

**ARTICLE 21
ZONING**

21-100 GENERAL PROVISIONS

21-101 STATEMENT OF LEGISLATIVE INTENT

It is the intent of this ordinance to divide the City and the land lying contiguous to and within one and one-half miles beyond the corporate limits, into zones, or districts, for the purpose of restricting and regulating therein the location, erection, construction, reconstruction, alteration and use of buildings, structures, and land for trade, industry, residence, and other specified uses; to regulate the intensity of the use of lot areas, and to regulate and determine the area of open spaces surrounding such buildings; to establish building lines and the location of buildings designed for specified industrial business, residential and other uses within such areas; to fix standards to which buildings or structures shall conform therein; to prohibit uses, buildings or structures incompatible with the character of such districts, respectively; to prevent additions to and alterations or remodeling of existing buildings or structures in such a way as to avoid the restrictions and limitations lawfully imposed hereunder; to limit congestion in the public streets by providing for off-street parking and loading and unloading of vehicles; providing for the gradual elimination of nonconforming uses of land, building and structures; to lessen congestion in the streets, to secure safety from fire, panic and other dangers; to provide adequate light and air; to prevent the over-crowding of land; to conserve the taxable value of land and buildings throughout the City; and to promote the public health, safety and general welfare.

21-102 SHORT TITLE

This amended ordinance, including the zoning District Maps made a part hereof shall be known and may be cited and referred to as the “Zoning Ordinance of the City of Mount Vernon, Illinois”.

21-103 TERRITORIAL LIMITS OF THIS ORDINANCE

The provisions of this ordinance shall apply to that land located within the corporate limits of the City of Mt. Vernon, Illinois, and the land lying contiguous to and within one and one-half miles beyond the corporate limits as they may exist from time to time.

21-104 ESTABLISHMENT OF DISTRICTS: PROVISIONS FOR OFFICIAL ZONING MAP

21-104.1 Official Zoning Map - The territorial limits described in Section 21-103 are hereby

divided into districts, as shown on the official zoning map which, together with all explanatory matter thereon, is hereby adopted by reference and declared to be part of this ordinance.

The Official Zoning Map shall be identified by the signature of the Mayor, attested by the City Clerk, and bearing the seal of the City of Mt. Vernon under the following words: "This is to certify that this is the Official Zoning Map referred to in Section 21-104 of the Revised Code of Ordinances of the City of Mt. Vernon, Illinois. (the Zoning Ordinance of the City of Mt. Vernon, Illinois)", together with the date of the adoption of this ordinance. The official zoning map indicating current zoning district boundaries shall be located in the office of the City Clerk.

If, in accordance with the provisions of this ordinance and the Illinois Municipal Code, changes are made in district boundaries or other matter portrayed on the Official Zoning Map, such changes shall be entered on the Official Zoning Map promptly after the amendment has been approved by the City Council, with an entry on the Official Zoning Map as follows: "By official action of the City Council the following (change) changes were made in the Official Zoning Map:

(Date, Ordinance Number _____, Brief description of Change)," which entry shall be signed by the Mayor and attested by the City Clerk.

No changes of any nature shall be made in the Official Zoning Map or matter shown thereon, except in conformity with the procedures set forth in this ordinance. Any unauthorized change of whatever kind by any person or persons shall be considered a violation of this ordinance and punishable as provided under Article 22 of the Revised Code of Ordinances.

21-104.2 **Annual Updating of Copies of the Official Zoning Map**- In the event there have been changes in the Official Zoning Map in any calendar year, the Administrative Official hereinafter provided for shall prepare and publish or print copies of the Official Zoning Map reflecting zoning district boundaries as of December 31. Such copies shall be printed prior to March 31 of the succeeding year, and shall bear the following words. "This is a copy of the Official Zoning Map reflecting zoning district boundaries as of December 31, 19__ ". Fees for such copies of Official Zoning Map shall be established in accordance with Section 21-115 of this Ordinance. Regardless of the existence of copies of the Official Zoning Map, the Official Zoning Map located in the Office of the City Clerk shall be the final authority as to the current zoning status of land and water areas, buildings, and other structures in the territorial limits.

21.104.3 **Replacement of Official Zoning Map**- In the event that the Official Zoning Map becomes damaged, destroyed, lost, or difficult to interpret because of the nature or number of changes and additions, the City Council may by resolution adopt a new Official Zoning

Map which shall supersede the prior Official Zoning Map. The new Official Zoning Map may correct drafting or other errors or omissions in the prior Official Zoning Map, but no such correction shall have the effect of amending the original Official Zoning Map or any subsequent amendment thereof. The new Official Zoning Map shall be identified by the signature of the Mayor, attested by the City Clerk, and bearing the seal of the City of Mt. Vernon under the following words: "This is to certify that this Official Zoning Map supersedes and replaces the Official Zoning Map adopted (date of adoption of map being replaced) as part of Ordinance No. _____ of the City of Mt. Vernon, Illinois".

Unless the prior Official Zoning Map has been lost or has been totally destroyed, the prior map or any significant parts thereof remaining, shall be preserved, together with all available records pertaining to its adoption or amendment.

21-105 **RULES FOR INTERPRETATION OF DISTRICT BOUNDARIES**

Where uncertainty exists as to the boundaries of districts as shown on the Official Zoning Map, the following rules shall apply:

21-105.1 Boundaries indicated as approximately following the center lines of streets, highways, or alleys shall be construed to follow such center lines.

21-105.2 Boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines.

21-105.3 Boundaries indicated as approximately following City limits shall be construed as following such City limits, as they may exist from time to time.

21-105.4 Boundaries indicated as following railroad lines shall be construed to be midway between the main tracks.

21-106 **SCHEDULE OF DISTRICT REGULATIONS ADOPTED**

District regulations shall be as set forth in the Schedule of District Regulations, Section 21-300, hereby adopted by reference and declared to be a part of this ordinance, and in Section 21-109 of this ordinance, entitled, "Supplementary District Regulations."

21-107 **APPLICATION OF DISTRICT REGULATIONS**

The regulations set by this ordinance within each district shall be minimum regulations and shall apply uniformly to each class or kind of structure or land, and particularly, except as hereinafter provided:

21-107.1 No building, structure, or land shall hereafter be used or occupied, and no building or

structure or part thereof shall hereafter be erected, constructed, moved or structurally altered except in conformity with all regulations herein specified for the district in which it is located.

21-107.2 No building or other structure shall hereafter be erected or altered: to exceed the height or bulk; to accommodate or house a greater number of families; to occupy a greater percentage of lot area; to have narrower or smaller rear yards, front yards, side yards, or other open spaces than herein required; or in any other manner contrary to the provisions of this ordinance.

21-107-3 No part of a yard, or other open space, or off-street parking or loading space required about or in connection with any building for the purpose of complying with this ordinance, shall be included as part of a yard, open space, or off-street parking or loading space similarly required for any other building or any other lot.

21-107.4 No yard or lot existing at the time of passage of this ordinance shall be reduced in dimension or area below the minimum requirements set forth herein. Yards or lots created after the effective date of this ordinance shall meet at least the minimum requirements established by this ordinance.

21-107.5 Any land which shall come within an area within one and one-half miles beyond the corporate limits, by reason of annexation of other lands to the City, shall be and is hereby classified and zoned as A-G General Agriculture District, unless and until such classification may be amended by ordinance.

21-108 **NON-CONFORMING LOTS, NON-CONFORMING USES OF LAND, NON-CONFORMING STRUCTURES, NON-CONFORMING USES OF STRUCTURES AND PREMISES, NON-CONFORMING CHARACTERISTICS OF USE, AND NON-CONFORMING SIGNS.**

21-108.1 **Intent** - Within the districts established by this ordinance or amendments that may later be adopted there exist: lots, structures, uses of land and structures, characteristics of use, and signs which were lawful before this ordinance was passed or amended, but which would be prohibited, regulated, or restricted under the terms of this ordinance or future amendments. It is the intent of this ordinance to permit these non-conformities to continue until they are removed, but not to encourage their survival. It is further the intent of this ordinance that non-conformities shall not be enlarged upon, expanded or extended, nor be used as grounds for adding other structures or uses prohibited elsewhere in the same district.

Non-conforming uses are declared by this ordinance to be incompatible with permitted uses in the districts involved. A non-conforming use of structure and land in combination shall not be extended or enlarged after passage of this ordinance by attachment on a

building or premises of additional signs intended to be seen from off the premises, or by the addition of other uses, or a nature which would be prohibited generally in the district involved.

To avoid undue hardship, nothing in this ordinance shall be deemed to require a change in the plans, construction, or designated use of any building on which actual construction was lawfully begun prior to the effective date of adoption or amendment of this ordinance and upon which actual building construction has been carried on diligently.

Actual construction is hereby defined to include the placing of construction materials in permanent position and fastened in a permanent manner. Where excavating or demolition or removal of an existing building has been substantially begun preparatory to rebuilding, such excavation or demolition or removal shall be deemed to be actual construction, provided that work shall be carried on diligently.

21-108.2 **Non-Conforming Lots of Record** - In any district in which single-family dwellings are permitted, a single-family dwelling and customary accessory buildings may be erected on any single lot of record at the effective date of adoption or amendment of this ordinance, notwithstanding limitations imposed by other provisions of this ordinance. Such lot must be in separate ownership and not of continuous frontage with other lots in the same ownership. This provision shall apply even though such lot fails to meet the requirements for area or width, or both, that are generally applicable in the district, provided that yard dimensions and requirements other than those applying to area or width, or both, of the lot shall conform to the regulations for the district in which such lot is located. Variance of yard requirements shall be obtained only through action of the Board of Appeals.

In any district, if two or more lots or combination of lots and portions of lots with continuous frontage in single ownership are of record at the time of passage or amendment of this ordinance, and if all or part of the lots do not meet the requirements established for lot width and area, the lands involved shall be considered to be an undivided parcel for the purpose of this ordinance, and no portion of said parcel shall be used or sold in a manner which diminishes compliance with lot width and area requirements established by this ordinance, nor shall any division of any parcel be made which creates a lot with width or area below requirements stated in this ordinance.

21-108.3 **Non-Conforming Uses of Land (Or land with Minor Structures Only)**- Where at the time of passage of this ordinance lawful use of land exists which would not be permitted by the regulations imposed by this ordinance, and where such use involves no individual structure with a replacement cost exceeding \$1,000 the use may be continued so long as it remains otherwise lawful for a period of five years from the date of adoption of this ordinance, provided:

21-108.3.1 No such non-conforming use shall be enlarged or increased, nor extended to occupy a

greater area of land than was occupied at the effective date of adoption or amendment of this ordinance.

21-108.3.2 No such non-conforming use shall be moved in whole or in part to any portion of the lot or parcel other than that occupied by such use at the effective date of adoption or amendment of this ordinance.

21-108.3.3 If any such non-conforming use of land ceases for any reason for a period of more than 30 days, any subsequent use of such land shall conform to the regulations specified by this ordinance for the district in which such land is located.

21-108.3.4 No additional structure not conforming to the requirements of this ordinance shall be erected in connection with such non-conforming use of land.

21-108.4 **Non-Conforming Structures** - Where a lawful structure exists at the effective date of adoption or amendment of this ordinance that could not be built under the terms of this ordinance by reason of restrictions on area, lot coverage, height, yards, its location on the lot, or other requirements concerning the structure, such structure may be continued so long as it remains otherwise lawful, subject to the following provisiond.

21-108.4.1 No such non-conforming structure may be enlarged or altered in a way which increases its non-conformity, but any structure or portion thereof may be altered to decrease its non-conformity.

21-108.4.2 Should such non-conforming structure or non-conforming portion of structure be destroyed by any means to an extent of more than 50 percent of its physical structure, it shall not be reconstructed except in conformity with the provisions of this ordinance.

21-108.4.3 Should such structure be moved for any reason for any distance whatever, it shall thereafter conform to the regulations for the district in which it is located after it is moved.

21-108.5 **Non-Conforming Uses of Structures or of Structures and Premises In Combination**- If lawful use involving individual structures, or of structure and premises in combination, that would not be allowed in the district under the terms of this ordinance, the lawful use may be continued so long as it remains otherwise lawful; subject to the following provisions:

21-108.5.1 No existing structure devoted to a use not permitted by this ordinance in the district in which it is located shall be enlarged, extended, constructed, reconstructed, moved, or structurally altered, except in changing the use of the structure to a use permitted in the district in which it is located.

21-108.5.2 Any non-conforming use may be extended throughout any parts of a building which were

manifestly arranged or designed for such use at the time of adoption or amendment of this ordinance, but no such use shall be extended to occupy any land outside such building.

21-108.5.3 If no structural alterations are made, any non-conforming use of a structure or structures and premises, may as a conditional use be changed to another non-conforming use provided the Planning Commission shall find that the proposed use is equally appropriate or more appropriate to the district than the existing non-conforming use. In permitting such change, the Planning Commission may require appropriate conditions and safeguards in accord with the provisions of this ordinance.

21-108.5.4 Any structure, or structure and land in combination, in or on which a non-conforming use is superseded by a permitted use, shall thereafter conform to the regulations for the district, and the non-conforming use may not thereafter be resumed.

21-108.5.5 When a non-conforming use of a structure, or structure and premises in combination, is discontinued or abandoned for six consecutive months or for 18 months during any three year period (except when government action impedes access to the premises), the structure, or structure and premises in combination, shall not thereafter be used except in conformity with the regulations of the district in which it is located.

21-108.5.6 Where non-conforming use status applies to a structure and premises in combination, removal or destruction of the structure shall eliminate the non-conforming status of the land. Destruction for the purpose of this subsection is defined as damage to an extent of more than 50 percent of the physical structure.

21-108.6 **Repairs and Maintenance** - On any non-conforming structure or portion of a structure containing a non-conforming use, work may be done on ordinary repairs, or on repair or replacement of non-bearing walls, fixtures, wiring, or plumbing, provided that the cubic content existing when it became non-conforming shall not be increased.

If a non-conforming structure or portion of a structure containing a non-conforming use becomes physically unsafe or unlawful due to lack of repairs and maintenance, and is declared by any duly authorized official to be unsafe or unlawful by reason of physical condition, it shall not thereafter be restored, repaired, or rebuilt except in conformity with the regulations of the district in which it is located.

Nothing in this ordinance shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official.

21-108.7 **Non-Conforming Signs Shall be Amortized** - Any sign which does not conform to the sign provisions of the district in which it is located shall be eliminated or brought in conformity with such provisions within ten years from the date of adoption of this

ordinance.

21-108.8 **Conditional Uses Shall Not Be Non-Conforming Uses**- Any use which is permitted as a conditional use in a district under the terms of this ordinance other than a change through Planning Commission and City Council action from a non-conforming use to another use not generally permitted in the district shall not be deemed a non-conforming use in such district, but shall without further action be considered a conforming use at the date of adoption of this ordinance.

21-109 **SUPPLEMENTARY DISTRICT REGULATIONS**

21-109.1 **Visibility at Intersections in Residential Districts** - On a corner lot in any residential district, nothing shall be erected, placed, planted, or allowed to grow in such a manner as materially to impede vision between a height of two and a half and ten feet above the centerline grades of the intersecting streets in the area bounded by the lot lines of such corner lots and a line joining points along said lot lines 15 feet from the point of the intersection of the lot lines.

21-109.2 **Fences, Walls, and Hedges** - Notwithstanding other provisions of this ordinance, fences, walls and hedges may be permitted in any required yard, or along the edge of any yard, provided that no fence, wall or hedge along the sides or front edge of any front yard shall conflict with the provisions of Subsection 21-109.1 of this Section 21-109.

21-109.3 **Accessory Buildings** - No accessory building shall be erected in any required front or side yard, and no separate accessory building shall be erected within five feet of any other building.

21-109.4 **Erection of More Than One Principal Structure on A Lot** - In all districts with the exception of R-1, R-2, and R-M2 residential districts, more than one structure housing a permitted or permissible principal use may be erected on a single lot of record, provided that yard and other requirements of this ordinance shall be met for each structure as though it were on an individual lot, and further provided that the owner of a single lot of record shall not sell or convey off a part of said lot of record without compliance with Article 17 of the Revised Code of Ordinances of the City of Mt. Vernon, relating to subdivision of land.

21-109.5 **Exceptions to Height Regulations** - The height limitations contained in the Schedule of District Regulations do not apply to spires, elevator penthouses, belfries, cupolas, antennas, water tanks, ventilators, chimneys, farm silos in agricultural districts or other appurtenances usually required to be placed above the roof level and not intended for human occupancy.

21-109.6 **Structures to Have Access** - Every building hereafter erected or moved shall be on a

lot adjacent to a public street or with access to an approved private street, and all structures shall be so located on lots as to provide safe and convenient access for servicing, fire protection, and required off-street parking.

21-109.7 **Parking, Storage, or Use of Major Recreational Equipment** - For purposes of these regulations, major recreational equipment is defined as including boats and boat trailers, travel trailers, pick-up campers or coaches (designed to be mounted on automotive vehicles), motorized dwellings, tent trailers, utility trailers, and the like, and cases or boxes used for transporting recreational equipment, whether occupied by such equipment or not. No major recreational equipment shall be parked or stored on any lot in a residential district except in a carport or enclosed building or behind the nearest portion of a building so as not to be visible from the street if feasible, provided, however, that such equipment may be parked anywhere on residential premises for a period not to exceed 24 hours during loading or unloading. No such equipment shall be used for living, sleeping, or housekeeping purposes when parked or stored on a residential lot, or in any location not approved for such use.

21-109.8 **Parking and Storage of Certain Vehicles** - Automotive vehicles, trucks or trailers of any kind or type without current license plates, or trucks over 3/4 ton capacity, with current license plates, shall not be parked or stored on any residentially zoned property other than in a carport or closed building.

21-110 **ADMINISTRATION AND ENFORCEMENT - BUILDING PERMITS AND CERTIFICATES OF ZONING COMPLIANCE**

21-110.1 **Administration and Enforcement** - The City Manager shall administer and assign duties to other persons in the City's service at his discretion.

If the City Manager, or his designated official find that any of the provisions of this ordinance are being violated, he shall provide for notice in writing to the person responsible for such violations, indicating the nature of the violation and ordering the action necessary to correct it. He shall order discontinuance of illegal use of land, buildings, or structures, removal of illegal buildings or structure or of illegal additions, alterations, structural changes; discontinuance of any illegal work being done; or shall take any other action authorized by this ordinance to ensure compliance with or to prevent violation of its provisions.

21-110.2 **Building Permits Required**- No building or other structure shall be erected, moved, added to, or structurally altered without a permit therefore. No building permit shall be issued by the Building Department except in conformity with provisions of this ordinance, unless he receives a written order from the City Manager after approval of the City Council or Board of Appeals in the form of an administrative review, conditional use or variance as provided by this ordinance.

No premises within the City of Mt. Vernon shall be improved for parking or parking lot purposes, whether for surface parking or by a parking structure, unless and until a building permit shall have been issued therefor as required and provided by Article 5 of this Ordinance and the requisite fee paid therefor.

21-110.3 **Application for Building Permit** - All applications for building permits shall be accompanied by plans in triplicate, drawn to scale, showing the actual dimensions and shape of the lot to be built upon; the exact sizes and locations on the lot of buildings already existing, if any; and the location and dimensions of the proposed building or alteration. The application shall include such other information as lawfully may be required by the Building Department, including existing or proposed building or alteration; existing or proposed uses of the building or land; the number of families, housekeeping units or rental units the building is designed to accommodate; conditions existing on the lot; and such other matters as may be necessary to determine conformance with, and provide for the enforcement of this ordinance.

One copy of the plans shall be returned to the applicant by the Building Department, marked either as approved or disapproved and attested to same by his signature. The original and one copy of the plans, similarly marked, shall be retained by the administrative official.

21.110.4 **Certificates of Zoning Compliance for New, Altered, or Non-Conforming Uses** - It shall be unlawful to use or occupy or permit the use or occupancy of any building or premises, or both, or part thereof created, erected, converted, changed or wholly or partly altered or enlarged in its use or structure until a certificate of zoning compliance shall have been issued therefore by the administrative official, stating that the proposed use of the building or land conforms to the requirements of this ordinance. No non-conforming structure or use shall be maintained, renewed, changed, or extended until a certificate of zoning compliance shall have been issued by the administrative official. The certificate of zoning compliance shall state specifically wherein the non-conformity differs from the provisions of this ordinance.

No permit for erection, alteration, moving, or repair of any building shall be issued until an application has been made for a certificate of zoning compliance, and the certificate shall be issued in conformity with the provision of this ordinance upon completion of the work.

A temporary certificate of zoning compliance may be issued by the administrative official for a period not exceeding six months during alterations or partial occupancy of a building, pending its completion, provided that such temporary certificate may include such conditions as safeguards as will protect the safety of the occupants and the public. The administrative official shall maintain a record of all certificates of zoning compliance, and a copy shall be furnished upon request to any person.

Failure to obtain a certificate of zoning compliance shall be a violation of this ordinance and punishable under Article 22 of the Revised Code of Ordinances.

No such certificate of zoning compliance for a new, altered, or nonconforming use shall be issued for the use and occupancy of any building or premises which shall be used for other than single family dwelling purposes unless and until the applicant shall have provided to the building Inspector a plan of storm water detention describing the method for handling storm water in a manner so that storm water runoff shall not be increased as a result of such structure without detention and other storm water handling facilities and until such storm water detention plans shall have been approved by the City Engineer.

In the event that the applicant shall desire to use and occupy any such building or premises prior to completion of all parking lot required by this Article 21, such certificate may issue only under the following circumstances:

(a) Storm water detention shall have been completed according to the storm water detention plan approved by the City Engineer; and

(b) The applicant shall deposit with the City a performance bond in an amount not less than one and one-half times the estimated cost of such parking lot improvements which remain to be completed, together with the applicant's agreement to complete all of such improvements not less than one year after the date of such bond, and that such bond shall be conditioned to guarantee such performance.

21-110.5 **Expiration of Building Permit** - If the work described in any building permit has not been substantially completed within one year of the date of issuance thereof, said permit shall expire and be cancelled by the administrative official, and written notice thereof shall be given to the persons affected, together with notice that further work as described in the cancelled permit shall not proceed unless and until a new building permit has been obtained. A building permit may be extended beyond one year if it is so requested in writing at the time of issuance of building permit.

21-110.6 **Construction and Use To Be Provided in Applications, Plans, Permits and Certificates of Zoning Compliance** - Building permits or certificates of zoning compliance issued on the basis of plans and applications approved by the administrative official authorize only the use, arrangement, and construction set forth in such approved plans and applications, and no other use, arrangement, or construction. Use, arrangement, or construction at variance with that authorized shall be deemed violation of this ordinance and punishable as provided by Article 22 of the Revised Code of Ordinances.

21-110.7 **Storm Water Detention Plans** - No building permit shall issue for any structure other than a single family structure or for any parking lot unless there shall have been attached to the application therefor a storm water detention plan describing the method for handling storm water in a manner so that storm water runoff shall not be increased as a result of such structure without detention and other storm water handling facilities, and until such storm water

detention plan shall have been approved by the City Engineer. .

21-111 **ZONING AND PLANNING COMMISSION BOARD: ESTABLISHMENT AND PROCEDURE**

A Zoning and Planning Commission is hereby established, which Commission shall perform the duties and have the authority as hereinafter set forth for the Zoning Board of Appeals and shall perform the duties and have the authority of the Plan Commission (also called “Planning Commission”) established by Article 14 of the Revised Code of Ordinances. Wherever the term “Zoning Board of Appeals”, “Plan Commission”, or “Planning Commission” is used within the Revised Code of Ordinances, said term shall mean the Zoning and Planning Commission Board.

21-111.1 **Membership and Terms** - The Zoning and Planning Commission shall consist of eleven members, all residents of the City, each shall be appointed for a 5-year term. Members shall serve until replaced or reappointed. In the event a vacancy or late appointment occurs, replacement shall be for the unexpired term only. The Mayor, with the advice and consent of the City Council shall appoint the membership and shall designate the Chairman who shall serve in this capacity until a vacancy in his term of appointment exists. The City Engineer shall serve as an advisor and as an ex-officio member without a vote. Members of the Zoning and Planning Commission may be removed for cause after a public hearing. Cause shall include, but shall not be limited to, the failure to attend two consecutive meetings or four meetings during any 12-month period. The Zoning and Planning Commission shall perform the duties of the Zoning Board of Appeals as hereinafter set forth.

21-111.2 **Proceedings of the Board of Appeals** - The Board of Appeals shall adopt written rules necessary to the conduct of its affairs and in keeping with the provisions of this ordinance. The Chairman, or in his absence the Acting Chairman, may administer oaths and compel the attendance of witnesses. The Board of Appeals shall keep minutes of its proceedings, showing the vote of each member upon every question, or if absent or failing to vote, indicating such fact, and shall also keep records of its examination and other official actions. Every rule, regulation, every amendment or repeal thereof, and every order, requirement, decision or determination of the Board shall immediately be filed in the office of the City Clerk and shall be a public record. In the performance of its duties, the Board of Appeals may incur such expenditures as are authorized by the City Council. Meetings shall be held at the call of the chairman and at such times and places within the City as the Board of Appeals may determine. All meetings shall be open to the public.

21-111.3 **Hearings, Appeals, Decisions, Notice** - Appeals to the Board of Appeals concerning interpretation or administration of this ordinance may be taken by any person aggrieved. Such appeals shall be taken within a reasonable time, not to exceed 60 days or such lesser period as the Board of Appeals may provide by the rules of the Board of Appeals, by filing with the City Clerk and with the Board of Appeals a notice of appeal specifying the grounds thereof.

The City Clerk shall forthwith transmit all papers constituting the record upon which the action appealed from was taken.

The Board of Appeals shall fix a reasonable time for the hearing of the appeal and give the notice thereof to the parties interested and decide the same within a reasonable time. Upon the hearing, any party may appear in person or by agent, or by attorney. The Board of Appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination as in its opinion ought to be made in the premises, and to that end shall have all the powers of the City Manager, or his designated official, from whom the appeal is taken.

The concurring vote of six members of the Board of Appeals is necessary to reverse any order, requirement, decision, or determination of the City Manager, or his designated official, or to decide in favor of the applicant any matter upon which it is required to pass under this ordinance, or to effect any variation in this ordinance, or to recommend any amendment or modification to this ordinance to the City Council.

21-111.4 **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 Board of Appeals after the notice of appeal has been filed with him that by reasons of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Appeals or by a court of record on application on notice to the officer from whom the appeal is taken and on due cause shown.

21-112 **BOARD OF APPEALS: POWERS AND DUTIES**

The Board of Appeals shall have the following powers and duties:

21-112.1 **Administrative Review** - To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by the officials of the City in the enforcement of this ordinance.

21-112.2 **Variations: Conditions Governing Applications; Procedures** - To authorize upon appeal in specific cases such variance from the terms of this ordinance as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this ordinance would result in unnecessary hardship. The non-conforming use of neighboring lands, structures, or buildings in the same district, or permitted or nonconforming use of lands, structures or buildings in other districts shall not be considered grounds for issuance of a variance. A variance from the terms of this ordinance shall not be granted by the Board of Appeals unless and until:

21-112.2.1 A written application for a variance is submitted, on forms obtained from the City Clerk,

demonstrating:

- 21-112.2.1.1** That special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to the other lands, structures, or buildings in the same district.
- 21-112.2.1.2** That literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this ordinance.
- 21-112.2.1.3** That the special conditions and circumstances do not result from the actions of the applicant.
- 21-112.2.1.4** That granting the variance requested will not confer on the applicant any special privilege that is denied by this ordinance to other lands, structures, or buildings in the same district.
- 21-112.2.2** Notice shall be given not less than 15 nor more than 30 days in advance of the public hearing. The petitioner, his agent, or attorney shall cause such notice to be given in each of the following ways:
 - a. The owner of the property for which the proposed variance is sought, or his agent, shall be notified by mail as to the time, date and place of public hearing, unless said owner is applicant.
 - b. Notice of such hearing indicating the date, time and place, legal description of the property for which the proposed variance is sought and the common street address and nature of the proposed variance shall be printed in a newspaper of general circulation within Mt. Vernon.
 - c. Notice of such hearing indicating the date, time, place, legal description of the property for which the proposed variance is sought, including common street address and nature of the proposed variance, shall be posted at the City Hall and in a prominent place on the property for which the proposed variance is sought.
 - d. The notice required herein to be posted upon the property affected shall be in the following form:
 - (1) The basic form of notice shall be furnished by the City, shall be a metal or other permanent sign with the main panel thereof being not less than 18 inches by 24 inches in bold black or other conspicuous color. Such a sign shall remain the property of the City. The petitioner shall pay to the City in cash or by check a deposit of \$50 which shall be refunded after the hearing and after the petitioner shall return the metal sign to the City. In the event the petitioner

shall not return the metal sign, then the petitioner shall forfeit the deposit; and in addition, the Zoning Board of Appeals and/or the City Council may delay its final decision upon the application until return of the sign.

(2) The notice shall bear the legend, PROPOSED ZONING CHANGE AND/OR CONDITIONAL USE - THIS PROPERTY and also shall have printed thereon the words, "FOR INFORMATION PHONE 618/242-5000." The notice which is published shall be typed and shall further have a plastic cover to protect such a notice from the weather.

(3) The notice shall be posted so as to be conspicuous and visible from the road or street nearest the principal structure on the property and if there is no structure, then from the principal road or street adjacent thereto. If the lot is a corner lot or through lot as defined by the Zoning Ordinance of the City of Mt. Vernon, then such a notice shall be posted on each side of the lot facing the street or road. In no event shall the notice be posted more than 10 feet or less than 5 feet from each such street or road.

e. Proof that each of the notices required herein has been given, shall be provided by the petitioner by delivering an authentic certificate of publication of the notice published in a newspaper of general circulation and providing a certificate of posting and mailing as to the other notices required herein.

f. Each notice shall use not only the zoning classification by number, but also by common designation for describing the current zoning and also the description of the variance requested.

21-112.2.3 The public hearing shall be held. Any party may appear in person or by agent or by attorney.

21-112.2.4 The Board of Appeals shall make findings that the requirements of Section 21-112.2.1 of this ordinance have been met by the applicant for a variance.

21-112.2.5 The Board of Appeals shall further make a finding that the reason set forth in the application justify the granting of the variance, and that the variance is the minimum variance that will make possible the reasonable use of the land, building, or structure.

21-112.2.6 The Board of Appeals shall further make a finding that the granting of the variance will be in harmony with the general purpose and intent of this ordinance, and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.

21-112.3 **Special Conditions for Variance** - In granting any variance, the Board of Appeals may prescribe appropriate conditions and safeguards when made a part of the terms under which the variance is granted, shall be deemed a violation of this ordinance and punishable under

Article 22 of the Revised Code of Ordinances.

Under no circumstances shall the Board of Appeals grant a variance to allow a use not permissible under the terms of this ordinance in the district involved, or any use expressly or by implication prohibited by the terms of this ordinance in said district.

21-112.4 **Board Has Power of Administrative Official on Appeals** - In exercising the above mentioned powers the Board of Appeals may, so long as such action is in conformity with the terms of this ordinance, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and may modify the order, requirement, decision, or determination as ought to be appealed and to that end shall have the powers of the administrative official from whom the appeal is taken.

The concurring vote of four members of the Board of Appeals be necessary to reverse any order, requirement, decision, or determination of the administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass this ordinance, or to effect any variation in the application of this ordinance.

21-113 **ZONING AND PLANNING COMMISSION: POWERS AND DUTIES FOR CONDITIONAL USE**

The Zoning and Planning Commission established by Section 21-111 of Article 21 and by Article 14 of the Revised Code of Ordinances shall perform the duties of the Planning Commission as hereinafter set forth. The duties of the Planning Commission shall include hearing and recommending such conditional uses indicated in the Schedule of District Regulations to the City Council and deciding such questions as are involved in determining whether conditional uses should be granted and recommending conditional uses for such conditions and safeguards as are appropriate under this Ordinance or recommending denial of conditional uses when not in harmony with the purpose and intent of this Ordinance. Wherever the term “Planning Commission” is used herein it shall mean the Zoning and Planning Commission.

21-113.1 **Application and Procedure** - A conditional use shall not be recommended by the Planning Commission unless and until:

21-113.1.1 A written application for a conditional use is submitted, indicating the section of this ordinance under which the conditional use is sought and stating the grounds on which it is requested. Application shall be made on forms obtained from the City Clerk.

21-113.1.2 Notice shall be given not less than 15 nor more than 30 days in advance of the public hearing. Where the petitioner is the City of Mt. Vernon, the City Manager for the City of Mt. Vernon or the Chairman of the Industrial Commission of the City of Mt. Vernon and the property affected by the requested conditional use exceeds 60 acres, notice of such hearing indicating

the date, time, and place, legal description of the property for which conditional use is sought and nature of the proposed conditional use shall be printed in a newspaper of general circulation within Mt. Vernon. In all other cases, the petitioner, his agent, or attorney shall cause such notice to be given in each of the following ways:

a. The owner of the property for which the conditional use is sought, or his agent, shall be notified by mail as to the time, date and place of public hearing;

b. Notice of such hearing indicating the date, time and place, legal description of the property for which conditional use is sought, and the common street address and nature of the proposed conditional use, shall be printed in a newspaper of general circulation within Mt. Vernon;

c. Notice of such hearing indicating the date, time, place, legal description of the property for which conditional use is sought, and the common address and nature of the proposed conditional use, shall be posted at the City Hall and in a prominent place on the property for which the conditional use is sought;

d. The notice required herein to be posted upon the property affected shall be in the following form:

1. The basic form of notice shall be furnished by the City, shall be a metal or other permanent sign with the main panel thereof being not less than 18 inches by 24 inches in bold black or other conspicuous color. Such sign shall remain the property of the City. The petitioner shall pay to the City in cash or by check a deposit of \$50 which shall be refunded after the hearing and after the petitioner shall return the metal sign to the City. In the event the petitioner shall not return the metal sign, then the petitioner shall forfeit the deposit; and in addition, the City Council may delay its final decision upon the application until return of the sign.
2. The notice shall bear the legend, "PROPOSED ZONING CHANGE AND/OR CONDITIONAL USE - THIS PROPERTY", and also shall have printed thereon the words, "FOR INFORMATION PHONE 618/242-5000". The notice shall further have affixed thereto a copy of the notice which is published which shall be typed and shall further have a plastic cover to protect such notice from the weather.
3. The notice shall be posted so as to be conspicuous and visible from the road or street nearest the principle structure on the property and if there is no structure, then from the principle road or street adjacent thereto. If the lot is a corner lot or through lot as defined by the Zoning Ordinance of the City of Mt. Vernon, then such notice shall be posted on each side of the lot facing the

street or road. In no event shall the notice be posted more than 10 feet nor less than 5 feet from each such street or road.

- e. Proof that each of the notices required herein has been given shall be provided by the petitioner by delivering an authentic certificate of publication of the notice published in a newspaper of general circulation and providing a verified certificate of posting and mailing as to the other notices required herein.
- f. Each notice shall use not only the zoning classification by number, but also the relief requested. An example is, "To amend the Zoning Classification from R-1, Low Density Residential District to B-2, Secondary Business District".

21-113.1.3 The public hearing shall be held. Any party may appear in person, or by agent or Attorney.

21-113.2 **Findings** - The Planning Commission shall make a finding that is empowered under the section of this ordinance described in the application, to recommend to the City Council the conditional use and that the granting of the conditional use will not adversely affect the public interest.

Before any conditional use permit shall be recommended to the City Council, the Planning Commission shall make written findings certifying compliance with the specific requirements governing individual conditional uses, if any, and that satisfactory provision and arrangement has been made concerning the following, where applicable:

21-113.2.1 Ingress and egress to property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe.

21-113.2.2 Off-street parking and loading areas where required, with particular attention to the items in 21.113.2.1 above and the economic, noise, glare or odor effects of the conditional use or adjoining properties and properties generally in the district.

21-113.2.3 Refuse and service areas, with particular reference to the items in 21-113.2.1 and 21-113.2.2 above.

21-113.2.4 Utilities, with reference to locations, availability and compatibility.

21-113.2.5 Screening and buffering; with reference to type, dimensions, and character.

21-113.2.6 Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect, and compatibility and harmony with properties in the district.

21-113.2.7 Required yards and other open space.

21-113.2.8 General, compatibility with adjacent properties and other property in the district.

21-113.3 **Final Decision** - After receiving the recommendation of the Planning Commission, the City Council shall grant or deny the application for conditional use.

21-114 **AMENDMENTS**

The regulations imposed and the districts created by this ordinance may be amended from time to time by ordinance after this ordinance has gone into effect.

21-114.1 **Application and Procedure** - No amendment of this Ordinance shall be made by the City Council unless and until:

21-114.1.1 A written application for amendment is submitted indicating the type of amendment sought. The application for amendment shall be made on form obtained from the City Clerk and shall be accompanied by a fee to defray the cost of processing the application. The fee less costs incurred by the administrative official, shall be refunded if the legal notice has not been published.

21-114.1.2 Notice shall be given not less than 15 nor more than 30 days in advance of the public hearing. Where the petitioner is the City of Mt. Vernon, the City Manager for the City of Mt. Vernon, or the Chairman of the Industrial Commission of the City of Mt. Vernon and the property affected by the requested zoning amendment exceeds 60 acres, notice of such hearing, indicating the date, time, place, legal description of the property for which the proposed change in zoning is sought, and nature of the proposed change in zoning shall be printed in a newspaper of general circulation within Mt. Vernon. In all other cases, the petitioner, his agent, or attorney shall cause such notice to be given in each of the following ways:

- a. The owner of the property for which the proposed change in zoning is sought, or his agent, shall be notified by mail as to the time, date and place of public hearing.
- b. Notice of such hearing indicating the date, time and place, legal description of the property for which the proposed change in zoning is sought and the common street address and nature of the proposed change in zoning shall be printed in a newspaper of general circulation within Mt. Vernon.
- c. Notice of such hearing indicating the date, time, place, legal description of the property for which the proposed change in zoning is sought, including common street address and nature of the proposed change in zoning, shall be posted at the City Hall and in a prominent place on the property for which the proposed change in zoning is sought.
- d. The notice required herein to be posted upon the property affected shall be in the following form:

(1) The basic form of notice shall be furnished by the City, shall be a metal or other permanent sign with the main panel thereof being not less than 18 inches by 24 inches in bold black or other conspicuous color. Such sign shall remain the property of the City. The petitioner shall pay to the City in cash or by check a deposit of \$50 which shall be refunded after the hearing and after the petitioner shall return the metal sign to the City. In the event the petitioner shall not return the metal sign, then the petitioner shall forfeit the deposit; and in addition, the City Council may delay its final decision upon the application until return of the sign.

(2) The notice shall bear the legend, PROPOSED ZONING CHANGE AND/OR CONDITIONAL USE - THIS PROPERTY and also shall have printed thereon the words, "FOR INFORMATION PHONE 618/242-5000." The notice shall further have affixed thereto a copy of the notice which is published which shall be typed and shall further have a plastic cover to protect such notice from the weather.

(3) The notice shall be posted so as to be conspicuous and visible from the road or street nearest the principle structure on the property and if there is no structure, then from the principle road or street adjacent thereto. If the lot is a corner lot or through lot as defined by the Zoning Ordinance of the City of Mt. Vernon, then such notice shall be posted on each side of the lot facing the street or road. In no event shall the notice be posted more than 10 feet or less than 5 feet from each such street or road.

- e. Proof that each of the notices required herein has been given, shall be provided by the petitioner by delivering an authentic certificate of publication of the notice published in a newspaper of general circulation and providing a certificate of posting and mailing as to the other notices required herein.
- f. Each notice shall use not only the zoning classification by number, but also by common designation for describing the current zoning and also the relief requested. An example is, "To amend the zoning classification from R-1, Low Density Residential District to B-2, Secondary Business District".

21-114.1.3 The public hearing shall be held before the Zoning Board of Appeals. Any part may appear in person or by agent or attorney.

21-114.1.4 In case of a written protest against any proposed amendment of the regulations or districts signed and acknowledged by the owners of 20% of the frontage immediately adjoining, or across an alley therefrom, or by the owners of 20% of the frontage directly opposite the frontage proposed to be altered, is filed with the City Clerk, the amendment shall not be passed, except by a favorable vote or 2/3 of the City Council then holding office.

21-115 **APPEALS FROM THE BOARD OF APPEALS, PLANNING COMMISSION AND CITY COUNCIL**

Any person or persons, or any board, taxpayer, or official of the City, aggrieved by any decision of the Board of Appeals, the Planning Commission or the City Council, may seek review by a court of record of such decision in the manner provided by law, but only after exhaustion of administrative remedies provided by this Ordinance or by State law.

21-116 **DUTIES OF THE CITY MANAGER, BOARD OF APPEALS, PLANNING COMMISSION AND CITY COUNCIL**

It is the intent of this Ordinance that all questions of interpretation and enforcement shall be first presented to the Administrator of the Zoning Ordinance and that such questions shall be presented to the Board of Appeals only on appeal from the decision of the administrative official, and that recourse from the decisions of the Board of Appeals shall be to the Courts as may be provided by law.

It is also the intent of this Ordinance that conditional uses shall be decided by the City Council and that recourse from decisions of the City Council shall be to the Courts as provided by law.

It is further the intent of this Ordinance that the duties of the City Council in connection with this Ordinance shall not include hearing and deciding questions of interpretation and enforcement that may arise. The procedure for deciding such questions shall be as stated in this section and this Ordinance. Under this Ordinance the City Council have only the duties, (1) or considering and adopting or rejecting proposed amendments or the repeal of this Ordinance, as provided by law, (2) granting or denying conditional uses based on recommendations of the Plan Commission and, (3) of establishing a schedule of fees and charges as stated in Section 21-117 below.

21-117 **SCHEDULE OF FEES, CHARGES, AND EXPENSES**

The City Council shall establish a schedule of fees, charges and expenses and a collection procedure for building permits, certificates of zoning compliance appeals, conditional uses, variances, and other matters pertaining to this ordinance.

The schedule of fees shall be posted and may be altered or amended only by the City Council.

Until all applicable fees, charges, and expenses have been paid in full, no action shall be taken on any application or appeal.

21-118 **PROVISIONS OF ORDINANCE DECLARED TO BE MINIMUM REQUIREMENTS**

In their interpretation and application, the provisions of this ordinance shall be held to be minimum requirements, adopted for the promotion of the public health, safety, morals, or general welfare. Whenever the requirements of this ordinance are at variance with the requirements of any other lawfully adopted rules, regulations, ordinances, deed restrictions, or

covenants, the most restrictive or that imposing the higher standards, shall govern.

21-119 **COMPLAINTS REGARDING VIOLATIONS**

Whenever a violation of this ordinance occurs, or is alleged to have occurred, any person may file a written complaint. Such complaint, stating fully the causes and basis thereof shall be filed with the City Manager or his designated official. He shall record properly such complaint, immediately investigate and take action thereon as provided by this ordinance.

21-120 **(RESERVED FOR FUTURE USE)**

21-121 **AIRPORT HEIGHT REGULATIONS**

Any person seeking a building permit, rezoning, conditional use, or variance within the jurisdiction of airport height regulations as administered by the Mt. Vernon Airport Authority shall provide evidence acceptable to the administrative official; that such height regulations have been complied with before such building permit, rezoning, conditional use, or variance can be acted upon.

21-122 **SEPARABILITY CLAUSE**

Should any section or provision of this ordinance be declared to be unconstitutional or invalid, such decision shall not affect the validity of the ordinance as a whole, or any part thereof other than the part so declared to be unconstitutional or invalid.

21-123 **REPEAL OF CONFLICTING ORDINANCES: EFFECTIVE DATE**

All ordinances or parts of ordinances in conflict with this Zoning Ordinance, or inconsistent with the provisions of this Ordinance, are hereby repealed to the extent necessary to give this Ordinance full force and effect. This Ordinance shall become effective immediately upon its passage, approval, and publication.

21-124 **DEFINITIONS AND ILLUSTRATIONS**

21-124-1 **Definitions** - For the purpose of this ordinance, certain terms and words are hereby defined. Words used in the present tense shall include the future; the singular number shall include the plural, and the plural, the singular; the word “shall” is mandatory and the word “may” is permissive; and the word “person” includes firm, association, trust, organization, partnership, company or corporation as well as an individual. The word lot includes the words plot or parcel.

ACCESSORY BUILDING: A subordinate building or portion of the main building, the use of which is incidental to that of the main building or to the principal use of the premises,

including garages, fallout shelters.

ACCESSORY USE: A use which is incidental to the principal or main use of the premises.

ACHROMATIC COLOR means colorless, zero in saturation, or lacking in hue; for purposes of this Article, the definition of *achromatic* shall include, without limitation white, black, grays, tans, and light earth tones, but any bold, vivid, neon, florescent, or extreme coloration that attracts attention shall be excluded from the definition of *achromatic*.

ACRE(S) GROSS: The Total Acreage of a subdivision, a contiguous zoning district, or a planned development. Computations shall include all public right-of-way except boundary streets of which only one-half of the right-of-way shall be used in any computation.

ACRE(S) NET: The Gross Acreage less all public right-of-way and publicly owned land utilized for community facilities.

AGRICULTURE: Land, including necessary buildings and structures, the principal uses of which are growing of soil crops or the raising or keeping of livestock.

ALLEY: Any public right-of-way twenty feet or under in width providing a secondary means of access to abutting properties.

ALTERATION: Applied to a building or structure to mean a change or rearrangement in the structural parts or in the exit facilities.

AUTOMOBILE, ABANDONED: All motor vehicles or other vehicles in a state of disrepair rendering the vehicle incapable of being driven in its condition; or any motor vehicle or other vehicle that has not been moved or used for seven (7) consecutive days or more and is apparently deserted. Notwithstanding the foregoing definition, a vehicle or portion thereof stored within a permitted building or structure shall not be considered to be an abandoned automobile.

AUTOMOBILE SERVICE STATION: Any building or premises used for the sale, or offering for sale at retail of any automobile fuels or oils. Uses permissible at an "Automobile Service Station" do not include major mechanical and body work, straightening of body parts, painting, welding, storage of automobiles not in operating condition, or other work involving noise, glare, fumes, smoke, or other characteristics normally found in a repair garage or a body shop.

AUTOMOBILE WRECKING: The dismantling or wrecking of used motor vehicles or trailers, or farm machinery, or the storage, sale, or dumping of dismantled, partially dismantled, obsolete or wrecked vehicles or their parts.

BASEMENT: Any floor below the first story of a building unless construed to be a STORY as defined herein.

BILLBOARD: See “Sign, Off-Site”.

ADULT DAYCARE - Adult Daycare Center shall mean any individual, person or entity which for compensation provides care for 3 or more adult persons not related to the caregiver. The care provided shall be temporary care each day and shall not include any extended care nor any residential living arrangements. An Adult Daycare Center shall not be situated at the family home or residence of any care giver or other person.

BOARDING HOUSE: Any dwelling, not open to transients, which provides sleeping and/or cooking and/or eating facilities for more than three (3) but less than ten (10) unrelated individuals. Sleeping rooms shall not be used for more than two (2) persons per room. A rooming house shall be deemed to be a boarding house.

BUILDING: See “Structure”.

BUILDING AREA: The portion of a lot remaining after required yards have been provided.

CARPORT: See “Basement”.

CHILD CARE PROVIDER: Shall mean any individual who provides care within a family home of less than four children and shall mean any individual who provides care within a family home only for children related to the individual and/or only for children from a single household (excluding the households of any related child and of the Child Care Provider). “Related” means any of the following relationships by blood, marriage or adoption: parents, grandparents, great-parents, great uncle, great aunt, brother, sister, step-parent, step-brother, step-sister, uncle, aunt, nephew, niece or first cousin. No Conditional Use under Article 21 of the Revised Code is required for a Child Care Provider.

COMMUNITY RESIDENCE: Community Residence means a group home or specialized residential care home serving unrelated persons with disabilities which is licensed, certified or accredited by appropriate local, state or national bodies. Community Residence does not include a residence which serves persons as an alternative to incarceration for a criminal offense, or persons whose primary reason for placement is substance or alcohol abuse or for treatment of a communicable disease.

COMMUNITY RESIDENCE (SMALL): Small Community Residence means a Community Residence serving eight (8) or fewer persons with disabilities in a family-like atmosphere.

COMMUNITY RESIDENCE (LARGE): Large Community Residence means a Community Residence serving 9 to 20 persons with disabilities in a family-like atmosphere.

CONDITIONAL USE: A special use of land which would not generally be appropriate within a particular land use district but might be allowable in certain locations within the district if specific requirements of conditions are met (as to number, area, location, or relation to neighboring lands or uses and public facilities). After compliance with appropriate safeguards and procedures specified herein, the City Council may permit as conditional uses precise types of uses listed in the land use districts of the Schedule of District Regulations. A conditional use, as defined herein, is the same type of use described as a “special use” in Section 11-13-1.1 of the Illinois Municipal Code.

CONDITIONAL USE PERMIT: Legal authorization to undertake a conditional use, issued by the administrative official pursuant to authorization by the City Council and in compliance with procedures specified herein.

DAY CARE CENTER: Shall mean any individual, person or entity which provides care for children except a Child Care Provider or a Day Care Home. “Children” means any person under 18 years of age.

DAY CARE HOME: Shall mean a family home (residence) satisfying the hereinafter described conditions which receives more than three up to a maximum of 12 children for less than 24 hours per. The number of children includes the family's natural, foster or adopted children and all persons under the age of 12. The term does not include facilities which receive only children from a single household. A Day Care Home must meet each of the following conditions:

1. The Day Care Home must be licensed by the Illinois Department of Children and Family Services and operated in accordance with the Illinois Child Care Act and Regulations of the Department of Children and Family Services.
2. No person other than members of the family residing on the premises shall provide child care, except a Day Care Home may employ one full time equivalent employee who is not a resident of the family home.
3. The use of the family home for child care shall be clearly incidental and subordinate to its use for residential purposes by its occupants.
4. There shall be no sign or other change in the outside appearance of the residence or premises nor any visible evidence of nonresidential use of the premises.
5. No Day Care Home shall be situated nor shall any child care be provided within any accessory building.

6. Only child care services shall be provided and there shall be no sales of any goods or merchandise by the Day Care Home or upon the premises; no other home occupation shall be conducted upon the premises.
7. No traffic shall be generated by the Day Care Home in greater volumes than would normally be expected in a residential neighborhood.
8. Any need for parking generated by the conduct of the Day Care Home shall be met off the street and other than in a required front yard (except within a garage, carport or upon a graveled, asphalted or other hard surfaced driveway). The Day Care Home shall not create a need for off-street parking spaces in addition to that required for the members of the family residing on the premises.
9. No noise or condition shall be created by the day Care Home in greater volume or degree than would normally be expected in a residential neighborhood.
10. Unless waived in writing by the City Council, all areas where any child or children may reasonably be expected to be present shall be completely enclosed by properly constructed and well maintained four foot chain-link fence or a six foot privacy fence aesthetically compatible with the neighborhood and approved by the Building Inspector.
11. The Day Care Home shall comply with such other conditions or restrictions as determined by the City Council to be necessary because of the particular character or condition of the neighborhood, the premises or the proposed Day Care Home.
12. A Conditional Use under Article 21 of the Revised Code of Ordinances shall be required which Conditional Use shall be subject to all other terms and provisions of Article 21 relating to a Conditional Use except that said Conditional Use shall be issued in the name of the operator or operators of the Day Care Home and shall be non-transferable and shall immediately terminate upon any conveyance or other transfer of the residence in whole or in part; and in addition, upon a Day Care Home failing to satisfy any condition imposed herein, the Conditional Use may be revoked by the City Council upon notice and an opportunity to be heard, and shall also be subject to all other remedies provided by law.

DENSITY: Pertaining to the number of dwelling units per net acre or gross acre as indicated for the appropriate zoning district in the Schedule of District Regulations. Residential District density shall not be exceeded for new subdivisions nor exceeded for re-subdivision of existing platted land.

DISABILITIES, PERSON WITH MEANS: Any individual whose disability:

1. is attributable to mental, intellectual, or physical impairment or a combination of mental, intellectual, or physical impairment; and
2. is likely to continue for a significant amount of time or indefinitely; and
3. results in functional limitations in three or more of the following areas of major life activities:
 - a. Self care;
 - b. Receptive or expressive language;
 - c. Learning;
 - d. Mobility;
 - e. Self-direction;
 - f. Capacity for independent living;
 - g. Economic self-sufficiency; and
4. reflects the person's need for a combination and sequence of special interdisciplinary or generic care, treatment, or other services which are of a lifelong or extended duration.

DISTINGUISHED OR CHARACTERIZED BY AN EMPHASIS UPON means the dominant or principal theme of the object described by such phrase. For instance, when the phrase refers to films “which are distinguished or characterized by an emphasis upon the exhibition or description of Specified Sexual Activities or Specified Anatomical area,” the films so described are those whose dominant or principal character and theme are the exhibition or description “specified anatomical areas” or “specified sexual activities.”

DISTRICT: A section or sections of the City of Mt. Vernon and the territorial limits of this ordinance for which uniform regulations governing the use, height, area, and intensity of use by buildings and land, and open spaces about buildings, are herein established.

DRIVE-IN RESTAURANT: A food service establishment, with or without interior facilities for eating, which caters to and permits the consumption of food either in customer's automobile parked on the premises or in any other designated area on the premises outside the establishment where the food is so prepared.

DWELLING: A residential building designed or used exclusively as the living quarters for one or more families.

DWELLING, ATTACHED: a dwelling which is joined to another dwelling at one or more sides by a party wall or walls.

DWELLING, DETACHED: a dwelling which is entirely surrounded by open space on the

same lot.

DWELLING, SINGLE FAMILY: A Dwelling Unit other than a mobile home designed for or occupied exclusively by one family. A Dwelling Unit includes a Modular Unit as herein defined.

DWELLING, TWO-FAMILY: A detached residential building other than a mobile home containing two dwelling units designed for or occupied exclusively by two families living independently of each other. A Two-Family Dwelling includes a Modular Unit as herein after defined.

DWELLING, MULTIPLE-FAMILY: A residential building other than a mobile home or a portion thereof containing separate dwelling units for three or more families living independently of each other. A Multiple-Family Dwelling may be a Modular Unit as herein defined.

DWELLING, MOBILE HOME: shall mean any structure placed in accordance with Article 19 of the Revised Code of Ordinances that meets the definition of “Manufactured Home” as set forth within the National Manufactured Housing Construction and Safety Act, 42 USC 5401 et seq and the 24 Code of Federal Regulations Part 3280, which Act essentially provides that A Manufactured Home is a structure that is transportable in one or more sections. In traveling mode, the home is 8-feet or more in width and 40 feet or more in length, or, when erected on site, is 320 or more square feet. A Manufactured Home is built on a permanent chassis and is designed to be used as a dwelling unit with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein. A Manufactured Home is designed and constructed to the Federal Manufactured Construction and Safety Act Standards and must be so labeled. Calculations used to determine the number of square feet in a structure shall be based on the structure's exterior dimensions measured at the largest horizontal projections when erected on site. These dimensions will include all extendable rooms, cabinets, and other projections containing interior space but do not include bay windows. Width of the Manufactured Home means its largest overall width in the traveling mode, including cabinets and other projections which contain interior space; width does not include bay windows, roof projections, overhangs or eaves under which there is no interior space. All Manufactured Homes must have an affixed Housing and Urban Development seal(s) located on the outside of the home: if the home is a multi-wide unit, each must have a seal.

MODULAR UNIT: A Modular Unit is a structure manufactured in an off-site location and transported to the placement site by a specialized transporting device. When the Modular Unit arrives at the placement site, it must be removed from the transporting device onto a basement or permanent foundation. The towing hitch or running gear, which includes axles, brakes, wheels, and other parts of the chassis that operate only during transportation must be removed prior to placement or installation on a site built permanent foundation consisting of a system of

supports, including piers, either partially or entirely below grade which is : (a) capable of transferring all design loads imposed by or upon the structure into soil or bedrock without failure, (b) placed in a adequate depth below grade to prevent frost damage, and (c) constructed of concrete, metal, treated lumber or wood or grouted masonry. A Modular Unit is not designed to be moved once placed or installed on a site-built permanent foundation. A Modular Unit must be designed and manufactured to comply with all building, dwelling, plumbing, electrical, mechanical and other construction codes applicable to construction of residential structures within the City of Mt. Vernon. A Modular Unit must have affixed thereto a certification under 24 Code of federal Regulations 3282.12c certifying that the Unit is not subject to the provisions of the National Manufactured Housing Construction Safety Standards Act (42 USC 5401 et seq) which certification shall substantially state as follows:

The manufacturer of this structure, Name _____;
Address _____ (location where structure was manufactured).

Certifies that this structure (Ser. No _____) is not a manufactured home subject to the provisions of the National Manufactured Housing Construction and Safety Standards Act and is -

- (1) designed only for erection or installation on a site-built permanent foundation,
- (2) not designed to be moved once so erected or installed,
- (3) designed and manufactured to comply with _____
(Here state which code included in paragraph (b) (3) of this section has been followed), and
- (4) to the manufacturer's knowledge is not intended to be used other than on a site-built permanent foundation.

This certification shall be affixed in a permanent manner near the electrical panel, on the inside of a kitchen cabinet door, or in any other readily accessible and visible location. As part of the certification, the manufacturer shall identify each certified structure by a permanent serial number placed on the structure. No certification except the certification described above shall be accepted by the City, unless otherwise required by federal law.

“TRAVEL TRAILER” shall mean a vehicular, portable structure built on a chassis designed to be a temporary dwelling for travel and recreation purposes.

DWELLING UNIT: a room or rooms connected together, constituting a separate, independent housekeeping establishment, and physically separated from any other rooms or “dwelling units” which may be in the same structure, and containing independent cooking, bathroom, and sleeping facilities.

EMPLOYEE(S): in regard to off-street parking requirements, employees mean all who work in the enterprise, including owners other than purely stock holders), partners, management and office personnel.

ESSENTIAL SERVICES: the erection, construction, alteration or maintenance, by public utilities or municipal or other governmental agencies, of underground or overhead gas, electrical, steam, or water transmission or distributing systems, collection, communication, supply or disposal systems, elevated and underground water storage tanks, including poles,

ESSENTIAL SERVICES (Cont'd.): wires, mains, drains, sewers, pipes, conduits, cables, traffic signals and signs, hydrants and other similar equipment and accessories in connection therewith; reasonably necessary for the furnishing of adequate service by such public utilities or municipal or other governmental agencies or for the public health or safety or general welfare, but not including buildings, or Public Utility Substations as hereinafter defined. Underground use is encouraged, overhead discouraged.

FAMILY: One or more persons occupying a single dwelling unit, provided that unless all members are related by birth, adoption, or marriage, no unrelated group shall consist of more than three (3) persons.

FLOOR AREA: The sum of all gross horizontal enclosed area of the several floors of a building and its accessory buildings on the same lot excluding basement floor areas and non-enclosed portions of the structure. All dimensions shall be measured between exterior faces of walls.

FLOOR AREA RATIO (F.A.R.): The quotient of the floor area as defined above of the building divided by its lot area.

$$\text{F. A. R.} = \frac{\text{Floor Area}}{\text{Lot Area}}$$

(See illustration 21-124.2 of this Section)

GRADE: Grade is the average of the finished ground level at the center of all walls of a building. In case building walls are parallel to and within five feet (5) of sidewalk(s), the grade shall be the average finished elevation of such sidewalk(s) between side lot lines. (See also HEIGHT and STORY, and illustration at 21-124.2 of this Section).

HEIGHT: Building height, as permitted in each district, shall be determined from GRADE as herein defined. (See also STORY and illustration at 21-124.2 of this Section).

HOME OCCUPATION: An occupation conducted in a dwelling unit, provided that:

1. No person other than members of the family residing on the premises shall be engaged in such occupation.
2. The use of the dwelling unit for the home occupation shall be clearly incidental and

subordinate to its use for residential purposes by its occupants, and not more than 25 percent of the floor area of the dwelling unit shall be used in the conduct of the home occupation.

3. There shall be no change in the outside appearance of the building or premises, or other visible evidence of the conduct of such home occupation other than one sign, not exceeding one square foot in area, non-illuminated and mounted flat against the wall of the principal building
4. No home occupation shall be conducted in any accessory building.
5. There shall be no sales in connection with such home occupation.
6. No traffic shall be generated by such home occupation in greater volumes than would normally be expected in a residential neighborhood, and any need for parking generated by the conduct of such home occupation shall be met off the street and other than in a required front yard.
7. No equipment or process shall be used in such home occupation which creates noise, vibration, glare, fumes, odors or electrical interference detectable to the normal senses off the lot, if the occupation is conducted in a single-family residence, or outside the dwelling unit if conducted in other than a single-family residence. In the case of electrical interference, no equipment or process shall be used which creates visual or audible interference in any radio or television receivers off the premises, or causes fluctuations in line voltage off the premises.
8. A medical practitioner, architect, engineer, insurance or real estate offices shall not be construed to be home occupations.

JUNK YARDS: The use of more than 750 cubic feet of open storage on any lot, portion of a lot or tract of land for the sale, storage, keeping or abandonment of junk, scrap metals or salvageable materials, or for the abandonment, dismantling, or wrecking of automobiles or other vehicles, machines, or parts thereof.

KENNEL: Any lot structure or premises where 4 or more dogs and/or cats over 4 months of age are kept.

LOADING SPACE, OFF-STREET: Adequate space, logically and conveniently located for bulk pickups and deliveries, scaled to delivery vehicles expected to be used such as trucks and tractors, and accessible to such vehicles at all times. Required off-street loading space is not to be included as off-street parking space in computation of required off-street parking space.

LOT: For purposes of this ordinance, a lot is a parcel of land of at least sufficient size to meet

minimum zoning requirements for use, coverage, and area, and to provide such yards and other open spaces as are herein required. Such lot shall have frontage on an improved public street, or on an approved private street, and may consist of

1. A single lot of record.
2. A portion of a lot of record.
3. A combination of complete lots of record, of complete lots of records and portions of lots of record, or of portions of lots of record.
4. A parcel of land described by metes and bounds; provided that in no case of division or combination shall any residual lot or parcel be created which does not meet the requirements of this ordinance for the zoning district for which the lot or parcel is located.

LOT FRONTAGE: The front of a lot shall be construed to be the portion nearest the street. For the purpose of determining yard requirements on corner lots and through lots, all sides of a lot adjacent to streets shall be considered frontage, and yards shall be provided as indicated under YARDS as defined herein. (See definition of YARD, FRONT.)

LOT MEASUREMENTS:

1. DEPTH of a lot shall be considered to be the distance between the midpoints of straight lines connecting the foremost points of the side lot lines in front and the rearmost points of the side lot lines in the rear.
2. WIDTH of a lot shall be considered to be the distance between straight lines connecting front and rear lot lines at each side of the lot, measured across the rear of the required front yard, provided, however, that width between side lot lines at their foremost points (where they intersect with the street lot line), shall not be less than 80 percent of the required lot width, except in the case of lots on the turning circle of cul-de-sac, where the 80 percent requirement shall not apply.

LOT OF RECORD: A lot which is part of a subdivision recorded in the office of the Recorder of Deeds, or a lot or parcel described by metes and bounds, or a lot or parcel described by metes and bounds, the description of which has been so recorded.

LOT TYPES: Any lot within the jurisdiction of this ordinance shall be one of the three following types:

CENTER LOT: defined as a lot located at the intersection of two or more streets. A lot abutting on a curved street or streets shall be considered a corner lot if straight lines

drawn from the foremost points of the side lot lines to the foremost point of the lot meet at an interior angle of less than 135 degrees.

INTERIOR LOT - defined as a lot other than a corner lot with only one frontage on a street.

THROUGH LOT - define as a lot other than a corner lot with frontage on more than one street. Through lots abutting two streets may be referred to as double frontage lots. (See illustration at 21-124 of this section).

MOBILE HOME: - See “ Dwelling, Mobile Home”.

MODULAR UNIT: A prefabricated sectionalized, panelized or modular unit is a structure manufactured in an off-site location and transported to the job site by a specialized transporting device. When the modular unit arrives at the job site, it must be removed from the transporting device onto a basement or permanent foundation. Modular units have no steel chassis attached to the floor joist.

PARKING SPACE, OFF STREET: For the purposes of this ordinance, an off-street parking space shall consist of a space within the buildable area of a lot, adequate for parking an automobile. Any off-street parking space required herein shall be one of the following types:

1. **RESIDENTIAL, ONE AND TWO FAMILY**: This space may be in a garage, carport, or unenclosed area, but not on any public right-of-way (including sidewalk). Ingress and egress to such parking space from public right-of way may be by forward or backward motion.
2. **RESIDENTIAL MULTI-FAMILY (THREE OR MORE FAMILIES); COMMERCIAL INDUSTRIAL**: This space shall be one of a group of off-street parking spaces (a parking lot and/or structure containing three or more spaces) consisting of a space adequate for parking an automobile with room for opening doors on both sides. Each parking space shall have maneuvering room and properly related access to a public right of way (included to mean only forward motion as opposed to backing out). Required spaces shall be individually marked and shall be so designed, maintained, and regulated so that no parking or maneuvering incidental to parking shall be on any public street, walk, or alley, and so that any automobile may be parked and unparked without moving another.

Parking spaces shall not be less than 9 feet by 18 feet for any parking arrangement except parallel type, in which case the minimum size shall be 8.5 feet by 22 feet. Aisles

between parking spaces shall be not less than twelve feet in width when serving automobiles parked at a forty-five degree angle in one direction nor less than twenty-five feet in width when serving automobiles parked perpendicularly.

For purposes of rough computation, an off-street parking space and necessary access and maneuvering room may be estimated at 400 square feet. Requirements will be considered met only when actual spaces as required in the Schedule of District Regulations and maneuvering room meeting the aforementioned requirements are provided. All parking spaces, maneuvering room, and points of access from public right of way shall be a hard surface, and meet the following standards:

- 2.1. 6" of rock and 2" of asphalt, or equivalent in concrete.
- 2.2. Provide for disposal of storm water and ensure such water shall not flow onto adjoining property or sidewalks.
- 2.3. Traffic flow direction shall be appropriately marked.

If appropriate in the judgement of the Administrative Official: Curbs (or stops) shall be installed at each off-street parking space to regulate traffic flow; adequate lighting facilities shall be provided. Layout of parking spaces in parking lot or parking structure are the responsibility of the developer, but shall be approved by the Administrative Official in respect to meeting the intent of this definition.

“PLANNING COMMISSION” or “PLAN COMMISSION” shall mean the Zoning and Planning Commission of the City of Mt. Vernon.

PLANNED UNIT DEVELOPMENT: A means of developing or redeveloping existing larger parcels or combinations of smaller parcels of land within the jurisdiction of this ordinance, by allowing more flexibility in design to produce a more aesthetic and/or efficient environment, and which through safeguards incorporated elsewhere in this ordinance will assure that any such planned unit development will be in harmony and compatible with the intent of this ordinance and the appropriate zoning district of this ordinance.

More specifically, a planned unit development is land which is under:

1. Single ownership, or
2. Unified control, and wherein such land is to be utilized for ultimate use by:
 - 2.1. Single ownership, or

- 2.2. Unified control, or
- 2.3. Separate ownership and unified control, or
- 2.4. Separate ownership without unified control, and whereon such land is designed for use as one building or a group of buildings, and whereon such land there may be provisions for multiple purpose uses. Standards and requirements within the various zoning districts permitting a planned unit development are indicated in the Schedule of District Regulations, and in Performance Standards, Section 21-200 of this ordinance.

Planned Unit Development does not prevent conveyance or other transfer of less than the whole parcel comprising the Planned Unit Development, provided the transfer or conveyance does not create or result in a violation of Article 21 or other Article of the Revised code of Ordinances.

Any such planned unit development shall be compatible to the Comprehensive Plan for the City of Mt. Vernon, Illinois. Provided further, if the proposed development is only for a portion of the contiguous landholdings of the applicant(s), then a simple, schematic plan showing anticipated uses, densities, and circulation (traffic or thoroughfare) patterns shall be submitted with application for any planned unit development.

PUBLIC PARK OR RECREATION AREA means public land which has been designated for park or recreational activities including but not limited to a park, playground, nature trails, swimming pool, reservoir, athletic field, basketball or tennis courts, pedestrian/bicycle paths or similar public land open to the public within the City of Mt. Vernon which is under the control, operation, or management of the City or other governmental, charitable, or not-for-profit authority.

PUBLIC UTILITY SUBSTATION: An area where facilities are provided for the distribution of telephone, radio communications, water, gas, and electricity. These facilities shall be permitted as a conditional use in the various zoning districts subject to conditions which will assure their harmony, especially aesthetically, with the nature of the respective district.

REGULARLY FEATURES means a consistent or substantial course of conduct, such that the films or performances exhibited constitute a substantial portion of the films or performances offered as a part of the ongoing business of the establishment.

RELIGIOUS INSTITUTION means any church, synagogue, mosque, temple, regular place of worship or building which is used primarily for religious worship and related religious activities.

RESIDENTIAL DISTRICT OR USE means the R-1, Low Density Residential; R-2, Medium Density Residential; R-M2, Medium Density and Mobile Home; R-3, High Density Residential; and R-MH, Planned Mobile Home Districts described within Article 21 of the Revised Code of Ordinances. *Residential Use* means any dwelling or structure used or occupied for living quarters of any person or property upon which there is situated a residential structure, dwelling unit or other living quarters.

ROOMING HOUSE: See “Boarding House”

SCHOOL means any public or private educational facility including but not limited to child day care facilities, nursery schools, preschools, kindergarten, elementary schools, primary schools, intermediate schools, junior high schools, high schools, secondary schools, continuation schools, special education schools, junior colleges, and universities. School includes the school grounds, but does not include the facilities used primarily for another purpose and only incidentally as a school.

SEMI-NUDE OR SEMI-NUDITY means a state of dress in which non-transparent and opaque clothing covers from view no more than the human buttocks, anus, anal cleft and cleavage, pubic area, male genitals, female genitals, vulva and the female breast below a horizontal line across the top of the areola at its highest point and the human male genitals in a discernibly turgid state, even if completely and opaquely covered. This definition shall include the entire lower portion of the human female breasts, but shall not include any portion of the cleavage of the human breasts exhibited by a dress, blouse, shirt, leotard, bathing suit or other wearing apparel, provided the areola and nipple are not exposed in whole or in part.

SERVICE STATION: See “Automobile Service Station”

“SEXUALLY ORIENTED BUSINESS” shall mean an adult store, adult cabaret, adult motel, adult theater, sexual encounter center, escort agency, or semi-nude model studio, each of which are defined as follows:

(1) **ADULT CABARET** means any commercial establishment, except an adult theater, semi-nude model studio, or sexual encounter center, including but

not limited to a nightclub, bar, restaurant, or gentlemen’s club, which regularly features any one or more of the following:

- (i) persons who appear semi-nude or in a state of semi-nudity;
- (ii) live performances which are characterized by their emphasis upon exposure of “specified sexual activities” or “specified anatomical areas.”

(2) **ADULT MOTEL** means a motel, hotel or similar commercial establishment which offers private accommodations to the public, for any form of consideration, which provides patrons with closed-circuit television transmissions, films, motion

pictures, video cassettes, slides or other photographic reproductions which are characterized by their emphasis upon the exhibition or description of “specified sexual activities” or “specified anatomical areas” and which advertises the availability of such sexually oriented type of material by means of a sign visible from the public right-of-way, or by means of any off-premises advertising including but not limited to, newspapers, magazines, pamphlets or leaflets, radio or television, and (i) offers a sleeping room for rent for a period of time less than ten (10) hours or (ii) allows a tenant or occupant to sub-rent the sleeping room for a time period of less than ten (10) hours.

(3) **ADULT STORE** means a commercial establishment that, as one of its principal business purposes, offers for sale or rental for any form of consideration any one or more of the following:

- (i) books, magazines, periodicals or other printed matter, or photographs, films, motion picture, video cassettes or video reproductions, slides, or other visual representations that are characterized by the depicting or describing of “specified sexual activities” or “specified anatomical areas;” or
- (ii) instruments, devices, or paraphernalia that are designed for use in connection with “specified sexual activities.”
- (iii) films, motion pictures, video cassettes, slides or other photographic reproductions which are distinguished or characterized by their emphasis upon matters exhibiting or describing “specified sexual activity” or “specified anatomical areas” and which are shown within a viewing room as hereinafter defined on still or motion picture projectors, slide projectors or similar machines or computers or other image producing machines.

A principal business purpose exists if the establishment has a significant or substantial portion of its stock in trade or derives a significant or substantial portion of its revenues or devotes a significant or substantial section of its sales or display or floor space to the sale or rental for any form of consideration any one or more of the items described above. A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or describing “specified sexual activities” or “specified anatomical areas” and still be categorized as an adult store. Such other business purposes will not serve to exempt such commercial establishments from being categorized as an adult store so long as one of its principal business purposes are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas.”

(4) **ADULT THEATER** means a theater, concert hall, auditorium or similar commercial establishment which has a room(s) for viewing or viewing areas, each of which are 150 square feet or greater in size and which for any form of consideration regularly features any one of the following:

- (i) films, motion pictures, video cassettes, slides or similar photographic

reproductions which are characterized by their emphasis upon the exhibition or description of “specified sexual activities” or “specified anatomical areas” are regularly shown for any form of consideration;

(ii) persons who appear semi-nude or in a state of semi-nudity or live performances which are characterized by their emphasis upon the exposure of “specific sexual activities” or “specific anatomical areas”.

(5) **ESCORT AGENCY** means a person or business association who furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes for a fee, tip, or other consideration.

(6) **SEMI-NUDE MODEL STUDIO** means any place where a person, who regularly appears in a state of semi-nudity is provided for money or any form of consideration to be viewed or observed or sketched or drawn or painted or sculptured or photographed or similarly depicted by other persons. Semi-nude Model Studio shall not include a modeling class operated: (a) By a college, junior college, or university supported entirely or partly by taxation; or (b) By a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or (c) In a structure: (i) which has no sign visible from the exterior of the structure and other advertising that indicates a semi-nude person available for viewing and (ii) where, in order to participate in a class a student must enroll at least three days in advance of the class; and (iii) where no more than one model is on the premises at any one time.

(7) **SEXUAL ENCOUNTER CENTER** means a business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration:

- (i) physical contact in the form of wrestling or tumbling between persons of the opposite sex; or
- (ii) activities between male and female persons and/or persons of the same sex when one or more of the persons is in a state of semi-nudity.

A principal business purpose exists if the services offered are intended to generate business income.

SIGN: Any device designed to inform or attract the attention of persons not on the premises on which the sign is located. (For definitions and restrictions see Sections 21-125 and 21-126 of this ordinance)

SPECIFIED ANATOMICAL AREAS means and includes any of the following:

- (1) the male genitals in a discernibly turgid state, even if fully and opaquely covered;
- (2) less than completely and opaquely covered human genitals, pubic region, buttocks, or

a female breast below a point immediately above the top of the areola.

SPECIFIED SEXUAL ACTIVITIES means and includes any of the following:

- (1) the fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts, whether covered or uncovered;
- (2) sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy;
- (3) masturbation, actual or simulated; or
- (4) excretory functions as part of or in connection with any of the activities set forth in (1) through (3) above.

STORY: That portion of a building between the upper surface of any floor and the upper surface of the floor next above, except that the topmost story shall be that portion of a building included between the upper surface of the topmost floor and the ceiling or roof above. If the finished floor level directly above a basement, cellar or unused underfloor space is more than six feet above GRADE as defined herein, such basement, cellar, or unused underfloor area shall be considered as a story. (See also, GRADE and HEIGHT, and illustration at 21-124.2 of this Section).

STREET LINE: The lot line abutting street right-of-way line.

STRUCTURE: Anything constructed or erected with a fixed location on the ground, or attached to something having a fixed location on the ground. Among other things, structures include buildings, mobile homes, signs, billboards, and poster panels, but do not include walls and fences.

TOWN HOUSE DEVELOPMENT: A group of single family dwelling units, each dwelling unit structure having the following characteristics:

1. May or may not be part of a planned unit development, but each zoning lot used for single family town houses shall have a distinct area which shall be described and recordable as a separate lot.
2. Containing one or more stories.
3. Having at least two exterior entrances.
4. Attached to one or more adjoining town houses by a vertical party wall extending from the footing(s) to the roof line without passageway or access between town houses, - Or - Unattached, but abutting one or more adjoining town houses and with a separate but complete vertical wall from footing to roof line without passageway or access between town houses.

5. A minimum of one off-street parking space.
6. Rear yards separated from adjoining rear yards with masonry fences a minimum of seven feet in height. Such fences may or may not be party walls.
7. Area, yard, height, and F.A.R. requirements as indicated in schedule of District Regulations.

TRAILER: See “Dwelling, Mobile Home”.

TRAVEL TRAILER: A vehicular, portable structure built on a chassis, designed to be used as a temporary dwelling for travel and recreational purposes.

TRUCK OR EQUIPMENT TERMINAL: Any lot, structure, or premises use for the parking or storage of capital equipment such as trucks, trailers, or other like equipment, over 3/4 ton capacity.

UNIFIED CONTROL: More than one parcel of land wherein separate owners join for development purposes, and at a later date may transfer all or part of the land to another person or persons, but any such transfer shall include the legal responsibility of being an integral part of the whole development. For example; a condominium; a cooperative, a land trust; or, private ownership of a single parcel, but any such parcel has a legal responsibility to the entire development through a legally recorded covenant or some other recorded instrument. It is intended that all owners of such land under unified control know their limitations and responsibility as previously agreed upon are re-defined from time-to-time. It is further intended that any such jointly owned land shall not come under ownership of the City of Mt. Vernon as in the case of open space, except in special and unique conditions which shall be determined at the time of authorization.

Unified control may be utilized within planned unit developments or in conventional developments.

UTILITY SUBSTATION: See “Public Utility Substations”.

VARIANCE: A variance is a relaxation of the terms of the zoning where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the actions of the applicant, a literal enforcement of the ordinance would result in unnecessary and undue hardship. As used in this ordinance, a variance is authorized only for height, area, and size of structure or size of yards and open spaces; establishment or expansion of a use otherwise prohibited shall not be allowed by variance, nor shall a variance be granted because of the presence of non-conformities in the zoning district or uses in an adjoining district.

VIEWING ROOM shall mean a room, booth, or area having less than 150 square feet of floor space where a patron of a sexually oriented business is positioned or would ordinarily be

positioned while watching a film, videocassette, or other video reproduction.