~~{UDO}~~UDC may be appealed to the City Council, provided that:

1. The action is dispositive with respect to the application or a material part of it; and
2. The appeal is not used to address or resolve disputed questions of fact or law in connection with an enforcement action, or to seek relief from an enforcement action.

C. **Filing of Appeal; Automatic Stay.** An appeal may be brought by any person or entity that is aggrieved by the decision appealed, as follows:

1. A complete application for an appeal, including required fees, shall be filed with the ~~{Director}~~Zoning Administrator within **ten (10)** days of the date of the decision appealed from. No appeal will be heard if the application is untimely.
2. The filing of an appeal shall stay all proceedings and further actions by both parties in furtherance of the contested action, unless the ~~{Director}~~Zoning Administrator certifies to the City Council that, in his or her opinion by reason of facts stated in the certification, such a stay could cause imminent peril to life and/or property. In such case, proceedings shall not be stayed except by a restraining order granted by the City Council or by a court of law on notice to the ~~{Director}~~Zoning Administrator, with due cause shown.
3. Upon a finding that the application is complete, the ~~{Director}~~Zoning Administrator shall schedule the appeal for consideration at a hearing before the City Council. The ~~{Director}~~Zoning Administrator shall transmit all applications and other records pertaining to such appeal to the City Council.

D. **Hearing.**

1. Upon receiving the application materials from the ~~{Director}~~Zoning Administrator, the City Council shall hold a public hearing on the appeal.
2. The burden of proof shall rest with the appellant.

E. **Effect of Appeal.** The City Council shall have the power to review the decision de novo, and may grant the appeal, grant the appeal with conditions that modify the order appealed from, or deny the appeal.

~~{15-7}~~11-817.06. Interpretation

A. **Generally.** It is the intent of this ~~{UDO}~~UDC that all questions of interpretation and enforcement shall be first presented to the ~~{Director}~~Zoning Administrator and that such questions shall be presented to the BOA only on appeal from the decision of the ~~{Director}~~Zoning Administrator and that recourse from the decision of the BOA shall be to the courts as provided by law.

B. **Requests for Interpretation.** Any person may request an administrative interpretation of the terms, provisions, or requirements of this ~~{UDO}~~UDC if the application of the terms, provisions, or requirements is not obvious.

C. **Applicability.** This Subsection applies to any request to interpret a provision of this ~~{UDO}~~UDC.

D. **Application Fee.**

1. It is the intent of the City Council that this ~~{UDO}~~UDC be accessible and clear to the residents, business owners, and landowners in the City. As such, City staff will provide:
 - a. General information to residents, business owners, and landowners with respect to the districts that apply to property;

- b. References to the standards that may be applied to individual uses or buildings; and
 - c. Requested public records that are related to the administration and enforcement of this ~~{UDO}~~UDC.
- 2. It is not the intent of the City Council that the ~~{Director}~~Zoning Administrator affirmatively evaluates the full development potential of individual properties or resolve other such detailed inquiries about specific properties or issues without a pending application.
 - 3. Within these guidelines, the ~~{Director}~~Zoning Administrator is authorized to waive the application fee for specific inquiries that do not involve material time commitments or copying costs, and to charge an hourly research fee for broad inquiries that are likely to involve material time commitments. Such fee shall be according to a fee schedule promulgated by City Council resolution.
- E. **Process.** The interpretation is made by the official charged with administering the provision for which an interpretation is requested (the “responsible official”). The responsible official and the City are not obligated to render an interpretation. The interpretation is not subject to appeal, although related appeals may proceed as provided in this ~~{UDO}~~UDC (e.g., appeals of decisions on applications which may be impacted by the interpretation). After an interpretation is issued, the ~~{Director}~~Zoning Administrator may propose a text amendment to this ~~{UDO}~~UDC to codify the interpretation.
- F. **Application Requirements.**
- 1. Applications for interpretations shall be submitted on a form approved by the ~~{Director}~~Zoning Administrator.
 - 2. The applicant shall cite the code provisions for which interpretation is sought, a description of a hypothetical situation or scenario to which the application of this ~~{UDO}~~UDC is in question, and a statement of the nature of the interpretation sought.
- G. **Decision.** Within thirty (30) days after the application for an interpretation is filed, the responsible official shall make a good faith effort to interpret the provision that is the subject of the application. The responsible official shall respond to the applicant in writing, and shall keep a copy of the response in a record of interpretations. The responsible official may consult with the ~~{Director}~~Zoning Administrator in drafting the interpretation.
- H. **Standards for Interpretations.** The interpretation shall be based on:
- 1. The materials or scenario posed by the applicant;
 - 2. The plain and ordinary meaning of the terms that are subject to the application for an interpretation as set out in Webster’s Third New International Dictionary or other current and authoritative dictionaries;
 - 3. The purpose statement for the ~~{UDO}~~UDC section that is subject to interpretation;
 - 4. Any other provision of the Comprehensive Plan, the Municipal Code, State law, or Federal law that are related to the same subject matter;
 - 5. Any technical meanings of the words used in the provision subject to interpretation;
 - 6. Other interpretations rendered by the City relating to the same or related provisions of this ~~{UDO}~~UDC;
 - 7. The consequences of the interpretation;
 - 8. The legislative history;
 - 9. The problem or issue that is addressed by the provision subject to interpretation; and

10. Sources outside the ~~{UDO}~~UDC provisions that provide a related source for the definition, such as technical or professional literature.
- I. **No Legal Advice.** The City does not provide legal advice to applicants or property owners. Private parties, including purchasers, lenders, title insurers, and others are advised to seek legal opinions from their attorneys with respect to specific potential applications of this ~~{UDO}~~UDC. No interpretation provided by City staff pursuant to this Subsection shall be construed as legal advice.
- J. **No Binding Effect.** It is the policy of the City to evaluate applications for development approval comprehensively on their individual merits. Therefore, interpretation may be persuasive to the applicable development review bodies, but they are not binding on the City
- K. **Recordkeeping.** The ~~{Director}~~Zoning Administrator shall keep records of interpretations made pursuant to this Subsection.

~~{Sec. 15-7}~~§11-818 Reserved to ~~{Sec. 15-7}~~§11-819

~~{15-7}~~11-820 NONCONFORMITIES

~~{Sec. 15-7}~~§11-821 Purpose

- A. **Generally.** The City includes areas that have been developed for many years. Therefore, applying new regulations to existing development will create situations in which existing lot dimensions, development density or intensity, land uses, open spaces, buildings, structures, landscaping, buffering, parking and loading areas, or signs do not strictly comply with the new requirements, even though they complied with the regulations at the time they were permitted and constructed. The fact that these nonconformities were at one time conforming means that they are now considered “legally nonconforming” and therefore, will be permitted to continue without immediate retrofit until significant site or use changes are proposed. This Section sets out fair rules for whether, when, and how the regulations of this ~~{UDO}~~UDC apply to existing development.
- B. ~~{Conversion of Nonconformities. Generally, nonconforming uses, buildings, structures, and signs are not permitted to be enlarged, expanded, increased, nor be used as grounds for adding other structures or uses that are now prohibited in the same zoning district. In these instances, this Section provides standards by which minor nonconforming uses can be made “conforming” through a public hearing process. Nonconforming buildings and structures may be made conforming with a variance process, but only if all standards for variances are met.}~~
- C. **Reduction of Nonconformities.** It is the policy of the City to encourage reinvestments in property that increase its value and utility and improve its quality and character. Since bringing a developed parcel into full compliance with this ~~{UDO}~~UDC may involve substantial cost (which could discourage reinvestment), this Section provides a set of thresholds for determining when new construction or modifications to development trigger a requirement for meeting the various standards of this ~~{UDO}~~UDC.
- D. **Unlawful Uses, Buildings, Structures, or Signs.** This Section does not authorize or legitimize uses, buildings, structures, or signs that are not “legally nonconforming” but instead remain “unlawful”, and are subject to all the provisions of this ~~{UDO}~~UDC (including enforcement provisions) and any other applicable law. Likewise, this Section does not legitimize unlawful subdivisions of property that may have occurred before the effective date of this ~~{UDO}~~UDC.

Commented [AT35]: This has the same material effect as granting a variance which is not a power granted to the governing body by the State.

~~[Sec. 15-7]~~ §11-822 Application

- A. **Generally.** This Section applies to uses, buildings, structures, lighting, landscaping, bufferyards, signs, parking, site access, site improvements, and lots that were lawfully constructed or established, but do not conform to the requirements of this ~~[UDO]~~UDC.
- B. **Exceptions to this Section.**
1. *Maintenance.* This Section does not exempt property owners from ongoing maintenance requirements, including, but not limited to, the maintenance of landscaping, parking lots (e.g., upkeep of paving and striping), and drainage structures and systems. See [Section 15-724.03](#), *Repairs and Modifications*.
 2. *Eminent Domain; Governmental Acquisition.* Any nonconforming structure or land expressly created or caused by a conveyance of privately-owned land to a Federal, State, or local government to serve a public purpose is conforming for the purposes of this ~~[UDO]~~UDC, and is not subject to the limitation of this Section. This exemption applies only in cases where private land is obtained by a governmental entity for a public purpose, through condemnation, threat of condemnation or which otherwise creates a nonconforming situation in the remaining parcel in terms of setback, lot size, or other standards of this ~~[UDO]~~UDC. This exemption does not apply to right-of-way dedication or other public conveyances of land required by the City in the course of subdivision or other development approvals pursuant to this ~~[UDO]~~UDC.
- C. **Types and Classes of Nonconformities.** Types and classes of nonconformities are set out in [Section 15-723](#), *Types and Classes of Nonconformities*. The application of the standards of this Section is based on the type of nonconformity that is being addressed.
1. *Types.* There are [ten \(10\)](#) types of nonconformities including:
 - a. Uses;
 - b. Buildings;
 - c. Structures;
 - d. Lighting;
 - e. Landscaping and buffering;
 - f. Signs;
 - g. Parking;
 - h. Site access;
 - i. Site improvements (e.g., fencing, screening, storage and display, etc.); and
 - j. Lots.
 2. *Classes.* There are two [\(2\)](#) classes of use nonconformities including “major” and “minor”.
- D. **General Regulations.** Set out in [Section 15-724](#), *General Regulations*, is the standards for when nonconforming situations must be made conforming (or more conforming) or, alternatively, terminated or removed. It also sets out the circumstances in which a nonconforming situation may be restored or resumed after damage, destruction, or temporary cessation of the use.
- E. **Compliance Threshold.** Set out in [Section 15-725](#), *Compliance Thresholds*, is the standards for determining when new construction or modifications to development trigger a requirement for conformity with the various requirements of this ~~[UDO]~~UDC.

F. **Effect of Section.**

1. *Effect on Existing Development Entitlements.* Nothing in this ~~{UDO}~~UDC shall be interpreted to require a change in plans, construction, or designated use of any building in which a building permit was lawfully issued prior to the effective date of adoption or amendment of the ~~{UDO}~~UDC, provided construction was commenced within ninety (90) days after obtaining the building permit and diligently completed.
2. *Effect on Existing Unlawful Uses, Buildings, Signs, Structures, and Parcels.* Any use, building, sign, structure, and/or parcel of land which was used, erected, or maintained in violation of any previous zoning regulations shall not be considered as a legal, nonconforming use, building, sign, structure, and/or parcel, and shall be required to comply with all provisions of this ~~{UDO}~~UDC.

~~{Sec. 15-7}~~§11-823 **Types and Classes of Nonconformities**

~~{15-7}~~11-823.01. **Uses**

- A. **Generally.** A nonconforming use is a use of land that was lawfully established (e.g., it was allowed and legally authorized, if legal authorization was required) on a ~~{parcel or}~~lot or tract before the effective date of this ~~{UDO}~~UDC (or amended hereto), that is no longer allowed after the effective date of this ~~{UDO}~~UDC (or amended hereto). The following uses are legally nonconforming uses:
1. *Permitted Uses and Structures.* Uses that were lawfully established but are not currently listed as Permitted, Limited, or Conditional Uses in the district set out in Section 15-300, Land Uses, except that structures that were listed as uses of land prior to the effective date and are not regulated as accessory buildings or structures (see Section 15-410, Accessory and Supplemental Standards) are either:
 - a. Conforming structures (if they comply with the requirements of this ~~{UDO}~~UDC); or
 - b. Nonconforming structures (see Subsection 15-723.03., Structures).
 2. *Limited Uses.* Uses that are listed as Limited Uses in the district set out in Section 15-300, Land Uses, but were lawfully established without a limited use permit and do not comply with the applicable standards of Section 15-304, Limited and Conditional Uses. For these uses, the nonconforming use status may be removed by obtaining a limited use permit.
 3. *Conditional Uses.* Uses that are listed as Conditional Uses in the district set out Section 15-300, Land Uses, but were lawfully established without a conditional use permit. For these uses, the nonconforming use status may be removed by obtaining a conditional use permit. See Section 15-726, Conversion of Nonconformities.
 4. *Flood Prone Uses.* Uses that were lawfully established within a floodplain or floodway, but are no longer permitted in the floodplain or floodway. See Section 15-524, Floodplain Management and Flood Damage Prevention.
- B. **Classifications of Nonconforming Uses.** There are two (2) classes of nonconforming uses. The classification of the nonconforming use affects whether it can be converted to a conforming use as set out in Section 15-726, Conversion of Nonconformities. The classifications include:
1. *Major Nonconforming Uses.* Major nonconforming uses are those uses for which the nonconformity generates a nuisance per se or represents such incompatibility with adjacent uses and/or the Comprehensive Plan that public policy favors their elimination from the district if they

are discontinued, abandoned, or destroyed. As set out in [Section 15-300, Land Uses](#), major nonconforming uses include, but are not limited to, commercial feedlots and mobile homes.

2. *Minor Nonconforming Uses.* All nonconforming uses that are not classified as major nonconforming uses are minor nonconforming uses. Such uses may be converted to conforming uses as provided in [Section 15-726, Conversion of Nonconformities](#).

~~15-7~~11-823.02. Buildings

A nonconforming building that was lawfully constructed prior to the effective date of this ~~UDO~~UDC (or amendment hereto) that does not conform to the height, yard, impervious cover, coverage ratio, density, intensity, building scale, or design standards that are applicable to the same type of building in the district in which the building is located.

~~15-7~~11-823.03. Structures

- A. **Generally.** A nonconforming structure is a structure other than a building that was lawfully constructed prior to the effective date of this ~~UDO~~UDC (or amendment hereto) that does not conform to the standards that are applicable to the same type of structure in the district in which the structures is located.
- B. **Examples.** The following are illustrative examples of nonconforming structures:
 1. Fences or walls that do not comply with the height, setback, or material standards set out in [Subsection 15-414.01., Fences and Walls](#) and [Subsection 15-415.02., Fences and Walls](#);
 2. Freestanding carports that do not comply with the location, height, construction methods, design and appearance, or building standards set out in [Subsection 15-413.04., Carports and Porte-Cocheres](#); and
 3. Structures located in floodplains, floodways, required yards, or open space areas that do not comply with the applicable regulations of this ~~UDO~~UDC.

~~15-7~~11-823.04. Landscaping and Buffering

- A. **Generally.** Nonconforming landscaping and buffering is landscaping and buffering (or lack thereof) that does not conform to the landscape or bufferyard area or the planting requirements of [Section 15-610, Landscaping and Buffering](#), or other provisions of this ~~UDO~~UDC that require the designation of open space, landscape surface areas, or the buffering of uses. Nonresidential, mixed-use, and multifamily residential parcels that were lawfully developed but do not include the required landscape surface ratio, open space ratio, or bufferyard that is required after the effective date of this ~~UDO~~UDC, or amendment hereto, are also nonconforming with respect to landscaping and buffering.
- B. **Single-Family and Two-Family Exception.** Residential housing types other than multifamily are conforming with respect to landscaping if it was platted prior to the effective date of this ~~UDO~~UDC.

~~15-7~~11-823.05. Parking

Nonconforming parking refers to parking spaces, drive aisles, and loading areas that do not conform to the requirements of this ~~Ordinance~~UDC that are set out in [Section 15-600, Parking, Loading, and Access](#), in terms of their number, dimensions, or the surfacing and maintenance of off-street parking areas.

~~{15-7}~~11-823.06. Lots

Nonconforming lots are lots that were lawfully created before the effective date of this ~~{UDO}~~UDC, or amendments hereto, but which no longer comply with the lot width, frontage, depth, area, or access requirements of this ~~{UDO}~~UDC, as set out in ~~Section~~ 15-400, *Development Yield and Lot Standards*.

~~{15-7}~~11-823.07. Signs

A. **Generally.** Any sign located within the City on the effective date of this ~~{UDO}~~UDC that does not conform to the provisions of ~~Section~~ 15-620, *Signs*, or, if applicable, ~~Section~~ 15-304, *Limited and Conditional Uses*, is a “legal nonconforming” sign, provided it also meets the following requirements:

1. The sign is a permanent sign; and
2. One (1) of the following apply:
 - a. The sign was approved by a sign permit before the effective date of this ~~{UDO}~~UDC, or amendment hereto, if a permit was required under applicable law; or
 - b. ~~If no sign permit was required~~ under applicable law for the sign in question, the sign was in all respects in conformity with the applicable law or conditions of approval immediately prior to the effective date; or
 - c. The sign had legal nonconforming status on the effective date of this ~~{UDO}~~UDC.

B. **Existing Signs on Annexed Property.** If land is annexed into the City after the effective date of this ~~{UDO}~~UDC, any signs that do not conform to the provisions of this ~~{UDO}~~UDC at such time shall have legal nonconforming status if:

1. Under applicable regulations, the sign was legal in all respects immediately prior to annexation;
2. The sign is a permanent sign; and
3. The annexation was not conditioned upon the removal or modification of the sign.

~~{Sec. 15-7}~~§11-824 General Regulations

~~{15-7}~~11-824.01. Termination, Restoration, and Removal

A. **Generally.** This Subsection sets out the standards for when a nonconformity must be terminated or removed, and when it is allowed to be restored after temporary cessation, damage, or destruction.

B. **Nonconforming Uses.**

1. If a major nonconforming use is discontinued for a period of twelve (12) months, for any reason, whether or not the equipment or fixtures are removed, it shall not be resumed.
2. If a nonconforming manufactured home or nonconforming mobile home is discontinued for a period of one hundred eighty (180) days, for any reason, it shall not be resumed. The applicant for compliance under this Subsection shall provide the ~~{Director}~~Zoning Administrator with a notarized letter stating that the replacement occurred within one hundred eighty (180) days of the discontinuance of the previous home.
3. If a minor nonconforming use is discontinued for a period of twelve (12) months, for any reason, whether or not the equipment or fixtures are removed, it shall not be resumed. However, if an application for conversion of the use is filed pursuant to ~~Section~~ 15-726, *Conversion of*

Commented [AT36]: This does not include temporary signs. Temporary signs – by its very definition – cannot become permanent nonconforming signs and must be removed within the period designated.

Nonconformities, before the end of the twelve (12) month period, the use may be resumed as a conforming use after the period expires if the application is granted.

4. Uses or adjuncts thereof which are or become nuisances shall not be entitled to continue a nonconforming use.

C. Nonconforming Buildings, Structures, and Elements of Buildings or Structures.

1. If a nonconforming building or structure or a nonconforming element of a building or structure is damaged or destroyed by any means, or declared unsafe by the Building Official to an extent that repairs would exceed more than sixty (60) percent of the replacement cost of the building or structure or a damaged nonconforming element of a building or structure, the building, structure, or elements of the building or structure shall be reconstructed in conformity with the provisions of this ~~UDC~~UDC.
2. If the reconstruction cost and/or area of reconstruction (whichever is less) is less than or equal to sixty (60) percent of the cost of replacement or area of the building structure, or elements of the building or structure may be strengthened or restored to a safe condition provided that:
 - a. The original nonconformity is not enlarged, increased, or extended;
 - b. Building permits are obtained for repairs within six months of the date the building, structure, or elements of the building or structure was damaged or, if no date can be reasonably established for the damage, the date that the Building Official determines that the building is unsafe;
 - c. Construction commences within twelve (12) months after a building permit is obtained; and
 - d. The construction is complete within eighteen (18) months from the time the building permit was obtained.

- D. **Unenclosed Nonconforming Uses.** Any nonconforming use not enclosed within the confines of a building existing as of the effective date of (or amended to) this ~~UDC~~UDC but not in conformity with the provisions of this ~~UDC~~UDC may be continued no longer than six (6) months from and after the effective date of this ~~UDC~~UDC, or after the determination of nonconformance. Such use shall only be allowed to continue operation as a nonconforming use provided the nonconforming use is enclosed and screened from view by a Type B bufferyard, and provided the nonconforming use conforms to all other regulations of this ~~UDC~~UDC.

- E. **Nonconforming Landscaping.** Multifamily, nonresidential, and mixed use properties that are nonconforming with respect to the standards of Section 15-615, Development Landscaping, and Section 15-616, Bufferyards, shall be brought into compliance when the property is redeveloped or substantially improved, and shall be brought into compliance as set out in Section 15-725, Compliance Thresholds.

F. Nonconforming Signs or Sign Elements.

1. *Restoration.* A nonconforming sign which has been damaged by fire, wind, water, or other cause in excess of sixty (60) percent of its replacement cost shall not be restored except in conformance with this ~~UDC~~UDC.
2. *Replacement of Nonconforming Element.* If an element of a sign that causes the sign to be nonconforming is removed, it shall not be replaced, except with a conforming element.
3. *Discontinuance of Message.* If a nonconforming sign structure does not display any message for a period of ninety (90) calendar days, it shall be removed or brought into conformance with this

~~{UDO}~~UDC. For the purposes of this standard, a temporary sign may be used to display a message while a new sign face is being designed and fabricated.

4. *Removal.* If a nonconforming sign structure is removed for any reason other than routine repair and maintenance, it shall not be replaced unless the replacement sign conforms to this ~~{UDO}~~UDC.
5. *Unsafe Signs.* Nonconforming signs that are a danger to the public safety due to damage or wear shall be removed and shall not be replaced unless the replacement sign conforms to this ~~{UDO}~~UDC.
6. *Amortization.* Within any district, all premise identification signs or other signage that pertains to the premises on which such sign is located shall comply fully with the provisions of this ~~{UDO}~~UDC, unless otherwise provided, within fifteen (15) years after the effective date of this ~~{Ordinance}~~UDC. This amortization provisions does not apply to outdoor advertising signs, provided that such signs remain in continuous use. Any nonconforming outdoor advertising sign that remains unused for a continuous period of one hundred eighty (180) days shall forfeit its right to continue as a nonconforming sign.

G. Nonconforming Parking.

1. *Number of Parking Spaces.*
 - a. If an existing building or use is expanded, additional parking shall be required only in proportion to the new area of the building or use, as set out in Section 15-725, Compliance Thresholds.
 - b. If the use of a building changes, resulting in additional demand for parking, additional parking shall be provided in an amount equal to the difference between the requirements of the former use (not the actual parking provided on-site) and the requirements for the new use, as set out in Subsection 15-603.02., Required Parking and Loading. However, a permit for the new use may be denied if the available parking is less than seventy-five (75) percent of the required parking.
 - c. If an existing building is redeveloped or substantially improved, parking shall be provided as required by Section 15-603, Parking and Loading Calculations.
2. *Size of Parking Spaces and Drive Aisles.* Parking spaces and drive aisles shall be sized according to the requirements of Subsection 15-604.02., Space and Module Standards, when so required by Section 15-725, Compliance Thresholds.

H. Nonconforming Uses or Structures in a Floodway.

1. *Residential Use of Structure.* If a residential use of structure is destroyed by any means, including flood, it shall not be reconstructed if the cost is more than sixty (60) percent of the market value of the structure before the damage occurred within those areas identified as Floodway Overlay (FW) district. This limitation does not include the cost of any alteration to comply with existing State or local health, sanitary, building, or safety codes or regulations or the cost of any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.
2. *Nonresidential Use of Structure.* If a nonresidential use of structure is destroyed by any means, including flood, it should not be reconstructed if the cost is more than sixty (60) percent of the market value of the structure before the damage occurred except that if it is reconstructed in conformity with the provisions of Section 15-720, Nonconformities. This limitation does not include the cost of any alteration to comply with existing State or local health, sanitary, building,

or safety codes or regulations or the cost of any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

~~15-7~~11-824.02. Change of Use and Reuse

- A. **Generally.** A nonconforming use shall not be changed to another nonconforming use.
- B. **Effect of Change of Use.**
 - 1. If a nonconforming use is changed to a conforming use, the nonconforming use shall not be resumed.
 - 2. If the use of only a portion of a building or property is changed from a nonconforming use to a conforming use, then the use of that portion of the building or property shall not be changed back to the nonconforming use.
- C. **Reuse of Vacant Nonconforming Buildings.** An existing vacant nonresidential building in a residential district, previously occupied by and structurally designed for nonresidential use, may be renovated and reoccupied under the following conditions:
 - 1. An application for conversion of the use is filed pursuant to by **Section 15-725, Compliance Thresholds**, and the application is granted;
 - 2. The off-street parking requirements comply with the provisions of **Article Six, Site Development**;
 - 3. The landscaping and buffering requirements comply with the provisions of **Section 15-610, Landscaping and Buffering**; and
 - 4. The property complies with the applicable yard requirements.

~~15-7~~11-824.03. Repairs and Modifications

- A. **Generally.** Repairs and modifications to nonconforming buildings, structures, and signs are permitted as provided by this Subsection.
- B. **Repairs and Alterations.**
 - 1. *Buildings and Structures.* Routine maintenance of nonconforming buildings and structures is permitted, including necessary non-structural repairs, paint, and incidental alterations which do not extend or intensify the nonconforming buildings or structures or materially extend their life. This standard also applies to buildings or structures that house nonconforming uses if they are designed in a way that is not suitable for re-use as a conforming use. If the building is conforming and could be re-used for a conforming use, there is no limitation on its maintenance.
 - 2. *Buildings Containing Major Nonconforming Uses.* No building or structure that contains a major nonconforming use shall be enlarged unless the major nonconforming use is permanently discontinued.
 - 3. *Signs.* Routine maintenance of nonconforming signs is permitted, including necessary non-structural repairs, paint, and incidental alterations which do not extend or intensify the nonconforming sign or materially extend its life. This standard applies to changing the message of a sign by replacing or repainting the sign face.
 - 4. *Structural Alterations.* Structural alterations to nonconforming buildings, structures, and signs are permitted only if it is demonstrated that the alteration will eliminate the nonconformity or reduce it in accordance with the standards of **Section 15-725, Compliance Thresholds**.
- C. **Expansion of Nonconforming Uses.**

1. *Major Nonconforming Uses.* Major nonconforming uses shall not be expanded, enlarged, extended, increased, or moved to occupy an area of land or building that was not occupied on the effective date of this ~~{UDO}~~UDC or any amendment that made the use a major nonconforming use.
2. *Minor Nonconforming Use.* No minor nonconforming use shall be expanded or extended in such a way as to:
 - a. Occupy any open space or landscaped surface area that is required by this ~~{UDO}~~UDC;
 - b. Exceed building cover, impervious cover, intensity, or height limitation of the district in which the use is located;
 - c. Occupy any land beyond the boundaries of the property or lot as it existed on the effective date of this ~~{UDO}~~UDC; or
 - d. Displace any conforming use in the same building or on the same parcel.

~~{15-7}~~**11-824.04. Nonconforming Lots; Combination and Construction**

A. Nonconforming Lots.

1. *Construction on Nonconforming Lots.* A nonconforming lot that does not meet district requirements with respect to area, lot width, or frontage may be built upon if:
 - a. The lot is a lot of record;
 - b. The use is permitted in the district in which the lot is located;
 - c. The lot has sufficient frontage on a public street to provide access that is appropriate for the proposed use;
 - d. All yards or height standards are complied with ~~[, except that the Planning Commission may authorize a reduction of required yards of up to 10 percent, provided that the Planning Commission finds that the reduction does not allow a building that would be larger than permitted on a conforming lot. Yard reductions that are greater than 10 percent shall make application for a variance].~~
2. *Re-subdivision.* A nonconforming lot shall be brought into compliance if the owner applies for a re-subdivision that involves the lot.
3. *Pre-Existing Lots of Record.* Nonconforming lots of record existing at the time of the adoption of this ~~{UDO}~~UDC shall be exempt, unless otherwise provided, from the minimum lot area and lot width requirements of the district. The lots may be developed with any use allowed by the regulations for that district and must comply with all other site development regulations set out in ~~Article Five~~, *Subdivision Design and Land Development*.

B. Combination of Lots to Increase Conformity.

1. Where a landowner owns several abutting lots that do not conform to the dimensional requirements of the district in which they are located, they shall be combined to create fully conforming lots or, if full conformity is not possible, they shall be combined if the combination will increase the degree of conformity.
2. The City will not require the combination of lots if:
 - a. The combination of lots would not address a nonconformity; and

- b. Two (2) or more of the lots are developed with principal buildings, and the combination of lots would require that one (1) or more of the buildings be torn down in order to comply with this ~~UDC~~UDC.

~~Sec. 15-7~~ §11-825 Compliance Thresholds

~~15-7~~ 11-825.01. Purpose

The purpose of this Section is to encourage reinvestment in existing buildings and properties by reasonably mitigating the costs of retrofitting existing buildings and sites to achieve full compliance with this ~~UDC~~UDC. This Section does not relate to building code compliance or compliance with applicable engineering standards.

~~15-7~~ 11-825.02. Administrative Compliance Requirements

Set out in ~~Table~~ 15-725.02., *Administrative Compliance Requirements*, is the levels of reinvestment in property that trigger compliance with the regulations set out in this ~~UDC~~UDC.

Table 15-7 11-825.02. Administrative Compliance Requirements		
Type of Improvement	Definition of Improvement	Level of Compliance that is Required
New development or redevelopment	<ol style="list-style-type: none"> 1. Development of vacant sites; 2. Cumulative expansion of a building by more than 7060 percent of its gross floor area; and 3. Tear-down and reconstruction of a building (except re-establishment of a nonconforming use or building pursuant to Section 15-724, <i>General Regulations</i>). 	Full compliance with all provisions of this UDC UDC is required. Compliance with Subsection 15-724.04., <i>Nonconforming Lots; Combination and Construction</i> is sufficient with respect to lot dimensions.
Major expansions	<p>Cumulative expansion of a building by 30 percent to 7060 percent of its gross floor area, or an increase in parking requirements of more than 20 percent, as set out in Subsection 15-603.02., <i>Required Parking and Loading</i>.</p>	<ol style="list-style-type: none"> 1. Parking spaces and drive aisles shall be dimensioned, and loading spaces shall be provided, as required by Section 15-600, <i>Parking, Loading, and Access</i>. Parking spaces shall be provided according to the applicable regulations set out in Subsection 15-604.02., <i>Space and Module Standards</i>. 2. Landscaping improvements must further the objectives of Section 15-610, <i>Landscaping and Buffering</i>. 3. Bufferyards shall be provided as required by Section 15-616, <i>Bufferyards</i>. 4. Improvements that are needed to ensure public safety and safe access and circulation are required. 5. Buildings affected by the construction shall be designed according to the standards of Section 15-420, <i>Design Standards</i>. 6. Major nonconforming uses shall be discontinued.

Commented [AT37]: We may have to revisit this table to discuss other aspects such as stormwater management.

Table ~~[15-7]~~11-825.02.

Administrative Compliance Requirements

Type of Improvement	Definition of Improvement	Level of Compliance that is Required
Minor expansions	Cumulative expansion of a building by less than 30 percent of its gross floor area or an increase in parking requirements of 20 percent or less, as set out in Subsection 15-603.02. , <i>Required Parking and Loading</i> .	<ol style="list-style-type: none"> 1. New parking spaces and drive aisles shall be dimensioned as required by Section 15-600, Parking, Loading, and Access, if the new dimensions would not be detrimental to safe circulation when combined with the existing lot. 2. Major nonconforming uses shall be discontinued. 3. If height is increased by more than 20 percent within 50 feet of a district boundary line or if the expansion reduces the dimension between the building and a district boundary line, bufferyards shall be brought into compliance with Section 15-616, Bufferyards.
Façade and site improvements	Building or architecture changes or site improvements that do not involve expansion of the building or parking, but will change the physical character of the building or site beyond repair and maintenance.	<ol style="list-style-type: none"> 1. Buildings affected by the construction shall be designed according to the standards Section 15-420, Design Standards. 2. Landscaping improvements must further the objectives of Section 15-610, Landscaping and Buffering. 3. Improvements affected by the proposed site improvements that are needed to ensure public safety and safe access and circulation are required.
Parking lot improvements	Drainage, expansion, or reconstruction improvements, but not restriping alone unless the restriping according to the standards of Section 15-600, Parking, Loading, and Access , results in reduction of the area of the existing parking spaces by more than 10 percent.	<ol style="list-style-type: none"> 1. Parking spaces and drive aisles shall be dimensioned, and loading spaces shall be provided, as required by Section 15-600, Parking, Loading, and Access. 2. Parking lot landscaping shall be provided as required by Section 15-615, Development Landscaping, even if it results in a reduction in the number of parking spaces, but only to the extent that the reduction does not result in a parking lot that contains less than 95 percent of the required parking spaces set out in Subsection 15-603.02., Required Parking and Loading.

Commented [AT37]: We may have to revisit this table to discuss other aspects such as stormwater management.

Commented [AT38]: Can't think of a scenario where this would occur.

~~[Sec. 15-7]~~11-826 **Conversion of Nonconformities**

15-726.01. Purpose

~~Many minor nonconforming uses have existed for a period of time, and some may have only recently become nonconforming. In some instances, minor nonconforming uses are integral parts of the City's character and function, so their continuing existence promotes the City's policy objective of protecting its neighborhoods. In these instances, the classification "nonconformity" and resulting restriction on investment will not achieve the City's objectives. This Section allows the City to restore such uses to conforming status on a case-by-case basis.~~

15-726.02. Repairs and Modifications

~~A. **Generally.** An owner of a minor nonconforming use may apply for a conditional use permit, which has the effect of making the nonconforming use conforming. The criteria for conditional use approval are set out in Subsection 15-726.03., *Criteria for Approval*. A conforming building and/or structure shall not be changed in any way that will result in a nonconforming development.~~

- ~~B. **Exclusions.** This procedure does not apply to nonconforming lots, which may be buildable in accordance with the standards of Subsection 15-724.04., *Nonconforming Lots; Combination and Construction.*~~

~~15-726.03. Criteria for Approval~~

- ~~A. **Generally.** A conditional use approval may be granted to make a nonconforming building, structure, or use conforming, if, in addition to the criteria for approval of a conditional use set out in Section 15-304, *Limited and Conditional Uses*, all of the criteria of this Subsection are satisfied.~~
- ~~B. **Approval Criteria.** The building, structure, or use, as conducted and managed, has minimal nonconformities and has been integrated into the neighborhood's (or district's if it is not in or adjacent to a residential neighborhood) function, as evidenced by the following demonstrations:~~
- ~~1. The neighborhood residents regularly patronize or are employed at the use (for nonresidential uses in or abutting residential neighborhoods).~~
 - ~~2. Good management practices eliminate nuisances such as noise, light, waste materials, unreasonably congested on-street parking, or similar conflicts.~~
 - ~~3. There is no material history of complaints about the building, structure, or use (a history of complaints is justification for denying the conditional use permit, unless the conditions of the permit will eliminate the sources of the complaints).~~
 - ~~4. The building, structure, or use has been maintained in good condition and its classification as a nonconformity would be disincentive for such maintenance.~~
- ~~C. **Conditions.** Conditions may be imposed relative to the expansion of bufferyards, landscaping, screening, or other site design provisions, or other limitations necessary to ensure that, as a conforming use, the use will not become a nuisance. Such conditions may relate to the lot, buildings, structures, or operation of the use.~~

~~15-726.04. Effect and Annotation~~

- ~~A. **Generally.** Uses that comply with the terms of a conditional use permit issued in accordance with this Section are converted from "legally nonconforming uses" to "conforming uses" by virtue of the issuance of the permit.~~
- ~~B. **Written Approval.** Conditional use approvals shall be provided to the applicant in writing and may be recorded by the applicant at the applicant's expense.~~
- ~~C. **Annotation of Zoning Map.** Upon granting a conditional use permit and the applicant's demonstration of compliance with any conditions placed upon it, the Director shall place an annotation on the Official Zoning Map that states that the property has a conditional use permit, as well as the permit number and date of approval.~~

~~Sec. 15-727] Reserved to [Sec. 15-7]§11-829~~

~~[15-7]11-830 ENFORCEMENT, REMEDIES, AND REPEALER~~

~~[Sec. 15-7]§11-831 Purpose~~

This Section establishes the procedures that the City may use to assure compliance with the provisions of this ~~{UDO}~~UDC and to correct violations. The Section also sets out the remedies and penalties that the City may seek to correct violations. The provisions of this Section are intended to encourage the voluntary correction of violations.

~~{Sec. 15-7}~~§11-832 Application

- A. **Enforcement Official.** The provisions of this ~~{UDO}~~UDC shall be administered and enforced by the City Administrator or such other person(s) as may be designated by the City Administrator.
- B. **Compliance Required.** No person shall develop or use any land, building, or structure within the City in violation of this ~~{UDO}~~UDC, regulations authorized under this ~~{UDO}~~UDC, or the terms and conditions of permits issued under this ~~{UDO}~~UDC or adopted uniform codes. The use of any land or structure shall conform to all conditions, restrictions, or limitations contained in any permit or required under any ordinance, and failure to conform shall be a violation of this ~~{UDO}~~UDC.
- C. **Continuation of Prior Enforcement Actions.** Nothing in this ~~{UDO}~~UDC shall prohibit the continuation of previous enforcement actions undertaken by the City pursuant to regulations in effect before the effective date of this ~~{UDO}~~UDC. Enforcement actions initiated before the effective date of this ~~{UDO}~~UDC and amendments hereto may be continued to completion or settlement under the terms of the regulations in effect prior to the effective date of this ~~{UDO}~~UDC.

~~{Sec. 15-7}~~§11-833 Enforcement and Remedies

~~{15-7}~~11-833.01. Administrative Official

- A. **Responsibility.** The ~~{Director}~~Zoning Administrator, or an appointee, who is designated by the City Administrator shall be responsible for administering and enforcing this Ordinance. As the Administrative Official, the ~~{Director}~~Zoning Administrator may be provided with the assistance of such other persons as the City Administrator may direct.
- B. **Correction of Violations.** If the ~~{Director}~~Zoning Administrator, or an appointee, finds that any of the provisions of this ~~{UDO}~~UDC are being violated, he or she shall notify in writing the persons responsible for such violations, indicating the nature of the violation and ordering the action necessary to correct it. The ~~{Director}~~Zoning Administrator, or an appointee, shall order the following:
 - 1. Discontinuance of illegal use of land, buildings, or structures;
 - 2. Removal of illegal buildings or structures or of additions, alterations, or structural change thereto;
 - 3. Discontinuance of any illegal work being done; or
 - 4. Shall take other action authorized by law to ensure compliance with or to prevent violation of its provisions.

~~{15-7}~~11-833.02. Violations

- A. **Complaints.** Whenever a violation of this ~~{UDO}~~UDC occurs or is alleged to have occurred, any person may file a written complaint. Such complaint stating fully the causes and basis of the complaint shall be filed with the ~~{Director}~~Zoning Administrator, acting as the Administrative Official. The

~~{Director}~~**Zoning Administrator** shall record properly such complaint, immediately investigate, and take action as provided by this ~~{UDO}~~**UDC**.

- B. **Penalties.** Violations of the provisions of this ~~{UDO}~~**UDC** or failure to comply with any of its requirements shall constitute a misdemeanor. Any persons who violate this ~~{UDO}~~**UDC** or fails to comply with any of its requirements shall upon conviction thereof be fined not less than an amount set out in the fee schedule established by City Council, as amended from time to time, or imprisoned for not more than **sixty (60)** days, or both, and, in addition, shall pay all costs and expenses involved in the case. Each day such violation continues shall be considered a separate offense.
- C. **Penalties of Responsible Parties.** The owner or tenant of any building, structure, premises, or part thereof, any architect, builder, contractor, agent, or other person who commits, participates in, assists in, or maintains such violation may each be found guilty of a separate offense and suffer the penalties provided in this Section.
- D. **Other Lawful Action.** Nothing herein contained shall prevent the City from taking such other lawful action as is necessary to prevent or remedy any violation.
- E. **Repeat Violations.** When a person has deliberately commenced a project without a permit and it is a second violation of this ~~{UDO}~~**UDC** by the offender, then the Building Official shall refer the project for abatement or judicial remedy as set out in this Section.

~~{15-7}~~**11-833.03. Abatement**

- A. **Generally.** The City may abate violations of this ~~{UDO}~~**UDC** pursuant to this Subsection. This remedy is authorized for, but is not limited to, any situation where any property owner fails to construct, improve, or maintain any improvement that is required by the terms of any permit or approval, or any condition upon any land that is in violation of this ~~{UDO}~~**UDC**.
- B. **Warning Notice Required.** Before action is taken to abate a violation to this ~~{UDO}~~**UDC** or any violation to an ordinance or other policies of the City, a final warning notice shall be posted on the property and served personally or by certified mail with return receipt required to the owner of record of the property, or to the property owner or association, as applicable, and a period of ~~{five business}~~**ten (10)** days shall be given from the date of the notice indicated by the date on the letter. Failure to receive such notice when proof of delivery to the correct address has been provided by the U.S. Post Office shall not forestall enforcement action under this provision.
- C. **Timing of Abatement.** Unless this notice is appealed, pursuant to requirements herein within **ten (10)** days of the posting of the final warning, the City may proceed to abate the violation in accordance with City policies and procedures.
- D. **Documentation of Costs.** The ~~{Director}~~**Zoning Administrator** shall keep an account of the direct and indirect cost incurred by the City in the abatement of any violation. The ~~{Director}~~**Zoning Administrator** shall forward a bill for collection to the violator or association, and to owner of record of the property specifying the nature and costs of the work performed. For purposes of this Subsection, direct and indirect costs shall include, but not be limited to, the actual expenses and costs to the City in the preparation of the notices, specifications and contracts, actual physical abatement processes, work inspection, and interest from the date of completion at the rate prescribed by law for delinquent real property taxes.
- E. **Payment of Costs by Owner.** The responsibility for payment of the charges for abatement as set out in this Subsection shall rest solely upon the owners of the property upon which the abatement

occurred, or the property owners' association, as applicable. Such charges shall become a lien upon the real property or properties upon which the violation was located or upon properties associated with the property upon which the violation was located. The lien shall be subordinate to all existing special assessment liens previously imposed upon the same property and shall be paramount to all other liens except for State or municipal property taxes, with which it shall be upon a parity. The lien shall continue until the charges and all interest due and payable thereon are paid.

F. **Allocation of Costs for Property Controlled by Property Owners' Associations.** Where a property owners' association is involved:

1. Expenses under **Subsection E.**, above, shall be prorated among all lots and/or owners of lots within the subdivision.
2. Actions directed under this Subsection are considered delivered if they are addressed and sent by certified mail to the responsible person(s) who are shown to be the responsible person(s) on the most recent tax roll of the City.

~~15-7~~11-833.04. Judicial Remedies

A. **Generally.** This Subsection sets out remedies that may be requested by the City to enforce this ~~UDO~~UDC in a court of competent jurisdiction. This Subsection shall not limit the power of the City to pursue multiple or alternative actions, remedies, and penalties, or to pursue actions, remedies, and penalties that are authorized by law but not listed in this Subsection.

B. **Fines.** Any person, firm, corporation, agent, or employee thereof who violates any of the provisions of this ~~UDO~~UDC shall be fined according to the provisions of the *Zoning Ordinance of the City of Fremont*, as amended from time to time.

C. **Injunctive Relief.**

1. The City may seek injunctive relief or other appropriate relief in court of competent jurisdiction against any person who fails to comply with any provision of this ~~UDO~~UDC or any requirement or condition imposed pursuant to this ~~UDO~~UDC or any violation to a uniform code or other policies of the City. In any court proceedings in which the City seeks a preliminary injunction, it shall be presumed that a violation of this ~~UDO~~UDC or continued violation of this ~~UDO~~UDC is, will, or may be an injury to the public health, safety, or general welfare; that the public health, safety, or general welfare will or may be irreparably injured by the continuation of the violation unless the violation is enjoined; and that there is no plain and adequate remedy at law for the subject violation.
2. The City may seek an affirmative injunction to require the demolition or removal of a structure, or to allow the City to demolish or remove a structure and recover costs against the landowner, pursuant to the provisions of State law.

~~15-7~~11-833.05. Special Provisions

A. **Conditional Uses.**

1. **Generally.** The provisions of this Subsection may be applied to enforce a conditional use permit.
2. **Inspection.** The City may:
 - a. Make inspections to determine compliance with the provisions of this ~~UDO~~UDC and the conditional use permit, and initiate appropriate action as necessary; and/or

b. Keep a record of complaints, indicating any action taken. These records shall be made available at the time of renewal of the conditional use permit if there has been a time period placed on the conditional use, or where the Planning Commission has been requested to review the conditional use for compliance.

3. **Conditional Use Permit Revocation.** Upon determination of noncompliance with the provisions of the conditional use permit, the City will take actions as necessary to assure compliance. Such actions may include non-renewal or revocation of the permit as follows:

- a. The ~~{Director}~~Zoning Administrator shall provide a notice of violation to the record owner of the property upon which a conditional use is located, advising the owner that the use must be brought into compliance with specified ~~{UDO}~~UDC sections within thirty (30) days from the date of the notice.
- b. If total compliance has not occurred or a plan for compliance has not been submitted to the ~~{Director}~~Zoning Administrator within thirty (30) days from the date of notice, then the ~~{Director}~~Zoning Administrator shall issue a cease-and-desist order and notify the record owner of a hearing date by the Planning Commission to consider revocation of the conditional use permit.
- c. The Planning Commission shall revoke the conditional use permit if the use and/or property is/are not in total compliance. The Planning Commission may grant up to a thirty (30) day period for compliance. The conditional use permit shall remain in suspension and the cease-and-desist order shall remain in effect until total compliance is obtained.
- d. At the end of a compliance period the Planning Commission shall revoke the conditional use permit if total compliance has not been obtained.
- e. If the use and property are brought into compliance, any further violation of terms of the conditional use permit within ninety (90) days from the initial notice of violation are grounds for immediate revocation of the Conditional Use Permit.
- f. Revoked conditional use permits may only be reinstated by the City Council, which may impose conditions to ensure compliance.

B. Historic Preservation.

1. **Generally.** The purpose of this Subsection is to provide additional means of enforcing the City's historic preservation. The remedies available to the City in this Subsection are in addition to any other remedies allowed by this ~~{UDO}~~UDC or applicable law.

2. **Revocation of Designation.** The Planning Commission may revoke classification designators for failure by the property owner(s) within a historic district or of a designated historic property to maintain the structure at the prescribed levels. Revocation procedures shall be as follows:

- a. The affected property owner and all property owners of the affected historic district or property, as applicable, shall be given written notice of the time and place of the hearing by certified mail sent at least 10 business days before the meeting to the owner's address of record.
- b. Notice shall be provided ~~{by mail and posting}~~ as set out in Subsection 15-714.09., Public Notice ~~{with the words, "NOTICE OF HEARING TO WITHDRAW HISTORIC DESIGNATION". The number and location of posted signs shall be determined by the Planning Commission}.~~
- c. The ~~{Director}~~Zoning Administrator shall make a presentation at the scheduled hearing and render a recommendation to the Planning Commission. The owner or owner's agent or representative shall attend the scheduled hearing. In the event the owner or owner's agent

or representative fails to be present at the hearing the Planning Commission shall table the item. At any subsequent meeting and regardless of the absence of the owner or owner's agent or representative, the Planning Commission may take action.

- d. The Planning Commission shall consider a recommendation to withdrawal a designation if it finds that:
 1. A designated historic district has failed to maintain the characteristics of which it was designated; or
 2. A designated district of historic property has failed to maintain the specified criteria; or
 3. Either such a district or property has failed to follow any relevant guidelines established by the City.
 - e. After the City Council receives the Planning Commission's recommendation if shall provide notice by publication as provided in **Subsection 15-714.09**, *Public Notice*, conduct a public hearing during which the ~~Director~~**Zoning Administrator** shall make a presentation and render the Planning Commission's recommendation, and take action on the recommendation.
3. **Fines.** A person found guilty of demolition of a designated property by neglect or without a required certificate of appropriateness shall be fined an amount set out in the fee schedule established by the City Council, as amended from time to time.
 4. **Violations Constitute Misdemeanor.** Any person who shall violate, participate or acquiesce in the violation of any provision of this ~~UDO~~**UDC** relative to its historic preservation, or who shall fail to comply therewith or with any of the requirements thereof, or who shall erect or alter any building historic resource in violation of any detailed statement or plan required to be submitted and approved pursuant to this ~~UDO~~**UDC** shall for each and every violation or noncompliance be deemed guilty of a misdemeanor and shall, upon conviction, be punished accordingly.
 5. **Authorized to City Attorney.** The City Attorney's office is hereby authorized to file an appropriate action in a court of competent jurisdiction to enforce the provisions hereof by the cause in equity or by any other remedy available by law.

~~Sec. 15-734~~ Legal Status

~~15-734.01. Severability~~

- ~~A. **Generally.** If any article, section, subsection, paragraph, clause, provision, or portion of this UDO is held unconstitutional or invalid by a court of competent jurisdiction, the remainder of this UDO shall not be affected. If any application of this UDO to a particular structure, land, or water is adjudged unconstitutional or invalid by a court of competent jurisdiction "as applied", such judgment shall not be applicable to any other structure, land, or water not specifically included in said judgment.~~
- ~~B. **Signs.** With respect to 15-620, *Signs*, the following severability provisions shall apply:~~
 - ~~1. *Interpretation; Substitution of Noncommercial Speech for Commercial Speech.* Notwithstanding anything contained in this UDO to the contrary, any sign erected pursuant to the provisions of this UDO or otherwise lawfully existing with a commercial message may, at the option of the owner, contain a noncommercial message in lieu of a commercial message. The noncommercial message may occupy the entire sign face or any portion thereof. The sign face may be changed~~

Commented [AT39]: The following Section language will appear in the adopting Ordinance and need not be codified.

from commercial to noncommercial messages, or from one noncommercial message to another, as frequently as desired by the owner of the sign, provided that:

- a. ~~The sign is not a prohibited sign or sign type; and~~
 - b. ~~The size, height, setback, and other dimensional criteria contained in this UDO have been satisfied.~~
2. ~~*Severability, Generally.* If any article, section, subsection, paragraph, subparagraph, sentence, phrase, clause, term, or word of 15-620, *Signs*, or any other provision of this UDO related to signage, is declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, the declaration of such unconstitutionality shall not affect any other article, section, subsection, paragraph, subparagraph, sentence, phrase, clause, term, or word of 15-620, *Signs*, or this UDO.~~
 3. ~~*Severability Where Less Speech Results.* Without diminishing or limiting in any way the declaration of severability set out above in Subsection B.2., above, or elsewhere in this Section, this UDO, or any adopting ordinance, if any article, section, subsection, paragraph, subparagraph, sentence, phrase, clause, term, or word of 15-620, *Signs*, or any other provision of this UDO related to signage, is declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, the declaration of such unconstitutionality shall not affect any other article, section, subsection, paragraph, subparagraph, sentence, phrase, clause, term, or word of said Article or provision, even if such severability would result in a situation where there would be less speech, whether by subjecting previously exempt signs to permitting or otherwise.~~
 4. ~~*Severability of Provisions Pertaining to Prohibited Signs and Sign Elements.* Without diminishing or limiting in any way the declaration of severability set out above, if any article, section, subsection, paragraph, subparagraph, sentence, phrase, clause, term, or word of 15-620, *Signs*, or any other provision of this Ordinance related to signage, is declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, the declaration of such unconstitutionality shall not affect any other article, section, subsection, paragraph, subparagraph, sentence, phrase, clause, term, or word of 15-620, *Signs*, that pertains to prohibited signs or sign elements. It is the intent of the City Council to ensure that as many prohibited sign types and sign elements as may be constitutionally prohibited continue to be prohibited.~~
 5. ~~*Severability Provisions if Adjudicated Stricken Due to a Content Basis.* It is the intent of the City Council to regulate signage in a manner that implements the purposes of 15-620, *Signs*, as expressed therein. The City Council finds that the purposes stated in 15-620, *Signs*, are legitimate, substantial, and compelling public interests, that the regulation of signage provided by 15-620, *Signs*, is unrelated to the suppression of free expression, and that the incidental restrictions on expression that may occur as a result of these regulations is no more than is essential to the furtherance of the public interests. However, if a court of competent jurisdiction finds any regulation therein to be based upon content and, further, declares such regulation unconstitutional, then it is the intent of the City Council that only that portion of the provision that is found to content be severed from this UDO, and if it is not possible for the court to strike only the portion of the provision that is found to relate to content, then it is the intent of the City Council that all signs that would be subject to the stricken provision will instead be subject to the next surviving provision for a sign of like geometry and character that is more restrictive than the stricken provision in terms of sign area.~~

15-734.02. Repealer

~~A. **Zoning Ordinance.** The following Articles including Sections of the Zoning Ordinance of the City of Fremont that existed on the Effective Date prior to the adoption of this UDO are hereby repealed:~~

- ~~1. Article One: General Provisions.~~
- ~~2. Article Two: Definitions.~~
- ~~3. Article Three: Use Types.~~
- ~~4. Article Four: Zoning District Regulations.~~
- ~~5. Article Five: Special and Overlay Districts.~~
- ~~6. Article Six: Supplemental Use Regulations.~~
- ~~7. Article Seven: Supplemental Site Development Regulations.~~
- ~~8. Article Eight: Landscaping and Screening Standards.~~
- ~~9. Article Nine: Off-Street Parking.~~
- ~~10. Article Ten: Sign Regulations.~~
- ~~11. Article Eleven: Nonconforming Development.~~
- ~~12. Article Twelve: Administration and Procedures.~~

~~B. **Subdivision Ordinance.** The City of Fremont's 1979 Subdivision Ordinance adopted by Ordinance No. 3019 that existed on the Effective Date prior to the adoption of this UDO is hereby repealed.~~

~~**15-734.03. Conflicting Provisions**~~

~~A. **Generally.** In the event that provisions of this UDO conflict with each other or with other ordinances of the City, the more restrictive provision shall control.~~

~~B. **State and Federal Law.** No part of this UDO relieves any applicant from compliance with applicable provisions of State or Federal law. If a use, structure, operational characteristic, construction technique, environmental impact, or other matter is prohibited by State or Federal law, then compliance with State or Federal law does not relieve the applicant from compliance with this UDO, unless the application of this UDO is legally preempted.]~~

Fiscal Impact: N/A