

1. 2.28.18 Planning And Zoning Agenda

Documents:

AGENDA.PDF

2. 1.24.18 Planning And Zoning Meeting Minutes

Documents:

01.24.18 MEETING MINUTES.PDF

3. Chapter 178 Redline

Documents:

CONDITIONAL USE PERMITS 178.PDF

4. Chapter 179 Redline

Documents:

CHAPTER 179 BOA.PDF

5. Chapter 180 Redline

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180 SITE REVIEW.PDF

6. Chapter 182 Redline

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7. Chapter 183 Redline

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# AGENDA

Planning and Zoning Commission

**City Council Chambers  
1133 66th St.  
Windsor Heights  
Wednesday, February 28, 2018  
5:00 PM**

- 1) **Call to Order**
- 2) **Approval of the Agenda**
- 3) **Approval of the Minutes:**
  - a) January 24, 2018
- 4) **Discussion and appropriate follow up to Chapter 175, Signs**
  - a) *“nonconforming sign” language cannot remove the 2 year limitation*
- 5) **Public Hearing Chapter 180 Conditional Use Permits, 182 Administration and Enforcement, and 183 Changes and Amendments**
- 6) **Public Hearing on Chapter 166, Definitions, Chapter 171, Temporary Uses**
- 7) **Adjourn**

*\*it is possible that members, including a quorum of members, of the City Council and other committees may be present. No business will be discussed outside of this agenda.*

**MINUTES  
WINDSOR HEIGHTS  
PLANNING AND ZONING COMMISSION  
Council Chambers- 1133 66<sup>th</sup> St.  
January 24, 2018**

**1. Call to Order.**

Egger called the meeting to order at 5:02 p.m. Egger, Turner, Schumann, Wood, Libbie, Foss and McConnville in attendance. Building and Zoning Official Sheilah Lizer and Communication Coordinator/Deputy Clerk Jessica Vogel

**2. Approval of the Agenda.**

Foss made a motion to prove the agenda. Schumann seconded; voice vote passed unanimously.

**3. Approval of the October 25, 2017 minutes.**

Turner made a motion to approve the minutes from October 25, 2017. Libbie seconded. Voice vote passed unanimously.

**4. Election of Chairman and Vice Chair**

Foss motioned to elect Jim Egger as Chairman. Libbie seconded. Voice vote passed unanimously. McConnville motioned to elect Jennifer Schumann as Vice Chair. Foss seconded. Voice vote passed unanimously.

**5. Introduction of new Planning and Zoning Commission Members**

Jennifer Schumann, Geoff Wood and Joe McConnville introduced themselves as well as the current members introduced themselves to the new members.

**6. Public Hearing on Chapter 175**

Foss motioned to open the public hearing. Schumann seconded. Motion passed unanimously on a roll call vote. Public Hearing opened at 5:16 pm. Discussion about the changes to Chapter 175. Turner motioned to close the public hearing at 5:42 pm. Libbie seconded. Motion passed unanimously on a roll call vote. Wood motioned to remove the two year time frame from 175.05(21). Schumann seconded. Voice vote passed unanimously. Foss motioned for 175.02(28) to say not more than 2 sq. feet in a residential area and remove the word small. Schumann seconded. Voice vote passed unanimously. Foss motioned for table 175-4 to conform with the definition of residential signs to have three exempt signs. Wood seconded. Voice vote passed unanimously. Schumann motioned for 175.02(35) for it to say from a window or located within the interior structure. Wood seconded. Voice vote passed unanimously. Egger motioned for

175.03(C) to remove in good condition. McConnville seconded. Voice voted passed unanimously. Turner motioned that city staff can make any necessary revision to motions. Libbie seconded. Voice voted passed unanimously.

7. **Adjourn**

Foss moved to adjourn at 6:30 p.m.; Schumann seconded. Voice vote passed unanimously.

\_\_\_\_\_  
Jim Egger, Chair

ATTEST:

\_\_\_\_\_

## Conditional Use Permits

### Section 180.01 Intent

Many land use activities, while not inherently inconsistent with other permitted uses in a particular zoning district, may have significant impact on the surrounding area. Conditional use permits for such uses allow special conditions to be "attached" to the development to address those impacts. The conditional use permit process provides for flexibility in identifying the special conditions without making the Ordinance unreasonably complicated. The objective of the conditional use permit process is to encourage compatibility of the proposed development with the environment, and with existing and future land uses in the area.

### Section 180.02 Conditional Use Permit Required

Those uses which require a Conditional Use Permit are listed in the individual districts, as well as those having the discretion of the Zoning Administrator.

### Section 180.03 Issuance of Conditional Use Permit

1. A conditional use permit may be issued only after review and approval of the submitted application, including any plans, by the Board of Adjustment. An application and plan shall only be approved upon determination that the development, if completed as proposed, will comply with the provisions of this chapter.
2. The conditional use permit shall be issued in the name of the applicant (except that applications submitted by an agent shall be issued in the name of the principal), shall identify the property involved and the proposed use, and shall incorporate by reference the approved application and plan. The permit shall contain any special conditions or requirements lawfully imposed by the Board of Adjustment.
3. All development shall occur strictly in accordance with such approved application and plan.

### Section 180.04 Application for Conditional Use Permits

1. The applicant for a conditional use permit must be a person with the legal authority to take action in accordance with the permit. In general, this means that applications should be made by the owners or lessees of the subject property or their agents, or persons who have contracted to purchase property contingent upon their ability to acquire the necessary permits, or their agents.
2. The application must be submitted on an approved form and must be complete. An application shall be complete when it contains all the information necessary for the Board of Adjustment to decide whether the development, if completed as proposed, will comply with all of the requirements of this section. Unless the Zoning Administrator informs the applicant in what way the application is incomplete, the application shall be presumed to be complete. If the application is deemed incomplete, the Zoning Administrator will not schedule the hearing until all required documentation has been submitted.
3. Additional Documents needed:

Site plan with dimensions of the proposed with dimensions of the proposed building and land

Property owners within 500 feet of the property in reproducible electronic format

A complete legal description of the property shall be provided in reproducible electronic format.

Narrative to the Standards for Approval #1 - 6

3. To minimize planning costs to the applicant, avoid misunderstandings or misinterpretations, and to ensure compliance with the requirements of this section, a pre-application conference between the applicant and the Zoning Administrator is strongly encouraged.

#### Section 180.05 Notification

The Board of Adjustment shall fix a reasonable time for the hearing on the appeal, give public notice thereof as well as due notice to the parties in interest, and decide the same within a reasonable time.

#### .Section 180.06 Standards for Approval

1. The Board of Adjustment shall review the proposed development for conformance to the following Standards for Approval:

A. Compatibility. The proposed buildings or use shall be constructed, arranged and operated so as to be compatible with the character of the zoning district and immediate vicinity, and not to interfere with the development and use of adjacent property in accordance with the applicable district regulations. The proposed development shall not be unsightly, obnoxious or offensive in appearance to abutting or nearby properties.

B. Transition. The development shall provide for a suitable transition, and if necessary, buffer between the proposed buildings or use and surrounding properties.

C. Traffic. The development shall provide for adequate ingress and egress, with particular attention to vehicular and pedestrian safety and convenience, traffic flow and control, and emergency access.

D. Parking and Loading. The development shall provide all off-street parking and loading areas as required by this Ordinance, and adequate service entrances and areas. Appropriate screening shall be provided around parking and service areas to minimize visual impacts, glare from headlights, noise, fumes or other detrimental impacts.

E. Signs and Lighting. Permitted Signage shall be in accordance with the applicable district regulations and shall be compatible with the immediate vicinity. Exterior lighting, if provided, shall be with consideration given to glare, traffic safety and compatibility with property in the immediate vicinity.

F. Environmental Protection. The development shall be planned and operated in such a manner that will safeguard environmental and visual resources. The development shall not generate excessive noise, vibration, dust, smoke, fumes, odor, glare, groundwater pollution or other undesirable, hazardous or nuisance conditions, including weeds.

2. If the Board of Adjustment concludes that all of the Standards for Approval criteria will be met by the development, it shall approve the application and plans. If it concludes, based on the information submitted at the hearing, which if completed as proposed there is a strong probability the development will:

- A. Not adequately safeguard the health, safety and general welfare of persons residing or working in adjoining or surrounding property, or
- B. Impair an adequate supply (including quality) of light and air to surrounding property, or
- C. Unduly increase congestion in the roads, or the hazard from fire, flood or similar dangers, or
- D. Diminish or impair established property values on adjoining or surrounding property, or
- E. Not be in accord with the intent, purpose and spirit of the Zoning Ordinance or Comprehensive Plan.

#### Section 180.07 Burden of Persuasion

The burden of persuasion as to whether the development, if completed as proposed, will comply with the requirements of this and all chapter is at all times on the applicant. The burden of presenting evidence to the Board of Adjustment sufficient enough for it to conclude that the application does not comply with the requirements of this section is upon the person or persons recommending such a conclusion, unless the information presented by the applicant warrants such a conclusion.

#### Section 180.08 Board of Adjustment Action on Applications

In considering whether to approve an application for a conditional use permit, the Board of Adjustment shall proceed according to the following format:

1. The Board of Adjustment shall establish findings of fact based upon information contained in the application, the staff report and information gather at the Board of Adjustment hearings.
2. The Board shall consider such reasonable requirements or conditions to the permit as will ensure the development will satisfy the requirements of this chapter. A vote may be taken on such conditions before consideration of whether the permit should be approved or denied for any of the reasons set forth in 3 or 4.
3. The Board of Adjustment shall consider whether the application complies with all of the applicable Standards for Approval set forth in 180.06. Separate votes may be taken with respect to each criterion. If the Board of Adjustment concludes that the application fails to meet one or more of the criteria, the application shall be denied.
4. If the Board of Adjustment concludes that all such criteria have been met, the application shall be approved unless it adopts a motion that the application fails to meet any of the approval standard set forth in 178.06. Separate votes may be taken with respect to each standard. Any such motion regarding compliance or noncompliance of the application to the development criteria or Standards for Approval shall specify the supporting reasons for the motion. It shall be presumed

the application complies with all criteria and standards not specifically found to be unsatisfied. Without limiting the foregoing, the Board of Adjustment may attach to a permit a conditions it deems necessary to protect the health, safety, and general welfare of the public. All conditions or requirements shall be entered on the permit.

A. The Board of Adjustment shall not grant a conditional use for any home occupation/home based business which is otherwise prohibited under this Zoning Code.

#### Section 180.09 Expiration of Permits

A. A conditional use permit shall become void one year after its effective date if the applicant has not carried out development or occupancy during that period.

B. The Board of Adjustment may revoke a conditional use permit should the operation of the use subject to such permit violate the conditions under which the permit was granted.

Previously Approved Permits. Any permit approved under regulations in effect before the effective date of this Zoning Code shall be considered a valid permit, subject to requirements imposed at the time of its approval.

#### Section 180.10 Effect of Permit on Successors and Assigns

A conditional use permit authorizes the permit holder the use of land or structures in a particular way and subject to certain conditions. As such, it is transferable. However, no person (including successors or assigns of the original permit holder) may make use of the land or structures covered under such permit except in accordance with all terms and requirements of the permit, so long as the permit remains in effect.

#### Section 180.11 Amendments and Modifications

1. Insignificant modifications to the approved permit are permissible upon authorization by the Zoning Administrator. A modification is insignificant if it has no discernible impact on neighboring properties, the general public or those intended to use or occupy the proposed development.

2. Minor modifications to the approved permit are permissible with the approval of the Board of Adjustment. Such permission may be obtained without a formal application, public hearing or payment of fees. A modification is minor if it has no substantial impact on neighboring properties, the general public or those intended to use or occupy the proposed development.

3. All other requests for modifications to the approved permit will be processed as new applications. New conditions may be imposed by the Board of Adjustment, but the applicant retains the right to reject such new conditions by withdrawing the request for modifications and proceeding under the terms and conditions of the original permit.

4. The permit holder requesting approval of modifications shall submit a written request (including plans as necessary) for such approval to the Administrator, and the request shall specifically identify the modifications. The Administrator shall determine whether the proposed modification falls within the categories set forth in Subsections 1, 2 and 3.



5. Approval of all modifications must be given in writing.

## CHAPTER 179: BOARD OF ADJUSTMENT

### Organization and Meetings

179.01 The Board of Adjustment hereafter referred to by the words “Board of Adjustment,” is hereby continued.

Such Board of Adjustment shall consist of five members appointed by the City Council. Terms shall be as provided by State statute. The Council shall have power to remove any member of the Board of Adjustment for cause upon written charges and after public hearing.

179.02 The Board of Adjustment shall adopt rules and regulations in accordance with this Zoning Code and the *Code of Iowa*. The meetings of the Board of Adjustment shall be held at the call of the chairman and at such other times as the Board of Adjustment may determine. Such chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the Board of Adjustment shall be open to the public. The Board of Adjustment shall keep minutes of its proceedings, showing the vote of each member on each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the Board of Adjustment and shall be a public record. The presence of three members shall be necessary to constitute a quorum.

### Section 179.03 Appeals

179.03 Appeals to the Board of Adjustment may be taken by any person aggrieved or by any officer, department, board or bureau of Windsor Heights affected by any decision of the Zoning Administrator, as provided in Iowa Code 414. Such appeal shall be taken within 20 days of the decision by filing with the Zoning Administrator and with the Board of Adjustment a notice of appeal specifying the grounds thereof. The Zoning Administrator shall forthwith transmit to the Board of Adjustment all papers constituting the record upon which the action appealed is taken from.

179. An appeal stays all proceedings in furtherance of the action appealed from, unless the Zoning Administrator certifies to the Board of Adjustment, after notice of appeal shall have been filed with him, that by reason of the facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order, which may not be granted by the Board of Adjustment, or by a court of record on application, on notice to the Zoning Administrator and on due cause shown.

179. The Board of Adjustment shall fix a reasonable time for the hearing on the appeal, give public notice thereof as well as due notice to the parties in interest, and decide the same within a reasonable time. At the hearing any party may appear in person or by agent, or by attorney. Before an appeal is filed with the Board of Adjustment, the appellant shall pay a fee according to

the Schedule of Fees which is on file in the Office of the City Clerk and submit all required paperwork and application.

#### Section 179.04 Powers

The Board of Adjustment shall have the following powers:

179.04.01 To hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by the Administrator in the enforcement of this ordinance.

179.04.02 To grant a variation from the terms of this Ordinance; provided, however, that all variations granted under this clause shall be in harmony with the intent of this Ordinance and the applicable State Statute Iowa Code Section 414. In granting approval or conditional approval of a variance, the Board of Adjustment shall prepare written findings of fact that all of the conditions below apply to the application:

1. Special Circumstances: Special circumstances exist relating to the physical character of the property that are peculiar to the property and that do not apply generally to other properties in the same zoning district. And these circumstances are not of so general or recurrent a nature as to make it practical to provide, in the form of an amendment to this Ordinance, a general rule to cover them.
2. Hardship or Practical Difficulties: Because of these special circumstances, the literal application of the provisions of this Ordinance would, without a variance, result in unnecessary and undue hardship or practical difficulties for the applicant, as distinguished from mere inconvenience.
3. Not Resulting from Applicant Action: The special circumstances and either practical difficulties or hardship that are the basis for the variance have not resulted from any act, undertaken subsequent to the adoption of this Ordinance or any applicable amendment thereto, of any party with a present interest in the property.
4. Reasonable Use and Return: Without the requested variance, the property cannot yield a reasonable return, or cannot be reasonably used consistent with the intent of the zoning district and the use of other properties therein, but the purpose of the variance is not otherwise to increase the return from the property or to confer special privileges not ordinarily enjoyed by other properties in the same district.
5. Not Alter Local Character: The variance will not alter the essential character of the locality or substantially impair public safety or welfare or property values in the area.

6. Minimum Variance Needed: The variance approved is the minimum required to allow reasonable use and enjoyment of the property.

In granting any variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this Ordinance. Violation of such 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 this Ordinance. Under no circumstances shall the Board of Adjustment 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.

No nonconforming use of neighboring lands, structures, or buildings in the same district and no permitted or nonconforming use of lands, structures, or buildings in other districts shall be considered grounds for the issuance of a variance

179.04.03 To permit the following exceptions to the District regulations set forth in the Ordinance, provided all exceptions shall be their design, construction and operation adequately safeguard the health, safety and welfare of the occupants of adjoining and surrounding property, shall not impair an adequate supply of light and air to adjacent property, shall not increase congestion in the public streets, shall not increase public danger of fire and safety, and shall not diminish or impair established property values in surrounding areas:

1. To permit erection and use of a building or the use of premises or vary the height, yard or area regulations in any location for a public service corporation for public utility purposes, or for purposes of public communication, which the Board of Adjustment determines is reasonably necessary for the public convenience or welfare.

179.04 To issue special permits and decide such matters as may be required by other sections of this Ordinance.

#### Section 179.05 Decisions of the Board of Adjustment

In exercising the above mentioned powers, the Board of Adjustment may, in conformity with the provisions of law, reverse or affirm, wholly or partly, or modify the order, requirement, decision or determination appealed from, and may make such order, requirement, decision or determinations as it believes proper, and to that end shall have all the powers of the Zoning Administrator. The concurring vote of three of the members of the Board of Adjustment shall be necessary to reverse any order, requirement, decision or determination of the Zoning Administrator or to decide in favor of the applicant on any matter upon which it is required to pass under this Ordinance. The action of the Board of Adjustment shall not become effective until after the resolution of the Board of Adjustment, setting forth the full reason for its decision and the vote of each member participating therein, has been filed. Such resolution, immediately

following the Board of Adjustment's final decision, shall be filed in the office of the Board of Adjustment, and shall be open to public inspection.

Every variation and exception granted or denied by the Board of Adjustment shall be supported by a written testimony or evidence submitted in connection therewith. Any taxpayer, or any officer, department, board or bureau of Windsor Heights, or any person or persons jointly or severally aggrieved by any decision of the Board of Adjustment may present to a court of record a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within 30 days after the filing of the decision in the office of the Board of Adjustment.

**180.01 PURPOSE.** The Administration and Procedures provisions establish the methods for implementation of a Site Plan Review into the Zoning Code.

**180.02 SITE PLAN REVIEW PROCEDURE.**

1. Purpose. The Site Plan Review Procedure provides for special review in addition to plan review required by other sections of this Code of Ordinances of projects that have potentially significant effects on traffic circulation or a significant effect on land uses in adjacent neighborhoods. The procedure provides for review and evaluation of site development features and possible mitigation of unfavorable effects on surrounding property.
2. Administration. The Zoning Administrator shall review, evaluate, and act on all site plans submitted pursuant to this procedure. The Planning and Zoning Commission shall review site plans and shall transmit its recommendation to the City Council for approval.
3. Uses Requiring Site Plan Review. Select uses as required by Chapter 170
4. Application Requirements. An application for a site plan review may be filed by the owner of a property or the owner's authorized agent with the Zoning Administrator. Site plan application forms are available in the offices of Zoning Administrator. The application shall include the criteria listed in Chapter 170.
5. Administrative Action. The Zoning Administrator shall review each site plan and provide a written recommendation to the Planning and Zoning Commission and City Council. The Planning and Zoning Commission shall transmit its recommendation to the City Council, which will then act on the application.
6. Review and Evaluation.
  - A. The Planning and Zoning Commission and City Council shall review and approve the site plan based on the criteria established in Chapter 170 and Table 180-1 and conformance with applicable regulations in this Zoning Code and the vision of the comprehensive plan.
  - B. The Planning and Zoning Commission shall make the following findings before recommending approval of the site plan to the City Council:
    - (1) The proposed development, together with any necessary modifications, is compatible with the criteria established in Chapter 170 and Table 180-1.
    - (2) Any required modifications to the site plan are reasonable and are the minimum necessary to minimize potentially unfavorable effects.
    - (3) The site plan conforms to this Zoning Code and to the vision of the comprehensive plan.
7. Modification of Site Plan. The Zoning Administrator, Planning and Zoning Commission, and City Council may require modification of a site plan as a prerequisite for approval. Required modifications may be more restrictive than base district regulations and may include (but are not limited to) additional landscaping or screening; installation of erosion control measures; improvement of access or circulation; rearrangement of structures on the site; or other

modifications deemed necessary to protect the public health, safety, welfare, community character, property values, and/or aesthetics.

8. Term and Modification of Approval.

A. A site plan approval shall become void one year after the date of approval, unless the applicant receives a building permit and diligently carries out development prior to the expiration of this period.

B. The Zoning Administrator may approve an application to modify a previously approved site plan if he/she determines that the modification does not affect findings related to the criteria set forth in Table 180-1.

C. The Zoning Administrator may revoke a site plan approval if said official determines that the development is not complying with the terms and conditions of the approval. Such revocation may be appealed to the Board of Adjustment.

**177.04 AMENDMENT PROCEDURE.** The amendment procedures describe the methods by which changes may be made in the text of this Zoning Code (text amendment) and/or the official boundaries of zoning districts (rezoning).

1. Initiation of Amendments.

A. Text amendments may be initiated by the Planning and Zoning Commission or City Council.

B. Rezoning may be initiated by a property owner or authorized agent, the Planning and Zoning Commission, or the City Council.

2. Rezoning Application Requirements. An application for a rezoning may be filed with the Zoning Administrator. The application shall include the following information:

A. Name and address of the applicant.

B. Owner, address, and legal description of the property.

C. A description of the reason for the rezoning application and the nature and operating characteristics of the proposed use.

D. Any graphic information, including site plans, elevations, other drawings, or other materials determined by the Zoning Administrator to be necessary to describe the proposed use to approving agencies.

3. Amendment Process.

A. The Planning Commission, following not less than 4 days notice and publication shall hold a public hearing on each proposed text or rezoning and shall recommend action to the City Council.

B. The City Council, after publication and public hearing, shall act on the proposed amendment. A majority vote of those members either elected or appointed to the City Council is required for approval. If the proposed amendment is recommended for disapproval by the Planning Commission, a majority vote plus one of the City Council shall be required for approval.

C. Protest. If a valid protest petition opposing an amendment is filed with the City Clerk by eligible property owners, a majority vote plus one of those members either elected or appointed to the City Council is required for approval. A valid protest petition must meet the following criteria:

(1) Submission of the petition in the office of the City Clerk within 14 days after the conclusion of the public hearing on the amendment by the Planning Commission.

(2) Notarized signatures by at least one of the following:

a. The owner or owners of at least 20% of the property proposed for rezoning.

b. The owners of 20% of the total area, excepting public rights-of-way and public property, within the zoning jurisdiction of the City and within 200 feet of the proposed rezoning.

4. Required Notice and Publication. Prior to consideration of amending, supplementing, changing, modifying, or repealing this Zoning Code by the governing body, notice of public hearings shall be provided by two of the three following methods, as determined by the City:

A. Notice by Posted Sign. A notice shall be posted in a conspicuous place on or near the property upon which action is pending. Such notice shall be not less than 18 inches in height and 24 inches in width with a white background and black letters not less than one and one-half inches in height. Such posted notice shall be so placed upon such premises that is easily visible from the street and shall be so posted at least ten days before the date of such hearing. It is unlawful for any person to remove, mutilate, destroy, or change such posted notice prior to such hearing.

B. Publication. At least ten days before the date of hearing, the City Clerk shall have published in a newspaper published at least once weekly and having a general circulation in the City a notice of the time, place, and subject matter of such hearing.

C. Notification by Mail. At least ten days prior to the date of hearing, the party initiating the rezoning request shall present the City Clerk a certified address list of those persons who own property within 200 feet of the subject site. The City Clerk shall mail notice of the time, place, and subject matter of the hearing to such property owners at least ten days prior to the date of the hearing.

**177.05 EXTENSION OF THE EXTRA-TERRITORIAL JURISDICTION.** Upon the automatic extension of the two-mile extra-territorial jurisdiction due to annexation, the City



Council with the recommendation of the Planning Commission shall zone properties within the newly established jurisdiction concurrent with adoption of the annexation ordinance. The zoning shall consider the Comprehensive Development Plan of the City and the present use of the land.

**Table 180-1 – Criteria for Site Plan Review**

	<b>Criteria- Site Plan Review</b>
<b>Land Use Compatibility</b>	
Development Density	Site area per unit or floor area ratio should be similar to surrounding uses if not separated by major natural or artificial features.
<b>Height and Scale</b>	
Height and Bulk	Development should minimize differences in height and building size from surrounding structures. Differences should be justified by urban design considerations.
Setbacks	Development should respect pre-existing setbacks in surrounding area. Variations should be justified by site or operating characteristics.
Building Coverage	Building coverage should be similar to that of surrounding development if possible. Higher coverage should be mitigated by landscaping or site amenities.
<b>Site Development</b>	
Frontage	Project frontage along a street should meet minimum frontage requirements and provide reasonable exposure for the development.
Parking and Internal Circulation	Parking should serve all structures with minimal conflicts between pedestrians and vehicles.
	All structures must be accessible to

	public safety vehicles.
	Development must have access to adjacent public streets and ways. Internal circulation should minimize conflicts and congestion at public access points.
Landscaping	Landscaping should be integral to the development, providing street landscaping, breaks in uninterrupted paved areas, and buffering where required by surrounding land uses. Parts of site with sensitive environmental features or natural drainage ways should be preserved.
Building Design	Architectural design and building materials should be compatible with surrounding areas or highly visible locations

**Table 180-1 – Criteria for Site Plan Review and Conditional Use and Special Use Permits**

(continued)

	<b>Criteria-Site Plan Review</b>
<b>Operating Characteristics</b>	
Traffic Capacity	Project should not reduce the existing level of traffic service on adjacent streets. Compensating improvements will be required to mitigate impact on street system operations.
External Traffic Effects	Project design should direct nonresidential traffic away from residential areas.
Operating Hours	Projects with long operating hours must minimize effects on surrounding residential areas.
Outside Storage	Outside storage areas must be screened from surrounding streets and less intensive land uses.
<b>Public Facilities</b>	
Sanitary Waste Disposal	Developments within 500 feet of a public sanitary sewer must connect to sewer system. Individual disposal systems, if permitted, shall not adversely affect public health, safety, or welfare.
	Sanitary sewer must have adequate capacity to serve development.
Storm Water Management	Development should handle storm water adequately to prevent overloading of public storm water management system.
	Development should not inhibit development of other properties.
	Development should not increase probability of erosion, flooding, landslides, or other run-off related

	effects.
Utilities	Project must be served by utilities.
<b>Other</b>	
Comprehensive Plan	Projects should be consistent with the City Comprehensive Development Plan
Common Facilities	Properties are required to have tornado shelters. Underground or other approved tornado shelters shall be provided in mobile home parks. Such shelter or shelters shall be built according to the recommendations of the Civil Defense authority and be large enough to meet the specific needs of the park and its residents
Certification	A certification of compliance with all ordinances and regulations regarding mobile home licensing, zoning, health, plumbing, electrical, building, fire protection, and any other applicable requirements shall be required of all mobile home parks.

## **182.01 ADMINISTRATION AND ENFORCEMENT**

1. Administration and Enforcement. The Zoning Administrator shall administer and enforce this Zoning Code. The Board of Adjustment may direct other persons to assist the Zoning Administrator. If the Zoning Administrator finds that any of the provisions of this Zoning Code are being violated, said official shall notify in writing the person responsible for such violations, indicating the nature of the violation and ordering the action necessary to correct it. The Zoning Administrator shall order discontinuance of illegal use of land, buildings, or structures; removal of illegal buildings or structures or of illegal additions, alterations, or structural changes; discontinuance of any illegal work being done; or shall take any other action authorized by this Zoning Code to ensure compliance with or to prevent violation of its provisions.
2. Building Permits Required. Except as provided by the Building Code, no building or other structure regulated by this Zoning Code shall be erected, constructed, enlarged, altered, repaired, moved, improved, removed, converted, or demolished unless a separate permit for each building or structure has first been obtained from the Building Official. No building permit shall be issued by the Building Official except in conformity with the provisions of this Zoning Code, unless he/she receives a written order from the Board of Adjustment in the form of an administrative review, special exception, or variance as provided by this Zoning Code.
3. Application for Building Permit. All applications for building permits shall include plans if applicable in duplicate 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 administrative official, including existing or proposed building or alterations; existing or proposed uses of the building and 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 Zoning Code. One copy of the plans shall be returned to the applicant by the administrative official, after said official has marked such copy either as approved or disapproved and attested to same by signing such copy. One copy of the plans, similarly marked, shall be retained by the administrative official.
4. Certificates of Zoning Compliance for New, Altered or Nonconforming Uses. No building or other structure regulated by this Zoning Code shall be erected, constructed, enlarged, altered, repaired, moved, improved, removed, converted, or demolished unless a certificate of zoning compliance for each building or structure has first been obtained from the Building Official. No building permit shall be issued by the Building Official except in conformity with the provisions of this Zoning Code, unless said official receives a written order from the Board of Adjustment in the form of an administrative review, special exception, or variance as provided by this Zoning Code.
5. Expiration of Building Permit.

A. If the work described in any building permit has not begun within 180 days from the date of issuance thereof, said permit shall expire; it shall be canceled by the administrative official; and written notice thereof shall be given to the persons affected.

B. 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 canceled by the Zoning Administrator, and written notice thereof shall be given to the persons affected, together with notice that further work as described in the canceled permit shall not proceed unless and until a new building permit has been obtained.

C. The expiration date of a building permit may be established for a period longer than one year if established at the time that such permit is issued by the City. The Zoning Administrator may, at his or her discretion, extend the expiration period of the building permit.

6. Construction and Use to be as 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 Zoning Code, and punishable as provided herein.

**177.07 SCHEDULE OF FEES, CHARGES AND EXPENSES.** The City Council shall establish by resolution a schedule of fees, charges, and expenses and a collection procedure for building permits, certificates of zoning compliance, site plan reviews, appeals, and other matters pertaining to this Zoning Code. The schedule of fees shall be posted in the office of the City Clerk, 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.

## Chapter 183 MOBILE FOOD UNITS

### Sections:

- 5.19.010**      **Definitions.**
- 5.19.020**      **License and permit required.**
- 5.19.030**      **Application.**
- 5.19.040**      **Exceptions.**
- 5.19.050**      **General regulations for all mobile food units and pushcarts.**
- 5.19.060**      **Pushcart specific regulations.**
- 5.19.070**      **Mobile food unit specific regulations.**
- 5.19.080**      **Enforcement and penalties.**

### **5.19.010**      **Definitions.**

A. "Commissary" means a licensed food facility regulated by a governmental entity where food is stored, prepared, portioned, packaged or any combination thereof, and where such food is intended for consumption at another location or place from a mobile food unit or pushcart.

B. "Food establishment" means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption. For the purposes of this chapter, "food establishment" does not include an establishment that offers only pre-packaged foods that are non-potentially hazardous; a produce stand which sells only whole, uncut fresh fruits and vegetables; an establishment operating in a farmers market if potentially hazardous food is not sold or distributed; a residence in which food that is non-potentially hazardous is sold for consumption off premises to a consumer customer provided the food is labeled so as to identify its preparer; a private home that receives catered or home-delivered food; child care facilities or food establishments in hospitals or health care facilities which are subject to regulation by state agencies; supply vehicles and vending machines.

C. "Mobile food unit" means motorized, a self-propelled food establishment or a trailer or vehicle towed by a motorized vehicle, that is readily movable, and which typically operates at a remote location and returns to base of operation or commissary at the end of its daily business. Mobile food units are considered Class IV mobile food units by the Iowa Department of Inspections and Appeals.

D. "Mobile food unit zone" means an area of governmentally owned property that has been designated as a location upon which mobile food units and pushcarts may sell or offer for sale for immediate consumption food and/or beverages.

E. "Potentially hazardous food" A biological (microorganism), chemical (cleansers, pesticides), or physical (fingernail, plastic) property that may cause an unacceptable consumer health risk.

F. "Pushcart" means a non-motorized food establishment limited to serving non-potentially hazardous packaged foods with limited assembly or commercial or commissary prepared foods that are reheated on the pushcart, such as frankfurters. Pushcarts may be towed by a vehicle, but are generally capable of being moved by human power. Pushcarts are considered Class III mobile food units by the Iowa Department of Inspections and Appeals.

### **5.19.020**      **License and permit required.**

No person shall sell or offer for sale or otherwise engage in a business as a mobile food unit or pushcart within the city without having first obtained a license to operate as such. A mobile food unit license is a special license and is required in addition to any other required city business license or state license or permit the person may hold or be required to hold. A separate mobile food unit license is required for each mobile food vehicle or pushcart from which business is conducted in the city. The exception to this requirement is a person having a license to operate as a mobile ice cream vendor need not obtain a mobile food unit license unless that person also sells or offers for sale food and/or beverages besides selling or offering for sale frozen desserts. Mobile food unit licenses are not transferable or assignable. The license fee required shall be established by the city council by resolution.

In addition to the license, no person shall sell or offer for sale or otherwise engage in business as a mobile food unit or pushcart within the public right-of-way, either in one of the mobile unit zones or in special occurrence permit situations, without first having obtained a permit to operate as such. A separate mobile food unit permit is required for each mobile food vehicle or pushcart from which business is conducted in the city. The permit fee required shall be established by the city council by resolution.

No person shall sell or offer for sale or otherwise engage in business as a mobile food unit or pushcart within the public right-of-way, other than in a designated mobile food unit zone, unless a special occurrence permit has been obtained by the premises/property owner. The premises shall make a formal request and complete an application to the city outlining all dates/times, and special occurrence permits require city council approval. Special occurrence permits are limited to one per premises. (Ord. 2017-59 § 1 (part)).

#### **5.19.030 Application.**

An application form available from the Building and Zoning Department must be filled out and submitted to the Building and Zoning Department for processing. The completed application must be submitted together with a copy of the applicant's Iowa retail sales tax permit and proof of liability insurance, including commercial general liability insurance coverage and automotive liability insurance coverage. Commercial general liability insurance shall include coverage for bodily injury, death and property damage with limits of liability of not less than one million dollars per occurrence and aggregate combined single limit. Automobile liability insurance coverage shall include coverage for bodily injury, death and property damage with limits of liability of not less than one million dollars per occurrence, combined single limit. Certificates of insurance shall provide that the policy or policies have been endorsed to provide thirty days advance notice of cancellation and forty-five days advance notice of non-renewal and ten days advance notice of cancellation for non-payment of premium and that these notices shall be provided to the city finance department by email, facsimile or mail. Cancellation of required insurance automatically revokes and terminates the mobile food unit license to operate in Windsor Heights unless other insurance policies are provided in a timely manner to the city. If the mobile food unit sells food or beverages other than pre-packaged items that do not require hot or cold handling procedures, the application shall also contain a copy of the mobile food unit's license issued by the Iowa Department of Inspections and Appeals, a copy of the food establishment license issued by the Iowa Department of Inspections and Appeals for any commissary kitchen or other premises where food is prepared, copies of the food protection manager certifications, the name and address of the facility at which any waste fat, waste oil or waste grease generated by the mobile food unit operation is disposed of, and a copy of the certificate of annual compliance issued by the fire marshal.

#### **5.19.040 Exceptions.**



A. Temporary food units associated with a private party on private, residential property hosted by the owner of the property upon which the unit is dispensing food and/or beverage, such as a graduation party, wedding reception, birthday celebration or similar event, are exempt from the licensing provisions of this chapter provided the unit's participation is by invitation or contract with the host and provided the vendor displays proof of its authorization to operate in Iowa and required health inspection certification

#### **5.19.050 General regulations for all mobile food units and pushcarts.**

A. Mobile food units shall have, and at all times maintain, all necessary licenses and permits from the Iowa Department of Inspections and Appeals as well as the City of Windsor Heights's required permits and licenses.

B. Mobile food units shall at all times operate in compliance with all applicable food, health and sanitation laws and shall comply with all health department regulations regarding food service, food storage and preparation, food handling and food cooking and shall have a valid inspection certificate or permit evincing health department inspection and approval on display and easily visible to the mobile food unit's or pushcart's patrons at all times in operation.

C. No mobile food unit or pushcart shall offer for sale or sell food and/or beverage between the hours of 12:00 a.m. and 6:00 a.m.

D. No mobile food unit or pushcart may operate in the right-of-way or outside of a designated mobile food vending zone established by the City of Windsor Heights absent of the premises obtaining a special occurrence permit which must be approved by the City Council.

E. No mobile food unit or pushcart shall operate within a city park unless such operation occurs within the boundaries of a designated mobile food unit zone or a separate permit has been acquired from the Building Official.

F. No mobile food unit or pushcart shall park or stand its pushcart or vehicle within (1) 40 feet of a pedestrian crosswalk, or a stop sign or traffic signal light, (2) adjacent to a designated bicycle lane, or (3) absent written authorization of the restaurant, within 200 feet of any public entrance to any permanent restaurant during hours the restaurant is open for business. For purposes of this section, bars that serve food are deemed to be restaurants. Mobile food units and pushcarts that are not directly involved with the sponsor organization shall not park or stand within 1,200 feet (3 city blocks) of an approved special event.

G. No mobile food unit or pushcart shall operate in a manner that violates Chapter 54 of the city code concerning noise. A mobile food unit or pushcart shall not call out to, cry out, shout out or otherwise communicate or make any noise or use any device to call attention to his or her unit's or cart's location and operation.

H. A mobile food unit or pushcart is responsible for keeping and maintaining the area around and within fifty feet of the mobile food unit or pushcart neat, clean and free from trash, debris, garbage and other hazardous conditions at all times regardless of whether the trash, debris or garbage originated from the operation of the unit or pushcart or was left in the area by a pedestrian passersby or natural conditions. A mobile food unit or pushcart shall provide adequate trash receptacles for the public for all garbage from its operation and from the accumulation of garbage in the area around his or her unit or pushcart at all times the unit is in operation. At the close of its daily business the mobile food unit or pushcart must remove all garbage from the area and properly dispose of it away from the site of its operation; the garbage shall not simply be placed in nearby public garbage receptacles provided for use to the general public at large.

I. The license required by this chapter, the state sales tax permit and all licenses, permits or certificates required to be displayed by state law, shall be posted on the mobile food unit or pushcart so as to be readily visible to all persons conducting business with the mobile food unit.

J. Mobile food units and pushcarts shall only offer single service food utensils such as cups, straws, knives, forks, spoons, stirrers, plates, bowls, wrappers, containers, and similar utensils, which shall be individually wrapped if usual, and kept in a clean place and only used once in the service of food and/or beverage.

K. No mobile food unit or pushcart shall be left at its operating location at the end of its business day and shall be removed to its base business operation location.

L. No mobile food unit or pushcart shall conduct operations at a location or in a manner that hinders, impedes or restricts access to a pay phone, mail box, emergency call box, traffic control box, fire hydrant, entrance to a building or a driveway.

M. A mobile food unit or pushcart operating on private property shall not encroach into any public sidewalk or public right-of-way. All private property owners allowing mobile food units on property must register with the city as having a mobile kitchen for public safety purposes.

N. No mobile food unit or pushcart is allowed on the grounds of any school unless it has been invited to be there as part of a school authorized function.

O. The city reserves the right to move a mobile food unit or pushcart from any location if determined to be necessary for the provision of emergency or public services or in the interest of public safety, peace and welfare.

P. No mobile food unit or pushcart shall offer for sale or sell any liquor, beer or wine from such unit.

#### **5.19.060 Pushcart specific regulations.**

A. A pushcart shall not allow, cause or obstruct the passage along any sidewalk, street, alley or parking lot as a result of a congregation of people seeking service from the pushcart or because of the size, shape or placement of the pushcart so as to interfere, inhibit or block the normal flow of pedestrian or vehicular traffic.

B. A pushcart shall not violate parking regulations.

C. A pushcart shall not sell to any person operating a vehicle on a public street while the person's vehicle is located within the traveled portion of the roadway. A pushcart may sell to a person operating or occupying a motor vehicle that is legally parked, but may only do so from the curb side of said parked vehicle.

D. No pushcart or equipment shall be allowed to remain in the public right-of-way at the close of business.

E. All pushcarts and equipment associated with the business shall be maintained so as to enhance the aesthetic and overall appearance of the area in which the pushcart is operated.

F. Pushcart vendors agree to indemnify and hold harmless the city from and against any and all loss, cost, damages or claims to persons or property, including property of the city, arising out of or claimed to have arisen out of the operation of a pushcart. In addition, pushcart vendors agree to defend, at no cost to the city, any such claims or lawsuits. The city may, at its option, join the defense of such claim or lawsuit without relieving the pushcart vendor from its obligations to indemnify, hold harmless and defend the city.

G. Pushcarts may operate anywhere within a designated mobile food unit zone on a paved surface, designated parking space or sidewalk subject to the other requirements of this chapter. In addition, a pushcart may operate at a requested location on private property provided application has been made for permission to operate the requested location and that application is accompanied by a verifiable letter from the owner or person in control of the property granting permission to operate on the premises. Permission by the owner/person in control of property may be rescinded at any time by notifying the city

Building and Zoning Department in writing that permission is rescinded. If permission is rescinded, no fees or portion of fees paid will be refunded.

H. No pushcart shall conduct business in areas of the city at which they are not permitted or authorized.

I. Pushcarts shall be subject to the same permit and fee structure as all other mobile food units.

**5.19.070 Mobile food unit specific regulations.**

A. Sales shall be conducted on the sidewalk side of the mobile food unit whenever possible away from moving vehicles.

B. No mobile food truck should provide or allow any dining area, tables, chairs, booths, benches, bar stools, stand-up counters, or similar furniture.

C. No mobile food unit shall be used for any purpose other than as a mobile food unit offering food and/or beverage to customers.

**5.19.080 Enforcement and penalties.**

The Polk County Health Department, the Windsor Heights Police Department, the Windsor Heights Fire Department and the Windsor Heights Building and Zoning Department of the City of Windsor Heights are authorized to enforce this chapter. The Polk County Health Department may elect to pursue enforcement under the provisions of this chapter or under applicable state laws and regulations with the sanctions available thereunder.

The performance of any action contrary to the provisions of this chapter may be cited as a municipal infraction offense. Additionally, failure to adhere to the regulations is cause for revocation or suspension of a license to operate as a mobile food unit or pushcart.