

# STUDY AND REPORT ON ZONING

City of Montgomery, West Virginia

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## Section 1: Introduction

### Legal Requirements for Study and Report on Zoning

W. Va. Code § 8A-7-4 requires that the City of Montgomery Planning Commission and City Council:

*(a) After adoption of a comprehensive plan and before enacting a zoning ordinance*

*. . . study the land within [their] jurisdiction. The study may include:*

*(1) Evaluating the existing conditions, the character of the buildings, the most desirable use for the land and the conservation of property values in relation to the adopted comprehensive plan; and*

*(2) Holding public hearings and meetings with notice to receive public input.*

*(b) The planning commission must use the information from the study and the comprehensive plan and prepare a report on zoning. The report shall include the proposed zoning ordinance, with explanatory maps showing the recommended boundaries of each district, and the rules, regulations and restrictions for each district.*

*(c) No zoning ordinance may be enacted without a study and report.*

The City of Montgomery City Council and the Planning Commission have studied the land within their jurisdiction and prepared a report that is based on both a study of the land and the City's comprehensive plan, recently updated in 2019. It is the intent of City Council, based on this *Study and Report on Zoning*, pursuant to W. Va. Code § 8A-7-4, to repeal the current zoning ordinance and adopt a new zoning ordinance.

### Enactment of the Zoning Ordinance

The West Virginia Legislature has provided the City of Montgomery the authority to enact a zoning ordinance through W. Va. Code § 8A-7-1, which states "The governing body of the municipality . . . may regulate land uses within its jurisdiction by: (1) Adopting a comprehensive plan; (2) Working with the planning commission and the public to develop a zoning ordinance; and (3) Enacting a zoning ordinance." W. Va. Code § 8A-7-2 provides a list of requirements and optional considerations for the City of Montgomery when enacting a zoning ordinance.

After completing this *Study and Report on Zoning*, the City Council must hold at least two public hearings and give public notice before enacting the proposed zoning ordinance. At least one public hearing must be held during the day, and at least one public hearing must be held during the evening. W. Va. Code § 8A-7-5. After proper notice and public hearings are held, the City Council may enact the zoning ordinance or hold an election to have the qualified voters residing in the affected area approve the zoning ordinance. After the enactment of the zoning ordinance, the City Council must file the enacted zoning ordinance in the office of the applicable county clerk. W. Va. Code § 8A-7-6.

## Section 2: Study of the Land

### Evaluating the Existing Conditions

The existing conditions in Montgomery have been studied, analyzed, and discussed extensively by the City Council, the Planning Commission, and interested citizens during the drafting processes for the comprehensive plan and proposed zoning ordinance. The Land Use and Sustainable Development Law Clinic at West Virginia University College of Law assisted the City of Montgomery with its comprehensive plan, adopted in 2019. As part of the comprehensive plan process, the City, with the help of the Land Use Law Clinic, identified current conditions and the needs of the community and established an action plan for achieving the community's goals. Several land use issues were brought to light during the comprehensive plan process. Land use issues included short-term rentals, beautification of the city, improving signage, senior housing, community gardens, increasing recreation and tourism opportunities, and increasing economic development.

The City of Montgomery included considerable community input in the development of the 2019 Comprehensive Plan. The City adopted public input procedures to guide the commission's community engagement in the comprehensive plan process. An online survey was made available in August of 2017 and closed in March of the following year. The survey received over 100 community member responses. The City also hosted an open house event to gather public input in August 2017, where 30 community members attended. In January of 2018, the Land Use Law Clinic attended Bridge Valley Community and Technical College to engage with students, faculty, and staff about several topics relating to the Montgomery Comprehensive Plan. Each of these engagement opportunities afforded the planning commission a better understanding of the public's interests and concerns for the future planning of the City of Montgomery.

- **Strengths & Opportunities:** Montgomery has a variety of natural assets, such as the river, mountains, and the Morris Creek Watershed. Many buildings and spaces can be further developed or used as a foundation for continued growth, such as the hospital, the library, and the college campus. The City has the opportunity to develop parking and property in a manner that will promote community growth and the introduction of additional activities to entertain citizens as well as visitors.
- **Challenges:** The City of Montgomery faces issues relating to the lack of local services, activities, destinations, and schools. The outdated zoning regulations and lack of building codes combined with these missing community elements make it difficult to engage the citizenry and cultivate new businesses in the area.
- **Future Growth:** Areas for future growth include promoting outside activities, illustrating the importance of beautification and recreational improvements in the public eye. The public input study indicated a large interest in focusing tax spending on activities for youth, recruitment of new businesses, a dog park, a track for outdoor walking and running, a splash pad, and improvements to the gun range.
- **Top Priorities:** The top priorities of the public appear to be increasing recreational opportunities and beautification within Montgomery: more green spaces, more

areas for recreation, and better use of the water resources. Other top priorities include the development of activities for adults and senior citizens and the introduction of new businesses, such as grocery stores, hotels, and daycares.

## **Current and Proposed Districting**

The City developed an existing land use map for inclusion in the 2019 Comprehensive Plan based on a study of land use patterns and development over the years. Later in the comprehensive plan process, the City also developed a future land use map to reflect the desires of the community for how development should occur in the future. The plan's mapping identifies transportation concerns, potential gateways, existing land use, development constraints, development areas, and future land use. All of these land use maps, reflecting a careful and recent study of the land, were frequently referred to and studied by the Planning Commission in setting new district boundaries for the proposed zoning ordinance.

Currently, the City is divided into six zoning districts: Central Business (CBD), Residence 1 (R-1), Residence 2 (R-2), General Purpose (GP), Land Conservation (LC), and Medical Complex (MCD). Moving forward, the proposed zoning ordinance divides the community into more nuanced districts with eight proposed zoning districts: Conservation, Factory-Built Home Neighborhood, Single-Family Residential, Multi-Family Residential, Downtown Commercial, General Commercial, Industrial and Telecommunications Overlay.

## **Character of the Buildings and Lots**

As part of the comprehensive plan process, both the character and condition of buildings were identified and analyzed. The City of Montgomery holds opportunities for development and beautification to improve the satisfaction of its residents. Montgomery is a residential area, especially with the departure of WVU Tech. Seventy-eight percent of housing in the city is single-family homes, compared to only eight percent being multi-family housing. There are less than ten total apartment buildings in city limits. The city has four subsidized housing complexes as well as a handicap-accessible building for senior citizens. A majority of the structures in Montgomery were built over 50 years ago; this has led to problems with dilapidated and abandoned buildings, as older buildings are harder to maintain.

## **Desirable Use for the Land**

The 2019 Comprehensive Plan identifies land use needs related to spaces for recreational activities, beautification, additional housing, and increasing business opportunities. There are areas around Montgomery that offer opportunities for development or repurposing. Preferred development areas include the area around Montgomery General, the land that was formerly occupied by a car dealership, the former college of Business and Economics, and the area adjacent to the river.

The City has an interest in improving housing and rental options, including tiny houses and Airbnbs. Additionally, housing for an aging population is needed in the City of Montgomery. There is an opportunity for the development of riverfront property to address senior citizen housing, as well as other areas across the Commercial and Multi-Family Districts. Infill development or annexation of the land around County Route 61 and Morris Creek Drive as well as Adena Village and Kimberly could also provide additional options for senior living or other housing or rental needs.

Establishing additional parks, greenspace, and aquatic opportunities are viable ideas on how to develop recreation in Montgomery. Language in the zoning ordinance will encourage recreational uses that can attract many people, including tourists, without impacting the character of residential districts by allowing these uses in Conservation and Commercial Districts. Community gardens and additional green space are mentioned by the comprehensive plan to address the issue of beautification in the City. Specific language in the zoning ordinance can ensure their success by establishing standards for use and maintenance. Montgomery's robust art community encourages the proposed zoning ordinance to take a favorable stance on the treatment of murals. The zoning ordinance contains language that establishes standards to ensure that signage (including murals) does not clash with the character or aesthetic of the City. According to the comprehensive plan, the current zoning ordinance would benefit from improved regulations regarding signage (including murals), parking, and buffering. The proposed zoning ordinance includes a thorough sign regulations section that specifically covers the review of murals.

The comprehensive plan mentions some of the events and gatherings specific to Montgomery as well as additional events that could take place to draw more visitors to the area. The proposed zoning ordinance contains language pertaining to such events and gatherings. Zoning can promote community engagement and promotion of all Montgomery has to offer while ensuring the health, safety, and general welfare of the City. One of the specific gatherings is the Farmer's Market currently held in the lobby of Montgomery General Hospital. The proposed zoning ordinance supports the revitalization of the Farmer's Market by allowing such in commercial districts. More generally, the proposed zoning ordinance details requirements for events to ensure they are conducted safely.

### **Section 3: Report on Zoning**

#### **Review of the Study of the Land and 2019 Comprehensive Plan**

The Planning Commission has prepared this *Study and Report on Zoning* based on its study of the land, as explained in "Section 2: Study of the Land," and the 2019 Comprehensive Plan. Many of the issues identified in the 2019 Comprehensive Plan relate to zoning and therefore have been considered or addressed in the proposed zoning ordinance.

2019 Comprehensive Plan's Goal 2: "Revitalize neighborhoods by addressing abandoned properties and proactively identifying solutions"

*Objective 1, "Utilize tools and ordinances to address issues with vacant and dilapidated properties"*

*Action Step 3, "Include short-term rental regulations in the update to the zoning ordinance"*

The proposed zoning ordinance uniformly regulates the rental of residential properties or a portion of residential properties solely as bed and breakfast inns. These are defined as opportunities for lodging that are temporary where the designated operator lives within a two-mile radius and may not involve renting to more than five transient paying guests. This use is limited to The Factory-Built Home District, Single-Family Residential District, and Multi-Family Residential District as a conditional use. The zoning ordinance provides that no aspect of the building or signage distinguish a bed and breakfast from other residences. This and other supplemental provision may help preserve the character of nearby residences, while also providing additional lodging opportunities for tourists in the area for events, recreation, work, or sporting events.

*Objective 2, "Improve the appearance of Montgomery through continued beautification efforts"*

*Action Step 1, "Continue to support the beautification committee"*

*Action Step 5, "Maintain and expand murals to beautify neighborhoods"*

The proposed zoning ordinance may continue to support the beautification of the City by clarifying standards for buffers, setbacks, fencing, landscaping, and signage. Art has immense potential to beautify and inspire a community. Murals, in particular, are a cost-effective means of adding art to common spaces within a community. While murals are not explicitly discussed, they are intended to be covered by wall signs under the signage language. The regulation of size and height along with design guidelines will ensure that the murals are within the vision of the City of Montgomery.

2019 Comprehensive Plan's Goal 3: "Improve and create opportunities for tourism and recreation by utilizing our natural assets"

*Objective 1, "Improve existing recreation facilities"*

*Action Step 1, "Support efforts of the Morris Creek Watershed Association to establish an aquatic center or fishing park"*

*Action Step 2, "Explore the potential of a splash pad"*

*Action Step 3, "Improve the boat launch under the Earl M. Vickers Bridge"*

*Action Step 4, "Reconstruct Ferry Street to include a city center with amphitheater and pavilion"*

*Action Step 5, "Develop a park near Montgomery Rehab and Elderly Care"*

The proposed zoning ordinance allows for recreation in both commercial and conservation districts. This will allow Montgomery to improve or construct a number of different facilities on the riverfront as well as in parks across the City. Within the

Conservation District, boat livery, marina, and parks are all permitted by right. The district also allows recreation, both public and private, as a conditional usage. The Downtown and General Commercial Districts allow amphitheaters, recreation centers, boat liveries, marinas, parks, and recreation (both public and private). By districting permitted usages in this manner, the citizens of Montgomery will be able to enjoy the growth of aquatic and land recreation across the city.

*Objective 3, “Capitalize on the Kanawha River as a resource”*

*Action Step 1, “Improve marina with gas and boat slips and camping sites”*

*Action Step 2, “Continue to promote and develop the riverfront to increase tourism”*

The marina as a conservation area is classified as public recreation in the proposed zoning ordinance. This will allow for the expansion of recreational facilities that are available to the public, which may include boating and camping opportunities. The marina is listed as a use permitted by right in the Conservation District as well as both Commercial Districts. Camping is permitted by right in the Conservation District only.

2019 Comprehensive Plan’s Goal 4: “Support the local population and attract new business through sustainable land use practices”

*Objective 1, “Identify new economic development opportunities in the city”*

*Action Step 1, “Market the city as a place for tiny homes”*

A favorable view of tiny houses may promote affordable housing options, tourism, and economic development. Tiny houses are not a distinct use but instead are regulated through a variety of zoning laws: minimum square footage requirements; foundations requirements; districting; and limitations on the use and placement of recreational vehicles, which may include some tiny homes are examples of this. Montgomery’s proposed zoning ordinance does not contain many of these regulations in order to encourage tiny homes to locate within the community with fewer regulatory hurdles. To the extent tiny homes may take the form of recreational vehicles, the proposed ordinance sets out district limitations and limits them from serving as a permanent or temporary living space when permanently parked or stored on an existing residential property.

*Objective 2, “Capitalize on visitors”*

*Action Step 1, “Sponsor additional events to bring people into Montgomery”*

*Action Step 2, “Develop a wayfinding system with a consistent theme that directs visitors to key attractions, amenities, and businesses”*

*Action Step 3, “Develop signage to promote Montgomery along major corridors”*

*Action Step 5, “Support and expand Farmer’s Market”*

The proposed zoning ordinance contains language for events of various types to ensure that mass gatherings are held in a manner that is mindful of the character of the City and is hosted in such a way that the community can manage a large number of people in one space without creating a strain on health, welfare, and safety. A comprehensive sign ordinance is included in the proposed ordinance draft. This language covers wall art, such as murals. Although the draft does not make distinctions between signs based on the

subject matter, like identification or wayfinding, the draft carefully considers which types, size, numbers, and other objective qualities of signs are appropriate in each district within the City of Montgomery. This ensures that signage achieves the look and feel desired within the city and addresses public safety concerns. The proposed zoning ordinance discusses farmer's markets as an outdoor commercial activity, which will allow for the farmer's market to move from the lobby of the hospital to a more central location. This change will allow for expansion and better engagement.

*Objective 3, "Encourage sound land use decision in order to protect community character"*

*Action Step 1, Update the zoning ordinance to be consistent with the vision in the comprehensive plan"*

The comprehensive plan specifically identifies the need to update definitions, sign regulations, parking requirements, and landscape and buffer requirements. Consistency between the zoning ordinance and comprehensive plan will ensure that land use decisions are made based on the input of the public and what is best suited to address community needs. Updated definitions, districts, allowable uses, and guidance for signage will ensure that future decisions are reliant on the most recent vision for the City.

Lastly, a telecommunications overlay was added to the zoning ordinance to support the development of telecommunication facilities while protecting scenic viewsheds within city limits. The planning commission considered topography and existing facilities in determining the best locations for new telecommunication facilities. Regulations in the zoning ordinance address collocation, concealment, and landscaping.

*Action Step 2, "Consider annexation of surrounding lands to increase the tax base and provide continued economic growth"*

Annexation is a method by which Montgomery can create new economic opportunities and also increase the tax base of the municipality. The new language allows for annexation through a parallel procedural plan. This seeks to incorporate the annexed land into the City in a seamless transition. Adena Village and Kimberly are two areas specifically flagged for potential annexation.

*Action Step 3, "Explore and promote opportunities for senior housing"*

Senior Independent Housing is permitted use in several areas of Montgomery, including Multi-Family, Downtown Commercial, and General Commercial Districts. There is also an opportunity for the development of property alongside the river for housing senior citizens. Annexation could offer additional opportunities for senior housing.

*Action Step 4, "Prioritize property redevelopment"*

Montgomery offers many structures that can be redeveloped into new offerings for the community, such as the former WVU Tech campus and other former educational

buildings. Many aspects of the proposed zoning ordinance seek to encourage new growth through the redevelopment of the city.

*Action Step 5, “Utilize unused space for community gardens”*

The community has emphasized its interest in the creation of more green spaces and parks in the city. The zoning ordinance delineates and defines land uses so these green spaces may be carefully placed within the community. The creation of community gardens specifically is discussed in the context of urban agriculture.

## **Summary of Proposed Zoning Ordinance**

The proposed zoning ordinance has been written to be consistent with the 2019 Comprehensive Plan and this *Study and Report on Zoning*. The proposed zoning ordinance is also consistent with current statutory enabling authority, state and federal case law, federal and state regulations, and commonly accepted best practices for land use and zoning.

An amendment to the 2019 Comprehensive Plan was completed in 2023 to ensure consistency between the plan and the draft zoning ordinance and to ensure compliance with West Virginia Code, Chapter 8A. Changes to achieve consistency focused on changes to the future land use map and an action item for telecommunications.

The proposed zoning ordinance is broken down into several different articles:

- Article I: Purpose and Introduction
- Article II: Definitions
- Article III: Districts Established; Classification of Districts
- Article IV: Conservation (C) District
- Article V: Factory-built Home Neighborhood (F) District
- Article VI: Single Family Residential (SF) District
- Article VII: Multi-Family Residential (SF) District
- Article VIII: Downtown Commercial (DC) District
- Article IX: General Commercial (C) District
- Article X: Industrial (I) District
- Article Xa: Telecommunications Overlay (TO) District
- Article XI: Conditional Use Standards
- Article XII: General Provisions
- Article XIII: Supplemental Regulations
- Article XIV: Wireless Telecommunications Facilities
- Article XV: Small Cell Wireless Telecommunications Facilities
- Article XVI: Signs
- Article XVII: Administration; Enforcement
- Article XVIII: Board of Zoning Appeals; Appeals

A notable aspect of the proposed zoning ordinance is the expansive list of definitions. The proposed zoning ordinance defines all uses permitted by right, conditional uses, and key

zoning terminology. The thorough districting and defining of uses serve to adequately accommodate a variety of businesses within the City of Montgomery. General and supplemental regulations in the proposed zoning ordinance are comprehensive and address various concerns identified while reviewing the comprehensive plan and related public input.

## **Conclusion**

The *Study and Report on Zoning* was completed by City Council and the Planning Commission in compliance with W. Va. Code §8A-7-4. The intended result of this *Study and Report on Zoning* is that the City Council will consider the study and report and the proposed zoning ordinance, including any maps, and hold the required public hearings on the proposed zoning ordinance pursuant to W. Va. Code § 8A-7-5.

The City Council must complete the study of the land and report on zoning and hold the two public hearings required under W. Va. Code § 8A-7-5 before a new zoning ordinance may be adopted. The new zoning ordinance must be filed with the Office of the Clerk of Fayette and Kanawha Counties.

See Appendix A for the Proposed Zoning Ordinance

See Appendix B for the Proposed Zoning Map

**APPENDIX A:  
PROPOSED  
ZONING ORDINANCE**

# THE CITY OF MONTGOMERY ZONING CODE

## CHAPTER 27

### Article I Purpose and Introduction

#### Section 27-1 Title.

This ordinance shall be known as the Zoning Ordinance of the City of Montgomery, West Virginia, hereinafter referred to as “this code” or “this ordinance.”

#### Section 27-2 Authority.

Whereas, by act of the West Virginia State Legislature, as recorded in the West Virginia Code, the governing body of any county or municipality may, by ordinance, classify the territory under its jurisdiction into districts of such number, shape, and size as it may deem best suited to carry out the purpose of zoning.

#### Section 27-3 Purpose.

This code is consistent with the City of Montgomery Comprehensive Plan and was developed to promote the health, safety, morals, and general welfare of the public. Other purposes of this ordinance include:

- (a) To plan so that adequate light, air, convenience of access, and safety from fire, flood, and other danger is secured;
- (b) To ensure attractiveness and convenience is promoted;
- (c) To lessen congestion;
- (d) To preserve historic landmarks, sites, districts, and buildings; and
- (e) To promote the orderly development of land.

#### Section 27-4 Scope and Jurisdiction.

The provisions of this code shall apply to the construction, addition, alteration, moving, repair, and use of any building, structure, parcel of land, or sign within the City of Montgomery, except work located primarily on a public way or road, or on public utilities and public utility structures. In fulfilling these purposes, this code is intended to benefit the public as a whole and not any specific person or class of persons. Although, through the implementation, administration, and enforcement of this code, benefits and detriments will be enjoyed or suffered by specific individuals, such is merely a byproduct of the overall benefit to the whole community. Therefore, unintentional breaches of the obligations of administration and enforcement imposed on the City of Montgomery hereby shall not be enforceable in tort.

#### Section 27-5 Interpretation, Conflict, and Severability.

In interpretation and application of this code, these regulations shall be held to be the minimum requirements for the promotion of the public health, safety, and general welfare. These regulations are not intended to interfere with, abrogate, or annul any other ordinance, rule or regulation, statute, or other provisions of law. Where the conditions imposed by, or pursuant to, these regulations are different from those imposed by any other provision of these regulations or any other ordinance rule or regulation, statute, or other provision of law, the provisions that are more restrictive and that impose the higher or greater standards shall control. If any portion of this code is held invalid for any reason, the remaining herein shall not be affected.

#### Section 27-7 Non-exclusionary Intent.

It is not the intent of this code to exclude any persons or groups with differing economic, race, color, religion, sex, national origin, disability, or familial status from enjoyment of a residence, land ownership, or tenancy within the City of Montgomery; nor is it the intent of this code to use public powers in any

way to promote the separation within the City of Montgomery of economic, racial, religious, or ethnic groups, except as may be an incidental result of meeting the purposes outlined in this code.

**Section 27-8 Official Zoning Map.**

The Zoning Ordinance of the City of Montgomery shall include this code and the accompanying Official Zoning Map, which shall be considered part of this code. The Official Zoning Map shall be the map certified by the City of Montgomery. All subsequent amendments to the Official Zoning Map shall be certified by the City of Montgomery and then filed with the office of the Clerk of Fayette County, the office of the Clerk of Kanawha County, and the Clerk for the City of Montgomery.

**Section 27-9 Enactment.**

Therefore, the Council of the City of Montgomery hereby ordains for the purpose of accomplishing the objectives set out in the West Virginia Code, and Section 27-3 of this code, that the following be enacted as the Zoning Ordinance of the City of Montgomery, West Virginia.

**Section 27-10 Effective Date.**

This code shall take effect [EFFECTIVE DATE].

**Article II Definitions**

**Section 27-11 Interpretation of Words.**

For the purpose of this ordinance, certain terms and words used herein shall be interpreted as follows:

- (a) Words used in the present tense include the future tense.
- (b) Words used in the singular number shall include the plural, and words used in the plural number shall include the singular.
- (c) The word “person” shall include a firm, association, organization, limited liability company, limited partnership, corporation, trust, company, as well as a natural individual.
- (d) The word “City” shall mean the City of Montgomery.
- (e) The word “shall” and “must” are used to indicate mandatory directives.
- (f) The word “structure” shall include the word “building.”
- (g) The word “Map” or “Zoning Map” or “Zoning Map, City of Montgomery, West Virginia” or “Official Zoning Map” shall mean the map that geographically illustrates all zoning district boundaries within the City of Montgomery, West Virginia, pursuant to the requirements of Chapter 8A of the West Virginia Code.
- (h) The term “governing body” and “council” shall mean the City Council for the City of Montgomery, West Virginia, pursuant to the Charter of the City of Montgomery.
- (i) The term “Planning Commission” shall mean the Planning Commission for the City of Montgomery, West Virginia, pursuant to Chapter 8A of the West Virginia Code.
- (j) “Districts” or “Zoning Districts” shall mean administrative tracts designating the uses to which land can legally be utilized. Boundaries of the districts are shown on the Official Zoning Map, which is a part of this code.

**Section 27-12 Use Definitions.**

- (1) “Adult Business” means an adult bookstore, movie theater, or movie house or other adult entertainment, as defined herein.
  - (a) “Adult Bookstore” means any commercial establishment that offers for sale as a substantial or significant portion of its stock-in-trade videocassettes, movies, books, magazines or other periodicals, or other media that are distinguished or characterized by their emphasis on nudity or sexual conduct or on activities that, if presented in live presentation, would constitute adult entertainment.

- (b) “Adult Entertainment” means any establishment providing, either as a sole use or in conjunction with or in addition to other uses, entertainment consisting of the use of nudity or of live dancing, posing, displaying, acting, or other live presentation or use of persons whose actions are distinguished or characterized by emphasis on use of the human body in a manner intended to or resulting in arousal of sexual excitement or sexual titillation or a prurient interest or intended to or resulting in producing lustful emotions.
- (c) “Adult Movie Theater” or “Movie House” (including Adult Mini-Theaters) means any movie theater that on a regular, continuing basis shows films rated X by the Motion Picture Coding Association of America or any movie theater that presents for public viewing on a regular, continuing basis so-called adult films constituting adult entertainment, as defined by this code.
- (2) “Agritourism Enterprise” means activities associated with an agricultural operation and offered to the public or to invited groups for the purpose of recreation, education, or active involvement in the operation. These activities must be directly related to agricultural or natural resources and may include a brewery, cidery, mini-distillery, winery, and accompanying tasting facilities.
- (3) “Amphitheater” means an outdoor gathering space typically for entertainment that is often constructed with tiers of seats or sloping surfaces that gradually rise outward from a central open space or stage. An amphitheater may include a band shell-type structure to provide weather protection to a stage.
- (4) “Amusement and Recreation Center” means a business establishment, generally intended for use by all ages, that provides recreation or entertainment, including but not limited to swimming pools, dance halls, bowling alleys, skating rinks, billiard and pool halls, video and other coin-operated electronic games, miniature golf courses, indoor archery ranges, table games, trampolines, ball pits, and similar recreational diversions.
- (5) “Animal Grooming” means services provided to domesticated pet animals including, but not limited to, clipping, bathing, and related services, and excluding veterinary services unless combined with said use as permitted under this ordinance.
- (6) “Animal Hospital/Veterinary Office” means an establishment for temporary occupation by sick or injured animals for the purpose of medical diagnosis and treatment, but excluding the treatment or other care of humans.
- (7) “Automobile Car Wash” means the use of a site for washing and cleaning of automobiles, recreational vehicles, or other light duty equipment.
- (8) “Bakery” means an establishment primarily engaged in the retail sale of baked goods for consumption off-site.
- (9) “Bank/Financial Institution” means a bank, savings and loan, credit union, or other institution that provides retail banking services to individuals and businesses.
- (10) “Bed and Breakfast Inn” means a private residence in which overnight accommodations are provided for not more than five (5) transient paying guests in up to four (4) bedrooms at any particular time. The residence may or may not be occupied by the owner during the guests’ overnight stay; if not owner-occupied, a designated operator is present within in the City of Montgomery and available at all times the property is being rented.
- (11) “Boat Livery” means the rental of canoes, kayaks, and similar small boats for recreational use.
- (12) “Boat and Marine Sales/Service” means the sales, service, and repair of new and used boats, boat trailers, marine hardware, and related products
- (13) “Boat Storage” means an enclosed, partially enclosed, or open facility utilized for the wet or dry storage of boats.
- (14) “Brewery Pub” means a place of manufacture of nonintoxicating beer or nonintoxicating craft beer owned by a resident brewer as defined by the West Virginia Code, subject to federal and state regulations and guidelines, a portion of which premises may be designated for retail

sales for consumption on the premises of nonintoxicating beer or nonintoxicating craft beer by the resident brewer owning the brewpub.

- (15) "Broadcasting Studio" means a structure housing the operation of the over-the-air distribution of audio or video signals to a large number of recipients ("listeners" or "viewers") within the technical reach of the signals.
- (16) "Building Material Facility" means an establishment that sells home, lawn, garden supplies, tools and construction materials, such as brick, lumber, hardware, and other similar materials. Construction goods may be located in outdoor storage.
- (17) "Bus and Transit Facilities" means a facility operated as a bus or rail passenger station or transfer center that may have a covered structure. Typical facilities may include station platforms, bus bays, off-street parking, private access roads, and other passenger amenities.
- (18) "Bus and Transit Shelter" means a covered structure, located near a street and designed primarily for protection against the weather for bus or other transit passengers.
- (19) "Café/Coffee Shop" means an establishment in which beverages, primarily coffee and tea; light meals; and snacks are served, provided no food shall require preparation utilizing an open flame or fryer, and provided the establishment does not exceed one thousand (1,000) square feet in gross floor area.
- (20) "Campground" means a publicly or privately owned site designed, designated, maintained, intended, or used for the purpose of supplying a location for seasonal, recreational, and temporary living purposes in cabins, tents, or recreational equipment or vehicles open to the public for free or for a fee.
- (21) "Catering Business" means the preparation and delivery of food and beverages for off-site consumption for a fee.
- (22) "Child Day Care Facility" is divided into four classes:
  - (a) "Child Day Care Facility, Class 1" means a facility maintained by the state or any county or municipality thereof, or any agency or facility maintained by an individual, firm, corporation, association, or organization, public or private, for the care of thirteen (13) or more children for child care services in any setting, if the facility is open for more than thirty (30) days per year per child.
  - (b) "Child Day Care Facility, Class 2" means a facility that is used to provide child care services for compensation for seven (7) to twelve (12) children, including children who are living in the household, who are under six (6) years of age. No more than four (4) of the total number of children may be under twenty-four (24) months of age. A facility may be in a provider's residence or a separate building.
  - (c) "Child Day Care Facility, Class 3" means a facility that is used to provide child care services for compensation in a provider's residence. The provider may care for no more than six (6) children at one time including children who are living in the household, who are under six (6) years of age. No more than two of the total number of children may be under twenty-four (24) months of age.
  - (d) "Child Day Care Facility, Class 4" means residential child care services for compensation for three (3) or fewer children, including children who are living in the household, who are under six (6) years of age. Care is given in the provider's own home to at least one (1) child who is not related to the caregiver.
- (23) "Clinic" means an establishment providing medical, dental, chiropractic, psychiatric, substance abuse treatment, or surgical services exclusively on an outpatient basis, including emergency treatment and diagnostic services.
- (24) "Community Facility" means a nonprofit facility, whether publicly or privately owned, with the primary goal to provide a community service.

- (25) “Continuing Care Facility” means one or more of the following types of facilities:
- (a) “Adult Assisted Living” means any facility, residence, or place of accommodation available for four (4) or more residents for the purpose of having personal assistance or supervision, or both, provided to any residents therein who are dependent upon the services of others by reason of physical or mental impairment and who may also require nursing care at a level that is not greater than limited and intermittent nursing care.
  - (b) “Nursing Home” means any institution, residence, or place, or any part or unit thereof, however named, that is advertised, offered, maintained, or operated by the ownership or management, whether for consideration or not, for the express or implied purpose of providing accommodations and care, for a period of more than twenty-four (24) hours, for four (4) or more persons who are ill or otherwise incapacitated and in need of extensive, ongoing nursing care due to physical or mental impairment or that provides services for the rehabilitation of persons who are convalescing from illness or incapacitation.
  - (c) “Skilled Nursing Facility” means an institution, or a distinct part of an institution, that primarily provides inpatient skilled nursing care and related services, or rehabilitation services, to injured, disabled, or sick persons.
- (26) “Convenience Store” means a business establishment that offers convenience goods for sale, such as prepackaged or limited prepared food items, tobacco, and periodicals, but not displaying merchandise or products outdoors, except where such display is required to sell the merchandise. The use does not include the sale of gasoline unless combined with the gas station use.
- (27) “Conversion of Old Schools and Churches” means the adaptive reuse of a former school or church for residential or commercial purposes not affiliated with the prior use.
- (28) “Correctional Facility” means a publicly or privately operated facility housing persons awaiting trial, serving a sentence after being found guilty of a criminal offense, being within the jurisdiction of a federal, state, or local probation, parole, or corrections agency or receiving treatment other than at a hospital while under the jurisdiction of such authority or agency, including but not limited to jails, prisons, juvenile detention centers, work release centers, pre-release centers, and treatment centers.
- (29) “Cultural Service” means a site used for the collection, display, or preservation of objects of community or cultural interests, such as a library, museum, or similar facility.
- (30) “Distillery” means a state licensed Distillery establishment where in any year (as defined by WVABC) more than twenty thousand gallons of alcoholic liquor (not including wine or beer but including mead) is manufactured or in any way prepared; or, an establishment where in any year (as defined by WVABC) less than twenty thousand gallons of alcoholic liquor is manufactured but the facility cannot meet the requirements for locally produced (raw agricultural) ingredients for the production as defined in the “Mini Distillery” definition in this ordinance.
- (31) “Distillery, Mini” means a state licensed Mini Distillery establishment where in any year (as defined by WVABC) no more than twenty thousand gallons of alcoholic liquor is manufactured with no less than twenty-five (25%) percent of raw agricultural products being produced by the owner of the mini-distillery on the premises of that establishment, and no more than twenty-five (25%) percent of raw agricultural products originating from any source outside this state.
- (32) “Distribution Facility” means any premises, or part thereof, that provides logistical support for business, such as freight management, inventory control, storage, packaging, and consolidation of goods for distribution to be redistributed to retailers, wholesalers, or directly to the consumer.
- (33) “Dog Day Care” means an organized, controlled, and monitored environment for a group of dogs to interact and play throughout the day. The purpose is to provide stimulation, exercise, and socialization for dogs, and ancillary services. Overnight stays are not permitted in dog day care facilities.

- (34) “Drive-in Theater” means a designated area where an outdoor movie screen may be viewed by persons from within their vehicles or from outdoor spaces. May include concessions, tables, and outdoor dining areas, and playgrounds.
- (35) “Drive-through Facility” means the accessory use of land, buildings or structures, or parts thereof, to provide or dispense products or services, either wholly or in part, through an attendant or a window or automated machine, to persons remaining in motorized vehicles that are in a designated lane or parking spot. A drive-through facility may be in combination with other uses such as a laundry shop, dry cleaning shop, dry cleaner's distributing station, branch of a bank or financial institution, retail store, automotive service station, or restaurant. Despite the above, a drive-through facility does not include a car washing establishment, automobile service station, or a gas station.
- (36) “Dry Cleaner” means an establishment providing dry cleaning and laundering services where dry cleaning and laundering are done on the premises. Includes the mechanical cleaning of garments, clothing articles, or goods of fabric, including a linen, diaper, or uniform laundering service. May perform work on the premises for other dry cleaning and laundry services, serve retail customers, and provide ancillary services such as tailoring.
- (37) “Dwelling, Accessory” and “Conversion Dwelling” means a portion of a single-family dwelling converted into two separate dwelling units within the principal structure or new or existing accessory structures.
- (38) “Dwelling, Mixed Use” means a building with commercial, office, or similar uses on the ground floor with access at the front of the building and residential uses above the commercial, office, or similar uses and with residential access only at the side or rear of the building. No residential uses are on the ground floor.
- (39) “Dwelling, Multi-family” means a building containing three (3) or more dwelling units.
- (40) “Dwelling, Single-family” means a detached building designed for and occupied exclusively as a residence for only one (1) family or by two (2) families where accessory dwellings and conversion dwellings are permitted.
- (41) “Dwelling, Two-family” means a detached building designed for and occupied exclusively as a residence by no more than two (2) families.
- (42) “Educational Institution” means a college or university giving general academic instruction. Included within this term are areas or structures used for administration, housing of students and faculty, dining halls, and social or athletic activities when located on the institution's land that is not detached from where classroom facilities are maintained.
- (43) “Emergency Shelter” means a residential facility that provides room and board for a temporary period, protection, counseling, and pre-placement screening for abused, displaced, or transient adults or children.
- (44) “Equipment Rental/Repair” means an establishment involved in renting or repairing small tools and equipment, including janitorial equipment.
- (45) “Essential Utilities and Equipment” means underground or overhead electrical, gas, communications not regulated by the Federal Communications Commission, water and sewage systems, including pole structures, towers, wires, lines, mains, drains, sewers, conduits, cables, fire alarm boxes, public telephone structures, police call boxes, traffic signals, hydrants, regulating and measuring devices and the structures in which they are housed, and other similar equipment accessories in connection therewith.
- (46) “Event, Mass Gathering” means an event, as defined herein, resulting in the assemblage of more than five hundred (500) persons on any one parcel or any special event, as defined herein, where camping or overnight lodging are offered.
- (47) “Event, Special” means an event, as defined herein, resulting in the assemblage of fifty (50) to five hundred (500) persons; the arrival of twenty-five (25) or more vehicles at the location of the event, whether held on private property, public property, or public roads; and any events with a significant emphasis on the sale, marketing, or promotion of products or services to be

consumed, utilized, or provided off the premises, except for temporary uses permitted under Section 27-66 of this code.

- (48) “Extractive Industry” means a heavy industry use that involves the extraction of minerals for sale or other commercial purpose, including solids, such as coal and ores; liquids, such as crude petroleum; and gases, such as natural gases. The term also includes quarrying; well operation; milling, such as crushing, screening, washing, and flotation; and other preparation customarily done at the extraction site or as a part of the extractive activity.
- (49) “Factory-built Home” means manufactured and mobile homes.
- (a) “Manufactured Home” means a home that meets the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U. S. C. §5401, et seq.), effective on the fifteenth day of June, one thousand nine hundred seventy-six, and the federal manufactured home construction and safety standards and regulations promulgated by the secretary of the United States Department of Housing and Urban Development.
- (b) “Mobile Home” means a transportable structure that is wholly, or in substantial part, made, fabricated, formed or assembled in manufacturing facilities for installation or assembly and installation on a building site and designed for long-term residential use and built prior to enactment of the Federal Manufactured Housing Construction and Safety Standards Act of 1974 (42 U. S. C. §5401, et seq.), effective on the fifteenth day of June, one thousand nine hundred seventy-six, and usually built to the voluntary industry standard of the American National Standards Institute (ANSI)--A119.1 standards for mobile homes.
- (50) “Factory-built Home Rental Community” means a parcel of land under single or common ownership upon which two or more factory-built homes are located on a continual, nonrecreational basis together with any structure, equipment, road, or facility intended for use incidental to the occupancy of the factory-built homes, but does not include premises used solely for storage or display of uninhabited factory-built homes or premises occupied solely by a landowner and members of their family.
- (51) “Fairground” means an area of land used for fairs in accordance with local and state requirements, exhibitions, and shows, including but not limited to animal shows and judging, carnivals, circuses, concerts, food booths and stands, games, rides, rodeos, sales and auctions, storage, racetracks, agricultural-related office buildings, and community meeting or recreational buildings and uses.
- (52) “Farm” means the raising of crops or livestock, including orchards, vineyards, or nurseries, along with any buildings or structures necessary to conduct such activities.
- (53) “Farm/Construction Equipment and Supply Sales” means an establishment engaged in the on-premises lease, rental, or retail sale of new or used construction or farm equipment, with or without incidental service for minor repairs and maintenance.
- (54) “Farmer’s Market” means the offering for sale of agricultural products directly to the consumer at an open-air market designated as a community activity.
- (55) “Flea Market” means an outdoor or enclosed commercial activity, open to the general public that offers goods for sale, trade, or barter, regardless of whether they are new, used, antique, or homemade.
- (56) “Freight Terminal” means any premises and buildings where cargo is stored and where railroad cars or trucks load and unload cargo for shipment or distribution and that may include facilities for temporary storage of loads prior to shipment and facilities for the maintenance of transport vehicles.
- (57) “Funeral Home/Mortuary” means a building or part thereof used for human funeral services. Such building may contain space and facilities for (a) embalming and the performance of other services used in the preparation of human remains for burial or disposition of human remains; including cremation (b) the performance of autopsies and other surgical procedures related to the processing of human remains; (c) the storage of caskets, funeral urns, and other related funeral supplies; (d) the storage of funeral vehicles; and (e) facilities for cremation.

- (58) “Garage, Commercial” means a garage conducted as a business, that includes but is not limited to the rental of storage space for more than two automobiles or for one commercial vehicle not owned by a person residing on the premises.
- (59) “Garage, Community” means a group of private garages, detached or under one roof, arranged in a row or around a common means of access and erected for use of residents in the immediate vicinity.
- (60) “Garden Center” means an establishment primarily engaged in selling containerized trees, shrubs, other plants, seeds, bulbs, mulches, soil conditioners, fertilizers, pesticides, garden tools, and other garden supplies to the general public and where no trees, shrubs, or plants are grown on the premises.
- (61) “Gas Station” means a building, place of business, land area, or other premises, or portion thereof, used or intended to be used for the retail dispensing of gasoline, oil and grease, and other vehicle fuels, and including, as an accessory use, the sale and installation of batteries, tires, lubricants, and other automobile accessories and retail items. Minor repair service may also be rendered. May also offer convenience goods for sale, such as prepackaged or limited prepared food items, tobacco, and periodicals, except that the term does not include display of merchandise or products outdoors except where such display is required to sell the merchandise.
- (62) “Governmental Operations” include emergency services; federal, state, or municipal buildings; and post offices. Emergency services include areas utilized for the maintenance, fueling, storage, receiving and dispatching calls or transmissions, or parking of vehicles or equipment providing rescue or ambulatory services.
- (63) “Greenhouse, Commercial” means a building used for the growing of plants, all or part of which are sold at retail or wholesale.
- (64) “Greenhouse, Noncommercial” means an accessory building or structure under one hundred and fifty (150) square feet in gross floor area, constructed chiefly of glass, glasslike, or translucent material, cloth, or lath, and devoted to the protection or cultivation of flowers or other weather-sensitive plants.
- (65) “Group Residential Facility” means a facility that is owned, leased, or operated by a behavioral health service provider and that (1) provides residential services and supervision for individuals who are developmentally disabled or behaviorally disabled; (2) is occupied as a residence by not more than eight individuals who are developmentally disabled and not more than three supervisors or is occupied as a residence by not more than twelve individuals who are behaviorally disabled and not more than three supervisors; (3) is licensed by the Department of Health and Human Resources; and (4) complies with the State Fire Commission for residential facilities.
- (66) “Group Residential Home” means a building owned or leased by developmentally disabled or behaviorally disabled persons for purposes of establishing a personal residence. This includes a place for transitional group living arrangements for persons discharged from hospitals, correctional facilities, or in lieu of hospitalization, characterized by the presence of such live-in staff, emphasizing the development of skills necessary for more independent living. The facility shall be licensed and operated in accordance with all applicable laws.
- (67) “Health Club” means a building or portion of a building designed and equipped for sports, exercise, or other customary and usual recreational activities, operated for profit. The sale of sports nutrition products, non-alcoholic beverages, packaged health foods, exercise clothing, and sports videos and magazines is permitted as an accessory use to such facilities.
- (68) “Home-based Business” means an accessory use intended to allow commercial enterprises that generate limited numbers of customer visits or merchandise deliveries to a residential dwelling. Use involves limited customer, client, or patient traffic, whether vehicular or pedestrian, pickup, delivery, or removal functions to or from the premises, in excess of those normally associated with the use of a dwelling.

- (69) “Hospital” means an institution designed for the diagnosis, treatment, and care of human illness or infirmity and providing health services, primarily for inpatients, and including related facilities, laboratories, outpatient departments, training facilities, and staff offices.
- (70) “Hotel/Motel” means a building or group of buildings in which lodging is provided and offered for compensation. The building may also include dining rooms, kitchens, serving rooms, ballrooms, and other facilities and services intended primarily for the accommodation of its patrons.
- (71) “Industrial Park” means an area of land arranged or constructed in accordance with a plan for a group of business purposes, having separate building sites designed and arranged on streets and having utility services, setbacks, side yards, and covenants or other such regulations controlling or restricting uses.
- (72) “Laboratory” means a facility equipped for experimental study in a science or for testing and analysis; a facility providing opportunity for research, experimentation, observation, or practice in a field of study.
- (73) “Liquor Store” means an establishment operated under the authority of the West Virginia Code, Chapter 60, Article 3A, and primarily engaged in the retail sale of packaged alcoholic beverages such as ale, beer, wine, or whiskey, for off-premises consumption.
- (74) “Lumberyard” means an establishment where processed wood timbers and products are stored for bulk and retail sale.
- (75) “Manufacturing (Heavy)” means the manufacturing or compounding process of raw materials. These activities or processes would necessitate the storage of large volumes of highly flammable, toxic matter or explosive materials needed for the manufacturing process. These activities may involve outdoor operations as part of the manufacturing process.
- (76) “Manufacturing (Light)” means the manufacturing, compounding, processing, assembling, packaging, printing, or testing of goods or equipment, including but not limited to newspaper printing and distribution and research activities conducted entirely within an enclosed structure, with no outside storage, serviced by a modest volume of trucks or vans, and imposing a negligible impact on the surrounding environment by noise, vibration, smoke, dust, or pollutants.
- (77) “Marina” means a business or recreational facility engaged in the secure mooring of boats, including facilities for storage and repair of boats and sale of boating supplies and fuel.
- (78) “Medical Adult Day Care Center” means an ambulatory health care facility that provides an organized day program of therapeutic, social, and health maintenance and restorative services and whose general goal is to provide an alternative to twenty-four hour long term institutional care to elderly or disabled adults who are in need of such services by virtue of physical and mental impairment.
- (79) “Medical Cannabis Dispensary” means a place where processed medical cannabis products are permitted to be sold to qualifying consumers, as provided for in the Code of the State of West Virginia, Chapter 16A, as amended. This term does not include a health care medical cannabis organization as defined in the Code of the State of West Virginia, Chapter 16A, as amended.
- (80) “Medical Cannabis Growing Facility” means a place where medical cannabis is permitted to be grown, as provided for in the Code of the State of West Virginia, Chapter 16A, as amended. This term does not include a health care medical cannabis organization as defined in the Code of the State of West Virginia, Chapter 16A, as amended.
- (81) “Medical Cannabis Organization, Health Care” means a vertically integrated health system approved by the West Virginia Bureau for Public Health to dispense medical cannabis or grow and process medical cannabis, or both, in accordance with a research study under the Code of the State of West Virginia, Chapter 16A, as amended.
- (82) “Medical Cannabis Processing Facility” means a place where medical cannabis is permitted to be processed, refined, or otherwise converted into a legally permitted state, as provided for in the Code of the State of West Virginia, Chapter 16A, as amended. This term does

not include a health care medical cannabis organization as defined in the Code of the State of West Virginia, Chapter 16A, as amended.

- (83) “Night Club” means an establishment for evening entertainment, generally open until the early morning that serves liquor and usually food and offers patrons music, comedy acts, a floor show, or dancing but is not characterized as a forum for sexually oriented material.
- (84) “Off-premises, Freestanding Sign,” means a commercial sign not accessory to or associated with the principal use on a lot or a sign that is the principal use of a lot, attached only to its own support structures consisting of one or more columns, uprights, or braces in or upon the ground, with at least eight (8) feet between the lowest component of the sign face and the ground beneath the sign.
- (85) “Office Supply Establishment” means a place of business where stationary, furniture, and other supplies typically used in offices are the main items offered for sale.
- (86) “Parcel Delivery Facility” means an establishment engaged in the delivery, receipt, and transmittal of documents, packages, and parcels.
- (87) “Park” means land set aside for open space and recreational purposes.
- (88) “Parking Lot” means a principal use consisting of an off-street surfaced area used for parking two or more vehicles that is served by an entrance and possibly an access way connecting the parking lot and a public or private road, but does not include parking for a single-family or two-family dwelling.
- (89) “Pawn Shop” means any business that loans money on deposit of personal property or deals in the purchase or possession of personal property on condition of selling the same back again to the pledger or depositor, or loans or advances money on personal property by taking chattel mortgage security thereon, and takes or receives such personal property.
- (90) “Personal Service” means a business providing services to a person, their apparel or personal effects commonly carried on or about their person, including, but not limited to, shoe repair, tailoring, watch repair, beauty shops, barber shops, tanning and nail salons, laundromats, and dry cleaning and laundering drop-off and pick-up services where dry cleaning and laundering are not done on the premises.
- (91) “Pet Shop” means an establishment where animals are bought, sold, exchanged, or offered for sale or exchange to the general public.
- (92) “Pharmacy” means an establishment in which prescription or nonprescription drugs or devices are compounded, dispensed, or distributed. Ancillary retail items also may be sold.
- (93) “Photographic Studio” means a retail establishment for the purpose of photographing subjects and processing photographs for commercial purposes, but not including photography requiring professional models.
- (94) “Places of Worship/Religious Institution” means a building wherein persons regularly assemble for acts of religious devotion and that is maintained and controlled by a religious body organized to sustain public worship, together with all accessory buildings and uses customarily associated with such primary purpose. Includes a church, synagogue, temple, mosque, or other places for worship and religious activities. Customary accessory uses include a wide range of religious activities, including a caretaker’s residence; fellowship halls, parish halls, and similar buildings; rooms used for meetings, religious education, and similar functions; a gymnasium; a playground; the sale of items associated with the practice of religion; and faith-based social services such as homeless shelters, group homes, and soup kitchens.
- (95) “Private Club” means any corporation or unincorporated association meeting the definition of private club in West Virginia Code Section 60-7-2(a), and licensed and in compliance with West Virginia Code, Chapter 60, Article 7, to sell liquor, beer, and wine.
- (96) “Professional Services” means any office of recognized professions, other than medical, such as lawyers, architects, engineers, real estate brokers, insurance agents, and others who are qualified to perform services of a professional nature and other offices used primarily for accounting,

- corresponding, research, editing, or other administrative functions, but not including banks or other financial institutions and personal services.
- (97) “Reception Facility” means a facility within an existing structure or outdoor area for hosting receptions or similar activities, limited only to weddings, wedding receptions, birthday events, anniversary events, reunion events, and family gatherings, and not involving charging admission or held primarily to view a performance.
- (98) “Recreation, Private” means an enterprise operated by an individual or non-profit association or corporation, other than a public entity, for the pursuit of sports and recreational activities, including but not limited to such establishments as country clubs, golf courses, sports clubs, golf practice facilities, playing fields, tennis or racquet clubs, swimming pools, and similar facilities.
- (99) “Recreation, Public” means an enterprise owned and operated by a public entity, available to the general public, whether or not an admission fee is charged, including either indoor or outdoor facilities for the pursuit of sports, recreation, or leisure activities, including but not limited to marinas, parks, playgrounds, playing fields, fishing access, golf courses, golf or batting practice facilities, tennis courts, swimming pools, and similar facilities.
- (100) “Research and Development” means investigative activities a business conducts to improve existing products or services or to lead to the creation of new products and procedures that do not involve the mass manufacture, fabrication, processing, or sale of products; or a structure or complex of structures designed or used primarily for research development functions related to industry and similar fields of endeavor.
- (101) “Restaurant” means a commercial establishment with an equipped kitchen where food and beverages are prepared and served to be consumed primarily on the premises or served in ready to consume individual servings, for consumption either within the restaurant building or for carry out; and where food sales constitute more than sixty (60) percent of the gross sales receipts.
- (102) “Retail Store” means a business having as its primary function the supply of merchandise or wares to the end consumer. Such sales constitute the “primary function” of the business when sales equal at least eighty (80) percent of the gross sales of the business.
- (103) “Roadside Vendor Stand” means a location, trailer, truck bed, or similar facilities offering agricultural products for sale that are not produced on the immediate premise.
- (104) “School, Commercial” means an educational establishment to provide for the teaching of industrial, clerical, managerial, or artistic skills. This definition applies to educational establishments that are owned and operated privately for profit.
- (105) “School, Preschool to 12” means an educational establishment offering educational instruction between preschool through twelfth grade. Schools can be public or private, licensed in accordance with the West Virginia Code.
- (106) “Self-storage Facility” means a building or group of buildings containing separate, individual, and private storage spaces of varying sizes available for lease or rent for varying periods of time.
- (107) “Senior Independent Housing” means a single-family or multi-family development intended for, operated for, and designed to accommodate residents fifty-five (55) years of age or older. Senior independent housing communities are designed for seniors who are able to live independently or need assistance with daily care.
- (108) “Sewage Treatment Facility” means a facility designed to receive the wastewater from both residential and nonresidential sources and to remove materials that damage water quality and threaten public health and safety when discharged into receiving streams or bodies of water.
- (109) “Shooting Range, Commercial Indoor” means an area within an enclosed building used for the discharge of firearms, such as rifles, shotguns, pistols, skeet, trap, black powder, or other similar items, provided that a fee is charged for use of the premises to discharge firearms. Gun clubs and other organizations that charge a monthly or annual membership fee or fee for one-time use shall be included in the definition of a commercial indoor shooting range regardless of whether the club is operated for profit.

- (110) “Shooting Range, Commercial Outdoor” means an area of land designed for the discharge of firearms, such as rifles, shotguns, pistols, skeet, trap, black powder, or other similar items, provided that a fee is charged for use of the premises to discharge firearms. Gun clubs and other organizations that charge a monthly or annual membership fee or fee for one-time use are included in the definition of a commercial outdoor shooting range regardless of whether the club is operated for profit.
- (111) “Shooting Range, Noncommercial Indoor” means an area within an enclosed building used for the discharge of firearms, such as rifles, shotguns, pistols, skeet, trap, black powder, or other similar items, for use by the property owner, family members, or persons authorized by the property owner on a noncommercial basis.
- (112) “Shooting Range, Noncommercial Outdoor” means land designed for the discharge of firearms, such as rifles, shotguns, pistols, skeet, trap, black powder, or other similar items, for use by the landowner, family members, or persons authorized by the landowner on a noncommercial basis.
- (113) “Shopping Center” means a group of retail and other commercial establishments that is planned, owned, and managed as a single property.
- (114) “Small wireless facility” or “Wireless Telecommunications Facility, Small Cells” means a wireless facility that meets both of the following qualifications: each antenna does not exceed six (6) cubic feet; and all other wireless equipment associated with the facility is cumulatively no more than twenty-eight (28) cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meter, concealment elements, telecommunications demarcation box, ground-based enclosures, grounding equipment, power transfer switch, cut-off switch, and vertical cable runs for the connection of power and communications services.
- (115) “Solar Energy System” means an energy conversion system, including appurtenances, that converts solar energy to a usable form of energy to meet all or part of the energy or heating requirements of the on-site user, or that can incidentally be sold to a utility company to be used by others, or sold directly to other users.
- (a) “Small solar energy system, roof-mounted” means solar energy systems placed on or as an integral part of a building and installed for personal use in residences, commercial properties, and institutions.
- (b) “Small solar energy system, ground-mounted” means solar energy systems placed on top of the ground surface and installed for personal use in residences, commercial properties, and institutions.
- (c) “Large solar energy system” means solar energy systems installed on large parcels of land for the purpose of generating revenue or utility-scale systems installed to benefit the community or an entire institution.
- (116) “Sports Arena” means a central stage, ring, area, or the like, used for sports and surrounded by seats for spectators.
- (117) “Studio, Dancing, Music, or Art” means a facility used for the rehearsal or performance of performing arts, such as music, dance, or theatre; teaching classes in creative arts, such as painting, drawing, sculpting, potting, or beading or otherwise creating art; or for the display or sale of art in general or during special events. Food and alcoholic beverages may be served and fees charged as accessory uses during special events.
- (118) “Tattoo Parlor/Body Piercing Studio” means an establishment whose principal business activity, either in terms of operation or as held out to the public, is the practice of one or both of the following: (1) placing of designs, letters, figures, symbols, or other marks upon or under the skin of any person, using ink or other substances that result in the permanent coloration of the skin by means of the use of needles or other instruments designed to contact or puncture the skin; (2) creation of an opening in the body of a person for the purpose of inserting jewelry or other decoration.

- (119) “Tavern/Drinking Establishment/Bar” means an establishment engaged in the preparation and retail sale of alcoholic beverages for consumption on the premises and that may offer food for consumption on premises as an ancillary use.
- (120) “Theater” means a building or part of a building devoted to presenting motion pictures or live performances.
- (121) “Truck Terminal” means a facility where freight is unloaded from interstate trucks or intermodal trailers and containers carried on the railroad and loaded onto local delivery trucks.
- (122) “Urban Agriculture” means an accessory use involving land used for beekeeping, community gardens, and other small-scale agricultural activities not including fowl or livestock.
- (123) “Vehicle Repair/Service/Sales/Rental” means any building, structure, improvements, or land used for the repair or maintenance of automobiles, motorcycles, trucks, trailers, or similar vehicles including but not limited to body, fender, muffler or upholstery work, oil change and lubrication, painting, tire service and sales, or installation of CB radios, car alarms, stereo equipment, or cellular telephones.
- (124) “Video Gaming or Lottery Establishment” means an establishment at which any form of gambling of chance is permitted or played, including “video lottery” machines licensed by the West Virginia Lottery Commission pursuant to the West Virginia Code, but excluding establishments that only sell lottery tickets.
- (125) “Warehouse” means a facility characterized by extensive warehousing, frequent heavy trucking activity, open storage of material, or nuisances such as dust, noise, and odors, but not involved in manufacturing or production.
- (126) “Water Treatment Plant” means facilities that treat water and produce potable water for public consumption.
- (127) “Wholesale Establishment” means the sale of commodities to retailers or jobbers, including the sale of commodities for the purpose of carrying on any trade or business even if the said trade or business is the consumer or end user of the commodity.
- (128) “Wind Energy System” means any electric generation facility whose main purpose is to convert and store wind energy into usable forms of energy; includes wind turbines, structural supports, electrical infrastructure, and other appurtenant structures and facilities. Consisting of a maximum of one (1) wind turbine per parcel of land.
- (129) “Winery” means an establishment where wine is manufactured or in any way prepared in accordance with the West Virginia Code.
- (130) “Wireless Telecommunications Facility” means equipment at a fixed location that enables wireless communications between user equipment and a communications network, including: equipment associated with wireless communications; and radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration; any structure, antenna, tower, base station, or other device that provides or is suitable to provide radio/television transmission, commercial mobile wireless telecommunication services, cellular phone services, specialized mobile radio communications (SMR), broadband telecommunications services, common carrier wireless telecommunication exchange phone services, and personal communications service (PCS) or pager service. Wireless facility includes small wireless facilities. “Wireless facility” does not include the structure or improvements on, under, or within which the equipment is collocated; wireline backhaul facilities; coaxial or fiber-optic cable that is between wireless support structures or utility poles; or coaxial or fiber-optic cable that is otherwise not immediately adjacent to, or directly associated with, an antenna. The following are not wireless telecommunication facilities for purposes of this ordinance:
- (a) “Emergency wireless telecommunications facility” means wireless telecommunication facilities exclusively for emergency communications.

- (b) “Amateur (ham) Radio Stations” means any antenna of less than one hundred (100) feet in height owned and operated exclusively by an amateur radio operator licensed by the Federal Communications Commission (FCC).
- (c) “Temporary wireless telecommunications facility” means a wireless telecommunications facility either operational or in operation for a maximum period of one hundred and twenty (120) calendar days per calendar year within the jurisdiction.
- (d) “Antennas as accessory uses” means an antenna that is an accessory use to a residential dwelling unit.

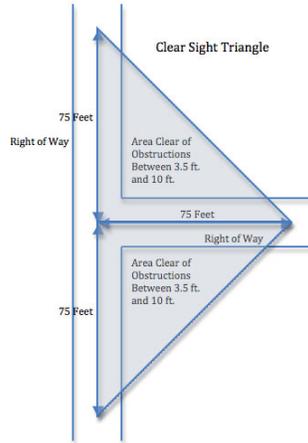
**Section 27-13 General Definitions.**

- (1) “Abandonment” means the relinquishment of property or a cessation of the use of the property by the owner or lessee without any intention of transferring rights to the property to another owner within one (1) year or without any intention to resume a nonconforming use of the property for a period of one (1) year.
- (2) “Abandoned motor vehicle” means any motor vehicle, or major part thereof, that is inoperative and that has been abandoned on public property for any period over five (5) days, other than in an enclosed building or in a licensed salvage yard or at the business establishment of a demolisher; or any motor vehicle, or major part thereof, that has remained on private property without consent of the owner or person in control of the property for any period over five (5) days; or any motor vehicle, or major part thereof, that is unattended, discarded, deserted and unlicensed and is not in an enclosed building, a licensed salvage yard or the actual possession of a demolisher: Provided, That a motor vehicle, or major part thereof, is not an abandoned motor vehicle if: (a) The owner of the motor vehicle is storing the motor vehicle on the owner’s property; (b) the motor vehicle is being stored for the purpose of using its parts on other motor vehicles owned by the owner; (c) the owner owns other motor vehicles similar to the motor vehicle being stored; and (d) the owner is a business licensed to do business in the State of West Virginia and not in the primary business of offering motor vehicles or parts thereof for sale.
- (3) “Access way” means a private vehicular facility for townhomes, multi-family dwellings, and condominiums, serving more than four (4) dwelling units, and commercial developments that extends from the curb line extended of a public or private road to the parking lot.
- (4) “Accessory Structure” or “Accessory Building” means a structure or building on the same lot with, and of a nature customarily incidental and subordinate to, the principal use or structure, including but not limited to signs, swimming pools, piers and other water-related structures, parking, fences, gazebos, satellite dishes, doghouses and dog-related structures, noncommercial greenhouses, sheds, and private garages.
- (5) “Accessory Use” means a use on the same lot with, and of a nature customarily incidental and subordinate to, the principal use, including but not limited to home-based businesses.
- (6) “Aggrieved or Aggrieved Person” means a person who (1) is denied by the planning commission, board of subdivision and land development appeals, or the board of zoning appeals, in whole or in part, the relief sought in any application or appeal; or (2) has demonstrated that he or she will suffer a peculiar injury, prejudice, or inconvenience beyond that which other residents of the municipality may suffer.
- (7) “Agricultural Operation” means an enterprise that is actively engaged in the commercial production and preparation for market of crops, livestock, and livestock products and in the production, harvesting, and preparation for market or use of agricultural, agronomic, horticultural, silvicultural and aquacultural crops and commodities. The term includes an enterprise that implements changes in production practices and procedures or types of crops, livestock, livestock products or commodities produced consistent with practices and procedures that are normally engaged by farmers or are consistent with technological development within the agricultural industry.

- (8) “Agritourism” means the practice of combining tourism and agriculture. It is a type of commercial enterprise that combines agricultural production or processing with tourism in order to attract visitors onto a farm or other agricultural enterprise for the purposes of entertaining or educating the visitors and generating income for the farm or agricultural based business owner. It is accessory to an active principal agricultural operation. (Separate definition for breweries, wineries, and distilleries.)
- (9) “Alley” means a service roadway less than twenty (20) feet providing a secondary means of access to abutting property and not intended for general traffic circulation.
- (10) “Alteration” means any change or expansion in the size, configuration, exterior features, or location of a structure; or any change or expansion in the use of a structure or lot from a previously approved or legally existing size, configuration, location, or use.
- (11) “Alternative support structure” means man-made trees, clock towers, steeples, light poles, flag poles, power transmission towers, buildings, signs, and similar alternative design mounting structures that partially or fully camouflage or conceal the presence of antennas or towers.
- (12) “Antenna” means communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of wireless services.
- (13) “Antenna Support Structure” means any building or structure other than a tower that can be used for location of telecommunications facilities.
- (14) “Automobile” means a road vehicle, typically with four (4) wheels, able to carry a small number of people.
- (15) “Basement” means a story having one half (0.5) or more of its clear height below grade.
- (16) “Base station” means the structure or equipment at a fixed location that enables wireless telecommunications licensed or authorized by the FCC, between user equipment and a communications network.
- (a) Includes, but is not limited to, equipment associated with wireless telecommunications services, such as private, broadcast, and public safety services, as well as unlicensed wireless telecommunication services and fixed wireless telecommunication services, such as microwave backhaul.
- (b) Includes, but is not limited to, radio transceivers, antennas affixed to the base station, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems and small-cell networks).
- (c) Includes any structure other than a tower that, at the time an eligible facilities modification application is filed with the City of Montgomery, supports or houses equipment described in paragraphs (i) and (ii) above, and that has been reviewed and approved under the applicable zoning or siting process, or under another state or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support.
- (d) Does not include any structure that, at the time a completed eligible facilities modification application is filed with the City of Montgomery under this Article, does not support or house equipment described in paragraphs (i) and (ii) above.
- (e) The term does not encompass a “tower” as defined in this Section, or any equipment associated with a tower.
- (17) “Board” or “Board of Zoning Appeals” means the officially constituted body appointed to carry out duties and responsibilities in accordance with the West Virginia Code, Chapter 8A, Article 8, *et seq.*, as amended.
- (18) “Bollard” means a short, vertical, and permanent post, usually ornamental in nature, used to inhibit trespass by persons or vehicles, or to prevent encroachment onto private property or other defined space.
- (19) “Brewery” means a state licensed establishment where intoxicating or nonintoxicating beer is manufactured or in any way prepared and may include a tasting facility as defined in this ordinance. Facilities are subject to federal, state, and local regulations and guidelines.

- (20) “Building” means any structure having enclosing walls and roofs and requiring a permanent location on the land.
- (a) “Building Frontage” means the length of the main wall of a building that physically encloses usable interior space and that is the architecturally designed wall that contains the main entrance for use by the general public. Said frontage is measured at a height of ten (10) feet above grade.
- (b) “Building, Height of” means the vertical distance measured from the level of approved street grade opposite the middle of the front of the building to the highest point of the coping of a flat roof; to the deck line of a mansard roof; and to the mean height level between eaves and ridge of gable, hip, or gambrel roof.
- (21) “Building Setback Line” means a line establishing the minimum allowable distance between the nearest part of any principal building, including decks, patios, covered porches, steps, and landings exceeding twenty-four (24) square feet, but excluding eaves, overhangs, bay windows, sills, belt courses, cornices, and ornamental features not exceeding two (2) feet in width, to the nearest edge of a street right-of-way, property line, or easement line, when measured perpendicular thereto. “Camouflage” or “conceal” or “concealment” or “stealth” means having similar design and coloration features as the surrounding environment, utility pole, or building.
- (22) “Centerline” means an imaginary line running parallel to street or easement right-of-way lines and equidistant from the lines on each side of the street or easement, or a line following the center of a physical feature such as a stream.
- (23) “Cidery” means a state licensed establishment where intoxicating or nonintoxicating cider is manufactured or in any way prepared for commercial (not solely personal) use. These establishments are licensed under the winery provisions by the WVABC.
- (24) “City of Montgomery utility pole” means a utility pole owned or operated by the City of Montgomery in a public right-of-way.

- (25) “Clear Sight Triangle” means the triangular area formed by intersecting street, alley, or other public right-of-way centerlines and a line interconnecting points established on each centerline, seventy-five (75) feet from the point of intersection and the plane established three and one-half (3.5) feet in elevation to a height of ten (10) feet from grade level at the intersection of the street, alley, or other public right-of-way centerline.



- (26) "Collapse Zone" means an area where a tower may collapse based on the site and design specifications and which is certified and stamped by an engineer licensed in the State of West Virginia.
- (27) “Collocate” or “collocation” means to install, mount, maintain, modify, operate, or replace wireless facilities on or adjacent to a wireless support structure or utility pole.
- (28) “Communications facilities” means the set of equipment and network components, including wires, cables, antennas, and associated facilities, used by a communications service provider to provide communications service.
- (29) “Communications service” means cable service, as defined in 47 U.S.C. § 522(6), as amended; information service, as defined in 47 U.S.C. § 153(24), as amended; telecommunications service, as defined in 47 U.S.C. § 153(53), as amended; mobile service, as defined in 47 U.S.C. § 153(33), as amended; or wireless service other than mobile service.
- (30) “Communications service provider” means any entity that provides communications service.
- (31) “Compact Parking Stall” an off-street space available for parking of one (1) automobile and having an area not less than eight (8) feet in width by eighteen (18) feet in depth and an area exclusive of passageways, access ways, and driveways appurtenant thereto, and having a means to direct access to a street or road.
- (32) “Comprehensive Plan” means the comprehensive plan for the City of Montgomery.
- (33) “Conceal” or “Concealment” means when an antenna, small wireless facility, decorative pole, utility pole, or related equipment are designed to look like a feature other than a small wireless facility and which has similar design and coloration features as the surrounding environment.
- (34) “Conditional Use” means a use that because of special requirements or characteristics may be permitted in a particular zoning district only after review by the board of zoning appeals and upon issuance of a conditional use permit, and subject to the limitations and conditions specified in this code.
- (35) “Decorative pole” means a City of Montgomery utility pole that is specially designed and placed for aesthetic purposes and on which no appurtenances or attachments, other than a small wireless facility, specially designed informational or directional signage, or temporary holiday or special event attachments have been placed, or are permitted to be placed, according to nondiscriminatory municipal rules or codes.

- (36) "Driveway" means privately owned vehicular access from a street to properties abutting the street and serving no more than four dwelling units.
- (37) "Dwelling" means a house, apartment building, or other building designed or used primarily for human habitation, but not including bed and breakfast inns, motels, hotels, or other structures designed for transient residence.
- (38) "Dwelling Unit" means any dwelling or portion thereof used or intended to be used by one family and providing complete housekeeping facilities.
- (39) "Eligible facilities request" means a request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station involving: collocation of new transmission equipment, removal of transmission equipment, or replacement of transmission equipment.
- (40) "Eligible support structure" means any tower or base station, as defined in this Section, provided that such tower or base station is in existence at the time the eligible facilities request application is filed with the City of Montgomery.
- (41) "Equipment cabinet" means an enclosure, room, shelter, structure, or building used to encapsulate, enclose, contain or otherwise support equipment associated with a wireless telecommunication facility.
- (42) "Event" means a planned public or social occasion, including but not limited to activities such as community fairs, carnivals, parades, horse shows, horse trials, dog shows, sporting events, music or art festivals, and holiday celebrations. Excluded from the definition of events and from the regulations of this code, are the following: any event sponsored by the Armed Forces of the United States or the State of West Virginia; any event sponsored by the forces of state or local police or fire departments; any event sponsored by an agency of the state, county, or local government; and activities that are part of the regular operations of a principal use, such as weddings at a church, annual fund raising or social events at a grange, and typical accessory events at educational, scientific, or institutional sites.
- (43) "Existing tower or base station" means a lawfully constructed tower or base station approved under the applicable zoning and siting process of the City of Montgomery, approved under another state or local regulatory review process, or permitted to continue to operate as a nonconforming use.
- (44) "Existing Use" means use of land, buildings or activity permitted or in existence prior to the adoption of a zoning map or ordinances by the county or municipality. If the use is nonconforming to local ordinance and lawfully existed prior to the adoption of the ordinance, the use may continue to exist as a nonconforming use until abandoned for a period of one year, provided that in the case of natural resources, the absence of natural resources extraction or harvesting is not abandonment of the use.
- (45) "FAA" means the Federal Aviation Administration, or its lawful successor.
- (46) "Family" means an individual or two (2) or more persons related by blood, marriage, adoption, or foster relationship, or no more than three (3) unrelated individuals and individuals related by blood, marriage, adoption, or foster relationship to any of those three (3) unrelated individuals, living together as a single, permanent, and stable nonprofit housekeeping unit and sharing common living, dining, and kitchen areas, subject to the requirements of the Building Code.
- (47) "Fence" means an artificially constructed barrier of wood, masonry, stone, wire, metal, or other manufactured material or combination of materials erected to enclose, screen, or separate an area.
- (48) "FCC" means the Federal Communications Commission of the United States.
- (49) "Fee" means a one-time, nonrecurring charge.
- (50) "Floor Area, Gross" means the total area of a building measured by taking the outside dimensions of the building at each floor level.

- (51) "Front Building Line" means a line parallel to the front lot line, at a distance measured perpendicular therefrom as prescribed in this code for a required yard. Where there is no required yard, the lot line is the front building line
- (52) "Garage Sale" means a temporary use involving the sale of personal property owned or maintained by occupants of the premises in, at, or upon any residentially zoned or residentially occupied property. "Garage sales" includes, but is not limited to, any yard sale, multi-family sale, home sale, patio sale, or any other sale similarly conducted on any residentially zoned or residentially occupied property.
- (53) "Height" for the purposes of wireless telecommunications facilities means the vertical distance measured from the base of the alternative support structure at grade to the highest point of the structure, including any antennas. Measurement of tower height includes antenna, base pad, and other appurtenances and is measured from the finished grade of the facility site. If the tower is located on a sloped grade, then the average between the highest and lowest grades immediately surrounding the perimeter of the tower base is used in calculating the antenna height. The highest point excludes farm building components, flagpoles, chimneys, ventilators, skylights, domes, water towers, bell towers, church spires, processing towers, tanks, bulkheads, or other building accessory features usually erected at a height greater than the main roofs of buildings.
- (54) "Historic District" means a geographically definable area, designated as historic on a national, state, or local register, possessing a significant concentration, linkage, or continuity of sites, buildings, structures, or objects united historically or aesthetically by plan or physical development.
- (55) "Historic Landmark" means a site, building, structure, or object designated as historic on a national, state, or local register.
- (56) "Historic Site" means the location of a significant event, a prehistoric or historic occupation or activity, or a building or structure whether standing, ruined, or vanished, where the location itself possesses historic, cultural, or archaeological value regardless of the value of any existing structure and designated as historic on a national, state, or local register.
- (57) "Landscaping" means the bringing of the soil surface to a smooth finished grade, installing trees, shrubs, ground cover, grass, and similar vegetation to soften building lines, provide shade, and generally produce a pleasing visual effect of the premises.
- (58) "Loading Space" means an area or berth available for the loading or unloading of goods from commercial vehicles.
- (59) "Lot" means a parcel of land with boundaries established by some legal instrument, such as a recorded deed or a recorded map, and that is recognized as a separate legal entity for purposes of transfer of title, together with the customary accessories and open spaces belonging to the same.
- (60) "Lot, Corner" means a lot at the junction of and abutting two or more intersecting streets.
- (61) "Lot, Interior" means a lot other than a corner lot with only one frontage on a street.
- (62) "Lot, Flag" means a lot not meeting minimum frontage requirements and where access to the public road is by a narrow, private right-of-way or driveway, or "handle."
- (63) "Lot, Irregular" means a lot of such shape or configuration that technically meets the area, frontage, and width-to-depth requirements of the ordinance but has unusual elongations, angles, and curvilinear lines.
- (64) "Lot Line" means the property boundary line of any lot held in single or joint ownership that divides one lot from another or from a street or any other public or private space.
- (a) "Front Lot Line" means, in the case of an interior lot, a line separating the lot from the street or public right-of-way; and in the case of a corner lot, a line separating the narrowest street frontage of the lot from the street.
- (b) "Rear Lot Line" means a lot line that is opposite and more distant from the front lot line, except corner lots have no rear lot line. In the case of an irregular lot, a line ten feet in length within the lot and parallel to and at the maximum distance from the front lot line.

- (c) “Side Lot Line” means any lot line other than a front or rear lot line.
- (65) “Lot, Through” or “Double Frontage” or “Reverse Frontage” means a lot other than a corner lot facing on more than one street. Through lots abutting two streets may be referred to as double frontage lots.
- (66) “Lot Width” means the distance measured between side lot lines, at the required building setback line. In a case where there is only one side lot line, lot width is measured between such side lot line and the opposite rear lot lines or street line.
- (67) “Medical Cannabis Organization” means a dispensary, grower, or processor. The term does not include a health care medical cannabis organization as defined in the Code of the State of West Virginia, Chapter 16A, as amended.
- (68) “Micro wireless facility” means a small wireless facility that is not larger in dimension than twenty-four (24) inches in length, fifteen (15) inches in width, and twelve (12) inches in height and that has an exterior antenna, if any, that is no longer than eleven (11) inches.
- (69) “Modification” or “Modify” means the physical change to any existing wireless telecommunications tower or base station that may or may not be related to an eligible facilities request and that involves collocation of new transmission equipment; removal of transmission equipment; replacement of transmission equipment; or any expansion of wireless telecommunication tower or base station.
- (70) “Nonconforming Building” or “Nonconforming Structure” means a building or structure lawfully constructed and not otherwise abandoned, existing on the effective date of this code, on the effective date of any amendment thereto, or prior to annexation, that renders such building or structure illegal within a district, or not complying in any fashion with any of the rules, requirements, and regulations of this code or any amendments thereto.
- (71) “Nonconforming Lot” means a lot or parcel of land that was of record and lawfully established and maintained but that, because of the enactment of this code, no longer conforms to the land use standards or use regulations of the district in which it is located.
- (72) “Nonconforming Sign” means any sign that was lawfully erected, maintained, and existing on the effective date of this code, on the effective date of any amendment thereto, or prior to annexation, that renders such existing sign illegal within a district, or not complying in any fashion with any of the rules, requirements, and regulations of this code or any amendments thereto, or any sign that is accessory to a nonconforming use.
- (73) “Nonconforming Use” means any actual and active use lawfully being made of any land, building, or structure not otherwise abandoned, existing on the effective date of this code, on the effective date of any amendment thereto, or prior to annexation, that renders such existing use illegal within a district, or not complying in any fashion with any of the rules, requirements, and regulations of this code or any amendments thereto.
- (74) “Nonintoxicating Beer” means all natural cereal malt beverages or products of the brewing industry commonly referred to as beer, lager beer, ale, and all other mixtures and preparations produced by the brewing industry, including malt coolers and nonintoxicating craft beers with no caffeine infusion or any additives masking or altering the alcohol effect, containing at least one half of one (0.5%) percent alcohol by volume, but not more than nine and six-tenths (9.6) of alcohol by weight, or twelve (12%) percent by volume, whichever is greater.
- (75) “Open Space” means any parcel or area of land or water essentially unimproved and set aside, dedicated, designated or reserved for public or private use or enjoyment, or for the use and enjoyment of owners and occupants of land adjoining or neighboring such open space.
- (76) “Owner” means any individual, firm, association, syndicate, estate, corporation, trust, or any other legal entity having proprietary interest in the land.
- (77) “Owner-occupied” means a person who maintains his or her principal residence by being physically present and spending the night on the property for more than 208 nights of each calendar year and who is:

- (a) The sole owner of record of the property, as reflected in a deed recorded in the County Clerk's Office;
  - (b) A tenant in common, tenant by the entirety or joint tenant with right of survivorship, as reflected in a deed recorded in the County Clerk's Office; or
  - (c) An owner of at least twenty-five (25%) percent of a business entity shown as the owner of record, as reflected in a deed recorded in the County Clerk's office. The ownership interest shall be shown by a duly executed resolution of the business entity, or such other method as determined by the Zoning Officer.
- (78) "Parallel Parking Stall" means an off-street space available for parking of one (1) automobile and having an area not less than eight (8) feet by twenty-two (22) feet and an area exclusive of passageways, access ways, and driveways appurtenant thereto, and having a means to direct access to a street or road.
- (79) "Parking Stall" means an off-street space available for parking one (1) automobile and having an area not less than nine (9) feet by twenty (20) feet and an area exclusive of passageways, access ways, and driveways appurtenant thereto, and having a means to direct access to a street or road.
- (80) "Patio" means an area consisting of natural or man-made material constructed at or near grade level, intended for use as an outdoor living area, and not enclosed by a permanent roof or awning.
- (81) "Permitted Use (Use Permitted by Right)" means any use requiring no special action by any governmental body, agency, or staff member before the zoning permit is granted by the Zoning Officer, subject to all other applicable provisions of this code.
- (82) "Personal wireless telecommunication services" means commercial mobile services, unlicensed wireless telecommunication services, and common carrier wireless telecommunication exchange access services.
- (83) "Porch" means a covered but unenclosed projection from the main wall of a building that may or may not use columns or other ground supports for structural purposes.
- (84) "Principal Building" or "Principal Structure" means a building or structure in which is conducted the principal use of the site or lot on which it is situated. In all residential districts, a dwelling is the principal building on the lot on which it is located.
- (85) "Principal Use" means the primary use of a lot by an individual, group of individuals, household, establishment, institution, or other entity.
- (86) "Public Area" means any public place, public right-of-way, any parking area or right-of-way open to use by the general public, or any navigable body of water.
- (87) "Right-of-way (R-O-W)" means a strip of land occupied or intended to be occupied by a street, crosswalk, railroad, electric transmission line, oil or gas pipeline, water main, sanitary or storm sewer main, shade trees, or for another similar use.
- (88) "Satellite Signal Receiving Station" means devices commonly parabolic in shape, mounted at a fixed point on a structure, or on rooftops, for the purpose of capturing electronic television or internet signals transmitted via satellite communication facilities and serving the same or similar function as the common television antenna. Such devices are accessory structures.
- (89) "Screening" means the use of plant materials, fencing, or earthen berms to aid in the concealment of such features as parking areas and vehicles within them, and to provide privacy between two (2) or more different adjoining land uses.
- (90) "Setback" means the minimum distance by which any building or structure must be separated from a street right-of-way, lot line, or other physical marker.
- (a) "Front Setback" means the shortest distance between the building setback line and the front lot line.
  - (b) "Rear Setback" means the shortest distance between the building setback line and the rear lot line.

- (c) “Side Setback” means the shortest distance between the building setback line and the side lot line.
- (91) “Sign” means any device (writing, letter work or numeral, pictorial presentation, illustration or decoration, emblem, device, symbol or trademark, flag, banner or pennant, or any other device, figure or character, or delineation) with the essential purpose to communicate, designed to communicate, or where context results in communication, and such communication is aimed at persons in a public right-of-way.
- (a) “A-frame Sign” means a two-faced sign with supports that are connected at the top and separated at the base with an internal angle between the two faces of no more than a forty-five (45) degree angle, forming an “A” shape not more than four (4) feet high. These are also referred to as “sandwich board” signs.
- (b) “Animated Sign” or “Moving Sign” means a sign or part of a sign that is designed to rotate, move, or appear to rotate or move. Such a sign is sometimes referred to as a “moving sign.” Animated signs include signs with moving graphic features such as scrolling text or images that appear to move; moving sign change features such as fly-in, wipe-off, fading, dissolving, traveling, or expanding displays or any other full message sign change taking longer than three tenths (0.3) of a second; and static electronic message displays displayed less than seven (7) seconds. Animated signs also include signs propelled by vehicle, watercraft, or aircraft where the primary purpose of the vehicle, watercraft, or aircraft at the time of sign display is to propel the sign.
- (c) “Awning Sign” or “Canopy Sign” means a sign placed directly on the surface of an awning or to a canopy, that is a roof-like structure either projecting from a building façade and open on three sides, or standing alone and open on four sides, and used for the purpose of protecting pedestrians and motorists from weather related elements.
- (d) “Banner” means a sign of flexible material affixed to a framework or flat surface. Banners are not flags for purposes of this ordinance.
- (e) “Beacon” means any light with one or more beams directed into the atmosphere or directed at one or more points not on the same lot as the light source; also, any light with one or more beams that rotate or move.
- (f) “Chalkboard Sign” means a single-faced, framed slate, or chalkboard that can be written on with chalk or similar markers.
- (g) “Changeable Copy Sign” means a sign or part of a sign that is designed so that characters, letters, or illustrations can be manually or physically changed or rearranged without altering the face or surface of the sign.
- (h) “Electronic message display” means a sign that is either light emitting or light reflective and that is capable of changing the displayed message through electronic programming. Electronic message displays are divided into four categories:
- (i) “Static electronic message display” means an electronic message display that is not an animated sign.
- (ii) “Static electronic message display with transition features” means an electronic message display that remains static except for no more than a two (2) second transition feature such as fading, dissolving or a single instance of fly-in, wipe-off, expansion, or traveling that occurs no more often than every seven (7) seconds.
- (iii) “Electronic message display, partially animated” means an electronic message display with animated or moving text or graphics.
- (iv) “Electronic message display, fully animated” means an electronic message display with full animation features.
- (i) “Feather Sign/Feather Flag/Teardrop Flag/Wind Flag” means a lightweight, portable flag made of cloth, plastic, or similar material mounted along one edge on a single, vertical, flexible pole, the physical structure of which may resemble a sail, bow, or teardrop.

- (j) “Flag” means a piece of cloth or similar material, typically oblong or rectangular, attachable by one edge to a pole or rope.
- (k) “Flashing Sign” means a sign that includes lights that flash, blink, turn on and off intermittently, or otherwise vary light intensity during the display of a message.
- (l) “Freestanding Sign” means a sign attached only to its own support structures consisting of one or more columns, uprights, or braces in or upon the ground, with at least eight (8) feet between the lowest component of the sign face and the ground beneath the sign.
- (m) “Geological Sign” means a sign made of or that appears to be made of geological formations, including but not limited to standalone rocks or mountainsides, and conveys a message that is etched, carved, painted, or similarly incorporated into the sign’s material.
- (n) “Illegal Sign” means any sign erected without obtaining a required permit or that otherwise does not comply with any provision of this code.
- (o) “Inflatable/Tethered Sign” means a sign that is filled with a gaseous substance to convey a message or to draw attention to a message or location.
- (p) “Marquee Sign” means a sign attached to and made a part of a marquee or any similar projections from a building, with changeable, fixed, or both types of lettering in use.
- (q) “Minor Sign” means a sign not exceeding two (2) square feet in area, not exceeding four (4) feet in height, and not illuminated.
- (r) “Monument Sign” means a sign affixed to a structure built on grade in which the sign and the structure are an integral part of one another, with less than five (5) feet between the lowest component of the sign face and the ground beneath the sign. Monument signs may contain changeable copy components. Monument signs are subject to the landscaping requirements set forth in Section 27-57.
- (s) “Neon Sign” means a sign containing exposed tubes filled with light-emitting gas.
- (t) “Off-premises Sign” means a commercial sign not accessory to or associated with the principal use on a lot, or a sign that is the principal use of a lot.
- (u) “Pennant” means a geometric shaped flag made of flexible materials, suspended from one or two corners fastened to a string, which is secured or tethered so as to allow movement and used as an attention-getting form of media.
- (v) “Person-assisted Sign” means an individual who is paid to hold, move, wear, or otherwise direct attention to a commercial sign.
- (w) “Projecting Sign” means a sign attached to and projecting more than twelve (12) inches from the face of a wall or building, but does not project above the parapet or eave line of the building and is a minimum of eight (8) feet above any walking surface.
- (x) “Roof Sign” means a sign erected or constructed, in whole or in part, upon or above the highest point of a building with a flat roof, or the lowest portion of a roof for any building with a pitched roof.
- (y) “Temporary Sign” means any sign intended to be displayed for a limited period of time.
- (z) “Topiary Sign” means a sign constructed of perennial plants by clipping or otherwise shaping the foliage and twigs.
- (aa) “Vehicle or Trailer Sign” means any sign attached to or displayed on a vehicle, if the vehicle or trailer is used primarily for displaying a commercial message and it fails to display current license plates, inspection sticker, or municipal decal; if the vehicle is inoperable; if evidence of paid-to-date local taxes cannot be made available; or if the sign alters the standard design of such vehicle or trailer.
- (bb) “Wall Sign” means any sign, inscription, artwork, figure, marking, or design that is attached, painted, drawn, marked, etched, or scratched onto a wall or against a flat vertical exterior surface of a structure, including portions of doors that do not contain windows.
- (cc) “Wicket Sign” means a sign with an H- or U-shaped frame that is put into the ground or placed above the ground.

- (dd) "Window Sign" means any sign visible outside the window, including windows on doors, and attached to or within eighteen (18) inches in front of or behind the surface of a window or door.
- (92) "Sign Face" means the portion of a sign structure bearing the message.
- (93) "Sign Structure" means any structure bearing a sign face.
- (94) "Site" means the current boundaries of the leased or owned property surrounding the tower and base station and any access or utility easements currently related to the site; and, for other eligible support structures, means that area in proximity to the structure and to other transmission equipment already deployed on the ground. This term does not apply to towers or base stations in public rights-of-way.
- (95) "Small cell network" means a collection of interrelated small wireless telecommunication facilities designed to deliver personal wireless telecommunication services.
- (96) "Special Flood Hazard Area" means the area that will be inundated by the flood event having a 1-percent chance of being equaled or exceeded in any given year. The 1-percent annual chance flood is also referred to as the base flood or 100-year flood.
- (97) "Specified Anatomical Areas" or "nudity" means less than completely and opaquely covered human genitals, pubic region, buttock, or female breast below a point immediately above the top of the areola, or human male genitals in a discernible turgid state, even if completely and opaquely covered.
- (98) "Spectrum Act" means the "Middle Class Tax Relief and Job Creation Act of 2012" (Public Law 112-96; codified at 47 U.S.C. § 1455(a)).
- (99) "Stealth" means the same as "camouflage," "conceal," or "concealment."
- (100) "Street" means a dedicated and accepted public right-of-way for vehicular and pedestrian traffic, whether designated as a street, highway, thoroughfare, parkway, throughway, road, avenue, boulevard, land place, or however otherwise designated.
- (101) "Substantial change criteria" means the criteria set forth in Section 27-89.
- (102) "Surety" means a financial guaranty that the activities proposed in the application are made as planned. If activities are not made by the applicant, the local government can use surety funds to complete the work as planned or return the land to its original state. Includes but is not limited to performance bonds, cash in escrow, a letter of credit, and similar collateral.
- (103) "Targeted market coverage area" means the area which is targeted to be served by the wireless telecommunications facility proposed in an application.
- (104) "Tower" means any structure capable of supporting any antennas affixed to the tower and their associated facilities, licensed or authorized by the FCC, and constructed for the sole or primary purpose of supporting wireless telecommunications facilities.
- (105) "Trailer, Camping and Recreational Equipment" means travel trailers, pickup coaches, motorized homes and recreational vehicles and equipment as follows:
- (a) "Travel Trailer" means a portable structure built on a chassis, designed to be towed and used as a temporary dwelling for travel, recreational, and vacation purposes, and permanently identified as a travel trailer by the manufacturer of the trailer.
- (b) "Pickup Coach" means a structure designed primarily to be mounted on a pickup or other truck chassis with sufficient equipment to render it suitable for use as a temporary dwelling for travel, recreational, and vacation purposes.
- (c) "Motorized Home" means portable dwelling designed and constructed as an integral part of a self-propelled vehicle.
- (d) "Boat" means a vessel designed to travel on water.
- (e) "Utility Trailer" means a portable structure built on a chassis, designed to be towed and used for the purposes of hauling a boat, lawnmower, farm equipment, recreational equipment, or similar equipment, measuring not more than twenty (20) feet in length, and not used primarily for commercial purposes.

- (106) “Tasting Facility” means an area of a winery, brewery, or distillery where complimentary samples of a beverage are served on the premises of manufacture, in moderate quantities for tasting.
- (107) “Transmission equipment” means equipment that facilitates transmission for any wireless telecommunication service licensed or authorized by the FCC, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply.
- (108) “Use” means any purpose for which a building or other structure or a tract of land may be designed, arranged, intended, maintained, or occupied, or any activity, occupation, business, or operation performed in a building or other structure, or on a tract of land.
- (109) “Utility” means a public or private distribution service to the public that is regulated by the public service commission.
- (110) “Utility pole” means a pole or similar structure that is or may be used, in whole or in part, by a communication services provider or for electric distribution, lighting, traffic control, signage (if the pole is fifteen (15) feet or taller), or a similar function, or for the collocation of small wireless facilities. However, “utility pole” does not include wireless support structures or electric transmission structures.
- (111) “Variance” means a deviation from the minimum standards of this code, but not permitting land uses that are otherwise prohibited in the zoning district or changing the zoning classifications of a parcel of land.
- (112) “Vehicle” means any device in, upon, or by which any person or property is or may be transported or drawn upon a street, including automobiles, and excepting tractors, agricultural machinery, devices moved by human power or used upon stationary rails or tracks.
- (113) “Vertically Integrated Health Care System” means a health delivery system in which the complete spectrum of care, including primary and specialty care, hospitalization and pharmaceutical care, is provided within a single organization.
- (114) “Wireless infrastructure provider” means any person, including a person authorized to provide telecommunications service in the state, that builds or installs wireless communication transmission equipment, wireless facilities, wireless support structures, or utility poles, but that is not a wireless provider.
- (115) “Wireless provider” means a wireless infrastructure provider or a wireless service provider.
- (116) “Wireless services” means any services, using licensed or unlicensed spectrum, including the use of Wi-Fi, whether at a fixed location or mobile location, provided to the public using wireless facilities.
- (117) “Wireless service provider” means an entity that provides wireless services.
- (118) “Wireless support structure” means a structure, such as a monopole; tower, either guyed or self-supporting; billboard; or other existing or proposed structure designed to support or capable of supporting wireless facilities. “Wireless support structure” does not include a utility pole.
- (119) “Wireline backhaul facility” is a facility used for the transport of communications service or any other electronic communications by coaxial, fiber-optic cable, or any other wire.
- (120) “Yard” means open space that lays between the principal building or structure and the nearest lot line. Yards are further classified as front, rear, and side:
- (a) “Yard, Front” means a space extending the full width of the lot between the architectural front of the principal building or structure and the front lot line.
  - (b) “Yard, Rear” means a space extending the full width of the lot between the architectural rear of the principal building or structure and the rear lot line.
  - (c) “Yard, Side” means a space extending from the front yard to the rear yard between the principal building façade and the side lot line.

- (121) “Zoning” means the division of a municipality or county into districts or zones that specify permitted and conditional uses and development standards for real property within the districts or zones.
- (122) “Zoning Officer” means the person or persons designated by the City of Montgomery to administer and/or enforce the provisions of this code.

### **Article III Districts Established; Classification of Districts**

#### **Section 27-14 Districts Established.**

- (a) For the purpose of this ordinance, the City of Montgomery is hereby divided into the following zoning districts:
- (1) C: Conservation
  - (2) F: Factory-built Home Neighborhood
  - (3) SF: Single Family Residential
  - (4) MF: Multi-family Residential
  - (5) DC: Downtown Commercial
  - (6) GC: General Commercial
  - (7) I: Industrial
  - (8) TO: Telecommunications Overlay

#### **Section 27-15 Official Zoning Map.**

The map attached as [Appendix \[X\]](#) is the official zoning map of the City of Montgomery.

#### **Section 27-16 Use Table.**

The table attached as [Appendix \[Y\]](#) reflects the uses permitted by right or possibly allowed with a conditional use permit within the City of Montgomery.

#### **Section 27-17 Classification of Districts and District Boundaries.**

- (a) Except where references on the Zoning Map to a road or street line or other designated line by dimensions are shown on the Zoning Map, the district boundary lines are intended to follow lot lines or the centerlines of roads or streets, as they existed at the time of the adoption of this ordinance. To the extent possible, district boundary lines should not be established or interpreted to bisect property lots. Where district boundary lines are shown following creeks, streams, or river channels, it is intended that the district line follow the center of the creek, stream, or river. Where a district line does not coincide clearly with such lines, or where a district line is not designated by dimensions, a district line shall be determined by scaling.
- (b) The boundaries of all zoning districts are shown on the Zoning Map, which is the official zoning map for the City.
- (c) Unless a use is allowed as a “use permitted by right,” “use permitted with conditions,” “conditional use,” “nonconforming use,” “accessory use,” or “temporary use,” then such use is prohibited.

#### **Section 27-18 Procedures Relating to Annexed or Vacated Areas.**

- (a) *Zoning of Annexed Lands.* Zoning classification for any land annexed into the City shall be established by ordinance, pursuant to Chapter 8A, Article 7, simultaneously with the adoption of the annexation resolution required by West Virginia Code, Chapter 8, Article 6, as amended. City Council shall hear zoning recommendations from the Planning Commission for the subject area during the required hearing for annexation. Prior to any hearings, the Montgomery Planning Commission shall submit its written recommendations, to be consistent with the comprehensive plan, to City Council at least thirty (30) days prior to the hearing for annexation.

- (1) Prior to the annexation hearing and formal zoning designation of any parcel(s) of land being annexed, the City shall, at least thirty (30) days prior to the enactment of the zoning map amendment:
  - (i) Give written notice, by certified mail, to the landowner(s) whose property is directly involved in the proposed amendment; and
  - (ii) Publish a notice of the proposed amendment to the zoning ordinance map as a Class II-0 legal advertisement, pursuant to West Virginia Code Chapter 59.
- (2) After the required thirty (30) day notice period ends and the property owners have been notified by certified mail, the City Council shall hold a public hearing regarding the zoning designation of the newly annexed land. After the hearing, City Council can, by ordinance, designate the zoning districts for the annexed land.
- (b) Whenever any street, place, alley, public right-of-way, railroad right-of-way, waterway, or other similar area is vacated by proper authority, the districts adjoining each side of such street, place, alley, public way, railroad right-of-way, waterway, or similar area shall be extended automatically to the center of such vacation and all area included in the vacation shall then and thenceforth be subject to all appropriate provisions of the extended districts. In the event of a partial vacation, the adjoining district, or district nearest the portion vacated, shall be extended automatically to include all of the vacated area.

**Section 27-19 Uses Not Expressly Permitted or Conditional.**

It is recognized that new types or forms of land use will develop within the City of Montgomery that are not anticipated by this ordinance. In order to provide for such changes and contingencies, the classification of any new or unlisted land use shall be made by the Zoning Officer to determine if the use can reasonably be interpreted to fit into a similar use category described in this code.

**Article IV Conservation (C) District**

**Section 27-20 Purpose.**

The purpose of the Conservation District is to preserve natural resources and to provide permanent open space to protect the natural beauty and scenic value of the City. The open space provides a low-impact recreational area for the enjoyment of outdoor and related activities.

**Section 27-21 Uses Permitted by Right.**

The following shall be uses permitted by right:

- (1) Agritourism Enterprise
- (2) Boat Livery
- (3) Campground
- (4) Essential Utilities and Equipment
- (5) Farmer’s Market
- (6) Flea Market
- (7) Greenhouse, Noncommercial
- (8) Group Residential Facility
- (9) Group Residential Home
- (10) Off-premises, Freestanding Sign
- (11) Park
- (12) Sewage Treatment Facility
- (13) Shooting Range, Commercial Indoor
- (14) Shooting Range, Commercial Outdoor
- (15) Shooting Range, Noncommercial Indoor
- (16) Shooting Range, Noncommercial Outdoor
- (17) Solar Energy System, Small, Roof-mounted

- (18) Urban Agriculture
- (19) Water Treatment Plant
- (20) Wind Energy System
- (21) Wireless Telecommunication Facilities, Small Cells

**Section 27-22 Conditional Uses.**

The following shall be conditional uses:

- (1) Boat Storage
- (2) Café/Coffee Shop
- (3) Extractive Industry
- (4) Fairground
- (5) Recreation, Private
- (6) Recreation, Public
- (7) Roadside Vendor Stand
- (8) Solar Energy System, Large
- (9) Solar Energy System, Small, Ground-mounted

**Section 27-23 Lot, Yard, and Height Requirements.**

Lot, Yard, and Height Requirements	
<b>Max. Building Height</b>	No maximum
<b>Min. Lot Size (Sq. Ft.)</b>	2 acres
<b>Min. Lot Width</b>	250 feet
<b>Max. Lot Coverage (as a %)</b>	N/A
<b>Min. Front Setback</b>	100 feet
<b>Min. Side Setback</b>	50 feet
<b>Min. Rear Setback</b>	50 feet
<b>Min. Front Accessory Setback</b>	N/A
<b>Min. Side Accessory Setback</b>	50 feet
<b>Min. Rear Accessory Setback</b>	50 feet

**Article V Factory-built Home Neighborhood (F) District**

**Section 27-24 Purpose.**

The purpose of the Factory-built Home Neighborhood is to provide areas for placement of manufactured and mobile homes while ensuring that adequate fire safety and other services can be provided.

**Section 27-25 Uses Permitted by Right.**

The following shall be uses permitted by right:

- (1) Bus and Transit Shelter
- (2) Dwelling, Accessory
- (3) Dwelling, Single-family
- (4) Essential Utilities and Equipment
- (5) Factory-built Home
- (6) Factory-built Home Rental Community
- (7) Greenhouse, Noncommercial
- (8) Group Residential Facility
- (9) Group Residential Home
- (10) Park
- (11) Shooting Range, Noncommercial Indoor

- (12) Shooting Range, Noncommercial Outdoor
- (13) Solar Energy System, Small, Roof-mounted
- (14) Urban Agriculture
- (15) Wireless Telecommunication Facilities, Small Cells

**Section 27-26 Conditional Uses.**

The following shall be conditional uses:

- (1) Bed and Breakfast Inn
- (2) Child Day Care Facility, Class 3
- (3) Child Day Care Facility, Class 4
- (4) Cultural Service
- (5) Event, Special
- (6) Places of Worship/Religious Institution

**Section 27-27 Lot, Yard, and Height Requirements.**

Lot, Yard, and Height Requirements	
<b>Max. Building Height</b>	140 feet
<b>Min. Lot Size (Sq. Ft.)</b>	3,600 square feet
<b>Min. Lot Width</b>	40 feet
<b>Max. Lot Coverage (as a %)</b>	60%
<b>Min. Front Setback</b>	15 feet, or the average of the two adjoining properties that have pre-existing structures, whichever is less. Setback cannot be less than 10 feet. Additional depth of 2 feet for each story over 4.
<b>Min. Side Setback</b>	Single Family, 1-3 stories = 15 feet* Multi-Family = 20 feet* Nonresidential = 30 feet* If building is over 35 feet, the total of the two side yards is to be increased 2 feet* per story If lot of record is less than 40 feet in width, setback can be reduced by 10 feet *Setback requirements are the total required for two side yards and shall be divided between the two side yards such that neither side yard is less than 5 feet
<b>Min. Rear Setback</b>	5 feet Additional depth of 2 feet for each story over 6
<b>Min. Front Accessory Setback</b>	N/A
<b>Min. Side Accessory Setback</b>	3 feet
<b>Min. Rear Accessory Setback</b>	3 feet

**Article VI Single Family Residential (SF) District**

**Section 27-28 Purpose.**

The purpose of the Single Family Residential District is to preserve desirable character of existing, lower-density, single-family neighborhoods. This district provides adequate open space, recreational, and cultural amenities conducive to single-family residential development.

**Section 27-29 Uses Permitted by Right.**

The following shall be uses permitted by right:

- (1) Dwelling, Single-family

- (2) Essential Utilities and Equipment
- (3) Greenhouse, Noncommercial
- (4) Group Residential Facility
- (5) Group Residential Home
- (6) Park
- (7) Shooting Range, Noncommercial Indoor
- (8) Shooting Range, Noncommercial Outdoor
- (9) Solar Energy System, Small, Roof-mounted
- (10) Urban Agriculture
- (11) Wireless Telecommunication Facilities, Small Cells

**Section 27-30 Conditional Uses.**

The following shall be conditional uses:

- (1) Bed and Breakfast Inn
- (2) Child Day Care Facility, Class 3
- (3) Child Day Care Facility, Class 4
- (4) Conversion of Old School/Church
- (5) Cultural Service
- (6) Event, Special
- (7) Places of Worship/Religious Institution

**Section 27-31 Lot, Yard, and Height Requirements.**

Lot, Yard, and Height Requirements	
<b>Max. Building Height</b>	35 feet
<b>Min. Lot Size (Sq. Ft.)</b>	3,600 square feet
<b>Min. Lot Width</b>	40 feet
<b>Max. Lot Coverage (as a %)</b>	60%
<b>Min. Front Setback</b>	20 feet
<b>Min. Side Setback</b>	Total of 15 feet for two side yards with neither side yard less than 5 feet
<b>Min. Rear Setback</b>	5 feet
<b>Min. Front Accessory Setback</b>	N/A
<b>Min. Side Accessory Setback</b>	3 feet
<b>Min. Rear Accessory Setback</b>	3 feet

**Article VII Multi-family Residential (MF) District**

**Section 27-32 Purpose.**

The purpose of the Multi-family Residential District is to provide for a variety of housing types at a higher density. This district will preserve the desirable characteristics of a residential neighborhood while in close proximity to community amenities.

**Section 27-33 Uses Permitted by Right.**

The following shall be uses permitted by right:

- (1) Bus and Transit Shelter
- (2) Dwelling, Accessory
- (3) Dwelling, Multi-family
- (4) Dwelling, Single-family
- (5) Dwelling, Two-family

- (6) Essential Utilities and Equipment
- (7) Greenhouse, Noncommercial
- (8) Group Residential Facility
- (9) Group Residential Home
- (10) Medical Adult Day Care Center
- (11) Park
- (12) Parking Lot
- (13) Senior Independent Housing
- (14) Shooting Range, Noncommercial Indoor
- (15) Shooting Range, Noncommercial Outdoor
- (16) Solar Energy System, Small, Roof-mounted
- (17) Urban Agriculture
- (18) Wireless Telecommunication Facilities, Small Cells

**Section 27-34 Conditional Uses.**

The following shall be conditional uses:

- (1) Bed and Breakfast Inn
- (2) Child Day Care Facility, Class 3
- (3) Child Day Care Facility, Class 4
- (4) Continuing Care Facility
- (5) Conversion of Old School/Church
- (6) Cultural Service
- (7) Emergency Shelter
- (8) Event, Special
- (9) Garage, Commercial
- (10) Garage, Community
- (11) Home-based Business
- (12) Places of Worship/Religious Institution

**Section 27-35 Lot, Yard, and Height Requirements.**

Lot, Yard, and Height Requirements	
<b>Max. Building Height</b>	140 feet
<b>Min. Lot Size (Sq. Ft.)</b>	3,600 square feet
<b>Min. Lot Width</b>	40 feet
<b>Max. Lot Coverage (as a %)</b>	60%
<b>Min. Front Setback</b>	15 feet, or the average of the two adjoining properties that have pre-existing structures, whichever is less. Setback cannot be less than 10 feet. Additional depth of 2 feet for each story over 4.
<b>Min. Side Setback</b>	Single-family, 1-3 stories = 15 feet* Multi-family = 20 feet* Nonresidential = 30 feet* If building is over 35 feet, the total of the two side yards is to be increased 2 feet* per story If lot of record is less than 40 feet in width, setback can be reduced by 10 feet *Setback requirements are the total required for two side yards and shall be divided between the two side yards such that neither side yard is less than 5 feet

<b>Min. Rear Setback</b>	5 feet Additional depth of 2 feet for each story over 6
<b>Min. Front Accessory Setback</b>	N/A
<b>Min. Side Accessory Setback</b>	3 feet
<b>Min. Rear Accessory Setback</b>	3 feet

## Article VIII Downtown Commercial (DC) District

### Section 27-36 Purpose.

The purpose of the Downtown Commercial District is to provide a diverse mix of residential, small-scale business, office, and educational uses in a high-density, pedestrian-oriented community.

### Section 27-37 Uses Permitted by Right.

The following shall be uses permitted by right:

- (1) Amphitheater
- (2) Amusement and Recreation Center
- (3) Animal Grooming
- (4) Animal Hospital/Veterinary Office
- (5) Bakery
- (6) Bank/Financial Institution
- (7) Boat Livery
- (8) Boat and Marine Sales/Service
- (9) Brewery Pub
- (10) Broadcasting Studio
- (11) Bus and Transit Facilities
- (12) Bus and Transit Shelter
- (13) Café/Coffee Shop
- (14) Catering Business
- (15) Child Day Care Facility, Class 1
- (16) Child Day Care Facility, Class 2
- (17) Clinic
- (18) Community Facility
- (19) Convenience Store
- (20) Conversion of Old School/Church
- (21) Cultural Service
- (22) Distillery
- (23) Distillery, Mini
- (24) Drive-in Theater
- (25) Drive-through Facility
- (26) Dwelling, Mixed Use
- (27) Educational Institution
- (28) Emergency Shelter
- (29) Equipment Rental/Repair
- (30) Essential Utilities and Equipment
- (31) Event, Special
- (32) Farm/Construction Equipment and Supply Sales
- (33) Farmer's Market
- (34) Flea Market

- (35) Freight Terminal
- (36) Garage, Commercial
- (37) Garden Center
- (38) Gas Station
- (39) Governmental Operations
- (40) Greenhouse, Commercial
- (41) Greenhouse, Noncommercial
- (42) Group Residential Facility
- (43) Group Residential Home
- (44) Health Cub
- (45) Home-based Business
- (46) Hospital
- (47) Hotel/Motel
- (48) Laboratory
- (49) Liquor Store
- (50) Manufacturing (Light)
- (51) Medical Adult Day Care Center
- (52) Medical Cannabis Dispensary
- (53) Medical Cannabis Growing Facility
- (54) Medical Cannabis Organization, Health Care
- (55) Night Club
- (56) Office Supply Establishment
- (57) Parcel Delivery Facility
- (58) Park
- (59) Parking Lot
- (60) Pawn Shop
- (61) Personal Service
- (62) Pet Shop
- (63) Pharmacy
- (64) Photographic Studio
- (65) Places of Worship/Religious Institution
- (66) Private Club
- (67) Professional Services
- (68) Reception Facility
- (69) Recreation, Private
- (70) Recreation, Public
- (71) Research and Development
- (72) Restaurant
- (73) Retail Store
- (74) School, Commercial
- (75) School, Preschool to 12
- (76) Senior Independent Housing
- (77) Shooting Range, Commercial Indoor
- (78) Shooting Range, Noncommercial Indoor
- (79) Shooting Range, Noncommercial Outdoor
- (80) Shopping Center
- (81) Solar Energy System, Small, Roof-mounted

- (82) Sports Arena
- (83) Studio, Dancing, Music, or Art
- (84) Tattoo/Body Piercing Studio
- (85) Tavern/Drinking Establishment/Bar
- (86) Theater
- (87) Urban Agriculture
- (88) Vehicle Repair/Service/Sales/Rental
- (89) Video Gaming or Lottery Establishment
- (90) Warehouse
- (91) Wholesale Establishment
- (92) Winery
- (93) Wireless Telecommunication Facilities, Small Cells

**Section 27-38 Conditional Uses.**

- (1) Continuing Care Facility
- (2) Dog Day Care
- (3) Event, Mass Gathering
- (4) Medical Cannabis Processing Facility
- (5) Roadside Vendor Stand
- (6) Wireless Telecommunication Facilities

**Section 27-39 Lot, Yard, and Height Requirements.**

Lot, Yard, and Height Requirements	
<b>Max. Building Height</b>	140 feet
<b>Min. Lot Size (Sq. Ft.)</b>	N/A
<b>Min. Lot Width</b>	N/A
<b>Max. Lot Coverage (as a %)</b>	100%
<b>Front Setback</b>	No minimum; maximum 10 feet
<b>Min. Side Setback</b>	All lots that abut residential zoning districts at the side shall adhere to the setback requirements of the abutting residential district
<b>Min. Rear Setback</b>	All lots that abut residential zoning districts at the rear shall adhere to the setback requirements of the abutting residential district
<b>Min. Front Accessory Setback</b>	5 feet from adjacent street, alley, or walkway
<b>Min. Side Accessory Setback</b>	5 feet
<b>Min. Rear Accessory Setback</b>	5 feet

**Article IX General Commercial (C) District**

**Section 27-40 Purpose.**

The purpose of the General Commercial District is to provide space for a commercial corridor to serve as an attractive gateway to the City. The district is intended to include higher-density development with compact and highly visible businesses.

**Section 27-41 Uses Permitted by Right.**

The following shall be uses permitted by right:

- (1) Adult Business
- (2) Amphitheater

- (3) Amusement and Recreation Center
- (4) Animal Hospital/Veterinary Office
- (5) Automobile Car Wash
- (6) Bakery
- (7) Bank/Financial Institution
- (8) Boat Livery
- (9) Boat and Marine Sales/Service
- (10) Boat Storage
- (11) Brewery Pub
- (12) Broadcasting Studio
- (13) Building Material Facility
- (14) Bus and Transit Facilities
- (15) Bus and Transit Shelter
- (16) Café/Coffee Shop
- (17) Catering Business
- (18) Clinic
- (19) Community Facility
- (20) Continuing Care Facility
- (21) Convenience Store
- (22) Correctional Facility
- (23) Cultural Service
- (24) Distillery
- (25) Distillery, Mini
- (26) Distribution Facility
- (27) Dog Day Care
- (28) Drive-in Theater
- (29) Drive-through Facility
- (30) Dry Cleaner
- (31) Dwelling, Mixed Use
- (32) Educational Institution
- (33) Emergency Shelter
- (34) Equipment Rental/Repair
- (35) Essential Utilities and Equipment
- (36) Event, Special
- (37) Farm/Construction Equipment and Supply Sales
- (38) Farmer's Market
- (39) Flea Market
- (40) Freight Terminal
- (41) Funeral Home/Mortuary
- (42) Garage, Commercial
- (43) Garden Center
- (44) Gas Station
- (45) Governmental Operations
- (46) Greenhouse, Commercial
- (47) Greenhouse, Noncommercial
- (48) Group Residential Home
- (49) Health Club

- (50) Home-based Business
- (51) Hospital
- (52) Hotel/Motel
- (53) Laboratory
- (54) Liquor Store
- (55) Manufacturing (Light)
- (56) Medical Adult Day Care Center
- (57) Medical Cannabis Dispensary
- (58) Medical Cannabis Growing Facility
- (59) Medical Cannabis Organization, Health Care
- (60) Night Club
- (61) Office Supply Establishment
- (62) Parcel Delivery Facility
- (63) Park
- (64) Parking Lot
- (65) Pawn Shop
- (66) Personal Service
- (67) Pet Shop
- (68) Pharmacy
- (69) Photographic Studio
- (70) Places of Worship/Religious Institution
- (71) Private Club
- (72) Professional Services
- (73) Reception Facility
- (74) Recreation, Private
- (75) Recreation, Public
- (76) Research and Development
- (77) Restaurant
- (78) Retail Store
- (79) Senior Independent Housing
- (80) Shooting Range, Commercial Indoor
- (81) Shooting Range, Noncommercial Indoor
- (82) Shooting Range, Noncommercial Outdoor
- (83) Shopping Center
- (84) Solar Energy System, Small, Roof-mounted
- (85) Sports Arena
- (86) Studio, Dancing, Music, or Art
- (87) Tattoo/Body Piercing Studio
- (88) Theater
- (89) Truck Terminal
- (90) Urban Agriculture
- (91) Vehicle Repair/Service/Sales/Rental
- (92) Video Gaming or Lottery Establishment
- (93) Warehouse
- (94) Wholesale Establishment
- (95) Winery
- (96) Wireless Telecommunication Facilities

(97) Wireless Telecommunication Facilities, Small Cells

**Section 27-42 Conditional Uses.**

- (1) Event, Mass Gathering
- (2) Extractive Industry
- (3) Medical Cannabis Processing Facility
- (4) Roadside Vendor Stand
- (5) Solar Energy System, Small, Ground-mounted

**Section 27-43 Lot, Yard, and Height Requirements.**

<b>Lot, Yard, and Height Requirements</b>	
<b>Max. Building Height</b>	50 feet
<b>Min. Lot Size (Sq. Ft.)</b>	N/A
<b>Min. Lot Width</b>	N/A
<b>Max. Lot Coverage (as a %)</b>	90%
<b>Min. Front Setback</b>	10 feet
<b>Min. Side Setback</b>	5 feet
<b>Min. Rear Setback</b>	All lots that abut residential zoning districts at the rear shall adhere to the setback requirements of the abutting residential district
<b>Min. Front Accessory Setback</b>	N/A
<b>Min. Side Accessory Setback</b>	5 feet
<b>Min. Rear Accessory Setback</b>	5 feet

**Article X Industrial (I) District**

**Section 27-44 Purpose.**

The purpose of the Industrial District is to provide a location for industrial development. The district is located such that it can be a complimentary asset to the community, considering proximity to and the safety of residents.

**Section 27-45 Uses Permitted by Right.**

The following shall be uses permitted by right:

- (1) Automobile Car Wash
- (2) Boat Livery
- (3) Boat and Marine Sales/Service
- (4) Boat Storage
- (5) Building Material Facility
- (6) Bus and Transit Facilities
- (7) Bus and Transit Shelter
- (8) Campground
- (9) Correctional Facility
- (10) Distillery
- (11) Distillery, Mini
- (12) Distribution Facility
- (13) Dog Day Care
- (14) Drive-in Theater
- (15) Dry Cleaner
- (16) Equipment Rental/Repair

- (17) Essential Utilities and Equipment
- (18) Farm/Construction Equipment and Supply Sales
- (19) Freight Terminal
- (20) Garage, Commercial
- (21) Garden Center
- (22) Gas Station
- (23) Governmental Operations
- (24) Greenhouse, Commercial
- (25) Group Residential Home
- (26) Hotel/Motel
- (27) Industrial Park
- (28) Laboratory
- (29) Lumberyard
- (30) Manufacturing (Heavy)
- (31) Manufacturing (Light)
- (32) Marina
- (33) Medical Cannabis Dispensary
- (34) Medical Cannabis Growing Facility
- (35) Medical Cannabis Organization, Health Care
- (36) Medical Cannabis Processing Facility
- (37) Office Supply Establishment
- (38) Parcel Delivery Facility
- (39) Park
- (40) Parking Lot
- (41) Research and Development
- (42) Shooting Range, Commercial Indoor
- (43) Shooting Range, Noncommercial Indoor
- (44) Shooting Range, Noncommercial Outdoor
- (45) Solar Energy System, Small, Roof-mounted
- (46) Truck Terminal
- (47) Warehouse
- (48) Wireless Telecommunication Facilities
- (49) Wireless Telecommunication Facilities, Small Cells

**Section 27-46 Conditional Uses.**

- (1) Self-Storage Facility
- (2) Solar Energy System, Small, Ground-mounted

**Section 27-47 Lot, Yard, and Height Requirements.**

<b>Lot, Yard, and Height Requirements</b>	
<b>Max. Building Height</b>	N/A
<b>Min. Lot Size (Sq. Ft.)</b>	N/A
<b>Min. Lot Width</b>	N/A
<b>Max. Lot Coverage (as a %)</b>	100%
<b>Min. Front Setback</b>	N/A
<b>Min. Side Setback</b>	50 feet for each side if adjacent to a residential zoning district
<b>Min. Rear Setback</b>	50 feet if adjacent to a residential zoning district

<b>Min. Front Accessory Setback</b>	N/A
<b>Min. Side Accessory Setback</b>	5 feet
<b>Min. Rear Accessory Setback</b>	5 feet

## **Article Xa Telecommunications Overlay (TO) District**

### **Section 27-47a Purpose.**

The purpose of the Telecommunications Overlay District is to ensure that wireless telecommunications facilities may locate within the community in a manner that best serves the local needs and concerns of citizens.

### **Section 27-47b Requirements.**

Wireless telecommunications facilities shall be permitted by right within the telecommunications overlay. The supplemental provisions applicable to wireless telecommunication facilities shall also be applicable.

## **Article XI Conditional Use Standards**

### **Section 27-48 Purpose.**

The conditional use permit procedure is intended to provide the Board of Zoning Appeals with review of requests to establish uses that may be appropriate in a zoning district, but that may have the potential for negative impacts on the health, safety, and welfare of the public. The conditional use standards provided in this Article are intended to avoid, minimize, or mitigate adverse impacts conditional uses may have on the health, safety, and welfare of the public.

### **Section 27-49 General Standards.**

- (a) All applications for a conditional use permit shall demonstrate that:
- (1) The use is consistent with the policies and intent of the corresponding purpose for the zoning district in which it lies and the City's comprehensive plan.
  - (2) The use is physically and operationally compatible with the surrounding neighborhood and surrounding existing uses.
  - (3) The use will be designed, constructed, operated, and maintained so that it does not cause substantial injury to adjoining property.
  - (4) The use will be adequately served by public facilities and services that include but are not limited to water, sewer, electric, schools, streets, fire and police protection, storm drainage, public transit, and public parks and trails.
  - (5) Adequate off-street parking will be provided on the same property as the proposed conditional use as well as adequate ingress and egress to the property in compliance with the standards set forth in this code.
  - (6) Any storage of hazardous material will comply with all state, federal, and local regulations, and all such material will be listed and made known to the Chief of the City of Montgomery Fire Department.
  - (7) The use will not endanger public health or safety or constitute a public nuisance.
  - (8) The use will not conduct operations in connection with the use that are offensive, dangerous, or destructive of the environment.
- (b) Conditions may be imposed on a proposed conditional use to ensure that potential significant adverse impacts on surrounding uses will be reduced to the maximum extent feasible, including but not limited to conditions or measures addressing:
- (1) Location on a site of activities that generate potential adverse impacts such as noise and glare;
  - (2) Hours of operation and deliveries;
  - (3) Location of loading space and delivery zones;

- (4) Light intensity and hours of full illumination;
  - (5) Placement of outdoor vending machines;
  - (6) Loitering;
  - (7) Litter control;
  - (8) Placement of trash receptacles;
  - (9) On-site parking configuration and facilities;
  - (10) On-site circulation; and
  - (11) Privacy concerns of adjacent uses.
- (c) Conditional use permit decisions are made by the Board of Zoning Appeals (BZA). In considering the proposed conditional use, the BZA must determine whether the applicable General Standards under this Section have been met. The BZA may impose additional conditions and safeguards deemed necessary.
- (d) The breach of any condition, safeguard, or requirement shall be considered a violation of the conditional use permit approval. If the applicant fails to comply with any of the applicable requirements of this ordinance, the BZA shall have the authority to revoke any conditional use permit after providing notice to the property owner and after public hearing is held in the same manner as the original approval.
- (e) *Validity of approval.* Any conditional use approved by the Board of Zoning Appeals under which the premises are not used, work is not started within six (6) months, or the use or work has been abandoned for a period of one (1) year, shall lapse and cease to be in effect. The BZA may permit one (1) six (6) month extension if the extension is applied for in writing by the applicant prior to the expiration of the approval, provided that the BZA finds that the extension is warranted due to circumstances beyond the control of the applicant.
- (f) No application that has been denied wholly or in part by the Board of Zoning Appeals shall be resubmitted for a period of one (1) year from the date of the last denial, unless permitted by the BZA after demonstration by the applicant of a change of circumstances from the previous application.

## **Article XII General Provisions**

### **Section 27-50 Purpose.**

The purpose of the general regulations is to provide for special situations that must be regulated in such a manner as to promote orderly development and to protect the public health, safety, and general welfare of the community. The following regulations have been deemed necessary to clarify and carry out the overall intent of this ordinance.

### **Section 27-51 Accessory Uses, Buildings, and Structures.**

- (a) All accessory uses, buildings, or structures shall require a Zoning Permit and shall be permitted in all districts, provided each is customarily incidental and subordinate to a principal use, except those otherwise expressly districted. There must be a principal use or structure on the lot prior to the issuance of a Zoning Permit for an accessory use, building, or structure.
- (b) Accessory buildings and structures shall adhere to the accessory setback requirements for each district. On residential property, accessory buildings and structures shall not be located in the front yard, except driveways, mailboxes, or other structures customarily located in the front yard. On nonresidential property, accessory buildings shall not be located in the front yard except those customarily located in the front yard. Accessory buildings and structures shall not be closer than five (5) feet from a principal structure. Accessory buildings and structures, together with principal buildings and structures, shall not exceed the maximum lot coverage permitted in a zoning district.
- (c) Accessory buildings and structures shall not be used as a dwelling, except a caretaker's residence or accessory dwelling as provided in this code.

- (d) Accessory buildings and structures shall be no more than seventy-five (75) percent of the height of the principal structure's height, and in no circumstance higher than the applicable zoning district's maximum height requirement.
- (e) No use conducted in an accessory building or structure shall be in violation of the permitted uses in that zoning district. Accessory uses within the principal structure shall not occupy more than twenty-five (25%) percent of the gross floor area.

**Section 27-52 Yard Requirements.**

- (a) All yards required under this code shall be open to the sky and unobstructed by any building or structure except for accessory buildings or structures in the rear yard, fences, and the following that may project into the required yards:
  - (1) Decks, patios, covered porches, steps, and landings not exceeding twenty-four (24) square feet;
  - (2) Open or lattice-enclosed fire escapes, fireproof outside stairways and balconies opening upon fire towers, and the ordinary projection of chimneys and flues into the rear or side yard not exceeding three and one-half (3.5) feet in width and placed so as not to obstruct light or ventilation; and
  - (3) Heating, ventilation, and air conditioning mechanical equipment;
  - (4) Eaves, overhangs, bay windows, sills, belt courses, cornices, and ornamental features not exceeding two (2) feet in width.
- (b) Where any main wall of a structure located on an irregularly shaped lot does not parallel the lot line that the wall faces, the yard or minimum distance to the lot line at every point shall be at least equal to the minimum dimension required for the yard or distance to the lot line.
- (c) For purposes of determining the required yard for townhouse developments, setbacks shall only apply from the perimeter of the main building to the perimeter of the parent parcel upon which the building is situated.

**Section 27-53 Additional Principal Buildings.**

- (a) *Residential.* Individual lots or subdivided parcels ten acres or less in size shall have no building or buildings used for living purposes in addition to the principal residence, except as provided in this code. Undivided land parcels of ten (10) acres or greater in size shall be limited to one (1) residential building per ten (10) acre unit of undivided land area. This provision does not apply to factory-built home rental communities.
- (b) *Nonresidential.* More than one principal building may be located upon the lot or tract of nonresidential properties, but only when such buildings conform to all setback requirements. Additional principal buildings may include a caretaker's residence used in conjunction with an active industrial establishment or a caretaker's residence used in conjunction with a place of worship or religious institution.

**Section 27-54 Height Exceptions.**

- (a) Special industrial structures such as cooling towers, elevator bulkheads, fire towers, water tanks, and water towers, which require a greater height than provided in the district, may be erected to a greater height than permitted provided that:
  - (1) The structure shall not occupy more than twenty-five (25%) percent of the lot area;
  - (2) The setback requirements of the district in which the structure is erected shall be increased by one foot for each foot of height over the maximum height permitted; and
  - (3) The structure is necessary to comply with state or federal statutes or regulations.
- (b) The height limitations of this code shall not apply to spires, belfries, or chimneys.

**Section 27-55 Lot Lines and Irregular Lots.**

- (a) *Corner lots.* Corner lots shall have no rear lot line.
- (b) *Flag Lots.* When the handle of a flag lot is less than the minimum width for a lot in the zoning district in which it is located, the handle is not to be used in delineating the minimum required lot width. The

minimum lot width shall be taken from the front building setback line. The handle shall be used in computing the required minimum lot size, except that in no case shall the area of the handle constitute more than fifty (50%) percent of the entire lot. No structures whether primary or accessory shall be placed in the handle.

- (c) *Lot Width*. In a case where there is only one side lot line, lot width shall be measured between such side lot line and the opposite rear lot lines or street line.
- (d) *Irregular Lots*. Front setbacks for irregular lots shall be measured from the front lot line adjacent to the street right-of-way with the greatest frontage in linear feet.
- (e) *Pie-shaped Lots*. Setbacks on pie-shaped lots shall be measured at the closest point between the building and the angled lot line.
- (f) *Rear lot line (Irregular)*. In the case of a lot having no street frontage or a lot of an odd shape, only the one lot line farthest from any street shall be considered a rear lot line. Where there is only one lot line other than street lot lines, it shall be considered the rear lot line.

#### **Section 27-56 Swimming Pools.**

Private swimming pools are permitted accessory uses only when located in rear yards. Swimming pools and protective barriers, required by the building code or otherwise installed, must adhere to setback requirements within the zoning district where the pool is located.

#### **Section 27-57 Fences, Landscaping, and Screening.**

Subject to the following conditions, fences and walls may be erected and hedges and other plantings may be grown along the boundaries of a lot:

- (a) *Clear sight triangle*. Fences, hedges, other plantings, or walls at street corners shall not interfere with any clear sight triangle. The height of such objects is restricted to three and one-half (3.5) feet within the clear sight triangle. No fence, hedge, other plantings, or walls shall otherwise impose a threat to public safety, including by obstructing the view of motorists to oncoming traffic or pedestrians.
- (b) *Height restrictions*. Fences, walls, hedges, and other plantings used for the purpose of screening shall not exceed four (4) feet in height from the front building line extending to the front lot line, and shall not exceed six (6) feet in height extending behind the front building line of the main structure, excluding porches and stairs.
- (c) *Fences and walls*.
  - (1) Fences and walls shall be durably constructed and well maintained.
  - (2) Fences and walls that have deteriorated shall be replaced or removed immediately.
  - (3) Fence and walls shall not be constructed out of fabric, junk, junk vehicles, appliances, tanks, barrels, razor wire, barbed wire, or electric fencing, not including invisible fencing with the use of a remote and collar on a domesticated animal. Razor wire or barbed wire are permitted in commercial or industrial uses.
  - (4) The finished side of the fence shall be oriented towards the front of the lot or the direction of the adjacent property owner, unless the fence is not visible from adjoining property.
  - (5) Fencing placed in the front yard shall permit at least fifty (50%) percent visibility through the fencing materials.
- (d) *Landscaped buffer areas*.
  - (1) Five (5) foot landscaped buffer areas are the preferred method of buffering. However, where a buffer strip is considered to be impracticable or inappropriate, an opaque fence at least six (6) feet in height, in the rear or side yard, or four (4) feet in height in the front yard so as to restrict a clear view beyond said buffer may be substituted in whole or in part for a natural buffer, subject to approval by the Zoning Officer.
  - (2) Landscaped buffer areas shall be continually maintained by the landowner. Any plant material that does not survive shall be replaced within six (6) months. All landscaping shall be kept free of refuse and debris.

- (3) Landscaped buffer areas may be required by the Board of Zoning Appeals as a condition of a conditional use permit.
- (4) Landscaped buffer areas shall not be required where the lot abuts an area of existing natural vegetation that effectively screens the lot from casual observation to a height of at least six (6) feet.
- (5) All species within the screen planting shall be indigenous or otherwise well-suited to the City, except that trees with large leaves that could clog storm drains; are brittle or disease-prone; have low, spreading branches or shallow root systems; drop large fruit or much sap; or are otherwise messy shall also be avoided.
- (6) Hedges shall be kept trimmed so that their branches shall not extend into the public road, or upon the lands of an adjoining owner, more than eighteen inches over the dividing line.
- (e) *Commercial or Industrial property adjacent to dwellings and zoned or existing single-family residential property.* Landscaped buffer areas shall be provided between any new commercial or industrial development adjacent to single-family residential property, existing or zoned, or adjacent to any dwelling, and such landscaping shall be at least five (5) feet wide and at least three and one half (3.5) feet high, subject to height limitations contained within this Section.
- (f) *Parking lot screening.* A three (3) foot high buffer area shall be provided between parking areas and public rights-of-way for all parking areas of five (5) or more parking spaces. A landscaped buffer area shall be required between parking areas and abutting property lines that are not a right-of-way, except where access ways or other openings may be required.
  - (1) At least one (1) tree for each fifty (50) linear feet shall be planted in a landscaping strip in addition to other planting materials.
  - (2) Landscaped areas shall be protected from the encroachment of vehicles by use of curbing, wheel stops, bollards, fencing, or other approved barriers.
  - (3) The landscaped areas shall not obstruct sight distances for motorists or pedestrians, nor shall such landscaping create any potential hazard to public safety.
- (g) *Monument signs.* All monument signs shall be installed with a minimum surround of three (3) feet of regularly maintained floral and shrubbery landscaping in every direction.
- (h) *Dumpster screening.* All outdoor storage of refuse material, recycling, and similar disposal in dumpsters shall be screened with fencing, walls, or a landscaped buffer area.

**Section 27-58 Lighting.**

- (a) All lighting shall be low intensity and shielded so there is no illumination of adjoining residential properties. All lighting shall be erected and maintained so that light is confined to the property and will not cast direct light or glare upon adjacent properties or public rights-of-way. Bare, unshaded bulbs are prohibited.
- (b) Building, parking, and all other exterior lighting shall be shielded and directed in a manner that lighting does not reflect or cause glare onto adjacent properties or adversely interfere with street traffic.
- (c) Lighting is required for all off-street parking areas, off-street loading areas, and for driveways providing ingress and egress for nonresidential and multi-family developments.
- (d) Feature lighting, such as up-lighting of trees or other plant material or seasonal lighting, shall be so arranged to reflect away from any residential structure. Such lighting shall not create a glare on adjacent streets or properties.
- (e) For all uses, except dwellings, exterior wall-mounted floodlights shall be prohibited except for security lighting.
- (f) Temporary, decorative string lighting may be used for periods of time not exceeding a total of sixty (60) days in one (1) calendar year.

**Section 27-59 Clear Sight Triangle.**

In a clear sight triangle, the entire area shall remain clear of obstructions to sight, including but not limited to fences, hedges, other landscaping, and signs, above a plane established three and one-half (3.5) feet in elevation to a height of ten (10) feet from grade level at the intersection of any street, alley, or other public right-of-way centerline.

**Section 27-60 Parking.**

(a) *Off-street parking.*

- (1) General. Off-street parking shall be provided in compliance with this Section whenever any building is erected, enlarged, converted, or increased in size or capacity.
- (2) Required number. The off-street parking spaces required for each use permitted by this code shall not be less than that found in Table 27-60(b), provided that any fractional parking space be computed as a whole space. Uses in the Downtown Commercial Zoning District that are less than fifteen thousand (15,000) square feet in gross floor area are exempt from Table 27-60(b). Any commercial buildings not listed Table 27-60(b) that are built, converted, modified, or structurally altered shall provide one parking space per two hundred (200) square feet of gross floor area and one parking space for each regular, full-time employee or full-time equivalent in the building or on the premises whose primary duties are in the building or on the premises, during the largest shift.
- (3) Combination of uses. Where there is a combination of uses on a lot, the required number of parking spaces shall be the sum of that found for each use, dividing the gross floor area proportionately between the different uses. The required parking space for any number of separate uses may be combined in one lot, but the required space assigned to one use may not be assigned to another use at the same time, except that one half (1/2) of the parking space required for churches, theaters, or assembly halls with peak attendance at night or on Sunday may be assigned to a use that will be closed at night or on Sunday.
- (4) Location of lot. The parking spaces required by this code shall be provided on the same lot as the use or on another lot not more than one thousand (1,000) feet radially from the lot where the use is located only if the Zoning Officer deems it impractical to provide space on the same lot with the building.

(b) *Off-street parking table.*

USE	NUMBER OF PARKING SPACES REQUIRED (all indoor square footage in gross floor area)
Retail/Goods Adult Business, Boat and Marine Sales/Service, Convenience Store, Farm/Construction Equipment and Supply, Garden Center, Liquor Store, Office Supply Establishment, Pawn Shop, Pet Shop, Pharmacy, Retail	4 spaces for the first 1,000 square feet of indoor space, plus 1 space for each additional 150 square feet of indoor space; 1 space per 5,000 square feet of outdoor space
Cultural/Community Amphitheater, Amusement and Recreation Center, Community Facility, Cultural Service, Health Club, Place of Worship/Religious Institution, Sports Arena, Theater	1 space per 5 seats or per persons allowed indoors at maximum capacity, whichever is greater, plus 1 space for every 2 persons employed

Clinic/Office/Service Animal Grooming, Animal Hospital, Broadcasting Studio, Clinic, Governmental Operations, Automobile Car Wash, Bakery, Bank/Financial Institution, Boat Storage, Brewery Pub, Catering Business, Dog Day Care, Dry Cleaner, Equipment Rental Repair, Funeral Home/Mortuary, Gas Station, Night Club, Personal Service, Photographic Studio, Private Club, Professional Services, Restaurant, Studio, Tavern, Vehicle Repair/Service/Sales/Rental, Video Gaming or Lottery Establishment	3 spaces per 1,000 square feet of indoor space, 1 space per 1,000 square feet of outdoor space, 1 space for every 2 persons employed
Accommodations Bed and Breakfast Inn, Hotel/Motel	1 space per bed offered for accommodation
Industry/Facility Building Material Facility, Bus and Transit Facility, Commercial Greenhouse, Correctional Facility, Distillery, Distribution Facility, Extractive Industry, Freight Terminal, Lumberyard, Manufacturing (Light), Manufacturing (Heavy), Parcel Delivery Facility, Research and Development, Salvage Yard, Self-storage Facility, Sewage Treatment Facility, Warehouse, Water Treatment Plant, Wholesale Establishment, Winery	1 space per 2 employed, 1 space per vehicle used for the business, 3 spaces per 7,000 square feet of indoor space
Outdoor Campground, Fairground, Farmer's Market, Flea Market, Marina, Park, Private Recreation, Public Recreation	1 per 500 square feet of indoor space, 1 space per 2 employees, 3 per acre of outdoor space for first 20 acres
Education/Care Child Day Care Facilities, Educational Institution, Commercial School, Preschool to 12, Medical Adult Day Care Center	1 space per 5 enrolled, 1 space per employed
Medical/Care Continuing Care Facilities, Group Residential Facility, Group Residential Home, Hospital	1 space per two beds
Dwelling Unit, Home-based Business	2 spaces, plus 1 space for home-based business if business requires nonresidential traffic

(c) *Parking stall dimension.*

- (1) Width. A minimum width of nine (9) feet shall be provided for each parking stall, except:
  - (i) Compact parking stalls shall be a minimum width of eight (8) feet wide.
  - (ii) Parallel parking stalls shall be a minimum width of eight (8) feet wide.
  - (iii) The width of a parking stall shall be increased ten (10) inches for obstructions located on either side of the stall within fourteen (14) feet of the access aisle.
- (2) Length. A minimum length of twenty (20) feet shall be provided for each parking stall, except:
  - (i) Compact parking stalls shall be a minimum length of eighteen (18) feet.
  - (ii) Parallel parking stalls shall be a minimum length of twenty-two (22) feet in length.
- (3) Aisle access. The minimum width of aisles providing access to stalls shall be measured exclusive of interior drives or maneuvering areas and shall be provided as follows in Table 27-60(d)

Parking Standards:

(d) *Parking standards table.*

<b>Table 27-60(d): Parking Standards</b>		
<i>Angle of Parking</i>	<i>Minimum Aisle Width (Double-sided Parking)</i>	<i>Minimum Aisle Width (Single-sided Parking)</i>
Parallel	12'	12'
45	12' 8"	12' 8"
60	16'	16'
75	20'	18'
90	24'	18'

(e) *Design of parking facilities.*

(1) General driveway and access way provisions.

- (i) Driveways and access ways should be located to minimize traffic conflicts with traffic entering the street from either the same or the opposite side of the street.
- (ii) All access ways and driveways shall be designed to conform to West Virginia Department of Transportation specifications with regard to roads.
- (iii) For dwellings, only one (1) driveway access per unit is permitted. A lot with at least one hundred (100) feet of frontage along a street may be permitted one (1) additional driveway access point. Regardless of frontage, a development may be restricted to a single access way depending on usage and interior and exterior traffic patterns.
- (iv) On any lot, no wall, fence, hedge, tree, shrub, or other obstruction shall be allowed that dangerously obscures the view of approaching traffic along the street, or at any intersection, including driveways and access ways.

(2) Driveway and access way width.

- (i) Commercial parking shall provide one or more access way, the width of which shall be twelve (12) feet for one-way enter/exit or twenty-four (24) feet for two-way enter/exit.
- (ii) Residential driveways and access ways shall be at least nine (9) feet in width.

(3) Driveway and ramp slopes. The maximum slope of any driveway, access way, or ramp shall not exceed twenty (20) percent.

(4) Stall access. Each required parking stall shall be individually and easily accessed. No automobile shall be required to back onto any public street or sidewalk to leave any parking stall when such stall serves more than two (2) dwelling units. All portions of a public lot or garage shall be accessible to other portions thereof without requiring the use of any public street.

(5) Striping. All parking stalls shall be striped. Parking spaces shall be clearly delineated by suitable markings. Short-term visitor parking spaces shall be differentiated from long-term employee spaces by suitable markings or signage.

(6) Surfacing.

- (i) Permanent surface material, which includes asphalt, concrete, brick, or concrete pavers or with a similar material approved by the Zoning Officer shall be the preferred method of surfacing parking areas and driveways. Gravel may be used for parking areas and driveways provided the gravel used is no less than three inches of No. 57 clean crushed gravel, rolled and compacted to less than one and one half (1.5) inches after compaction.
- (ii) Permanent surface material, which includes asphalt, concrete, brick, or concrete pavers or with a similar material approved by the Zoning Officer shall be constructed on a compacted sub grade free of organic matter. The gravel shall be well-graded, crushed stone aggregate six (6) inches thick after rolling. The surface shall be smooth, uniform, and tightly packed.
- (iii) In residential districts, no more than forty (40) percent of the front yard may be used for parking, including driveways. Vehicles may not be parked or stored upon any lawn or vegetated or otherwise landscaped area.

- (7) Compact car parking spaces. If twenty (20) or more parking stalls are required for a parking lot, ten (10) percent of those spaces may be designated for compact car parking stalls. Each compact car parking stall shall be marked as “Compact Car Parking.”
- (8) Retail parking. Off-street parking areas for all new retail businesses over seven thousand (7,000) square feet of gross floor area shall be designed to include bollards to prevent vehicles from driving into the business. All retail businesses existing before the date of this ordinance shall install bollards when replacing or substantially working on the sidewalk in front of the business’s entrance.
- (f) *Ingress and egress.* Adequate ingress and egress to a parking facility shall be provided by clearly defined access ways in accordance with any access management requirements of the City of Montgomery.
- (g) *Accessible parking.* Accessible parking spaces and passenger loading zones shall be provided in accordance with all applicable federal, state, and local laws, including but not limited to the Americans with Disabilities Act (ADA), ICC A117.1, and West Virginia Code Section 17c-13-6, and any amendments thereto.
- (h) *Bicycle parking.* One bicycle parking space shall be provided for every fifteen (15) required vehicular parking spaces. Bicycle spaces shall not be located within the required sidewalk or in a manner that impedes pedestrian access to the building and may be located within the landscape buffer area provided that it occupies less than ten (10%) percent of the length of the required buffer; spaces may be located at the side or rear of the building.

**Section 27-62 Drive-through Business.**

Drive-through businesses shall be oriented with respect to yards, driveways, driveway entrances and exits, and buildings and enclosures to ensure safety, minimize traffic hazards or difficulties, and to safeguard adjacent properties. At a minimum, drive-through facilities must be five (5) feet from any lot line. Entrances to drive-through facilities must be fifty (50) feet from any intersection.

**Section 27-63 Storage, General.**

- (a) No lot or premises shall be used as a storage area for inoperable automobiles, appliances, or the storage or collection of any other miscellaneous items unless permitted in this code or by state statute. No lot or premises shall be used as a garbage dump or a dead animal rendering plant nor may manure, rubbish, or unauthorized miscellaneous refuse be stored in the open.
- (b) Any storage of scrap metal, inoperable automobiles for purposes other than repair, or secondhand building materials closer than one thousand (1,000) feet to an interstate highway or three hundred (300) feet to any road shall be screened by a solid wall or fence at least ten (10) feet tall. If such wall or fence does not fully screen the scrap metal, inoperable automobiles for purposes other than repair, or secondhand building materials because of topography or piling, the storage may not be closer than three hundred (300) feet to any interstate highway or road.
- (c) *Flammable liquids.* The storage of alcohol, gasoline, crude oil, or any other highly flammable liquids in above ground tanks with unit capacity greater than five hundred and fifty (550) gallons shall be prohibited in all districts unless such tanks up to and including ten thousand (10,000) gallon capacity are placed not less than fifty (50) feet from all property lines and unless all such tanks of more than ten thousand (10,000) gallon capacity are placed not less than one hundred (100) feet from all property lines. All tanks having a capacity greater than five hundred fifty (550) gallons shall be properly diked with dikes having a capacity not less than one and one-half (1.5) times the capacity of the tank or tanks surrounded.
- (d) *Hazardous materials.* Any storage of hazardous material that is ancillary to a permitted use or a conditional use shall meet the following conditions:
  - (1) All storage shall comply with all state, federal, and local regulations.
  - (2) Such material shall be listed and made known to the Chief of the City of Montgomery Fire Department.

### **Section 27-64 Storage of Trailers, Camping and Recreational Equipment.**

Trailers and camping and recreational equipment may be parked or stored subject to the following requirements:

- (a) Permanent parking and storage of trailers or camping and recreational equipment shall be limited to the interior of automobile garages, other available on-lot accessory buildings, or that portion of the lot behind the rear building line of the principal building, provided the trailer or camping and recreational equipment is covered. All such storage shall be a minimum of five (5) feet from any lot line.
- (b) Trailers or camping and recreational equipment, including recreational vehicles, may be temporarily parked on off-street parking on a residential property provided a temporary trailer parking permit is obtained from the Zoning Officer. Temporary trailer parking permits may be issued for up to two (2) week period no more than four (4) times in a calendar year per registered trailer or piece of camping and recreational equipment, including recreational vehicles.
- (c) At no time shall trailers or camping and recreational equipment, including recreational vehicles, be occupied or used for living, sleeping, or housekeeping purposes while being temporarily or permanently parked or stored on a residential property. Recreational vehicles may not be hooked up to utilities while parked or stored within the City, except for within designated campgrounds.

### **Section 27-65 Satellite Signal Receiving Stations.**

(a) *General requirements.*

- (1) Satellite signal receiving stations shall be for the personal use of residents, occupants, and their guests only.
  - (2) Satellite signal receiving stations shall not be used to display a sign.
  - (3) Only one satellite signal receiving station is permitted per lot not exceeding five (5) feet in diameter is permitted, unless there is documentation provided to the Zoning Officer from the installer or satellite company that more than one satellite or a satellite exceeding five (5) feet in diameter is necessary in order to receive the signals for the use and enjoyment of the property owner.
  - (4) Satellite signal receiving stations shall comply with all other provisions of this code not otherwise in conflict with this Section pertaining to accessory structures for the particular zoning district in which such stations are to be installed.
  - (5) Satellite signal receiving stations shall be designed to withstand a wind force of up to seventy (70) miles per hour without the use of supporting guy wires.
- (b) *Ground-mounted stations.* Within all zoning districts, the following provisions shall apply to satellite signal receiving stations:
- (1) Ground-mounted stations shall only be mounted in the rear yard behind the principal building or structure, shall not exceed an above grade height of fifteen (15) feet, and shall not be located closer than five (5) feet to any lot line.
  - (2) If a lot or parcel cannot receive a signal for a ground station mounted in the rear yard, the Zoning Officer may permit a ground-mounted station in the side yard or front yard, subject to the following:
    - (i) Ground-mounted stations shall not exceed an above grade height of five (5) feet.
    - (ii) Ground-mounted stations shall not be located closer than five (5) feet to a side lot line or front lot line.
    - (iii) Ground-mounted stations shall be shielded or screened from view from the front lot line with natural vegetation or fencing to provide maximum screening or shielding without interfering with the signal.
    - (iv) Ground-mounted stations shall be mounted in a concrete base in line with grade, utilizing only metal supports of galvanized construction.
  - (3) Wiring between ground-mounted stations and any other structure shall be placed underground.

- (c) *Roof-mounted and side-mounted stations.* Within all zoning districts, the following shall apply to roof-mounted signal receiving stations or signal receiving stations affixed to the side of a primary or accessory structure (“side-mounted station”):
- (1) Roof-mounted stations shall be mounted directly on the roof of a primary or accessory structure located in the rear yard and shall not be mounted on appurtenances such as chimneys, towers, or spires.
  - (2) Side-mounted stations shall be mounted directly on the side of a primary or accessory structure located in the rear yard and shall not be mounted on appurtenances such as chimneys, towers, or spires.
  - (3) Roof-mounted stations mounted on the roof of a primary or accessory structure shall not exceed a height of greater than five (5) feet above the roof on which it is mounted. The height shall be measured vertically from the point at which such station is mounted on the roof.
  - (4) No portion of a side-mounted station mounted on the side of a primary or accessory structure shall be lower than seven (7) feet from the ground on which the primary or accessory structure stands and shall not exceed a height greater than five (5) feet above the location at which the station is mounted onto the side of the primary or accessory structure.

**Section 27-66 Temporary Uses.**

- (a) Except as provided in Subsection (b), only the following uses are permitted temporarily, for up to four consecutive weeks in one calendar year:
- (1) Seasonal sales of such items as pumpkins, Christmas trees, and fireworks stands in commercial districts;
  - (2) Carnival, circus, and street fairs in commercial or industrial districts; and
  - (3) Mobile amusements and lighting equipment for promotion, advertisement, and grand openings in commercial and industrial districts.
- (b) Temporary permits may be issued for up to one (1) year for nonconforming uses incident to housing and constructing projects including such structures and uses as storage of building materials and machinery, the processing of building materials, and a real estate office located on the tract being offered for sale, provided such permits are conditioned upon agreement by the owner or operator to remove the structure or structures or use upon expiration of the permit. Such permits may be renewed for no more than one (1) additional year.
- (c) A permit is required to be completed, returned to the Zoning Officer, and approved before any temporary use may commence, in addition to any other requirements of the Code of the City of Montgomery, including but not limited to obtaining a business license.

**Section 27-66a Sound.**

- (a) Sound resulting from any commercial or noncommercial activity shall not exceed the following between the hours of 7:00 a.m. and 7:00 p.m. for more than three (3) hours of total time accumulated within twenty-four (24) hours:
- (1) Sixty (60) dBA in single-family and multi-family residential districts;
  - (2) Seventy (70) dBA in commercial districts; and
  - (3) Eighty (80) dBA in industrial and conservation districts.
- (b) Sound resulting from any commercial or noncommercial activity shall not exceed the following between the hours of 7:00 p.m. and 7:00 a.m. for more than three hours of total time accumulated within twenty-four (24) hours:
- (1) Fifty-five (55) dBA in single-family and multi-family residential districts;
  - (2) Sixty-five (65) dBA in commercial districts; and
  - (3) Seventy-five (75) dBA in industrial and conservation districts.
- (c) Sound limits shall apply and be measured from all property lines and from the right-of-way nearest to the origin of the sound. Measurements with sound level meters shall be made when the wind velocity at the time and place of such measurement is not more than five (5) miles per hour. In all sound level

measurements, consideration shall be given to the effect of the ambient noise level created by the encompassing noise of the environment from all sources at the time and place of such sound level measurement.

- (d) Construction projects shall be subject to the maximum permissible noise levels specified for industrial zones for the period within which construction is to be completed pursuant to any applicable construction permit issued by proper authority or, if no time limitation is imposed, for a reasonable period of time for completion of project.
- (e) All railroad rights-of-way shall be considered as industrial zones for the purposes of this article, and the operation of trains shall be subject to the maximum permissible noise levels specified for such zone.
- (f) This Section does not apply to the operation of aircraft or to other activities which are subject to federal law with respect to noise control or to the use of property by the State of West Virginia, any political subdivision of the State of West Virginia, or any other entity not organized for profit, including, but not limited to, nonprofit corporations, or any of their lessees, licensees, or permittees, for the purpose of promoting, producing, or holding cultural, entertainment, athletic, or patriotic events, including, but not limited to, concerts, music festivals, and fireworks displays.

### **Article XIII Supplemental Regulations**

#### **Section 27-67 Purpose.**

The purpose of the supplemental regulations is to provide for special situations with specific uses that must be regulated in such a manner as to promote orderly development and to protect the public health, safety, and general welfare of the community. The following supplemental regulations have been deemed necessary to clarify and carry out the overall intent of this ordinance. These supplemental regulations are requirements in addition to those that may be required for a zoning permit for a permitted use or required by a conditional use permit.

#### **Section 27-68 Adult Business.**

- (a) No such adult establishment shall be located less than one thousand (1,000) feet from a school zone, place of worship, library, day care center, civic building, park, historic district, dwelling, lot with residential districting, or other adult establishment as measured from front door to front door along the curb line of public streets providing access.
- (b) All doors, windows, and other apertures shall be located and covered or screened with opaque glazing to discourage and prevent visibility or viewing of the interior.
- (c) No exterior signage, building element, advertisement, display, or other promotional material shall be pornographic in nature or convey any such idea or element to specified anatomical areas, as defined in this code.
- (d) In the event that an activity or business that might fall under a use category other than adult business is combined with or includes activities that constitute an adult bookstore, adult movie theater or movie house, or adult entertainment, as defined herein, then such activity or business shall constitute an adult business and shall be governed by those provisions in this code applicable to adult business uses, in addition to those provisions that govern the combined use.

#### **Section 27-69 Agritourism Enterprise.**

Agritourism enterprises are subject to the following regulations:

- (a) *Minimum acreage.* Agritourism enterprises are only permitted on properties with a minimum lot size of five (5) acres.
- (b) *Application and approval process.*
  - (1) No part of an agritourism operation shall be located within fifty (50) feet of any lot line.
  - (2) Sanitary facilities shall be provided in accordance with applicable County Health Department requirements.

- (3) All prepared food available for sale must be prepared in accordance with applicable federal, state, or local regulations.
- (4) A parking plan must be submitted as part of the permit process.
- (5) Permits for all agritourism enterprises shall be renewed annually.
- (c) *Operations.*
  - (1) Agritourism enterprises shall not be operated earlier than 7 a.m. nor later than 11:59 p.m.
  - (2) All parking is required to be on site. Parking is not permitted in the street right-of-way.
  - (3) Special events are allowed in accordance with the requirements under Section 27-75.
  - (4) The agritourism enterprise may, but need not, include:
    - (i) Daily tours of the production facilities.
    - (ii) No more than one (1) location for the on-premises sale and consumption of alcoholic beverages manufactured on site, including a tasting facility. Any tasting facility shall be primarily operated for the marketing and sale of the agricultural products produced or processed at the facility. Alcohol related products shall be limited to those produced, distilled, or bottled by the operator or grown on the premises.
    - (iii) Accessory gift shop. The sale of goods or merchandise may occur on the premises, but are limited to those goods or merchandise that are produced on the premises, or are customarily incidental to the operation and directly related thereto.

**Section 27-70 Bed and Breakfast Inn.**

- (a) A bed and breakfast inn may or may not offer ancillary services such as providing breakfast, private parties, and evening and lunch meals to guests; holding outdoor events such as weddings, fundraising or civic events for local clubs, and special dinners or meals; and operating gift shops.
- (b) All private residences used as bed and breakfast inns shall be indistinguishable from surrounding residential units.
- (c) Signs for residences used as a bed and breakfast inn are subject to the sign regulations for signs accessory to dwellings.
- (d) Cooking facilities within bedrooms are prohibited.
- (e) A bed and breakfast inn shall not employ individuals other than a permanent resident of the private residence.
- (f) All bed and breakfast inns shall comply with the provisions of West Virginia Code Section 29-3-16c, Safety Standards for Bed and Breakfast Establishments.

**Section 27-72 Child Day Care.**

- (a) All child care providers, whether state or privately operated, shall obtain a license from the West Virginia Secretary of State and the Department of Health and Human Resources. Each facility shall also be inspected by the Zoning Officer and Fire Marshal to ensure the safety of children and employees.
- (b) A facility shall provide a minimum of thirty-five (35) square feet of usable space per child. Any rooms or areas that have not been approved for the use of children shall be inaccessible. No activity space may be created in the basement of a structure unless expressly approved by the Fire Marshal.
- (c) A secured outdoor activity area must be provided by the facility allowing a minimum of seventy-five (75) square feet of space per child. Should the minimum space not be available, a rotating outdoor activity schedule shall be established to meet the minimum requirements and ensure that each child be afforded outdoor playtime everyday, weather permitting.
- (d) The outdoor activity area noted above shall be fenced with a minimum of six (6) foot high fence. All play equipment shall be located in the fenced area. All gates shall be self-latching.
- (e) Parks may be used to meet outdoor activity requirements if located immediately adjacent to the facility.

**Section 27-73 Dog Day Care.**

All dog day care facilities must comply with the following criteria:

- (a) The hours of operation shall be limited daily any time between 5 a.m. and 9 p.m.
- (b) Dogs may be groomed, trained, exercised, and socialized, but not kept or boarded overnight, bred, sold, or let for hire.
- (c) There shall be no more than thirty (30) dogs on the premises at one time.
- (d) *Provide indoor and outdoor recreational areas for dogs.* Indoor recreational area shall be at least one hundred (100) square feet per dog, and outdoor recreational area shall be at least one hundred and fifty (150) square feet per dog.
- (e) *Provide sight-obscuring fencing for all on-site outdoor recreation areas.* The fence shall provide full containment for the dogs and be secured at all times. The fence structure shall be deep enough and secured to the ground to prevent escape and high enough to prevent dogs from jumping or climbing over. The fence shall comply with all fence provisions in this ordinance.
- (f) If there is a grooming facility on site, it must be physically separated from primary enclosure areas and food storage.
- (g) Feces, hair, dirt, debris, and food waste must be removed at least daily or more often if necessary to prevent accumulation and to reduce disease hazards, insects, pests and odors.

#### **Section 27-74 Events, Mass Gathering.**

- (a) A permit is required for each mass gathering event.
- (b) The applicant shall be the owner or co-owner of the property. An owner or a representative of the owner shall be present on the property at all times during the mass gathering event.
- (c) Mass events shall occur outdoors, in temporary structures, or existing permanent structures. New permanent structures shall not be constructed for special events.
- (d) Mass events shall cause no alteration to land including, but not limited to, grading, filling, or paving.
- (e) The duration of each mass event shall not exceed three (3) consecutive days, provided activities shall only occur between the hours of 10:00 a.m. and 11:59 p.m.
- (f) Within any single calendar year, a parcel may host no more than four (4) mass events.
- (g) A parking plan shall be submitted as part of the permit process. Adequate on-site parking areas shall be provided to accommodate the number of vehicles expected. Off-site parking areas are permitted if the applicant provides written authorization from the property owner for those sites. The applicant shall post signs safely directing people to the parking sites. There shall be no parking on any public roads.
- (h) Local emergency medical services (EMS) shall be notified of all mass events. The holder of the mass event shall provide EMS with the number of people projected to attend.
- (i) All garbage shall be removed from the site within five (5) days.
- (j) Trained security is required onsite for all mass events.
- (k) All lighting and sound shall be aligned so as to minimize impact on nearby residents and shall conform to requirements of this code and other applicable city ordinances.
- (l) The site shall provide potable water supply and proper sanitation facilities.
- (m) The sale of alcohol is permitted. All sales of alcohol shall be regulated by the West Virginia Alcohol Beverage Control Administration.
- (n) The owner of the property shall procure a liability insurance policy. Proof of the liability insurance in the minimum amount of \$2,000,000 per occurrence shall be submitted with the permit application.
- (o) All mass gathering events shall contract with the following agencies: the City of Montgomery Police Department and garbage removal services, a West Virginia licensed EMS provider, licensed towing company, the applicable County Health Department (approval or permit required), West Virginia Division of Highways (approval or permit required), and applicable County Homeland Security. Proof of contract shall be submitted with the permit application.

#### **Section 27-75 Events, Special.**

- (a) A permit is required for each special event.

- (b) The permit applicant shall be the owner or co-owner of the property. An owner or a representative of the owner shall be present on the property at all times during the special event.
- (c) Special events shall occur outdoors, in temporary structures, or existing permanent structures. New permanent structures shall not be constructed for special events.
- (d) Special events shall cause no alteration to land including, but not limited to, grading, filling, or paving.
- (e) The duration of each special event shall not exceed three (3) consecutive days, provided activities shall occur only between the hours of 7:00 a.m. and 11:59 p.m.
- (f) A parking plan shall be submitted as part of the permit process.
- (g) The owner of the property shall procure a liability insurance policy. Proof of the liability insurance in the minimum amount of \$1,000,000 per occurrence shall be submitted with the permit application.
- (h) Local emergency medical services (EMS) shall be notified of all events. The holder of the event shall provide EMS with the number of people projected to attend.

**Section 27-76 Factory-built Home Neighborhood.**

Factory-built home neighborhoods are subject to the following provisions:

- (a) The minimum tract for a factory-built home neighborhood shall be not less than five (5) acres.
- (b) Setbacks of twenty-five (25) feet from the front, rear, and side lot lines of the entire factory-built home neighborhood shall be maintained.
- (c) A minimum five thousand (5000) square foot lot shall be maintained for each factory-built home.
- (d) No more than seven factory-built homes may be placed on a single acre.
- (e) Each factory-built home shall be at least thirty (30) feet apart, with each factory-built home having at least a twelve (12) foot side yard. Front and rear yards for each factory-built home shall not be less than fifteen (15) feet.

**Section 27-77 Garage Sales.**

- (a) No more than twelve (12) garage sales, yard sales, or rummage sales are permitted within any twelve (12) month period for each residence, with only one (1) permitted per month.
- (b) For the purpose of this section, garage sale, yard sale, and rummage sale shall be deemed to mean the same thing.
- (c) Sales must be contained within the individual's property and may not encroach into a public right-of-way.
- (d) Each garage sale shall not be permitted to last more than four (4) days.
- (e) A garage sale shall not include the sale of new merchandise.
- (f) Tents may be used during the event subject to Subsection (c) and must be removed immediately following the conclusion of each event.
- (g) All items must be removed from the exterior of the premises at the end of the sales event.
- (h) All persons desiring to conduct a garage sale, except for 501(c)(3) nonprofit organizations, must first obtain a zoning permit for the temporary use.

**Section 27-78 Home-based Business.**

The business or commercial activity conducted as a home-based business must satisfy the following criteria:

- (a) There shall be no appearance of the business on the exterior of the dwelling.
- (b) Customer, client, patient, or other traffic shall be restricted to 8 a.m. to 6 p.m. daily.
- (c) No more than twelve (12) visits to the home-based business shall be allowed per day, except as necessary to operate childcare facilities in accordance with the West Virginia Code; such visits may be addressed in a conditional use permit. A "visit" is defined as a stop at the premises by one automobile transporting one or more customers, clients, patients, packages/parcels, or other business associates or items. A visit does not include the operator of the business, members of his/her family, or a business employee.

- (d) The home-based business shall be compatible with the use of the property as a residence and surrounding residences.
- (e) The home-based business may employ one (1) individual not residing in the dwelling.
- (f) There shall be no display or sale of retail goods and no stockpiling or inventory of a substantial nature.
- (g) The business or commercial activity may not use any equipment or processes that create noise, vibration, glare, fumes, odors, or electrical or electronic interference, including interference with radio or television reception detectable in the surrounding neighborhood.
- (h) The business or commercial activity may not generate any solid waste or sewage discharge, in volume or type, not normally associated with the use of a dwelling in the neighborhood.
- (i) The business activity may not occupy more than twenty-five (25%) percent of the gross floor area of the residence.
- (j) The business may not involve any illegal activity or mortuary services.

**Section 27-79 Medical Cannabis Organizations.**

- (a) A medical cannabis organization shall not be located within fifty (50) feet of a property any portion of which is used for residential purposes or is within a residential zoning district.
- (b) A medical cannabis growing facility or medical cannabis processing facility shall not be located within five hundred (500) feet of the property line of a school or church.
- (c) A medical cannabis dispensary shall not be located within one thousand (1000) feet of the property line of a church; public or private school; or a day care center.
- (d) No more than two (2) medical cannabis dispensaries, two (2) medical cannabis processing facilities, and two (2) medical cannabis growing facilities may be located within City of Montgomery.
- (e) The only medical cannabis uses permitted under this ordinance are those expressly defined and permitted herein. Medical cannabis organizations may not be combined with other uses.
- (f) There shall be no emission of dust, fumes, vapors, or odors into the environment from the premises of a medical cannabis organization.
- (g) Medical cannabis organizations shall possess all applicable state licenses.

**Section 27-80 Night Clubs, Taverns, Brewery Pubs.**

- (a) The total number of such establishments in concurrent operation within any zoning district where permitted shall not exceed two (2) per county and four (4) total.
- (b) The gross floor area to customer ratio shall be fifty (50) square feet of gross floor area for every one (1) customer.
- (c) No night clubs, taverns, or brewery pubs shall share a lot line with a residential district or a residential use.

**Section 27-81 Gas Stations.**

No gas station shall have a vehicular entrance less than two hundred (200) feet to an entrance to a church, school, theater, hospital, public park, playground, or fire station, measured as the shortest distance between the nearest points of entrance. Gasoline pumps must be at least fifty (50) feet from any side property line.

**Section 27-82 Reception Facility.**

- (a) No activities that involve charging admission or are solely performance activities are permitted as part of this use.
- (b) No more than two (2) receptions are allowed per week per reception facility.
- (c) The owner or his or her designated representative shall be physically present on the property at all times during receptions.
- (d) All outdoor receptions, temporary structures, and parking areas associated with a reception shall be located one hundred and fifty (150) feet to any property line.

- (e) All receptions, whether indoor or outdoor, shall end no later than 11:00 p.m.
- (f) Lighting may be used for the duration of the reception only and may not shine or produce glare on adjacent properties.
- (g) A consistent vegetative buffer shall be located between all parking areas and adjacent residential uses and districts. The buffer shall include evergreen plantings at least three (3) feet in height.
- (h) Parking shall be in compliance with this code. No parking by patrons shall be permitted on any public road. The owner(s) shall ensure that ingress and egress during the reception to the venue does not cause congestion on any public road.
- (i) The owner(s) shall be responsible for the following: (1) sanitation (municipal waste and recycling) facilities at the reception commensurate with the number of patrons attending and (2) sanitary sewer facilities at the reception commensurate with the number of patrons attending.
- (j) The operation of the use shall at all times comply with all federal, state, and local laws and regulations.

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**Section 27-82a Shooting Ranges.**

- (a) *Purpose.* The purpose of this ordinance is to promote the health, safety, and welfare of the public while shooting activity is ongoing within the City of Montgomery's jurisdiction. Other purposes of this ordinance include:
- (1) To ensure the safety of all individuals within the vicinity of a shooting range, whether indoor or outdoor.
  - (2) To ensure that no damage occurs to property within the vicinity of and resulting from a shooting range.
  - (3) To ensure that indoor and outdoor shooting ranges are constructed in areas and buildings that are adequately designed to allow for safe operation.
  - (4) To ensure that shooting activities at shooting ranges are conducted during hours of operation that minimize the disturbance of neighboring landowners and homeowners.
  - (5) To ensure that lighting from night shooting is sufficiently contained to the shooting range.
  - (6) To ensure that noise mitigation measures are taken to reduce the amount of disturbance to neighboring landowners and homeowners.
  - (7) To ensure that harmful waste is safely stored to prevent harm external to shooting range properties.
- (b) *General provisions.*
- (1) Pursuant to W. Va. Code § 20-2-58, it shall be unlawful to discharge a firearm at a noncommercial or commercial outdoor shooting range:
    - i. Within five hundred (500) feet of any school or church; or
    - ii. Within five hundred (500) feet of a dwelling; Provided, That a person who is a resident of a dwelling house, and his or her authorized guest, may shoot or discharge a firearm in a lawful manner within five hundred (500) feet of the dwelling house where the person lives, if the firearm is being discharged with the express or implied knowledge and consent of all residents of that dwelling house, and no other dwelling houses are located within five hundred feet (500) of where the firearm is discharged.
  - (2) All shooting ranges operating within the City of Montgomery should refer to the NRA's Range Source Book and the United States Department of Energy Range Design Criteria for guidance in safely constructing shooting ranges.
  - (3) The City of Montgomery may hire experts necessary, at the shooting range owner or operator's expense, to ensure compliance with this section prior to issuing a zoning permit and to review evidence of noncompliance with this section.
  - (4) All shooting ranges are subject to the sound limitations found in Section 27-66a and light limitations found in Section 27-58.
- (c) *Noncommercial outdoor shooting range.*
- (1) All noncommercial outdoor shooting ranges shall be constructed such that a bullet cannot exit the property on which the shooting range is located when the shooter is aimed at the target(s).
  - (2) All shooting range activities shall occur within the timeframe from two (2) hours before sunrise and two (2) hours after sunset.
  - (3) When not in use, all impermanent materials used as targets or otherwise for the shooting range shall be removed from the shooting range and stored in an area that is not visible from nearby public rights-of-way.
- (d) *Noncommercial indoor shooting range.* All noncommercial indoor shooting ranges shall be constructed such that a bullet cannot exit the building within which shooting activity occurs.
- (e) *Commercial outdoor shooting range.*
- (1) All noncommercial outdoor shooting ranges shall be constructed such that a bullet cannot exit the property on which the shooting range is located when the shooter is aimed at the target(s).
  - (2) Commercial outdoor shooting ranges shall not operate outside the hours of 10:00 a.m. to 10:00 p.m.

- (3) All commercial outdoor shooting ranges shall be surrounded by a landscaped buffer area consisting solely of evergreen vegetation that will reach at least eight (8) feet in height at maturity or privacy fencing at least eight (8) feet tall.
- (4) All waste potentially containing lead or other toxic materials shall be safely gathered and stored such that contaminants do not leave the property on which they accumulated.
- (f) *Commercial indoor shooting range.*
  - (1) All commercial indoor shooting ranges shall be constructed such that a bullet cannot exit the building where shooting activity occurs.
  - (2) All waste potentially containing lead or other toxic materials shall be safely gathered and stored such that contaminants do not leave the property on which they accumulated.

**Section 27-83 Urban Agriculture.**

(a) *Definitions for this Section.*

- (1) “Beekeeping” means the keeping or propagation of honeybee hives for collection of honey or other bee products.
- (2) “Community Garden” means a neighborhood-based development with the primary purpose of providing space for members of the community to grow plants for beautification, education, recreation, community distribution, or personal use.
- (3) “Composting” means accumulating a mixture of various decaying organic substances, such as dead leaves or manure, intended to be used for fertilizing soil.
- (4) “Fowl” means any chicken, duck, goose, turkey, guinea fowl, or pigeon.
- (5) “Home Agriculture” means the gardening or production, principally for use or consumption of the property owner or resident, of plants or their products including but not limited to fruits of all kinds including grapes, nuts, and berries; vegetables; floral, ornamental, and other noncommercial greenhouse products; and bees and apiary products.
- (6) “Hydroponics” means the cultivation of plants in nutrient solution rather than soil.
- (7) “Livestock” means any hog, pig, goat, cow, horse, pony, emu, alpaca, or other hoofed animal.
- (b) *Beekeeping.* Beekeeping is permitted as an accessory use to a dwelling provided that:
  - (1) No more than three (3) hives, each with only one swarm, are allowed on lots of less than ten thousand (10,000) square feet; and
  - (2) Hives shall not be located within ten (10) feet of any lot line except when situated eight (8) feet or more above the grade immediately adjacent to the grade of the lot on which the hives are located or when situated less than eight (8) feet above the adjacent existing lot grade and behind a solid fence or hedge six (6) feet high parallel to any lot line within twenty-five (25) feet of a hive and extending at least twenty (20) feet beyond the hive in both directions.
  - (3) Hives shall only be located in rear yards or side yards not adjacent to a street.
- (c) *Community gardens.* The responsibility of managing, maintenance, and operations of community garden sites shall be that of the landowner or designated public or civic entity, nonprofit organization, or other community-based organization. Processing and storage of plants or plant products are prohibited on site. Garden tools and supplies may be stored within an accessory structure.
- (d) *Composting.* Composting shall take place at least fifty (50) feet from any dwelling other than the dwelling associated with the use.
- (e) *Incidental sales.* Any sale resulting from beekeeping, composting, or home agriculture shall constitute a home-based business and is subject to all applicable provisions of this code.
- (f) *Location.* Beekeeping, composting, and home agriculture shall not take place in the front yard of any lot, except:
  - (1) Plants that are integrated with the principal structure’s landscaping and primarily serve an ornamental purpose; and

- (2) Ten (10) plants grown for use or consumption may be cultivated in a front yard, separate from the principal structure's landscaping, provided such plants do not exceed four (4) feet in height and the planted area does not exceed twelve (12) square feet.

(g) *Prohibitions.*

- (1) Livestock shall not be kept within the City.
- (2) Fowl, including roosters, shall not be kept within the City.

**Section 27-84 Vehicle, Boat, and Marine Repair/Service/Sales/Rental.**

Vehicle, boat, and marine repair, service, sales, and rental uses shall be subject to the following conditions:

- (a) Outdoor storage areas shall be located within the side or rear yards and screened from adjacent properties with fencing or with a landscaped buffer area, except that new and used vehicles and boats currently being offered for sale, rent, or lease may be located in the front yard, subject to yard, setback, and other requirements of this code.
- (b) Activities involving excessive noise shall be conducted entirely within the confines of a building sufficiently sound-insulated to effectively confine the noise.
- (c) No vehicle, boat, or marine repair, service, sales, and rental uses shall be located less than one hundred (100) feet from a residential district.
- (d) Vehicle, boat, and marine sales uses shall have a minimum of six thousand (6,000) square feet of outdoor display area.

**Section 27-85 Video Lottery Establishment.**

Establishments that offer or provide video gaming or lottery regulated under the provisions of the Limited Video Lottery Act, West Virginia Code Section 29-22B-101 et. seq., shall not be located within one thousand and five hundred (1,500) feet of any school zone, childcare facility, place of worship or religious institution, park, community center or facility, library, recreation center or facility, public building or public arena, or any other similar structure, or any other structure that houses an establishment that offers or provides video gaming or lottery, measured in a straight line from the nearest point of the wall of the establishment offering video gaming or lottery to the nearest property line of said school zone, school, place of worship or religious institution, park, community center or facility, recreation center or facility, public building or public arena, or any other similar structure, or any other structure that houses an establishment that offers or provides video gaming or lottery.

**Section 27-86 Wind Energy Systems.**

- (a) *Purpose.* The purpose of this Section is to regulate the placement, construction, and modification of small wind energy systems while promoting the safe, effective, and efficient use of such systems.
- (b) *Applicability.* The requirements set forth in this Section shall govern the siting of wind energy systems used to generate electricity or perform work that may be connected to the utility grid pursuant to West Virginia's net metering laws, serve as an independent source of energy, or serve in a hybrid system.
- (c) *Siting requirements.* The requirements for siting and construction of all wind energy systems regulated by this Section shall include the following:
  - (1) Wind energy towers shall maintain a galvanized steel finish, unless Federal Aviation Administration (FAA) standards require otherwise, or if the owner is attempting to conform the tower to the surrounding environment and architecture, in which case it may be painted to reduce visual obtrusiveness. A wind energy tower may be erected, maintained, or operated on or as an attachment to a building on a lot. A photo simulation may be required.
  - (2) Wind energy systems shall not be artificially lighted unless required by the FAA or appropriate authority.
  - (3) No tower shall be used to display a sign.

- (4) The applicant shall provide evidence that the proposed height of the wind energy system tower does not exceed the height recommended by the manufacturer or distributor of the system. The tower height shall not exceed a maximum height of seventy (70) feet on a parcel. When situated on or attached to a building, the total height shall not exceed seventy (70) feet. The building itself shall otherwise comply with the applicable height requirement under this ordinance.
  - (5) The applicant shall provide evidence that the provider of electric utility service to the site has been informed of the applicant's intent to install an interconnected, customer-owned electricity generator, unless the applicant intends, and so states on the application, that the system will not be connected to the electricity grid. Notification will take place by having the electric utility provider sign the conditional use permit application, but such signature does not construe approval for net metering by the electric utility.
  - (6) Wind energy systems shall adhere to noise limits as established in the City of Montgomery. These levels, however, may be exceeded during short-term events such as utility outages or severe windstorms.
  - (7) The applicant will provide information demonstrating that the system will be used primarily to reduce on-site consumption of electricity.
  - (8) The minimum distance between the ground and any protruding blade utilized on a small wind energy system shall be fifteen (15) feet, as measured at the lowest point of the arc of the blades. The lowest point of the arc of the blades shall be ten (10) feet above the height of any structure within seventy-five (75) feet of the base. The supporting tower shall be enclosed with a six (6) foot tall fence, or the base of the tower shall not be climbable for a distance of ten (10) feet.
  - (9) The applicant will provide proof of adequate liability insurance for a small wind energy system. Whether or not the applicant is participating in the net metering program, the applicant will be required to meet the insurance coverage requirements as set forth in W. Va. Code R. 150-33-4 (2011), as amended.
  - (10) The small wind energy system generators and alternators should be constructed so as to prevent the emission of radio and television signals and shall comply with the provisions of Section 47 of the Federal Code of Regulations, Part 15 and subsequent revisions governing said emissions.
- (d) *Federal and state requirements.*
- (1) Compliance with the Montgomery Building Code. Building permit applications for wind energy systems shall be accompanied by standard drawings of the wind turbine structure, including tower, base, and footings. An engineering analysis of the tower showing compliance with the Montgomery Building Code and certified by a licensed professional engineer shall also be submitted.
  - (2) Compliance with FAA Regulations. Wind energy systems must comply with applicable FAA regulations.
  - (3) Compliance with National Electric Code. Building permit applications for wind energy systems shall be accompanied by a line drawing of the electrical components in sufficient detail to allow for a determination that the manner of installation conforms to the National Electrical Code.
  - (4) Compliance with regulations governing energy net metering. Wind energy systems connected to the utility grid must comply with West Virginia Code Section 24-2F-8 and West Virginia Administrative Code Title 150, Series 33, as amended.
- (e) *Setbacks.* The wind energy system shall be setback a distance at least equal to one hundred and ten (110) percent of the height of the tower plus the blade length from all adjacent property lines and a distance equal at least to one hundred and fifty (150) percent of the tower height plus blade length from any dwelling inhabited by humans on neighboring property. Additionally no portion of the wind energy system, including guy wire anchors, may be extended closer than ten (10) feet to the property line.

- (f) *Removal of defective or abandoned wind energy systems.* Any wind energy system found to be unsafe by the Zoning Officer shall be repaired by the owner to meet federal, state, and local safety standards or removed within six (6) months. Any wind energy system that is not operated for a continuous period of twelve (12) months shall be considered abandoned and the owner of the system shall remove the turbine within ninety (90) days of receipt of notice from the Zoning Officer instructing the owner to remove the abandoned wind energy system.

## **Article XIV Wireless Telecommunications Facilities**

### **Section 27-87 Purpose.**

This ordinance seeks to ensure the citizens of the City of Montgomery have access to wireless telecommunication technology, to protect the residents of the City of Montgomery from the proliferation of freestanding towers, and to provide a process and standards for the construction, maintenance, and modification of wireless telecommunication facilities through the following:

- (a) Establishing clear guidelines, standards, and time frames for the exercise of authority for wireless telecommunications facilities through the City of Montgomery's zoning, planning, and design standards;
- (b) Allowing competition in telecommunications service;
- (c) Encouraging the provision of advanced telecommunications services to the largest number of businesses, institutions, and residents of the City of Montgomery;
- (d) Encouraging the location, design, and construction of wireless telecommunication facilities that will have minimal impact on the location, minimal visual impact on the scenic resources, and minimize the total number of towers and tower sites throughout the City of Montgomery.
- (e) Permitting reasonable access to the public rights-of-way for telecommunications facilities on a competitively neutral basis;
- (f) Ensuring that all telecommunications carriers providing facilities or services comply with federal, state, and local regulations;
- (g) Encouraging the use of existing structures as an alternative to new wireless telecommunications facility construction, including the collocation of new and existing wireless telecommunications facilities, thus helping to minimize adverse visual impacts on the community; and
- (h) Protecting the scenic and visual character of the community.

### **Section 27-88 Applicability.**

Wireless telecommunications facilities may not be constructed or modified without a zoning permit issued in accordance with the provisions of this Article. Modifications to existing wireless telecommunication facilities, as of the effective date of this Article, are required to comply with this Article.

This section does not apply to the replacement of any component of a wireless telecommunication facility where the replacement is identical to the component being replaced or to the normal repair and maintenance of a wireless telecommunication facility that does not involve the addition, removal, or change of any of the externally discernable physical components of a wireless telecommunication facility from that which was originally permitted.

### **Section 27-89 Substantial Change Criteria.**

For the purposes of determining whether a requested modification is an eligible facilities request for modification under this section, a proposed facilities modification will substantially change the physical dimensions of an eligible support structure, and therefore not be eligible for the expedited modification process and corresponding eligible facilities application process under this Article, if the requested modification meets any of the following criteria:

- (a) For towers other than towers in the public rights-of-way, the request increases the height of the tower

by more than ten (10) percent or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty (20) feet, whichever is greater; for other eligible support structures, the request increases the height of the structure by more than ten (10) percent or more than ten (10) feet, whichever is greater. Changes in height shall be measured from the original support structure in cases where deployments are or will be separated horizontally, such as on buildings' rooftops; in other circumstances, changes in height shall be measured from the dimensions of the tower or base station, inclusive of originally approved appurtenances and any modifications that were approved prior to the passage of the Spectrum Act.

- (b) For towers other than towers in the public right-of-way, it involves adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty (20) feet, or more than the width of the tower structure at the level of appurtenance, whichever is greater; for other eligible support structures, it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six (6) feet.
- (c) For any eligible support structure, the request involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four (4) cabinets; or, for towers in the public right-of-way and base stations, it involves installation of any new equipment cabinets on the ground if there are no preexisting ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than ten (10) percent larger in height or overall volume than any other ground cabinets associated with the structure.
- (d) The request entails any excavation or deployment outside the current site.
- (e) The request would defeat the concealment elements of the eligible support structure.
- (f) The request does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment; provided, however, that this limitation does not apply to any modification that is noncompliant only in a manner that would not exceed the thresholds identified in this section.

#### **Section 27-90 General Requirements.**

- (a) *Lighting.* Lighting affixed to any wireless telecommunication facilities shall meet, but not exceed, the minimum lighting required by the Federal Aviation Administration (FAA). For any application where lighting is required, the applicant shall submit documentation from the FAA stating that the proposed lighting meets all applicable FAA standards and regulations.
- (b) *Structural Standards.* Wireless telecommunications facilities shall conform to the most current versions of the ANSI/ASSE A10.48 "Standard Criteria for Safety Practices with the Construction, Demolition, Modification and Maintenance of Communication Structures"; ANSI/TIA-222 Standard, "Structural Standard for Antenna Supporting Structures, Antennas and Small Wind Turbine Support Structures"; and ANSI/TIA-322 Standard, "Loading, Analysis and Design Criteria Related to the Installation, Alteration and Maintenance of Communication Structures." Wireless telecommunication facilities shall also meet any applicable local building code standards.
- (c) *Height Restrictions.* No wireless telecommunication facility shall exceed one hundred ninety-nine (199) feet in height, unless the applicant sufficiently justifies that the height of the tower will eliminate other similar towers or that the provision of service cannot be accomplished without a tower height in excess of one hundred ninety-nine (199) feet. Any applicant proposing a wireless telecommunication facility greater than one hundred ninety-nine (199) feet in height must provide evidence that the applicant notified the FAA of the intent to build the facility and received a final determination of "no hazard" from the FAA. Wireless telecommunications facilities located atop or within an alternative support structure may extend ten (10%) percent above the height of the structure or to the maximum height permitted in the zoning district in which the structure is located, whichever is less.
- (d) *Collocation.*
  - (1) An applicant for a new wireless telecommunication facility must demonstrate by substantial evidence that a bona fide need exists for the construction of a new tower and that no reasonable

combination of locations, techniques, or technologies would obviate the need. The applicant for a new facility must further demonstrate that all reasonable efforts have been made to collocate wireless telecommunication facilities on existing towers or alternative support structures.

(2) Prior to the approval of an application for a wireless telecommunications facility, the applicant shall demonstrate commitment to joint use as follows:

- (i) The applicant shall submit evidence as part of the application demonstrating that a genuine effort has been made to solicit additional users for the proposed new wireless telecommunications facility. Evidence of this shall include, at a minimum, copies of notices sent by registered mail, return receipt requested, to all other providers of cellular and wireless telecommunications services within the same county and within adjacent counties, or a Class II legal advertisement, advising of the intent to construct a new tower, identifying the location, inviting the joint use and sharing of costs, and requesting a written response within fifteen (15) business days.
- (ii) As part of the application, the applicant shall attest that the company will encourage the joint use of telecommunications towers within the City of Montgomery, committing that there shall be no unreasonable act or omission that would have the effect of excluding, obstructing, or delaying joint use of any tower where fair and just market reasonable compensation is offered for such use.
- (iii) Wireless telecommunications facilities, other than alternative support structures, shall be designed and built to accommodate a minimum of three (3) wireless telecommunications provider's equipment. The owner of the tower, if different than the applicant, must certify to the City of Montgomery that the tower is available for use by other telecommunications service providers on a reasonable and nondiscriminatory basis.

(e) *Concealment.*

- (1) All new or modified wireless telecommunication facilities must be concealed in a way that minimizes the adverse visual impact of the facilities through careful design, siting, landscaping, screening, and innovative camouflaging and stealth techniques, unless applicant shows substantial evidence that to do so is impracticable.
  - (2) Concealment techniques include fake trees, parapet extensions, silos, fake chimneys, water towers, fiberglass flagpoles, and steeples.
  - (3) A description must be included in the application of the possibilities for concealment that have been explored, and why the proposed option was chosen.
  - (4) Visual impact analysis of the wireless telecommunication facility is required using existing information, predictive modeling techniques, photographs, and simulations, to accurately and impartially communicate the potential visual impacts from proposed project.
  - (5) If determined to be impracticable by the Zoning Officer for a tower or alternative support structure to be entirely concealed, the applicant shall describe how materials, colors, textures, screening, and landscaping will be used to blend facilities into the natural setting and surrounding buildings.
  - (6) If an antenna is installed on an alternative support structure, the antenna and supporting electrical and mechanical equipment must be a neutral color that is identical to or closely compatible with the color of the alternative support structure so as to make the antenna and related equipment as visually unobtrusive as possible.
  - (7) Any equipment shelter or cabinet must be concealed from public view or made compatible with the architecture of the surrounding structures or placed underground
- (f) Replacement or modification of any previously approved concealed tower or facility must substantially conform to previous design characteristics.
- (g) *Setback.* Each tower shall have a setback of at least one hundred and ten (110%) percent the tower height measured from the tower base to the nearest property line.
- (h) *Collapse Zone.* No habitable structure may be located within the proposed collapse zone. The applicant shall demonstrate that the entire collapse zone is either under lease or owned by the

applicant and that no habitable structure will be constructed in the collapse zone while the tower is standing.

- (i) *Equipment Cabinets.* No equipment cabinet for a wireless telecommunications facility shall exceed seven hundred fifty (750) square feet in area, nor twelve (12) feet in height. All equipment cabinets shall be located with the tower and shall be enclosed within a minimum of a six (6) foot security fence and a locked gate.
- (j) *Signs.* No commercial messages nor any other signs beyond that which is required, not to exceed twelve (12) square feet cumulatively, shall be placed on any tower, equipment cabinet, or security fence.
- (k) *Landscaping.*
  - (1) Existing mature tree growth and natural landforms shall be preserved to the maximum extent possible. Trees existing within one hundred (100) feet of the wireless telecommunications facility shall not be removed except as required for tower construction, security fence construction, installation of ingress or egress, and the installation of utilities to the facility. To the extent that existing vegetation is the basis for a waiver of the landscaping requirement, preservation of such vegetation shall be a condition of the permit, and if such existing vegetation is removed or destroyed, the applicant shall meet the landscaping specified in Subsection 2 below within six (6) months thereafter.
  - (2) Wireless telecommunications facilities shall be landscaped within six (6) months after the tower and base station are erected with a visual buffer of plant materials that effectively screens the view of the equipment cabinet from adjacent property. The standard visual buffer shall consist of a landscaped strip of at least four (4) feet wide outside the perimeter of the security fencing enclosing the facilities. The visual buffer shall include vegetation of at least eight (8) feet tall, planted ten (10) feet apart behind a contiguous hedge of shrubs three (3) feet deep. All plant materials shall be species native to West Virginia. In the case where the tower and base station are sited on large wooded lots, the applicant may request that the natural growth preserved around the tower site be considered a sufficient visual barrier, without the need for additional landscaping. Such a request shall accompany the application and shall include photographs of the natural growth to be preserved.
- (l) *Location of Towers or Antenna in or near Historic Sites, Historic Districts, and Designated Scenic Resources.* Applications for wireless telecommunications facilities or antennas subject to this section shall also demonstrate that the views of, and vistas from, such structures, districts, and resources shall not be impaired or diminished by the placement of the proposed tower or antennas. In no instance shall a wireless telecommunications facility subject to the provisions of this paragraph exceed one hundred and ninety-nine (199) feet in height.
- (m) *Site Demarcation.* The site shall be physically and visually marked in the field, for immediate identification, with any combination of survey irons or flags as needed during the application process or during construction.

#### **Section 27-91 Approval Authority and Process.**

Applications for wireless telecommunications facilities shall follow the requirements of this section and written findings shall be made by the City of Montgomery as to whether the proposed facility complies with the regulations outlined in this section.

- (a) *Voluntary Pre-application Conference.* All persons seeking approval under this Article may meet with the City of Montgomery prior to filing an application. It is recommended that the meeting occur no less than thirty (30) days prior to the anticipated filing of the application to ensure adequate consideration and adequate time to address concerns. At this meeting, the City of Montgomery shall explain to the applicant the regulations as well as application forms and submissions that will be required under this Article.
- (b) *Submission Materials.* Where telecommunications facilities are a permitted use, applications shall be submitted to the Zoning Officer, who may confer with the Planning Commission in the application

process as needed. Where telecommunications facilities are a conditional use, applications shall be submitted to the Board of Zoning Appeals. No application shall be deemed complete unless it is in writing, is accompanied by the applicable fees, includes the required submittals, and is attested to by the applicant, certifying the truth and accuracy of the information provided in the application.

- (1) All applications shall include the following, in addition to the applicable subsections below:
  - (i) The following contact information for the applicant:
    - (A) Name,
    - (B) Title,
    - (C) Mailing address,
    - (D) Phone number,
    - (E) West Virginia tax number, and
    - (F) Electronic mail address (optional).
  - (ii) If a corporation, the name and address of the registered agent of applicant in West Virginia and the state of incorporation of applicant.
  - (iii) If applicant is an entity other than a corporation, such as a partnership or limited liability company, the names and business addresses of the principals.
  - (iv) If the applicant is not the owner or person in control of the structure or site, the following shall be required:
    - (A) Attestation that the owner or person in control of the structure or site has consented to the new facility, collocation, or for any modification that require a substantial change or are otherwise not considered an eligible facilities modification.
    - (B) If the structure is in a public right-of-way, the applicant must also attest to having authorization to install, maintain, and operate a wireless telecommunication facility in, under, and above the public right-of-way.
  - (v) If the applicant proposes a modification involving collocation of transmission equipment or the replacement of transmission equipment, the following shall be required: Complete copies of the underlying land use approvals for siting of the tower or base station proposed to be modified, establishing that, at the time of submittal of the application, such tower or base station constituted an eligible support structure.
- (2) Applications for eligible facilities requests, as defined herein and subject to a determination under Section 27-89, Substantial Change Criteria:
  - (i) Attestation that the proposed request is subject to review under Section 6409 of the Spectrum Act as an “eligible facilities modification.”
  - (ii) If the applicant proposes a modification that will result in an increase in height of the eligible support structure, the following shall be required: Record drawings, as-built plans, or the equivalent, showing the height of the eligible support structure, (a) as originally constructed and granted approval by the City of Montgomery or other applicable local zoning or similar regulatory authority, or (b) as of the most recent modification that received approval, prior to the passage of Section 6409(a) of the Spectrum Act of 2012, whichever height is greater.
  - (iii) If the applicant proposes an eligible facilities request for modification to an eligible support structure, which structure, or proposed modification of the same, is subject to pre-existing restrictions or requirements imposed by the City of Montgomery ordinances, the following shall be required: A copy of the document setting forth such pre-existing restrictions or requirements, together with a certification that the proposed facilities modification conforms to such restrictions or requirements.
  - (iv) If the applicant proposes a modification to an eligible support structure, which structure, or proposed modification of the same, is subject to pre-existing concealment restrictions or requirements, or was constructed with concealment elements, the following shall be required: Applicant shall set forth the facts and circumstances demonstrating that the

proposed modification would not defeat the existing concealment elements of the eligible support structure. If the proposed modification will alter the exterior dimensions or appearance of the eligible support structure, applicant shall include a detailed visual simulation depicting how the eligible support structure will appear after the proposed modification is complete. The visual simulation shall depict, to scale, the eligible support structure in relation to the trees, landscaping and other structures adjacent to, or in the immediate vicinity of, the eligible support structure.

- (v) If the applicant proposes a modification that will result in a protrusion from the edge of a tower that exceeds an existing protrusion of any transmission equipment attached to a tower or will protrude from the edge of a non-tower eligible support structure, the following shall be required: Record drawings and as-built plans, or the equivalent, showing, at a minimum, the edge of the eligible support structure at the location of the proposed modification.
- (vi) If the applicant proposes a modification to an eligible support structure that (a) will include any excavation, (b) would result in a protrusion from the edge of a tower that exceeds an existing protrusion of any transmission equipment attached to a tower, or (c) would protrude from the edge of a non-tower eligible support structure, the following shall be required: A description of the boundaries of the site and a scaled drawing based on an accurate traverse, with angular and lineal dimensions, depicting the boundaries of the site in relation to the tower or base station proposed to be modified and depicting the proposed location, elevation, and dimensions of the new or replacement transmission equipment. The City of Montgomery may require a survey by a land surveyor licensed in the state of West Virginia when, in the judgment of the approval authority, a survey is reasonably necessary to verify the boundaries of the site to determine if the proposed facilities modification would result in a substantial change in the physical dimensions of the eligible support structure.
- (vii) If the applicant proposes a modification to a tower, the following shall be required: A stamped report by a state of West Virginia registered or licensed professional engineer demonstrating that the tower with the proposed modifications will comply with applicable structural, electrical, and safety codes, including by way of example, but not limited to, the most recent revision of EIA/TIA-222, published by the American National Standards Institute (as amended), allowable wind speed for the applicable zone in which the tower is located, and describing the general structural capacity of the tower with the proposed modifications, including:
  - (A) the number and type of antennas that can be accommodated;
  - (B) the basis for the calculation of capacity; and
  - (C) a written statement that the proposal complies with all federal guidelines regarding interference and ANSI standards as adopted by the FCC.The City of Montgomery may retain the services of an independent technical expert to review, evaluate, and provide an opinion regarding the applicant's demonstration of compliance.
- (viii) If the applicant proposes a modification to a base station, the following shall also be required: A stamped report by a state of West Virginia registered or licensed professional engineer demonstrating that the base station, with the proposed modifications, will comply with applicable structural, electrical, and safety codes.
- (ix) If the applicant proposes a modification requiring an alteration to the eligible support structure, excavation, installation of new equipment cabinets, or any other activities impacting or altering the land, existing structures, fencing, or landscaping on the site, the following shall be required: A detailed site plan and drawings, showing the true north point, drawn to an appropriate decimal scale, indicating and depicting:
  - (A) the location, elevation, and dimensions of the existing eligible support structure;

- (B) the location, elevation, and dimensions of the existing transmission equipment;
  - (C) the location, elevation, and dimensions of the transmission equipment, if any, proposed to be collocated or that will replace existing transmission equipment;
  - (D) the location, elevation, and dimensions of any proposed new equipment cabinets and the intended use of each;
  - (E) any proposed modification to the eligible support structure;
  - (F) the location of existing structures on the site, including fencing, screening, trees, and other significant site features; and
  - (G) the location of any areas where excavation is proposed, showing the elevations, depths, and width of the proposed excavation and materials and dimensions of the equipment to be placed in the area excavated.
- (x) Copies of any environmental documents required by any state or federal agency. These shall include the environmental assessment required by 47 C.F.R. Part 1 (Part 1— Practice and Procedure), Section 1.1307, as amended, or, in the event that an environmental assessment is not required, a statement that describes the specific factors that obviate the requirement for an environmental assessment.
- (3) Applications for new facilities, collocations, or for any modifications that require a substantial change or are otherwise not considered an eligible facilities modification, as defined by this Article, shall include the following in the application submittal:
- (i) Copies of any easements necessary to access the property and proof that the same has been recorded, or will be recorded, in the applicable county clerk’s office.
  - (ii) Certification of the wireless telecommunication facility's collocation capabilities or whether the proposal is a collocation on an existing facility and whether the applicant anticipates other lessees will be able to utilize the facility.
  - (iii) A copy of the FCC license for the facility, or a signed statement from the owner or operator of the facility attesting that the facility will comply with current FCC regulations.
  - (iv) Evidence of compliance with applicable local, state, and federal historic preservation laws and regulations, including a copy of a written request for a statement of compliance sent to the necessary local, state, and federal historic preservation authorities and said authorities’ written responses.
  - (v) A map showing the location of all wireless telecommunications facilities above ground level, except antennas located on roof tops, within a three (3) air-mile radius of the proposed facility, unless this information has been previously made available to the City of Montgomery.
  - (vi) A site plan is required and shall include:
    - (A) Certification by a professional engineer indicating the location, including latitude and longitude, type, and height of the proposed facility; antenna capacity; on-site and abutting off-site land uses; topography; setbacks; parking; fencing; landscaping; the collapse zone; easements or other means of access; and all applicable American National Standards Institute (ANSI) technical and structural codes.
    - (B) A topographic map identifying the location of the site for the proposed wireless telecommunications facility.
    - (C) A stormwater and erosion control plan for the access road to the site, or a written statement that there will be no changes implemented with regards to any existing roads.
    - (D) Proximity of the proposed site to flood hazard areas.
    - (E) Certification by the applicant that the proposed facility complies with all FCC standards for radio emissions.
    - (F) A boundary survey completed by a land surveyor licensed by the State of West

- Virginia, and which includes the access road and vicinity map.
- (G) Photo simulations of the proposed facility taken from at least two perspectives, with emphasis placed on residential areas, public rights-of-way, public parks, designated scenic resources, and any historic site or district. The photos shall demonstrate whether the facility will be a stealth tower. Each photo must be labeled with the line of sight, elevation, and date taken.
- (vii) The applicant shall identify and demonstrate consideration of each and every designated scenic resource or viewshed, as recognized by federal, state, or local government in which the proposed wireless telecommunications facility is located or visible and shall provide a scenic assessment for the project area consisting of the following:
- (A) Elevation drawings of the proposed facility, showing height above ground level.
  - (B) A landscaping plan indicating the proposed placement of the facility on the site.
  - (C) Location of existing structures, trees, and other significant site features.
  - (D) A description and visual simulation of possible stealth tower design.
  - (E) A description of the lighting and type of lighting the facility will implement, including, but not limited to, the color of the lighting and whether it will be constant, flashing, or strobe.
  - (F) A narrative discussing the extent to which the proposed facility would be visible from any residential areas, height of vegetation within one hundred (100) feet of the facility at the time of application, and the distance to the proposed facility from a designated scenic resource's noted viewpoints.
- (viii) A propagation map, before and after, of how the proposed facility fits in the existing telecommunications network. The applicant must provide written evidence of a tenant for the proposed wireless telecommunications facility and the anticipated date that the facility will be occupied and used by such tenant. Such evidence may include a lease or letter of intent from the tenant. This submission requirement does not require disclosure of confidential business information. The Zoning Officer, Planning Commission, and Board of Zoning Appeals are hereby authorized to and may enter into a non-disclosure agreement with the applicant provided the non-disclosure agreement relates only to the applicant's propagation maps.
- (ix) Evidence demonstrating that an existing building, site, or structure cannot accommodate the applicant's proposed facility, the evidence for which may consist of any one or more of the following:
- (A) Evidence that no existing facilities, located within the targeted market coverage area, meet the applicant's engineering requirements.
  - (B) Evidence that existing facilities do not have sufficient height and cannot be increased in height at a cost not exceeding fifty (50%) percent of the cost required to construct the existing tower in present-day dollars, to meet the applicant's engineering requirements.
  - (C) Evidence that existing facilities do not have sufficient structural strength to support the applicant's proposed antenna and related equipment. Specifically:
    - (1) Planned, necessary equipment would exceed the structural capacity of the existing facility, considering the existing and planned use of the existing facilities, and the existing facilities cannot be reinforced to accommodate the new equipment.
    - (2) The applicant's proposed antenna or equipment would cause electromagnetic interference with the antenna on the existing towers or structures, or the antenna or equipment with the existing facility would cause interference with the applicant's proposed antenna.
    - (3) Existing or approved facilities do not have space on which planned equipment can be placed so it can function effectively.

- (D) Evidence that the fees, costs, or contractual provisions required by the owner of the existing facility or structure in order to share or adapt an existing facility are unreasonable, provided the existing facility was constructed prior to the effective date of the Article. Costs exceeding the pro rata share of a new facility development are presumed to be unreasonable.
- (E) Evidence that the applicant has made diligent good faith efforts to negotiate collocation on an existing facility, building, or structure, and has been denied access.
  - (x) A form of surety approved by the City of Montgomery to pay for the costs of removing the facility to a depth of three (3) feet below ground level if it is abandoned.
  - (xi) Proof of compliance with all applicable federal, state, and local regulations, including the NEPA (National Environmental Policy Act) Environmental Compliance Checklist and Section 106 of NHPA (National Historic Preservation Act).
  - (xii) A statement from the applicable county's assessor indicating the modification in real property taxation, if any, including the applicable tax rate to be charged, the real property subject to the tax rate, and the person or persons responsible for the payment of the real property taxes.
- (c) *Application Fee and Costs.* An application shall include a non-refundable payment in accordance with the fee schedule adopted by the City of Montgomery. The application shall not be considered complete until this fee is paid.
- (d) *Notice of Complete Application.*
  - (1) Upon receipt of an application, the applicant shall be provided with a dated receipt of submission.
  - (2) Within thirty (30) calendar days of receipt of an application, the application shall be reviewed to determine if the application meets the submission requirements. Any requests for a waiver from the submission requirements shall be reviewed prior to determining the completeness of the application.
  - (3) If the application is not complete, the applicant shall be notified in writing, specifying the additional materials or information required to complete the application.
  - (4) If the application is complete, the applicant shall be notified in writing of this determination and, if the application is to be reviewed by the Planning Commission or Board of Zoning Appeals, require the applicant to provide a sufficient number of copies of the application for the Planning Commission or Board of Zoning Appeals.
- (e) *Modification of Application Prior to Approval.* In the event that after submittal of the application, or as a result of any subsequent submittals, the applicant materially modifies the proposed facilities described in the initial application, the application as modified will be considered a new application subject to commencement of a new application review period and application fee; provided that, applicant and the approval authority may, in the alternative, enter into a mutually agreeable tolling agreement allowing the City of Montgomery to request additional submittals and additional time that may be reasonably necessary for review of the modified application.
- (f) *Approval of Application.* The shot clock period begins to run when the application is filed and may be tolled only by mutual agreement or in cases where the application is incomplete and notice is provided to the applicant that the application is insufficient.
  - (1) Approval of Eligible Facilities Modifications. Within sixty (60) calendar days of the date of receipt of an eligible facilities modification application, a determination shall be made as to whether the proposed modification is an eligible facilities modification, and contemporaneously a permit issued or the application denied.
  - (2) Approval of Applications involving (1) collocation or (2) modifications that are not eligible facilities modifications. Within ninety (90) calendar days of the date on which the City of Montgomery receives an application for collocation, as defined by this Article, or a modification that is not an eligible facilities requests, as defined by this Article, a determination shall be made on the application, and contemporaneously a permit issued or the application denied.

- (3) Approval of All New Towers. Within one hundred and fifty (150) calendar days of the date on which the City of Montgomery receives an application for the construction of a new wireless telecommunication facility, or any modification that is not solely for a collocation, and that does not meet the requirements for eligible facilities modification under this Article, a determination shall be made on the application, and contemporaneously a permit issued or the application denied.
- (g) *Denial of All Applications.* A denial of an application shall set forth in writing the reasons for the denial and shall be provided to the applicant contemporaneously with the denial of the application.
- (h) *Tolling Timeline for Approval Due to Incompleteness.*
- (1) To toll the timeline due to application incompleteness, written notice shall be provided to the applicant within thirty (30) calendar days of receipt of the application, clearly and specifically delineating all missing documents or information.
  - (2) The timeline for review (when tolling ends) begins running again when the applicant makes a supplemental submission in response to the notice of incompleteness.
  - (3) Following a supplemental submission, the City of Montgomery shall have ten (10) business days to notify the applicant that the supplemental submission did not provide the information identified in the original notice delineating missing information. The timeline is tolled in the case of second or subsequent notices, and tolling ends when the applicant makes supplemental submissions. Second or subsequent notices of incompleteness may not specify missing documents or information that were not delineated in the original notice of incompleteness.

**Section 27-92 Changes to Approved Application.**

Any changes to an approved application must be processed pursuant to Section 27-91, as a new application, and may be subject to the application fee, at the discretion of the City of Montgomery.

**Section 27-93 Abandonment.**

- (a) Any wireless telecommunications facility that is not in operation for a continuous period of twelve (12) months shall be considered an abandoned facility. If negotiations are pending with a service provider to place equipment at the facility, a letter of intent shall be provided to the City of Montgomery prior to the expiration of the twelve (12) months.
- (b) The owner of an abandoned facility shall be notified in writing of an order to remove the facility within no less than ninety (90) calendar days of receipt of the written notice. Failure to remove the wireless telecommunication facility within ninety (90) calendar days shall be grounds to remove the wireless telecommunications facility at the owner's expense and utilizing the surety to pay this expense. If two or more users occupy a single tower or alternative support structure, this provision shall not become effective until all users cease using the tower or alternative support structure.
- (c) The City of Montgomery requires the posting of surety before commencement of construction of an approved wireless telecommunication facility to ensure removal after the facility is no longer being used. The owner of the facility may apply to the City of Montgomery for release of the surety only when the facility and related equipment are removed by the owner to the satisfaction of the City of Montgomery.

**Section 27-94 Retention of Expert Assistance and Reimbursement by Applicant.**

- (a) The City of Montgomery may hire any consultant or expert necessary to assist the City of Montgomery in reviewing and evaluating the application, including the construction and modification of the site, once permitted, and any site inspections.
- (b) An applicant shall deposit with the City of Montgomery funds sufficient to reimburse the City of Montgomery for all reasonable costs of consultant and expert evaluation and consultation to the City of Montgomery in connection with the review of any application, including services needed during the construction and modification of the site, once permitted. The initial deposit shall be submitted with the application. The City of Montgomery shall maintain a separate escrow account for all such

funds. The consultants and experts shall invoice the City of Montgomery for services rendered. If at any time during the process, this escrow account has a balance of less than \$8,500, the applicant shall immediately, upon notification by the City of Montgomery, replenish said escrow account so that it has a balance of at least \$5,000. Such additional escrow funds shall be deposited with the City of Montgomery before any further action or consideration is taken on the application. If the amount held in escrow by the City of Montgomery is more than the amount of the actual invoicing at the conclusion of the project, the remaining balance shall be promptly refunded to the applicant. Consultants and experts shall, upon request, provide copies of all billing to the applicant.

- (c) The total amount of the funds needed as set forth in the Subsection (b) of this Section may vary with the scope and complexity of the project, the completeness of the application and other information as may be needed to complete the necessary review, analysis, and inspection of any construction or modification.

#### **Section 27-95 Indemnification.**

- (a) Any application for wireless telecommunication facilities that is proposed for the City of Montgomery property shall contain a provision with respect to indemnification. Such provision will require the applicant, to the extent permitted by law, to at all times indemnify and hold harmless the City of Montgomery, its commissions, and its agents, from any and all penalties, damages, or costs, arising out of any claims that might arise from said facility, excepting however, any portion of such claims, suits, demands, causes of action, or award of damages as may be attributable to the negligent or intentional acts or omissions of the City of Montgomery, or its commissions or agents.
- (b) With respect to the penalties, damages, or charges referenced herein, reasonable attorneys' fees, consultants' fees, and expert witness fees are included in those costs that are recoverable by the City of Montgomery. Notwithstanding the above, an indemnification provision shall not be required in those instances where the City of Montgomery itself applies for and secures a permit for wireless telecommunication facilities.

#### **Section 27-96 Other Permits Required.**

Compliance with this Section does not exempt compliance with all other applicable federal, state, and local regulations, Sections, or requirements.

### **Article XV Small Cell Wireless Telecommunications Facilities**

#### **Section 27-97 Purpose.**

Pursuant to the West Virginia Small Wireless Facilities Deployment Act, codified under West Virginia Code Section 31H-1-1 et seq. as amended, this Ordinance establishes nondiscriminatory policies and procedures for the deployment of small wireless facilities. This Ordinance allows for the efficient deployment of small wireless facilities while preserving the integrity, safe usage, and reasonable aesthetic qualities of the City of Montgomery's rights-of-way and the City of Montgomery as a whole. The City of Montgomery seeks to establish uniform standards consistent with federal and state law to address the placement of small wireless facilities and associated poles to achieve the following:

- (a) Prevent interference with the use of streets, sidewalks, alleys, parkways, and other public ways and places;
- (b) Prevent the creation of visual and physical obstructions and other conditions that are hazardous to vehicular and pedestrian traffic;
- (c) Prevent interference with the facilities and operations of facilities lawfully located in rights-of-way or public property;
- (d) Protect against environmental damage, including damage to trees;
- (e) Preserve the character of historic districts or areas; and
- (f) Facilitate rapid deployment of small cell facilities to provide the benefits of wireless services to the City of Montgomery's residents and visitors.

**Section 27-98 Requirements for Permitted Use Status; Zoning Applicability.**

- (a) A wireless provider may collocate small wireless facilities and install, maintain, modify, and replace the wireless provider's own utility poles or, with the permission of the owner, a third party's utility pole, in, along, across, upon, and under the right-of-way in any zone, or outside of the right-of-way on property not zoned exclusively for single-family residential use, as long as the following conditions are met:
- (1) The wireless provider receives all necessary permits as required by this Ordinance;
  - (2) The wireless provider pays all necessary fees and rates as required by this Ordinance;
  - (3) The structures and facilities are installed and maintained so as not to obstruct or hinder the usual travel or public safety on the right-of-way or to obstruct the legal use of the right-of-way by the City of Montgomery or other utilities;
  - (4) Each new or modified utility pole does not exceed the greater of ten (10) feet above the tallest existing utility pole in place as of March 5, 2019, within five hundred (500) feet of the new pole, or fifty (50) feet above ground level;
  - (5) New small wireless facilities may not extend more than ten (10) feet above an existing utility pole in place as of March 5, 2019; or if collocating a new utility pole, above the height permitted for a new utility pole as described in Subsection (a)(4) of this Section.
  - (6) The structures and facilities comply with the reasonable, written design guidelines created by the City of Montgomery, as enumerated in Section 27-99 of this Ordinance;
  - (7) If replacement of decorative poles is necessary to collocate a small wireless facility, such replacement shall reasonably conform to the design aesthetics of the decorative poles being replaced;
  - (8) If located in a historic district, as defined herein, the structures and facilities follow applicable design and concealment measures to protect the nature of the historic district;
  - (9) The area has not been designated solely for underground communications and electrical lines, provided that:
    - (A) The City of Montgomery required all such lines to be placed underground by a date certain that is at least three (3) months prior to submission of the permit application;
    - (B) The utility poles that the City of Montgomery allows to remain shall be made available for the collocation of small wireless facilities and may be replaced by a wireless provider to accommodate the collocation of small wireless facilities;
    - (C) A wireless provider may install a new utility pole in the designated area when unable to provide wireless service by collocating on a remaining structure; and
    - (D) If the small wireless facilities are installed before the City of Montgomery adopts requirements that communications and electric lines be placed underground, the wireless provider may:
      - (i) Maintain the small wireless facilities in place, subject to any applicable pole attachment agreement with the utility pole owner; or
      - (ii) Replace the associated utility pole within fifty (50) feet of the prior location, subject to the permission of the utility pole owner; and
  - (10) The structures and facilities are compliant with any other applicable local ordinance or state or federal law.
- (b) Any wireless facility or utility pole that does not meet the above requirements is not a permitted use.

**Section 27-99 Design Guidelines.**

- (a) Unless such guidelines prevent a wireless provider from serving a location in the City of Montgomery's jurisdiction, the following design guidelines shall apply to all small wireless facilities in the rights-of-way within the City of Montgomery's jurisdiction:
- (1) Small wireless facilities shall not obstruct or hinder the usual travel or public safety on the right-of-way or obstruct the legal use of such right-of-way by utilities or authorities.

- (2) Small wireless facilities shall not obstruct the safe operation of traffic control equipment or streetlights.
  - (3) Small wireless facilities shall not interfere with driver or pedestrian clear sight triangle for transportation or pedestrians.
  - (4) Small wireless facilities shall comply with all applicable federal and state standards regarding pedestrian access and movement.
  - (5) Small wireless facilities shall comply with generally applicable health and safety codes.
  - (6) Small wireless facilities shall be constructed in a manner to minimize physical damage to private property.
  - (7) Small wireless facilities shall be located in alleys to the greatest extent feasible as determined by the City of Montgomery.
  - (8) Small wireless facilities that are pole-mounted on decorative poles shall use concealed, camouflage, or stealth-style antennas in which all equipment is contained within the pole to which the antenna is mounted. The pole and antenna shall be painted to match the poles in the area or another color approved by the City of Montgomery.
  - (9) Small wireless facilities that are building-mounted shall use concealed, camouflaged, or stealth-style antennas to blend into the structure seamlessly by using one or more of the following methods approved by the City of Montgomery:
    - (i) Completely enclosed inside of a box that mimics the materials or aesthetics of the building to which the small wireless facility is mounted;
    - (ii) Completely concealed inside an existing portion of a building such as the cupola or screening for mechanical equipment; or
    - (iii) Completely concealed behind a parapet or other barrier so as to not be visible from any point at ground level on the right-of-way; and
  - (10) Small wireless facilities shall not be used to display a sign.
- (b) Unless such guidelines prevent a wireless provider from serving a location in the City of Montgomery's jurisdiction, the following design guidelines shall apply to all antennas associated with small wireless facilities within the City of Montgomery's jurisdiction:
- (1) An antenna shall be no more than three (3) cubic feet in volume.
  - (2) When mounted at the top of a utility pole, the antenna shall be aligned with the centerline of the utility pole and enclosed in a cylindrical shroud.
  - (3) When mounted at the top of a utility pole, a pole-top extension antenna shall be no taller than necessary for separation from other attachments.
  - (4) When mounted on or within a decorative pole, the antenna shall conform to the design aesthetics of that pole, including the design, style, and color.
  - (5) When mounted on another structure, the antenna shall not impair the function of the structure.
- (c) Unless such guidelines prevent a wireless provider from serving a location in the City of Montgomery's jurisdiction, the following design guidelines shall apply to all wireless equipment associated with antennas within the City of Montgomery's jurisdiction:
- (1) Where feasible, the wireless equipment shall be located inside of the utility pole on which the antenna is mounted.
  - (2) Where infeasible to locate the wireless equipment inside the utility pole, the wireless equipment shall be located in a ground-mounted cabinet and shall conform to the design aesthetics of the pole, including the design, style, and color or a design otherwise approved by the City of Montgomery. The ground-mounted cabinet shall be located within the same width of space parallel to the right-of-way boundaries as the pole on which the antenna is mounted. The ground-mounted cabinet shall not exceed thirty-six (36) inches in height.
  - (3) When located in alleys or non-improved rights-of-way, wireless equipment may be mounted on a utility pole, provided the wireless equipment is not located beyond the top of the utility pole. If a wireless provider chooses to mount the equipment on a utility pole in an alley or non-improved

- right-of-way, the equipment shall be flush-mounted and shall provide a minimum clearance of eight (8) feet above all streets, driveways, and sidewalks.
- (d) Unless such guidelines prevent a wireless provider from serving a location in the City of Montgomery's jurisdiction, all replacement utility poles within the City of Montgomery's jurisdiction shall be:
    - (1) Installed within three (3) feet of the location of the original pole; and
    - (2) Of a material and dimensions that matches existing adjacent poles or consistent with any published local standards for utility pole placements.
  - (e) Unless such guidelines prevent a wireless provider from serving a location in the City of Montgomery's jurisdiction, all new utility poles within the City of Montgomery's jurisdiction shall:
    - (1) Be aligned with the predominate pattern of existing poles where present, or with street trees along the same side of the right-of-way;
    - (2) Not be located directly in front of storefront windows, primary walkways, primary windows, or primary ingress/egress points to buildings;
    - (3) Be sited outside the critical root zone of existing street trees;
    - (4) Not impede vehicular or pedestrian traffic;
    - (5) Not be located where sidewalks are narrow;
    - (6) Not block any emergency service providers or emergency service access, including access to fire hydrants;
    - (7) Not be located upon any street or part of a street from which utility poles have been ordered removed by the City of Montgomery;
    - (8) Not be located on any street or side of a street where there is already an excess of poles; and
    - (9) Be spaced no closer than 200 feet apart.
  - (f) Unless such guidelines prevent a wireless provider from serving a location in the City of Montgomery's jurisdiction, all cables and wires associated with small wireless facilities within the City of Montgomery's jurisdiction shall:
    - (1) Be installed within the utility pole; or
    - (2) Be flush-mounted to the utility pole, and encased in cover or conduit, where internal installation is not feasible.
  - (g) If an electric meter is required, the electric meter shall be mounted in close proximity to the small wireless facility and have similar design characteristics.

#### **Section 27-100 Permit Application Requirements.**

- (a) Every wireless provider who wishes to collocate a small wireless facility or install or replace a utility pole in or outside of the right-of-way or modify an existing small wireless facility or utility pole in or outside the right-of-way must obtain a permit from the City of Montgomery under this Ordinance.
- (b) A wireless provider's permit application shall include the following:
  - (1) The applicant's name, address, phone number, email address, and a list of all duly authorized agents acting on behalf of the applicant.
  - (2) A general description of the proposed small wireless facility and associated pole, if applicable.
  - (3) Construction and engineering drawings and information demonstrating compliance with state law and this Ordinance, including a structural analysis of the pole where the applicant proposes to install the small wireless facility.
  - (4) An attestation that the small wireless facilities will be operational for use by a wireless provider within one (1) year after the permit issuance date, unless the City of Montgomery and the applicant agree to extend the period or delay is caused by lack of commercial power or communications transport facilities to the site.
  - (5) An attestation that the small wireless facility will comply with FCC regulations concerning (i) radiofrequency emissions from radio transmitters and (ii) unacceptable interference with the public safety spectrum and CII spectrum, including compliance with the abatement and resolution procedures for interference with the public safety spectrum and CII spectrum established by the

FCC set forth in 47 C.F.R. § 22.970 through 47 C.F.R. § 22.973 and 47 C.F.R. § 90.672 through 47 C.F.R. § 90.675.

- (6) Proof that the applicant maintains property insurance for its property's replacement cost against all risks, workers' compensation insurance as required by law, and commercial general liability insurance with respect to its activities on the City of Montgomery improvements or rights-of-way of not less than one million dollars (\$1,000,000) of coverage for damages, including bodily injury and property damage. The commercial general liability policy shall include the City of Montgomery as an additional insured party, and the wireless provider shall provide certification and documentation of such; except that if a wireless provider chooses to self-insure, the wireless provider does not have to name the City of Montgomery as an additional insured party, but shall provide to the City of Montgomery evidence sufficient to demonstrate its financial ability to self-insure the same coverage and limits required herein.
  - (7) An attestation that the applicant will provide a bond, escrow deposit, letter of credit, or other financial surety in an amount required by the City of Montgomery to ensure removal of abandoned or unused wireless facilities or damage to the right-of-way or the City of Montgomery property caused by the applicant or its agents, as set by the City of Montgomery, prior to beginning any installation.
  - (8) The appropriate fees, as further explained in Subsection (d) of this Section.
  - (9) An attestation that the applicant will notify the City of Montgomery and call the West Virginia 811 "Call Before You Dig" Hotline in order to locate all underground utilities at least seventy-two (72) hours before making any excavation.
- (c) A wireless provider that seeks to use a City of Montgomery utility pole shall provide the following additional information in its permit application:
- (1) The additional wind load that the wireless facility adds to the pole.
  - (2) A description of how the wireless provider will provide power to the small wireless facility.
  - (3) A description of how the small wireless facility would attach to the pole, including whether it would involve drilling holes into the pole or attaching bands to the pole.
  - (4) Whether there will be additional wire in the pole.
  - (5) An attestation that the small wireless facility will meet all clearance requirements if it is over the roadway.
  - (6) An attestation that the small wireless facility will not interfere with any other equipment signals on City of Montgomery utility poles.
- (d) *Fees.* A wireless provider's permit application shall be accompanied with the following fees:
- (1) Two hundred dollars (\$200) for the collocation of each small wireless facility on an existing utility pole for the first five (5) poles in the same application, followed by one hundred dollars (\$100) for each small wireless facility thereafter in the same application.
  - (2) Two hundred and fifty dollars (\$250) for the proposed installation, modification, or replacement of a utility pole and the collocation of an associated small wireless facility that is a permitted use.
  - (3) One thousand dollars (\$1,000) for the proposed installation, modification, or replacement of a utility pole and the collocation of an associated small wireless facility that is not a permitted use.
- (e) *Exemptions.* The City of Montgomery shall not require an additional application, approval, or permit, or require any fees or other charges from a wireless provider authorized to occupy the right-of-way, for the following:
- (1) Routine maintenance;
  - (2) The replacement of wireless facilities with wireless facilities that are substantially similar, the same size, or smaller; or
  - (3) The installation, placement, maintenance, operation, or replacement of micro wireless facilities that are suspended on existing cables that are strung between existing utility poles in compliance with applicable safety codes and the pole owner's construction standards and engineering practices.

### **Section 27-101 Permit Application Processing.**

- (a) All permit applications filed pursuant to this Ordinance shall be reviewed for completeness by the City of Montgomery. The City of Montgomery shall notify the applicant via certified mail whether the application is complete within ten (10) days of receiving the application.
- (b) If the application is incomplete, the City of Montgomery shall notify the applicant, in writing, what specific information is missing from the application. All deadlines required by this Section are tolled from the time the City of Montgomery sends the written notice of incompleteness to the time the City of Montgomery receives the missing information from the applicant.
- (c) A complete application for collocation of a small wireless facility shall be processed within sixty (60) days of the receipt of the complete application.
- (d) A complete application for the installation, modification, or replacement of a utility pole in the right-of-way shall be processed within ninety (90) days of the receipt of the complete application.
- (e) Within sixty (60) days of receiving a complete application for use of a City of Montgomery utility pole, the City of Montgomery shall provide a good faith estimate of any make-ready work necessary to enable the pole to support the requested collocation. If the applicant accepts the good faith estimate, the make-ready work shall be completed by the applicant within sixty (60) days of acceptance. Requirements for make-ready work are as follows:
  - (1) The City of Montgomery may require replacement of the City of Montgomery utility pole only if it demonstrates that the collocation would make the City of Montgomery utility pole structurally unsound;
  - (2) The person owning, managing, or controlling the City of Montgomery utility pole may not require more make-ready work than is required to meet applicable codes or industry standards;
  - (3) Fees for make-ready work may not include costs related to preexisting or prior damage or noncompliance; and
  - (4) Fees for make-ready work, including any pole replacement, may not exceed the actual costs or the amount charged to other communications service providers for similar work and may not include any consultant fee or expense.
- (f) Processing deadlines may also be tolled by agreement of the applicant and the City of Montgomery.
- (g) The City of Montgomery may deny the application if the application:
  - (1) Materially interferes with the safe operation of traffic control equipment;
  - (2) Materially interferes with sight lines or clear zones for transportation or pedestrians;
  - (3) Materially interferes with compliance with the Americans with Disabilities Act or similar federal or state standards regarding pedestrian access or movement;
  - (4) Fails to comply with the reasonable and nondiscriminatory spacing requirements of general application adopted by the City of Montgomery that concern the location of ground-mounted equipment and utility poles, as specified in Section 27-98 of this Ordinance;
  - (5) Fails to comply with the reasonable and nondiscriminatory rules approved by the City of Montgomery in Section 27-105 of this Ordinance;
  - (6) Fails to comply with the design guidelines in Section 27-99 of this Ordinance; or
  - (7) Fails to attest that a small wireless facility will comply with relevant FCC regulations.
- (h) If the City of Montgomery denies the application, it shall document the basis for the denial, including the specific provision on which the denial was based, and send the documentation to the applicant on or before the day the City of Montgomery denies the application. The applicant may cure the deficiencies identified within thirty (30) days without paying an additional application fee. If the applicant cures after thirty (30) days, the applicant shall pay an additional application fee in order for the revised application to be considered. The City of Montgomery shall have thirty (30) days to approve or deny the revised application.
- (i) The installation or collocation shall be completed within one (1) year after the permit issuance date unless the City of Montgomery and the applicant agree to extend the period or a delay is caused by the lack of commercial power or communications facilities at the site.

- (j) Upon approval of the application and posting of the reasonable bond, escrow deposit, letter of credit, or other financial surety required by the City of Montgomery to ensure removal of abandoned or unused wireless facility or damage to the right-of-way or City of Montgomery property, the applicant may undertake the installation or collocation and operate and maintain the small wireless facilities and associated utility poles.
- (k) An applicant may file a consolidated application and receive a single permit for the collocation of multiple small wireless facilities located within the City of Montgomery's jurisdiction. The denial of one (1) or more small wireless facilities in a consolidated application may not delay processing of any other small wireless facilities in the same batch.
- (l) Permits issued under this Ordinance authorize the applicant to operate and maintain the small wireless facilities and any associated utility poles that are covered by the permit for a period of ten (10) years.

**Section 27-102 Revocation of Permit.**

The City of Montgomery may revoke an applicant's permit at any time if the conditions of the permit required pursuant to Chapter 31H of the West Virginia Code are no longer being satisfied.

**Section 27-103 Rates.**

- (a) If an applicant's wireless facilities are located in a right-of-way, the applicant shall pay a rate of twenty-five dollars (\$25) per year, per small wireless facility for occupancy and use of the right-of-way.
- (b) If an applicant collocates its wireless facilities on a City of Montgomery utility pole, the applicant shall pay a rate of sixty-five dollars (\$65) per year, per City of Montgomery utility pole for the occupancy and use of the City of Montgomery utility pole.

**Section 27-104 Public Right-of-Way Requirements.**

- (a) The City of Montgomery may prohibit or restrict the applicant from working within a right-of-way when a road is closed, or its access is limited to the public.
- (b) The applicant shall employ due care during the installation, maintenance, or any other work in the right-of-way, and shall comply with all safety and right-of-way protection requirements of applicable laws, codes, guidelines, standards, and practices, and any additional commonly accepted safety and public right-of-way protection standards, methods, and devices to the extent consistent with applicable laws.
- (c) Unless otherwise specified in the permit, the applicant shall erect a barrier around the perimeter of any excavation and provide appropriate traffic control devices, signs, and lights to protect, warn, and guide the public (vehicular and pedestrian) through the work zone. The manner and use of these devices shall be described within a traffic control plan in accordance with the Uniform Manual of Traffic Control Devices. The applicant shall maintain all barriers and other traffic control and safety devices related to an open excavation until the excavation is restored to a safe condition or as otherwise directed by the City of Montgomery.
- (d) The applicant shall not interfere with any existing facilities or structures in the right-of-way, and shall locate its lines and equipment in such a manner as not to interfere with the usual traffic patterns (vehicular or pedestrian) or with the rights or reasonable convenience of owners of property that abuts any right-of-way.
- (e) If the City of Montgomery determines that a small wireless facility or utility pole violates the building code or otherwise creates a danger to the public's health, safety, and welfare, the City of Montgomery shall follow the processes and procedures laid out in the West Virginia State Building Code.
- (f) Any damage to the right-of-way directly caused by an applicant's activities in the right-of-way shall be repaired in order to return the right-of-way to its functional equivalence before the damage. After the applicant receives written notice, the City of Montgomery may assess a fine of one hundred dollars (\$100) per day until the repairs are completed. If the applicant fails to make the repairs required by the City of Montgomery within a reasonable time after written notice, the City of

Montgomery may complete the repairs and charge the applicant for the reasonable, documented cost of the repairs in addition to the one hundred dollar (\$100) daily fine.

**Section 27-105 Additional Local Rules.**

- (a) The City of Montgomery is authorized to create reasonable rules for construction and public safety in the rights-of-way, including wiring and cabling requirements, grounding requirements, and abandonment and removal provisions, to the extent any additional rules are necessary.
- (b) These rules shall be applied in a nondiscriminatory manner and shall be posted publicly on the City of Montgomery's website and shall be available to the public in print at the City Clerk's office. If the City of Montgomery determines that no additional rules are necessary, the City of Montgomery's website shall state that no additional rules apply. The City of Montgomery may change the guidelines in a prospective manner for all permit applications moving forward but shall not change requirements on any applicant who has already applied for a permit. Each new or modified small wireless facility or utility pole installed in the right-of-way shall comply with the City of Montgomery current rules for construction and public safety as of the time of the permit application.

**Section 27-105a Indemnification.**

Any wireless provider who owns or operates small wireless facilities or utility poles in the right-of-way shall indemnify, protect, defend, and hold the City of Montgomery and its elected officials, officers, employees, agents, and volunteers harmless against any and all claims; lawsuits; judgments; costs; liens; losses; expenses; fees to include reasonable attorney fees and costs of defense; proceedings; actions; demands; causes of action; liability and suits of any kind and nature, including personal or bodily injury or death; or property damage or other harm for which recovery of damages is sought, to the extent that it is caused by the negligence of the wireless provider who owns or operates small wireless facilities or utility poles in the right-of-way, any agent; officer; director; representative; employee; affiliate; contractor, or subcontractor of the wireless provider; or their respective officers, agents, employees, directors, or representatives while installing, repairing, or maintaining facilities in rights-of-way.

**Article XVI Signs**

**Section 27-106 Findings, Purpose, and Intent; Interpretation.**

- (a) Signs obstruct views, distract motorists, displace alternative uses for land, and pose other problems that legitimately call for regulation. The purpose of this Article is to regulate the size, color, illumination, movement, materials, location, height, and condition of all signs placed on property for exterior observation, thus ensuring the protection of property values; preservation of the character of the various neighborhoods; creation of a convenient, attractive, and harmonious community; protection against destruction of or encroachment upon historic areas; and the safety and welfare of pedestrians and wheeled traffic, while providing convenience to citizens and encouraging economic development. This Article allows adequate communication through signage while encouraging aesthetic quality in the design, location, and size of signs. These regulations do not entirely eliminate all of the harms that may be created by the installation and display of signs. Rather, they strike an appropriate balance that preserves ample channels of communication by means of signs while still reducing and mitigating the extent of the harms caused by signs.
- (b) This Article shall be interpreted in a manner consistent with the First Amendment guarantee of free speech. If any provision of this Article is found by a court of competent jurisdiction to be invalid, such finding shall not affect the validity of other provisions of this Article that can be given effect without the invalid provision.
- (c) Signs not expressly permitted under this code are prohibited.

**Section 27-107 Permit Required.**

- (a) *Application for permit.* Except as provided in this code, a permit is required prior to the display and erection of any sign.
- (1) An application for a permit shall be filed with the Zoning Officer on forms furnished by the City. The applicant shall provide sufficient information to determine if the proposed sign is permitted under this code and other applicable law. An application for a temporary sign shall state the dates intended for the erection and removal of the sign. All applications shall demonstrate that the materials used for the sign are appropriate for the particular sign type; the submission of manufacturer's specifications is sufficient to demonstrate the use of appropriate materials. An application for an electronic message display shall include the manufacturer's statement that the sign has been pre-programmed, to the extent possible, to conform to the requirements of this code. Such manufacturer's statement shall include, where applicable, the pre-stacked sign settings related to text and graphic features, message change features, message change time intervals, day and night lighting requirements, and any other settings capable of limiting the electronic message display such that the sign conforms to this code.
  - (2) The Zoning Officer shall promptly process the permit application and approve the application, reject the application, or notify the applicant of deficiencies in the application within twenty (20) business days after receipt. Any application that complies with all provisions of this code, the building code, and other applicable laws, shall be approved.
  - (3) If the application is rejected, the Zoning Officer shall provide a list of the reasons for the rejection in writing. An application shall be rejected for noncompliance with the terms of this code, building code, or other applicable law.
- (b) *Permit fee.* A nonrefundable fee shall accompany all permit applications. The permit fee schedule shall be set by the City.
- (c) *Duration and revocation of permit.* If a sign is not installed within six (6) months following the issuance of a permit or the time period stated within the permit, or within thirty (30) days for a temporary permit, the permit shall be void. The permit for a temporary sign shall state its duration, not to exceed thirty (30) days unless otherwise provided in this code. The Zoning Officer may revoke a permit under any of the following circumstances:
- (1) The information in the application was materially false or misleading;
  - (2) The sign as installed does not conform to the permit application; or
  - (3) The sign violates this code, building code, or other applicable law.
- (d) *Appeals.* Appeals from the denial or granting of a permit shall be made to the Board of Zoning Appeals pursuant to the process set forth in this code.

#### **Section 27-108 Permit Not Required.**

The purpose of not requiring a permit for some signage is to exempt certain signs that are frequently used, often by private citizens, and that typically have less of an impact on the public safety and aesthetic concerns of the community. Signs permitted under this Section count towards the maximum sign area and maximum number of signs allowed per use. A permit is not required for:

- (a) Signs required by law.
- (b) Flags up to sixteen (16) square feet.
- (c) The changing of messages on marquees and the repair of an existing permitted sign, except that repair of a nonconforming sign must comply with this code.
- (d) Temporary signs as follows, subject to sign area and height limitations of the district in which the sign is located:
  - (1) One (1) sign, no illumination, no more than twelve (12) square feet in area, located on property where a building permit is active.
  - (2) On any property for sale or rent, one sign with a total area of up to twelve (12) square feet and a maximum height of six (6) feet.

- (3) On dwellings, no more than four (4) temporary signs at one time with a total area of no more than twelve (12) square feet, and that are removed within thirty (30) days after being erected.
- (4) Window signs, provided that the total area of window signs does not exceed twenty-five (25%) percent of the total area of all windows on each building façade, and such signs are removed within thirty (30) days after being erected.
- (5) On any property where a new use began activity within the last six (6) months, banners for not more than fifteen (15) days.
- (e) Two (2) minor signs per use.
- (f) Pavement markings. Any sign applied directly and entirely to and flush with an asphalt, concrete, or similar paved surface.
- (g) A permanent window sign, provided that the aggregate area of all window signs on each window or door does not exceed twenty-five (25%) percent of the total area of the window or door.

### **Section 27-109 Prohibited Signs.**

The purpose of prohibiting the following signage is to address the community's substantial public safety and welfare concerns, including aesthetic concerns and protecting property values, associated with certain types of signage. In addition to signs prohibited elsewhere in this code or by applicable state or federal law, the following signs are prohibited:

- (a) *General prohibitions.*
  - (1) Signs that violate any state or federal law relating to outdoor advertising or in violation of this code.
  - (2) Signs attached to natural vegetation.
  - (3) Signs simulating, or that are likely to be confused with, a traffic control sign or any other sign displayed by a public authority.
  - (4) Vehicle or trailer signs, defined as any sign attached to or displayed on a vehicle, if the vehicle or trailer is used primarily to display a commercial message it fails to display current license plates, inspection sticker, or municipal decal; if the vehicle is inoperable; if evidence of paid-to-date local taxes cannot be made available; or if the sign alters the standard design of such vehicle or trailer.
  - (5) Animated signs, except where animated sign features as part of an electronic message display are expressly permitted.
  - (6) Flashing signs or other signs displaying flashing, scrolling, or intermittent lights or lights of changing degrees of intensity, except where flashing sign features as part of an electronic message display are expressly permitted.
  - (7) Beacons, except where light is cast onto a building located on the same lot as the beacon.
  - (8) Signs made of plywood.
  - (9) Signs limiting the flow of pedestrian traffic.
- (b) *Prohibitions based on materials.*
  - (1) Signs consisting of illuminated tubing or strings of lights outlining property lines or open sales areas, rooflines, doors, windows, or wall edges of any building, except for temporary decorations not to exceed three (3) months per year.
  - (2) Signs that emit smoke, flame, scent, mist, aerosol, liquid, or gas.
  - (3) Signs that emit sound.
  - (4) Neon signs, except in windows where expressly permitted in a district.
- (c) *Prohibitions based on location.*
  - (1) Off-premises signs, unless expressly permitted under this code.
  - (2) Signs erected on public land other than those approved by the Zoning Officer in writing, required by law without such approval, or permitted under West Virginia law. Any sign not so authorized is subject to immediate removal by the City, with the costs charged to the owner or person having control of such sign, with payment due within thirty (30) days of notice of charges. Removal of the sign under this provision does not preclude prosecution of the person responsible for the sign.

- (3) Signs on the roof surface or extending above the roofline of a building or its parapet wall greater than five (5) square feet in area.
- (4) Any sign located in the vision triangle formed by any two (2) or more intersecting streets or any street and alley.
- (5) Window signs with an aggregate area on a window or door in excess of twenty-five (25) percent of the total area of the window or door or located above the first floor unless the related use is only on the floor where the window sign is displayed.

**Section 27-110 General Requirements.**

- (a) *Setback and placement.* Except as otherwise expressly permitted, all freestanding signs and flagpoles shall be set back from any public right-of-way at least the height of the sign. Electronic message displays shall be placed perpendicular to residential structures where possible and shall comply with Federal Communications Commission regulations, including the avoidance of harmful interference with radio frequencies.
- (b) *Illumination.* The purpose of the following provisions regulating signage lighting is to ensure that signs are lighted in such a manner as to maintain aesthetic consistency with signs already existing in the city and to ensure the safety of drivers and pedestrians, while also ensuring that signs are adequately able to convey sign messages.
  - (1) Definitions.
    - (i) “Candela” means the basic unit of measurement of light in SI (metric) units.
    - (ii) “Candela per square meter (cd/m<sup>2</sup>)” means the SI (metric) unit used to describe the luminance of a light source or of an illuminated surface that reflects light. Also referred to as Nits.
    - (iii) “Nit” means a photometric unit of measurement referring to luminance. One nit is equal to one cd/m<sup>2</sup>.
    - (iv) “SI (International System of Units)” means the modern metric system of measurement, abbreviated SI for the French term “Le Systeme International d’Unites.”
  - (2) A sign in any district may be illuminated at night. Signs that are illuminated at night may not exceed a maximum luminance level of seven hundred and fifty (750) cd/m<sup>2</sup> or Nits, regardless of the method of illumination, at least one-half (0.5) hour before Apparent Sunset, as determined by the National Oceanic and Atmospheric Administration (NOAA), US Department of Commerce, for the specific geographic location and date. All illuminated signs must comply with this maximum luminance level throughout the night, if the sign is energized, until Apparent Sunrise, as determined by the NOAA, at which time the sign may resume luminance levels appropriate for daylight conditions.
  - (3) The maximum luminance during daylight conditions, between Apparent Sunrise and one-half hour before Apparent Sunset, shall be ten thousand (10,000) cd/m<sup>2</sup> or Nits.
  - (4) All permanent signs may be backlit, internally lighted, or indirectly lighted, subject to lighting limitations in this code. All external sign lighting shall have lighting fixtures or luminaires that are fully shielded.
  - (5) Temporary signs shall not be lighted.
- (c) *Maximum height measurements.* Wall signs and other signs with sign structures not affixed to the ground are measured from the lowest attached component of the sign to the highest attached component of the sign. The height of signs with sign structures affixed to the ground is measured as the distance from the base of the sign at normal grade to the top of the highest attached component of the sign, subject to limitations in this Article. Normal grade is the lower of:
  - (1) Existing grade prior to construction; or
  - (2) The newly established grade after construction, exclusive of any filling, berming, mounding, or excavating primarily for the purpose of mounting or elevating the sign.
- (d) *Measurement of sign area.* Sign area is calculated under the following principles:

- (1) With signs that are regular polygons or circles, the area can be calculated by the mathematical formula for that polygon or circle. With signs that are not regular polygons or circles, the sign area is calculated using all that area within a maximum of three abutting or overlapping rectangles that enclose the sign face.
- (2) The permitted area of a double-faced, a-frame sign shall be considered to be the area on one side only. If one face contains a larger sign area than the other, the larger face shall be used in calculating the sign area.
- (3) For projecting signs, the sign area also includes the area of the visible sides of the sign, calculated as a rectangle enclosing each entire side view.
- (4) Supports, uprights, or structures on which any sign is supported shall not be included in determining the sign area unless such supports, uprights, or structure are designed in such a way as to form an integral background of the display; except, however, when a sign is placed on a fence, wall, planter, or other similar structure that is designed to serve a separate purpose other than to support the sign, the entire area of such structure shall not be computed.
- (5) In instances where there are multiple tenants or users on a property or in a building, allowable sign area for all parties shall not exceed the maximum sign area computed based upon the number of tenants multiplied by forty (40) square feet per tenant. In no case shall any tenant sign exceed forty (40) square feet.
- (6) All signs displayed, whether permanent or temporary, and regardless of the type of sign are counted toward the maximum sign area allowed per use.
- (e) *Number of signs.* All signs displayed on a lot, whether permanent or temporary, and regardless of the type of sign are counted towards the maximum number of signs permitted per use.
- (f) *Wall signs.*
  - (1) Wall signs larger than sixty (60) square feet shall provide as part of a zoning permit application:
    - (i) Express permission from the operator or owner of the building;
    - (ii) The name and address of the person applying the wall sign; and
    - (iii) A clear drawing of the proposed wall sign including dimensions and location.
  - (2) Wall signs larger than sixty (60) square feet are subject to the design review standard in Subsection (g).
- (g) *Design review standards for signs.* Design review standards shall apply to wall signs in excess of sixty (60) square feet. The Board of Zoning Appeals shall issue zoning permits for signs within forty (40) business days. In determining whether a sign is compatible with the theme and overall character to be achieved in each zoning district or overlay, the Board of Zoning Appeals shall base its compatibility determination on the following criteria:
  - (1) The relationship of the scale and placement of the sign to the building or premises on which it is to be displayed.
  - (2) The relationship of the colors of the sign to the colors of adjacent buildings and nearby signs.
  - (3) The similarity or dissimilarity of the sign's size and shape to the size and shape of other signs in the area.
  - (4) The similarity or dissimilarity of the style of lettering or number of words on the sign to the style of lettering or number of words of nearby signs.
  - (5) The compatibility of the type of illumination, if any, with the type of illumination in the area.
  - (6) The compatibility of the materials used in the construction of the sign with the materials used in the construction of other signs in the area.

**Section 27-111 Nonconforming Signs.**

- (a) Signs lawfully existing on the effective date of this code that do not conform to the provisions of this code, and signs that are accessory to a nonconforming use shall be deemed nonconforming signs and may remain except as qualified below.

- (1) Nonconforming signs shall not be enlarged nor shall any feature of a nonconforming sign, such as illumination or technology, be increased.
  - (2) Nonconforming signs shall not be extended, structurally reconstructed, altered in any manner, or replaced with another nonconforming sign nor increased in technological advancement, except as permitted by this code.
  - (3) Nonconforming signs shall not be moved for any distance on the same lot or to any other lot unless such change in location will make the sign conform in all respects to the provisions of this Article.
  - (4) A nonconforming sign that is destroyed or damaged by any casualty to an extent not exceeding fifty (50) percent of the sign's area may be restored within six (6) months after such destruction or damage, but shall not be enlarged, nor may the sign's nonconformity be increased. If such sign is so destroyed or damaged to an extent exceeding fifty (50) percent of the sign's area, the sign shall not be reconstructed but may be replaced with a sign that is in full accordance with this code.
  - (5) Nonconforming sign structures shall be removed if the use to which they are accessory has not been in operation for a period of one (1) year or more. Such sign structure shall be removed or made conforming by the owner or lessee of the property. If the owner or lessee fails to remove or make conforming the sign structure within thirty (30) days of notice by the Zoning Officer, the Zoning Officer may cause the sign to be made conforming or removed and the cost of such removal or modification shall be charged to the owner, person having control, or person receiving benefit from such sign, with payment due within thirty (30) days of notice of charges.
  - (6) If a nonconforming sign is altered such that the sign is conforming or is replaced by a conforming sign, such sign shall thereafter be kept in accordance with the provisions of this code.
- (b) The burden of establishing nonconforming status of signs and the physical characteristics and location of such signs shall be with the owner of the property. Upon notice from the Zoning Officer, a property owner shall submit verification that sign(s) were lawfully erected. Failure to provide such verification shall cause the sign to be deemed an illegal sign.
  - (c) Nothing in this Section shall prevent keeping a nonconforming sign in good repair.

**Section 27-112 Maintenance and Removal.**

- (a) All signs shall be constructed and mounted in compliance with the building code. All signs and components thereof shall be maintained in good repair and in a safe, neat, and clean condition.
- (b) *Safety hazard.* The Zoning Officer may cause to have removed or repaired immediately without written notice any sign that has become insecure, in danger of falling, or otherwise unsafe, and, as such, presents an immediate threat to the safety of the public. If such action is necessary to render a sign safe, the cost of such emergency removal or repair shall be charged to the owner, person having control, or person receiving benefit from such sign, with payment due within thirty (30) days of notice of charges.
- (c) *Nuisance.* Any sign that constitutes a nuisance shall be abated by the owner within thirty (30) days of notice by the Zoning Officer. At any time, the Zoning Officer may cause the nuisance to be abated with the costs charged to the owner, person having control, or person receiving benefit from such sign, with payment due within thirty (30) days of notice of charges.
- (d) *Illegal sign and disrepair.* Any sign that is illegal or in disrepair shall be made conforming or repaired within thirty (30) days of notice from the Zoning Officer. Signs of disrepair include chipped paint, missing or significantly faded letters or other aspects of the sign, cracked portions of the sign face, broken lighting, graffiti, and unlevelled portions of the sign structure or face. If an illegal sign or a sign in disrepair is not made conforming or repaired, the Zoning Officer may cause the sign to be removed or repaired and the cost of such removal or repair shall be charged to the owner, person having control, or person receiving benefit from such sign, with payment due within thirty (30) days of notice of charges.

- (e) *Expired permit.* Any sign for which a permit has expired shall be removed within five (5) days of the permit expiration. If the sign is not removed, the Zoning Officer may cause the sign to be removed and the cost of such removal shall be charged to the owner, person having control, or person receiving benefit from such sign, with payment due within thirty (30) days of notice of charges.
- (f) The owner of any commercial sign, whether conforming or nonconforming, other than a permitted off-premises sign, located on commercial property where the use or business has ceased operating shall, within sixty (60) days of the cessation of the use or business operation, remove temporary signs and all aspects of any permanent signs that refer to the use or business. Property owners may request, in writing, a waiver of such requirement, if the use is temporarily or seasonally operational, is remodeling, or otherwise has the good will intention of resuming the use within one (1) year of time of cessation.

### **Section 27-113 Temporary Signs.**

Temporary signs pose distinct concerns with visual clutter, safety in erection and display, and removal when the time for display has concluded. Temporary signs also pose distinct concerns with materials quality. The following provisions and individual zoning of temporary signs per district serve to address these concerns.

- (a) Temporary signs require a permit, except as provided in this Article. Noncommercial temporary signs are permitted up to thirty (30) days each calendar year. Commercial temporary signs are permitted for thirty (30) consecutive days up to three (3) times per year.
- (b) A use may erect one temporary, off-premises sign on property in any district where permitted, except residential districts, with the consent of the persons in charge of such properties, no more than two (2) times in one calendar year. Each sign shall be no more than eight (8) feet in height and sixteen (16) square feet in area, and such area counts against the maximum sign area permitted on that lot.
- (c) No more than one (1) temporary, off-premises sign may be displayed per lot.
- (d) Temporary signs shall be securely affixed to the ground or a building, or a pole designated only to a single temporary sign.
- (e) Person-assisted signs shall not be located more than ten (10) feet from the entrance to a building or within ten (10) feet of a right-of-way.
- (f) Temporary signs shall be constructed of durable weatherproof materials.

### **Section 27-114 Signs for Single Family, Multi Family, and Factory Built Home Neighborhood Zoning Districts.**

- (a) *Purpose.* Signage in residential districts poses a heightened risk of visual blight and unsightly clutter, as residential neighborhoods typically contain markedly less signage than other districts in order to maintain the residential character of the neighborhood. At the same time, communicating from one's residence is a distinct and impactful form of speech that should be protected, and nonresidential uses should be afforded adequate signage incidental to the primary use, i.e. on-premises signs. Signs permitted in these districts are smaller, fewer in number, and limited in sign type in order to limit visual clutter and distraction, while affording ample speech.
- (b) *Signs permitted as accessory to dwellings.*
  - (1) Permitted permanent sign use as accessory to dwellings: Flag, Geological, Minor, Topiary, and Wall. Only wall signs are permitted on river frontage. No more than four (4) permanent signs are permitted by right per dwelling.
  - (2) Permitted temporary signs as accessory to dwellings: Banner, Beacon, Chalkboard, Feather, Flag, Inflatable/Tethered, Minor, Pennant, Wicket, and Window. Only flags and banners are permitted on river frontage. No more than five (5) temporary signs are permitted by right per dwelling.
  - (3) No more than four (4) flags as accessory to dwellings.
- (c) *Signs permitted as accessory to non-dwellings.*

- (1) Permitted permanent sign use as accessory to non-dwellings: Changeable Copy, Flag, Geological, Minor, Monument, Projecting, Topiary, and Wall. Only wall signs are permitted on river frontage. No more than three (3) permanent signs are permitted by right per use.
- (2) Permitted temporary signs: Banner, Beacon, Chalkboard, Changeable Copy, Feather, Flag, Inflatable/Tethered, Minor, Pennant, Wicket and Window. Only flags and banners are permitted on river frontage. No more than five (5) temporary signs are permitted by right per use.
- (3) No more than four (4) flags.
- (d) *Dimension specifications chart.* All maximum sign area requirements include the sum total sign area of all signs per use.

	Permanent Accessory to Dwellings	Permanent Accessory to Non-dwellings	Temporary Accessory to Dwellings and Non-dwellings	Flags
Max. Sign Area	4 sq. ft.	32 sq. ft.	24 sq. ft.	48 sq. ft. each
Max. Height	4 ft.	5 ft.	4 ft.	25 ft.

**Section 27-116 Signs for Downtown Commercial and General Commercial District.**

- (a) *Purpose.* Signage in commercial districts is allowed to a somewhat greater extent while maintaining proportion to the size and scope of uses typically present. However, even these more intensive uses in smaller communities are limited in signage to some degree in order to maintain small-town character and limit visual distraction by signage.
- (b) Permitted sign use as accessory to dwellings shall be the same as for Section 27-114.
- (c) *Signs permitted as accessory to non-dwellings.*
  - (1) Permitted permanent sign use as accessory to non-dwellings: Awning/Canopy, Changeable Copy, EMD static, EMD static w/transition, Flag, Geological, Minor, Monument, Neon, Projecting, Topiary, Wall, and Window. Only wall signs are permitted on river frontage. No more than five (5) permanent signs are permitted by right per use.
  - (2) Permitted temporary signs: A-Frame, Banner, Beacon, Chalkboard, Changeable Copy, Feather, Flag, Inflatable/Tethered, Minor, Pennant, Person-assisted, Wicket, and Window. Only flags and banners are permitted on river frontage. No more than three (3) temporary signs are permitted by right per use.
  - (3) No more than four (4) flags.
- (d) *Dimension specifications chart.* All maximum sign area requirements include the sum total sign area of all signs per use. Wall signs shall not be subject to maximum height or area requirements.

	Freestanding Signs	Other Permanent Signs	Temporary Signs	Flags	Wall Signs on River Frontage
Max. Sign Area	50 sq. ft.	60 sq. ft.	45 sq. ft.	48 sq. ft. each	180 sq. ft.
Max. Height	20 ft.	10 ft.	15 ft.	25 ft.	10 ft.

**Section 27-117 Signs for Industrial District.**

- (a) *Purpose.* Signage in heavier commercial and industrial districts is allowed to a greater extent, in size, number, and sign type, in order to maintain proportion to the size and scope of uses typically present within these districts. However, even the most intensive use districts in smaller communities are still limited in signage to some degree in order to maintain the small town character of smaller communities and to limit visual distraction by signage.
- (b) Permitted sign use as accessory to dwellings shall be the same as for Section 27-114.

- (c) *Signs permitted as accessory to non-dwellings.*
- (1) Permitted permanent sign use as accessory to non-dwellings: A-Frame; Awning/Canopy; Banner; Changeable Copy; EMD, static; EMD, static w/transition; Flag; Freestanding; Geological; Minor; Monument; Topiary; Wall; and Window. Only wall signs are permitted on river frontage. No more than six (6) permanent signs are permitted by right per use.
  - (2) Permitted temporary signs: A-Frame, Banner, Beacon, Chalkboard, Changeable Copy, Feather, Flag, Inflatable/Tethered, Minor, Pennant, Person-assisted, Wicket, and Window. Only flags and banners are permitted on river frontage. No more than three (3) temporary signs are permitted by right per use.
  - (3) No more than four (4) flags.
- (d) *Dimension specifications chart.* All maximum sign area requirements include the sum total sign area of all signs per use. Wall signs shall not be subject to maximum height or area requirements.

	Freestanding Sign	Other Permanent Signs	Temporary Signs	Flags	Wall Signs on River Frontage
Max. Sign Area	100 sq. ft.	100 sq. ft.	75 sq. ft.	1,800 sq. ft. each	180 sq. ft.
Max. Height	50 ft.	10 ft.	10 ft.	110 ft.	10 ft.

**Section 27-117a Signs for Conservation District.**

- (a) *Purpose.* On-premises signage in conservation areas is essential for the operation of a variety of uses. However, in order to maintain the natural beauty of these areas, signage that is less intrusive by being smaller, shorter in height, and more uniform in sign type should be utilized to preserve the aesthetic qualities of these distinct areas.
- (b) Permitted sign use as accessory to dwellings shall be the same as for Section 27-114.
- (c) *Signs permitted as accessory to non-dwellings.*
- (1) Permitted permanent sign use as accessory to non-dwellings: flag, freestanding, geological, monument, topiary. No more than three (3) permanent signs are permitted by right per use.
  - (2) Permitted temporary signs: Banner, Beacon, Chalkboard, Feather, Flag, Inflatable/Tethered, Minor, Pennant, Person-assisted, Wicket, and Window. No more than six (6) temporary signs are permitted by right per use.
  - (3) No more than five (5) flags.
- (d) *Dimension specifications chart.* All maximum sign area requirements include the sum total sign area of all signs per use.

	Freestanding Sign	All Other Permanent Signs	Temporary Signs	Flags	Wall Signs on River Frontage
Max. Sign Area	75 sq. ft.	25 sq. ft.	75 sq. ft.	48 sq. ft. each	180 sq. ft.
Max. Height	10 ft.	5 ft.	10 ft.	25 ft.	10 ft.

**Article XVII Administration; Enforcement**

**Section 27-118 Purpose.**

The purpose of this chapter is to ensure that the processes by which the ordinance is effectuated have been clearly identified and delineated. This Article outlines the duties and powers of the Board of Zoning Appeals, the zoning permit process, the appeals process, and other enforcement related provisions.

**Section 27-119 Powers and Duties of the Zoning Officer.**

City Council shall appoint a Zoning Officer, who shall have the authority to administer and enforce this ordinance, including but not limited to the following:

- (a) Keep a record of plans and applications for permits and all permits issued with notations as to special conditions. All records shall be open for public inspection.
- (b) Review permit applications and notifications as necessary to determine compliance with the provisions of this ordinance. No permit shall be issued unless it conforms to all applicable ordinances, statutes, and regulations.
- (c) All questions of interpretation and enforcement shall be initially presented and determined by the Zoning Officer. Subsequent recourse shall be, in order, to the Board of Zoning Appeals and the courts.
- (d) Upon finding that provisions of this ordinance have been violated, notify the person or party in writing responsible for the violation(s), order the action necessary to correct the violation, and if correction is not completed within the time specified in the notice of violation, begin legal actions necessary to compel correction of the violation.
- (e) Maintain official zoning maps.
- (f) Provide information on planning and zoning upon request by citizens and public agencies.
- (g) Submit at least annually, a written report to City Council on all permits issued and notice and orders issued.
- (h) Perform additional tasks and duties as may be prescribed by the City Council.

**Section 27-120 Zoning Permit.**

- (a) No building or structure shall be constructed, erected, expanded, enlarged, or otherwise structurally altered until a zoning permit has been issued by the Zoning Officer.
- (b) Applications for a zoning permit shall be made available at City Hall.
- (c) All applications for zoning permits shall be made in writing by the owner or authorized agent and shall be filed with the Zoning Officer. The application shall:
  - (1) Include a statement as to the proposed use of the structure or land.
  - (2) Be accompanied by a plan, drawn to scale, showing the dimensions of the lot to be built upon, the exact size and location of the building to be constructed upon the lot, accessory buildings to be erected, and such other information as may be deemed necessary by the Zoning Officer in determining and providing for the enforcement of this code.
- (d) If the zoning permit application is approved by the Zoning Officer, then an appropriate placard issued by the City and containing the approval of the Zoning Officer, shall be returned together with the zoning permit to the applicant, following payment of the appropriate fee. The placard shall be posted by the applicant in a conspicuous place upon the building or construction site prior to the commencement of any construction and shall remain upon the building or construction site during all construction operations.
- (e) A zoning permit does not alleviate the necessity to obtain a building permit as required by the City of Montgomery City Code.

**Section 27-121 Fees.**

Fees to be charged for the issuance of a zoning permit shall be determined by City Council.

**Section 27-122 Violations and Penalties.**

- (a) Any person who violates any provision of this chapter is guilty of a misdemeanor, and upon conviction, shall be punished for each offense by a fine not less than \$50.00 nor more than \$500.00. Each day the violation continues shall be considered a separate offense. Work carried on in violation of the cancellation of any permit issued under this chapter shall also be deemed a violation punishable in the same manner.
- (b) Any buildings erected, raised, or converted, or land or premises used in violation of any provision of this ordinance is declared a common nuisance and the owner of the building, land, or premises shall be liable for maintaining a common nuisance.

**Section 27-123 Injunction.**

- (a) The Planning Commission, Montgomery Board of Zoning Appeals, or any designated enforcement official may seek an injunction in the applicable Circuit Court of West Virginia, to restrain the owner, tenant, occupant, other persons or persons responsible, or unit of government from violating the provision of this ordinance or any rule, regulation, or requirement adopted or established hereunder.
- (b) The Planning Commission, Montgomery Board of Zoning Appeals, or any designated enforcement official may also seek a mandatory injunction in the applicable Circuit Court of West Virginia, directing the owner, tenant, occupant, other persons or persons responsible, or unit of government to remove a structure erected in violation of the provisions of this ordinance or rule, regulation, or requirement adopted or established hereunder.
- (c) If the Planning Commission, Montgomery Board of Zoning Appeals, or any designated enforcement official is successful in any suit brought under this Section, the respondent shall bear the costs of the action.

**Section 27-124 Amendments to Zoning Ordinance.**

- (a) The Montgomery City Council may amend this ordinance. Before amending this ordinance, the City Council with the advice of the Planning Commission, must find that the amendment is consistent with the adopted comprehensive plan. If the amendment is inconsistent, then the governing body with the advice of the Planning Commission, must find that there have been major changes of an economic, physical, or social nature within the area involved that were not anticipated when the comprehensive plan was adopted and those changes have substantially altered the basic characteristics of the area.
- (b) The City Council may amend this ordinance without holding an election, holding an election on the proposed amendment, or holding an election on the proposed amendment pursuant to a petition.

**Article XVIII Board of Zoning Appeals; Appeals**

**Section 27-125 Board of Zoning Appeals (BZA) Created.**

There is hereby created a board of zoning appeals to hear appeals on zoning issues and to hear conditional use permit application and variance applications to be known as the City of Montgomery Board of Zoning Appeals.

**Section 27-126 BZA Membership; Eligibility Requirements.**

- (a) The City of Montgomery Board of Zoning Appeals shall have 5 members to be appointed by the governing body. The members of the City of Montgomery Board of Zoning Appeals shall be residents of the City of Montgomery for at least three (3) years preceding the member's appointment. A member cannot be a member of the Planning Commission and cannot hold any other elective or appointive office in the City of Montgomery.
- (b) The members shall be appointed for the following terms: One (1) for a term of one (1) year; two (2) for a term of two (2) years; and two (2) for a term of three (3) years. The terms shall expire on the first day of January of the first, second, and third years, respectively, following appointment. Thereafter, members shall serve three (3) year terms. If a vacancy occurs, the governing body shall appoint a member for the unexpired term.
- (c) The governing body may appoint up to three (3) additional members to serve as alternate members of the City of Montgomery Board of Zoning Appeals. The alternate members must meet the same eligibility requirements as set out in Subsection (a) of this Section. The term for an alternate member is three (3) years. The governing body may appoint alternate members on a staggered term schedule.
- (d) An alternate member shall serve on the Board when one (1) of the regular members is unable to serve. The alternate member shall serve until a final determination is made in the matter to which the alternate member was initially called on to serve during the alternate member's term.

- (e) The City of Montgomery Board of Zoning Appeals shall establish written rules and procedures for designating an alternate member. An alternate member shall have the same powers and duties of a regular board member.
- (f) The members and alternate members of the City of Montgomery Board of Zoning Appeals shall serve without compensation, but shall be entitled to be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their official duties.

**Section 27-127 Meeting of the Board of Zoning Appeals.**

- (a) The City of Montgomery Board of Zoning Appeals shall meet at least quarterly and may meet more frequently at the written request of the chairperson or by two (2) or more members.
- (b) Notice for a special meeting must be in writing, include the date, time, and place of the special meeting, and be sent to all members at least two (2) days before the special meeting.
- (c) Written notice of a special meeting is not required if the date, time, and place of the special meeting were set in a regular meeting.
- (d) The City of Montgomery Board of Zoning Appeals must have a quorum to conduct a meeting. A majority of the members of the Board shall constitute a quorum. No action of the Board is official unless it is authorized by a majority of the members present at a regular or properly called special meeting.
- (e) At its first regular meeting of each year, the City of Montgomery Board of Zoning Appeals shall elect a chairperson and vice chairperson from its membership. The vice chairperson shall have the power and authority to act as chairperson during the absence or disability of the chairperson.

**Section 27-128 Powers and Duties of the City of Montgomery Board of Zoning Appeals (BZA).**

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

- (a) Hear, review, and determine appeals from an order, requirement, decision, or determination made by an administrative official charged with the enforcement of this ordinance or rule and regulation adopted pursuant thereto.
- (b) Authorize exceptions to the district rules and regulations only in the classes of cases or in particular situations as specified in this ordinance.
- (c) Hear and decide conditional uses of this ordinance upon which the board is required to act under this ordinance.
- (d) Authorize, upon appeal in specific cases only as provided in this ordinance, a variance to this ordinance.
- (e) Reverse, affirm, or modify the order, requirement, decision, or determination appealed from so long as the action of the BZA taken on appeal is consistent with the rules, regulations, and requirements of this ordinance.
- (f) Authorize, upon appeal, the substitution of one legal nonconforming use existing at the effective date of this ordinance for another similar nonconforming use. Provided further that upon substitution all applicable landscaping requirements of this code shall be satisfied.
- (g) Promulgate and adopt written rules and regulations concerning:
  - (1) The filing of appeals, including the process and forms for appeal;
  - (2) Application for variances and conditional uses;
  - (3) The giving of notice; and
  - (4) The conduct of hearings necessary to carry out the BZA's duties under the terms of this Article.
- (h) Keep minutes of the BZA's proceedings.
- (i) Keep an accurate and complete audio record of all BZA proceedings and official actions and keep the audio record in a safe manner, which audio record is accessible within twenty-four (24) hours of demand, for three (3) years.
- (j) Record the vote on all actions taken.
- (k) Take responsibility for the custody and preservation of all papers and documents of the BZA. All minutes and records shall be filed in the office of the BZA and shall be public records.

- (l) With consent of the governing body, hire employees necessary to carry out the duties and responsibilities of the BZA, provided that the governing body sets the salaries.
- (m) Supervise the fiscal affairs and responsibilities of the BZA.

**Section 27-129 Nonconformities.**

- (a) *Purpose and applicability.* The purpose of this Section is to regulate and limit the continued existence of uses, structures, and lots established prior to the effective date of this ordinance or any amendment thereto that does not conform to this code. Any nonconformity created by a change in the classification of property or the text of this code shall be regulated by the provisions of this Article.
- (b) *General provisions.*
  - (1) Nonconforming lots, structures, or uses may continue to exist, be bought or sold, altered, restored, or extended only in accordance with the provisions of this code.
  - (2) Nothing in this code shall prevent the strengthening or restoring to a safe condition any portion of a nonconforming structure declared unsafe by a proper authority.
  - (3) Nothing in this ordinance shall be interpreted as authorization for or approval of the continuance of the illegal use of a structure or premises in violation of zoning controls in existence at the time of the effective date of legal enactment of this code.
  - (4) Whenever the boundaries of a district shall be changed so as to transfer an area from one district to another district of a different classification, the foregoing provisions shall apply to any nonconformities existing therein.
  - (5) Nothing in this Section prohibits alterations or additions to or replacement of buildings or structures owned by any farm, industry, or manufacturer, or the use of land presently owned by any farm, industry, or manufacturer but not used for agricultural, industrial, or manufacturing purposes, or the use or acquisition of additional land that may be required for the protection, continuing development, or expansion of any agricultural, industrial, or manufacturing operation of any present or future satellite agricultural, industrial, or manufacturing use.
- (c) *Nonconforming uses.*
  - (1) If a nonconforming use has ceased for one (1) year, abandonment shall be presumed and the nonconforming use shall not resume. Any future use of the land or structures shall conform to and be in accordance with this ordinance. Abandonment of a nonconforming use shall be presumed if one (1) or more of the following conditions exists, indicating intent on the part of the property owner to abandon the nonconforming use:
    - (i) When the intent of the owner to discontinue the use is apparent;
    - (ii) Utilities, such as water, gas, and electricity to the property have been disconnected;
    - (iii) The property, buildings, and grounds, have fallen into disrepair as evidenced by proper code violation documentation;
    - (iv) When the nonconforming use has been replaced by a conforming use;
    - (v) When the nonconforming use has been changed to a use permitted or conditional use by the City of Montgomery; or
    - (vi) The business license issued by the City of Montgomery has expired.
  - (2) The Zoning Officer shall be responsible for preparing a list of all nonconforming uses existing at the time of the legal enactment of this ordinance and such list shall be maintained for public use and information.
  - (3) Once a nonconforming use has been changed or converted to a conforming use, it shall not thereafter be used for any nonconforming use.
- (d) *Nonconforming buildings or structures.*
  - (1) A lawful nonconforming structure that is damaged the extent of fifty percent (50%) or more of its appraised value, as valued within twelve (12) months of when the damage occurred, shall not be restored unless it is in full conformance with this code, except that single-family homes may be rebuilt within the original building's boundaries and no taller than the original building unless

- exceeding the boundaries or height of the original building would not increase the structures nonconformity.
- (2) A lawful nonconforming structure that is damaged, by neither malfeasance nor wanton disregard by an interested party, to the extent of less than fifty percent (50%) of the structure' appraised value, as valued within twelve (12) months of when the damage occurred, may be reconstructed, provided that:
    - (i) The reconstructed structure shall not exceed the height, area, or volume of the original structure; and
    - (ii) Reconstruction shall be commenced within one year from the date the structure was destroyed or condemned and shall be carried on without interruption.
  - (3) In the event an aggrieved person contests the appraised value determination, three (3) arbitrators shall be appointed, one (1) by City Council, one (1) by the aggrieved party, and one (1) by the two arbitrators or one (1) by the Board of Zoning Appeals if the two arbitrators cannot agree on the third arbitrator. Any determination regarding the percentage of damage made by the three (3) arbitrators shall be deemed the official decision of the BZA.
  - (4) The extension of a lawful use to any portion of a nonconforming structure shall not be deemed the extension of a nonconforming use.
- (e) *Nonconforming lot.*
- (1) Except as provided in this Section, a nonconforming vacant lot existing and of official record as of the effective date of this ordinance may be developed for any of the uses permitted by these regulations in the zoning district in which it is located, provided that the use meets all applicable yard and setback requirements for the zoning district in which the lot is located.
  - (2) A nonconforming vacant lot shall not be developed if it could be combined with an adjoining lot owned by the same person on or after the effective date of these regulations in order to create a single lot. Where an owner owns adjoining property, construction may occur across the lot lines if that is the only way the yard requirements may be met without a variance. If said combination, however, results in the creation of a single lot that is more than one and one-half (1.5) times the minimum lot width or area required in the zoning district, then the single lot may be divided into two lots of equal width and area without being further classified as nonconforming. For the purposes of this Section, "adjoining" shall be deemed to mean the sharing of one or more common lot lines and access to both lots can be provided by the same street without crossing that street.
- (f) *Nonconforming accessory uses and structures.* No nonconforming accessory use or accessory structure shall continue after the principal use or structure is terminated by abandonment, damage, or destruction unless such accessory use or accessory structure thereafter is made to conform to the standards for the zoning district in which it is located. No nonconforming accessory use or structure shall become or replace any terminated principal nonconforming use or structure.
- (g) *Enlargement or extension of a nonconforming use.*
- (1) Nonconforming structures used for a permitted use may be enlarged, provided that the enlargement shall not create any additional nonconformity or increase the degree of the existing nonconformity of such structure.
  - (2) Nonconforming structures and uses may enlarge principal structures by adding decks or porches provided structural nonconformities are not increased and that all requirements of this Code are met, including but not limited to setback and yard requirements.
  - (3) Nonconforming residential uses of single-family residential structures may enlarge or extend principal residential structures provided that all requirements of this Code are met, including but not limited to setback and yard requirements, and provided that the enlargement or extension does not increase the number of dwelling units.
  - (4) Nonconforming uses existing at the time this ordinance was passed, or at the time a subsequent amendment creates the nonconforming use, may extend within the building that housed the nonconforming use at the time this ordinance was passed, or at the time a subsequent amendment

creates the nonconforming use, provided that the area to which the nonconforming use extends was manifestly designed or arranged to accommodate such use, and that no structural alterations are made within the building in order to allow the use to extend, except those that may be required by the building code.

- (5) Nonconforming uses existing at the time this ordinance was passed, or at the time a subsequent amendment creates the nonconforming use, may extend within the building that housed the nonconforming use at the time this ordinance was passed, or at the time a subsequent amendment creates the nonconforming use, provided that such enlargement or extension may occur once and shall not exceed more than twenty-five (25%) percent of the floor area.
- (6) Enlargement or extension approval shall be void if construction work does not begin within one year from the date of approval, or if work is suspended or abandoned for a period of ninety (90) days at any time after the work is commenced.
- (7) All enlargement or extension of a nonconforming use must comply with the applicable floodplain management requirements.
- (8) Any enlargement or extension onto an adjacent parcel adheres to setback and yard requirements as if all parcels on which the use takes place were a singular parcel.

#### **Section 27-130 Variances.**

- (a) A variance is a deviation from the minimum standards of this ordinance and shall not involve permitting land uses that are otherwise prohibited in the zoning district nor shall it involve changing the zoning classifications of a parcel of land.
- (b) The City of Montgomery Board of Zoning Appeals shall grant a variance to this ordinance if it finds that the variance:
  - (1) Will not adversely affect the public health, safety, or welfare or the rights of adjacent property owners and residents;
  - (2) Arises from special conditions or attributes that pertain to the property for which a variance is sought and that were not created by the person seeking the variance;
  - (3) Would eliminate an unnecessary hardship and permit a reasonable use of the land; and
  - (4) Will allow the intent of this ordinance to be observed and substantial justice done.

#### **Section 27-131 Appeal to Board of Zoning Appeals.**

An appeal from any order, requirement, decision, or determination made by the Zoning Officer or any other person charged with the enforcement of this ordinance shall be filed by an aggrieved person with the City of Montgomery Board of Zoning Appeals. The appeal shall:

- (a) Specify the grounds for appeal;
- (b) Be filed within thirty (30) days of the date of the original order, requirement, decision, or determination made by the Zoning Officer, which time period shall be jurisdictional in nature;
- (c) Be on the form prescribed by the Board; and
- (d) Upon request of the City of Montgomery Board of Zoning Appeals, the Zoning Officer shall transmit all documents, plans, and papers constituting the record of the action from which the appeal was taken.

#### **Section 27-132 Notice and Hearing of Appeal.**

- (a) Within ten (10) days of receipt of the appeal by the City of Montgomery Board of Zoning Appeals (BZA), the BZA shall set a time for the hearing of the appeal and give notice. The hearing on the appeal must be held within forty-five (45) days of receipt of the appeal by the Board.
- (b) At least fifteen (15) days prior to the date set for the hearing on the appeal, the BZA shall publish a notice of the date, time, and place of the hearing on the appeal as a Class I legal advertisement, pursuant to the West Virginia Code, and written notice shall be given to the interested parties. The publication area shall be the area covered in the appeal.

- (c) The BZA may require the party taking the appeal to pay for the cost of public notice and written notice to interested parties.
- (d) At the hearing, any party may appear in person, by agent, or by an attorney licensed to practice in this state.
- (e) Every decision by the BZA shall be in writing and state specific findings of fact and conclusions of law on which the BZA based its decision. If the BZA fails to provide findings of fact and conclusions of law adequate for decision by the circuit court and as a result of the failure, the circuit court returns an appealed matter to the BZA and dismisses jurisdiction over an applicant's appeal without deciding the matter, whether the court returns the matter with or without restrictions, the BZA shall pay any additional costs for court filing fees, service of process, and reasonable attorney's fees required to permit the person appealing the BZA's decision to return the matter to the circuit court for the completion of the appeal.
- (f) The written decision by the BZA shall be rendered within thirty (30) days after the hearing. If the BZA fails to render a written decision within thirty (30) days after the hearing, then any party may pursue additional legal remedies to obtain a decision, including, but not limited to, seeking a writ of mandamus.
- (g) When an appeal has been filed with the BZA, all proceedings and work on the premises in question shall be stayed, except as provided below:
  - (1) If the official or board from where the appeal was taken certifies in writing to the BZA that a stay would cause imminent peril to life or property;
  - (2) Upon further administrative proceedings, including, but not limited to, submissions to and reviews by the staff or any administrative body; or
  - (3) Upon engineering or architectural work that does not disturb the real estate beyond what is necessary to complete engineering, survey work, or other tests.
- (h) *Petition for writ of certiorari*. The final decision of the City of Montgomery Board of Zoning Appeals shall be subject to review by the applicable Circuit Court of West Virginia, by certiorari, as provided by West Virginia Code Section 8A-9-1 et seq.
- (i) Nothing in this Section prevents a party from obtaining an injunction.

City of Montgomery Zoning Ordinance Use Table

P = Permitted by Right, C = Conditional

USES	Conservation	Factory-built Home Neighborhood	Single Family Residential	Multi-Family Residential	Downtown Commercial	General Commercial	Industrial
Adult Business						P	
Agritourism Enterprise	P						
Amphitheater					P	P	
Amusement and Recreation Center					P	P	
Animal Grooming					P		
Animal Hospital/Veterinary Office					P	P	
Automobile Car Wash						P	P
Bakery					P	P	
Bank/Financial Institution					P	P	
Bed and Breakfast Inn		C	C	C			
Boat Livery	P				P	P	P
Boat and Marine Sales/Service					P	P	P
Boat Storage	C					P	P
Brewery Pub					P	P	
Broadcasting Studio					P	P	
Building Material Facility						P	P
Bus and Transit Facilities					P	P	P
Bus and Transit Shelter		P		P	P	P	P
Café/Coffee Shop	C				P	P	
Campground	P						P
Catering Business					P	P	
Child Day Care Facility, Class 1					P		
Child Day Care Facility, Class 2					P		
Child Day Care Facility, Class 3		C	C	C			
Child Day Care Facility, Class 4		C	C	C			
Clinic					P	P	
Community Facility					P	P	
Continuing Care Facility				C	C	P	
Convenience Store					P	P	
Conversion of Old School/Church			C	C	P		
Correctional Facility						P	P
Cultural Service		C	C	C	P	P	
Distillery					P	P	P
Distillery, Mini					P	P	P
Distribution Facility						P	P

City of Montgomery Zoning Ordinance Use Table

P = Permitted by Right, C = Conditional

USES	Conservation	Factory-built Home Neighborhood	Single Family Residential	Multi-Family Residential	Downtown Commercial	General Commercial	Industrial
Dog Day Care					C	P	P
Drive-in Theater					P	P	P
Drive-through Facility (Accessory Use)					P	P	
Dry Cleaner						P	P
Dwelling, Accessory		P		P			
Dwelling, Mixed Use					P	P	
Dwelling, Multi-family				P			
Dwelling, Single-family		P	P	P			
Dwelling, Two-family				P			
Educational Institution					P	P	
Emergency Shelter				C	P	P	
Equipment Rental/Repair					P	P	P
Essential Utilities and Equipment	P	P	P	P	P	P	P
Event, Mass Gathering					C	C	
Event, Special		C	C	C	P	P	
Extractive Industry	C					C	
Factory-built Home		P					
Factory-built Home Rental Community		P					
Fairground	C						
Farm/Construction Equipment and Supply Sales					P	P	P
Farmer's Market	P				P	P	
Flea Market	P				P	P	
Freight Terminal					P	P	P
Funeral Home/Mortuary						P	
Garage, Commercial				C	P	P	P
Garage, Community				C			
Garden Center					P	P	P
Gas Station					P	P	P
Governmental Operations					P	P	P
Greenhouse, Commercial					P	P	P
Greenhouse, Noncommercial (Accessory Use)	P	P	P	P	P	P	
Group Residential Facility	P	P	P	P	P		
Group Residential Home	P	P	P	P	P	P	P
Health Club					P	P	
Home-based Business (Accessory Use)				C	P	P	
Hospital					P	P	

City of Montgomery Zoning Ordinance Use Table

P = Permitted by Right, C = Conditional

USES	Conservation	Factory-built Home Neighborhood	Single Family Residential	Multi-Family Residential	Downtown Commercial	General Commercial	Industrial
Hotel/Motel					P	P	P
Industrial Park							P
Laboratory					P	P	P
Liquor Store					P	P	
Lumberyard							P
Manufacturing (Heavy)							P
Manufacturing (Light)					P	P	P
Marina							P
Medical Adult Day Care Center				P	P	P	
Medical Cannabis Dispensary					P	P	P
Medical Cannabis Growing Facility					P	P	P
Medical Cannabis Organization, Health Care					P	P	P
Medical Cannabis Processing Facility					C	C	P
Night Club					P	P	
Off-premises, Freestanding Sign	P						
Office Supply Establishment					P	P	P
Parcel Delivery Facility					P	P	P
Park	P	P	P	P	P	P	P
Parking Lot (Principal Use)				P	P	P	P
Pawn Shop					P	P	
Personal Service					P	P	
Pet Shop					P	P	
Pharmacy					P	P	
Photographic Studio					P	P	
Places of Worship/Religious Institution		C	C	C	P	P	
Private Club					P	P	
Professional Services					P	P	
Reception Facility					P	P	
Recreation, Private	C				P	P	
Recreation, Public	C				P	P	
Research and Development					P	P	P
Restaurant					P	P	
Retail Store					P	P	
Roadside Vendor Stand	C				C	C	

City of Montgomery Zoning Ordinance Use Table

P = Permitted by Right, C = Conditional

USES	Conservation	Factory-built Home Neighborhood	Single Family Residential	Multi-Family Residential	Downtown Commercial	General Commercial	Industrial
School, Commercial					P		
School, Preschool to 12					P		
Self-storage Facility							C
Senior Independent Housing				P	P	P	
Sewage Treatment Facility	P						
Shooting Range, Commercial Indoor	P				P	P	P
Shooting Range, Commercial Outdoor	P						
Shooting Range, Noncommercial Indoor	P	P	P	P	P	P	P
Shooting Range, Noncommercial Outdoor	P	P	P	P	P	P	P
Shopping Center					P	P	
Solar Energy System, Large	C						
Solar Energy System, Small, Ground-mounted	C					C	C
Solar Energy System, Small, Roof-mounted	P	P	P	P	P	P	P
Sports Arena					P	P	
Studio, Dancing, Music, or Art					P	P	
Tattoo/Body Piercing Studio					P	P	
Tavern/Drinking Establishment/Bar					P		
Theater					P	P	
Truck Terminal						P	P
Urban Agriculture	P	P	P	P	P	P	
Vehicle Repair/Service/Sales/Rental					P	P	
Video Gaming or Lottery Establishment					P	P	
Warehouse					P	P	P
Water Treatment Plant	P						
Wholesale Establishment					P	P	
Wind Energy System	P						
Winery					P	P	
Wireless Telecommunication Facilities					C	P	P
Wireless Telecommunication Facilities, Small Cells	P	P	P	P	P	P	P

**APPENDIX B:  
PROPOSED  
ZONING MAP**

# City of Montgomery Draft Zoning Map

## January 2023

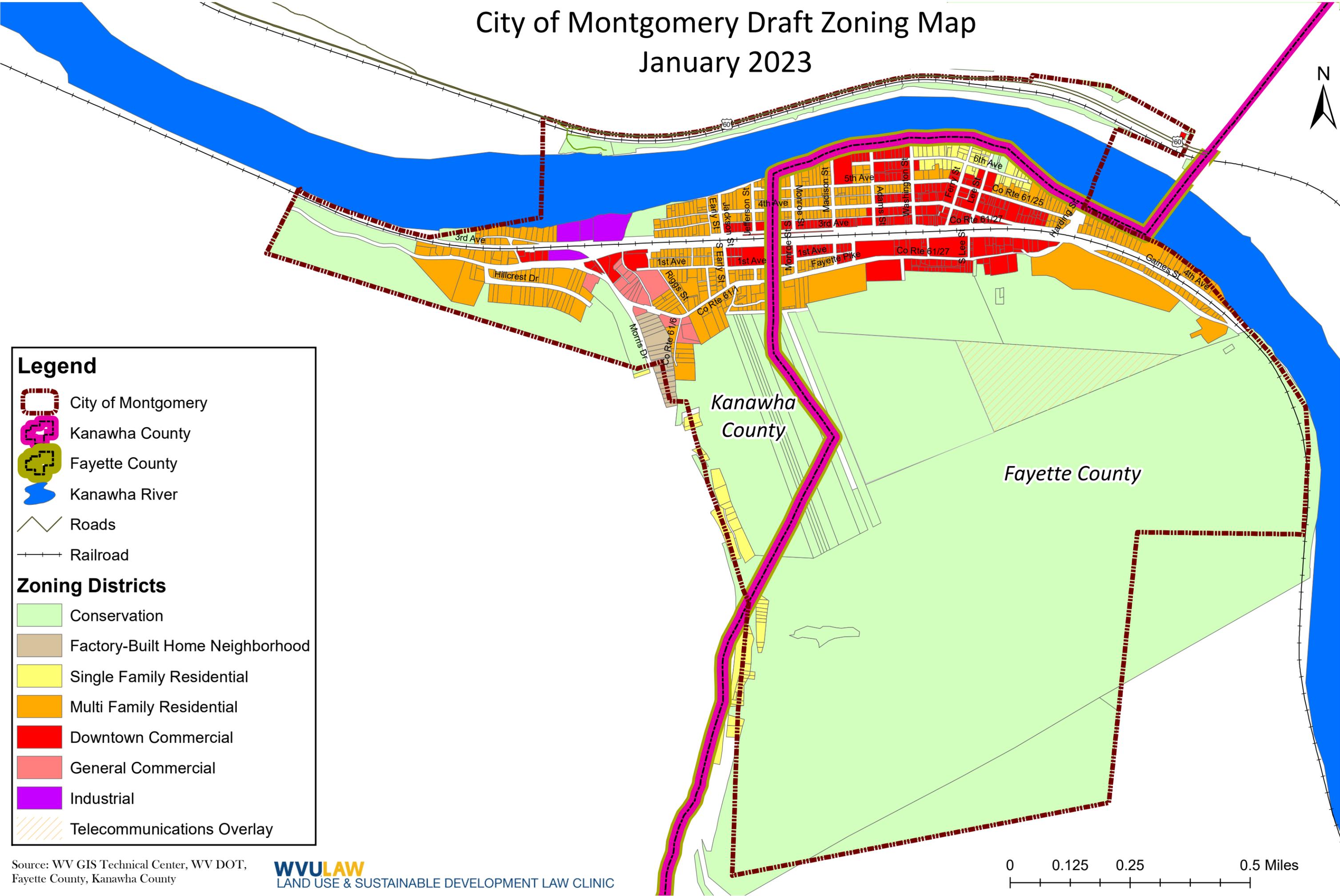


**Legend**

-  City of Montgomery
-  Kanawha County
-  Fayette County
-  Kanawha River
-  Roads
-  Railroad

**Zoning Districts**

-  Conservation
-  Factory-Built Home Neighborhood
-  Single Family Residential
-  Multi Family Residential
-  Downtown Commercial
-  General Commercial
-  Industrial
-  Telecommunications Overlay



Source: WV GIS Technical Center, WV DOT, Fayette County, Kanawha County

