

Part 4

Commercial District

§401. Statement of Intent. In addition to the general goals listed in the preamble and general intent, the district established in this regulation is intended to achieve the following:

A. To provide sufficient space in appropriate locations for the types of commercial and service establishments anticipated in the comprehensive plan.

B. To provide appropriate space for the requirements of present day merchandising, including the provision of off-street parking spaces, safe circulation of pedestrian and motor traffic in the zone district and in nearby areas.

C. To promote the most desirable use of and a pattern of building development in accord with a well considered plan, to promote stable commercial development, to strengthen the economic base of the Borough, to protect the character of the commercial areas and nearby districts, to conserve the value of land and buildings and to promote municipal tax revenues.

(Ord. 445, 12/8/1997, §401)

§402. General Commercial District. In addition to the general goals lists in §101(3) and (4) and §401, it is the purpose of this Section to provide for the orderly commercial development commonly associated with the business district of Homer City Borough.

A. Use Regulations.

(1) Uses by Right. In any C-1 District, land, buildings or premises shall be used by right for only one (1) or more of the following:

(a) General merchandise stores, including department, variety, discount, drug stores; apparel and accessories stores, including shoe, furrier, tailor and all other wearing apparel stores; furniture, home furnishings and equipment, including household appliance, electronics and repair, hardware, paint stores; eating establishments, including restaurants, lunch counters, delicatessens; State stores, taverns; telephone equipment and central office equipment building; specialty stores, including gift, antique, news-stands, tobacco, flower, sporting goods, hobby, books, jewelry, leather, luggage, music, stationery stores; retail food stores, including bakery, confectionery, candy, meat, grocery stores, convenience stores; governmental offices serving the public, including post office, business offices, professional offices, public utility offices; personal service shops including barber, beautician, and shoe repairs; finance

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institutions, including banks, credit union, insurance companies; parking lots; vehicular sales, leasing, washing; apartments, provided they do not exceed a density of one (1) dwelling unit per four hundred (400) square feet of lot area, have a minimum habitable floor area of eight hundred (800) square feet, have a separate entrance which does not require passing through any area devoted to office or retail use and provided they are not located on the street floor of any commercial building; private garages; public transportation terminals; funeral parlors; dance hall; and recreational.

(2) Accessory Uses. Only the following accessory uses may be permitted:

(a) Customary accessory uses in commercial districts.

(3) Uses By Special Exception. The following uses shall be permitted by special exception when authorized by the Zoning Hearing Board subject to Part 9 of this Chapter:

(a) Churches or similar places of worship; public schools; semipublic places, including clubs, fraternities and lodges; indoor recreational facilities, including theaters; and gasoline service stations.

(b) Nonconforming residential structures may be rebuilt if destroyed or partially destroyed by fire, explosion or other causes, or otherwise damaged, when authorized by the Zoning Hearing Board and the Planning Commission and subject to Part 9 of the Zoning Chapter.

B. Area and Bulk Regulations. The following regulations shall be observed:

Lot size	No minimum, except lots with dwelling units shall provide a minimum of four hundred (400)sq. ft. per dwelling unit .
Lot width	40 ft. at building setback line.
Building setback line	5 ft. minimum.
Side yard	30 ft. plus the height of the building over 30 ft. when abutting a resident district (total street R.O.W., widths may be included in this distance). If not abutting a residential district, 10 ft. or average of 20 ft.
Rear yard	10 ft., 25 ft. where no rear access is available from a public street
Lot coverage	75% maximum primary buildings only.

Total lot coverage (including primary, accessory and paved area)	90%
Building height	35 ft. or 3 stories maximum
Public or Semipublic Uses	
Lot size	5,000 sq. ft. minimum
Side yards	10 ft. minimum each
Building setback line	25 ft. minimum
Rear yard	10 ft., 25 ft. where rear access is available from a public street
Height of building	35 ft. or 3 stories

C. General Provisions. No merchandise shall be displayed, sold or otherwise made available within the street right-of-way.

D. Off-Street Parking Standards and Requirements. As required by §603(1) of this Chapter.

E. Off-Street Loading Regulations. As required by §603(2) of this Chapter.

F. Design and Performance Standards. As required by §§604 and 605 of this Chapter.

(Ord. 445, 12/8/1997, §402)



Part 5

Industrial Districts

§501. Statement of Intent. In addition to the general goals listed in the preamble, the district established in this regulation is intended to achieve the following:

A. To provide sufficient space, in appropriate locations, to meet the anticipated future needs for industrial activity.

B. To insure that the land most suitable for industrial and related activities will be available and to protect residences by separating them from such activities.

C. To protect industry against congestion by limiting the bulk of buildings in relation to the land around them and to one another, and by providing sufficient off-street parking and loading facilities for such developments.

D. To promote the most desirable use of land and direction of building development in accord with a well considered plan, to promote stable industry, to strengthen the economic base, to protect the character of particular industrial areas and their peculiar suitability to particular uses, to conserve the value of land and buildings and to protect local tax revenues.

(Ord. 445, 12/8/1997, §501)

§502. I-1 Industrial District. In addition to the general goals listed in the preamble and §501, it is the purpose of this Section to provide industrial locations for plants which require a large area for their operations and which are normally undesirable adjacent to residential and commercial areas. Residential uses are not permitted in industrial zone areas.

A. Use Regulations.

(1) Uses by Right. Any production, manufacturing, assembly, processing, cleaning, testing, repair, storage or distribution of materials, goods, foodstuffs and products not involving a retail activity on the property; a freight terminal; essential services, all wholesale distribution or storage; all utilities and garages.

(2) Uses by Special Exception. Any onsite retail sales or onsite distribution of products related to the above permitted uses.

(3) Accessory Uses. Only the following accessory uses shall be permitted:

(a) Customary accessory uses in manufacturing or industrial districts. Adult arcade, adult bookstore, adult

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business, adult entertainment, adult live theater, adult minimotion picture theater, adult motion picture theater, adult motel.

2. Area and Bulk Regulations. The following regulations shall be observed:

Lot size	10,000 sq. ft. minimum
Lot width	100 ft. minimum
Lot coverage	55% maximum
Setback	10 ft. minimum
Side yards	10 ft. minimum for each side
Rear yard	25 ft. minimum
Yards	Contiguous to Residential Districts, 40 ft. minimum. or a distance equal to the building height.
Maximum building height	60 ft. (See §602(4))
Tower and chimney location	100 ft. minimum from any lot line, or a distance equal to the structures height.

C. Off-Street Parking Regulations. As provided in §603(1) of this Chapter.

D. Loading Regulations. As provided in §602(5) of this Chapter.

E. Performance and Design Standards. The performance and design standards outline in §§604 and 605 of this Chapter shall apply to all industrial areas.

(Ord. 445, 12/8/1997, §502)

Part 6

Supplemental Regulations

§601. Sign Regulations.

1. Exempt Signs. The following signs shall be exempted from these regulations:

A. Directional, information or public service signs such as those advertising availability of rest room, fallout shelter, telephone or similar public convenience, and signs advertising meeting times and places of nonprofit service or charitable clubs or organizations may be erected or maintained provided that such signs do not advertise any commercial or industrial establishment activity or organization. Such signs shall not exceed two (2) square feet in area.

B. Signs of schools, colleges, churches, hospitals or of institutions of a similar nature relating exclusively to the identity, activities and services of such institutions, provided that such signs shall not exceed twenty (20) square feet in area and shall be limited to one (1) such sign for each separate use.

C. Nameplates not exceeding two (2) square feet in area.

2. Temporary Sign Regulations. The following shall be observed in all districts:

A. Temporary signs, including signs advertising land or premises available for purchase, development or occupancy, or announcements of special events or signs of mechanics or artisans shall be permitted; provided, that:

(1) Real estate signs shall not exceed six (6) square feet in area and not more than two (2) such signs shall be erected for any property held in single or separate ownership. Such signs shall be erected for any property held in single or separate ownership. Such signs must be removed by the person or persons erecting them upon completion of the sale or rental of the property.

(2) Other signs shall not exceed eighteen (18) square feet in area, shall be limited to one (1) per property and shall be removed immediately upon the completion of work. The site or building on which the sign was erected shall be restored to its original condition upon removal of such sign.

3. Business Signs. Business signs accessory to permitted commercial uses shall be allowed; provided, that:

A. All business signs shall advertise goods or service sold or produced on the premises on which the sign is located.

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B. Signs erected on supports or suspended or projecting from a building, including a banner or flag, shall not exceed sixty (60) square feet per face, in area.

C. Signs erected by the fastening of a board or other preprinted or printed thereon letters, words or insignias, or by erecting or superimposing separate cutout letters on the walls of a building or the placing of said letters on a plane surface which projects from the walls of a building shall not have a total area in excess of two (2) square feet per front foot of the building or space within the building occupied, on which there are erected. Where there is a corner building, only one (1) side of the building shall be included in determining front feet of a building; but in no case may such a sign on the side(s) of a corner building be in excess of two (2) square feet times the lineal length of the longest side.

D. When individual letters are used separately on a plane surface, the spaces between said letters shall be included in computing the area of the sign.

E. Mounted signs shall be installed parallel to the supporting wall and project not more than twelve (12) inches from the face of any such wall.

F. A nonconforming sign on a nonconforming use may be continued, but the area of such sign, or signs, shall not be increased.

G. The aggregate total area of all signs on each commercial parcel shall be a maximum of sixty (60) square feet per face, per principal use or two (2) square feet per front foot of the building, whichever is less. Where more than one (1) principal use exists on a parcel, the aggregate or total sign area for all uses within the structure or building shall not exceed two (2) square feet per front foot of the parcel frontage.

H. Signs shall not be painted directly on the surface of any building.

4. General Limitations. The following regulations shall be observed:

A. No sign shall be erected within or project into, the lines of a street right-of-way, except traffic signs and similar regulatory notices of a duly constituted governmental body.

B. No artificial light or reflecting device shall be used as a part of a sign where such light or device interferes with, competes for attention with, or may be mistaken for, a traffic signal.

C. Floodlighting shall be arranged so that the source of light is not visible from any point off the lot and that only the sign is directly illuminated thereby.

D. No sign shall be erected except on the property to which is related.

E. Billboards are prohibited in all districts.

F. Flashing, moving, oscillating lights are expressly prohibited.

G. No sign shall be erected containing information on it which states or implies that a property may be used for any purpose not permitted under the provisions of this Chapter.

H. Every sign permitted must be constructed of durable material and kept in good condition and repair. Any sign which is allowed to become dilapidated shall be removed by the Borough at the expense of the owner or lessee of the property on which it is located.

I. Nonconforming signs once removed physically, may be replaced only with conforming signs; every sign erected shall also comply with the requirements for the zoning district in which said sign is erected.

J. No projected business sign shall be placed to face an abutting residential district except when authorized as a special exception.

K. If a use ceases for a period of six (6) months, signs advertising the ceased business, or businesses, must be removed. Such signs may be removed by the Borough at the expense of the owner or lessee of the property on which such sign is located.

5. Permit Procedure.

A. Approval from the Code Enforcement Officer to erect, alter, change or enlarge a business sign is required before a permit from the Borough Manager or his duly authorized representative shall be issued.

B. All requests for erection, alteration or enlargement of any business sign must be accompanied by a plan drawn to scale, showing the exact size, shape and dimensions of such sign and its proposed location or placement upon any structure or property.

C. The applicant shall present evidence that all requirements for bonding and insurance, as required by the Borough, have been met.

(Ord. 445, 12/8/1997, §601)

§602. General Regulations.

1. Visibility at Intersections.

A. A clear sight triangle shall be maintained at all intersections and points of entry on a public road, so that, measured along the centerline, there shall be a clear sight triangle of the following dimensions:

50 ft. R.O.W.	75 ft. visibility in both directions
40 ft. R.O.W.	60 ft.

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30 ft. R.O.W.	45 ft.
20 ft. R.O.W.	30 ft.
10 ft. R.O.W.	20 ft.

B. No obstruction to view will be permitted in this area above the height of two and one-half (2 1/2) feet and below ten (10) feet. (Diagram at end of Part.)

2. Swimming Pools.

A. Open private swimming pools, whether set on or in the ground, are considered structures for the purpose of permits and regulations of all ordinances if they are constructed, used or maintained to provide recreational facilities for swimming, bathing or wading and capable of containing water to a depth of greater than eighteen (18) inches. For the purpose of this Chapter, they are not counted as floor area in computing the lot coverage. They shall not be located in any required setback area.

B. All swimming pools shall be at least ten (10) feet from any lot line. All in-ground pools shall be enclosed by a fence, wall or other substantial barrier not less than four (4) feet high, with a self-closing, self-latching gate and of such a character as to prevent reasonable access to the pool. Aboveground pools, the top which are at least four (4) feet above the ground and whose ladder or ladder to deck is not movable, shall also be required to be fenced. Aboveground pools at least four (4) feet above the ground whose ladder be retracted or moved when not in use will not require fencing.

C. No swimming pool shall be constructed in the Borough, except in accordance with a permit therefore previously secured from the Code Enforcement Officer or his duly authorized representative, upon written application accompanied by a plan showing the size, shape and location of the swimming pool and its enclosure and such other information as may be necessary to enable the Code Enforcement Officer to determine whether the pool complies with this Chapter.

3. Basketball and Tennis Courts.

A. Tennis courts or other paved playing surfaces accessory to a dwelling shall be located only in a side or rear yard and shall be no closer to the side or rear property line than twenty (20) feet. If lighting is proposed, the lighting shall be shielded so that it does not reflect on any adjoining property. All tennis courts shall be enclosed by a fence which is a minimum of ten (10) feet in height and maximum of twelve (12) feet in height and which shall contain openings equal to fifty (50) percent or more of the surface area of the fence.

B. The proposed paving shall be subject to review by the Borough Engineer to determine the need for stormwater management and to ensure that drainage onto adjoining properties will not result.

#### 4. Driveways.

A. An individual private driveway, as defined herein, which serves one (1) single-family or one (1) two-family dwelling shall not be required to be paved; however, in lieu of paving, the driveway shall have a cover of slag or stone at least two (2) inches thick over a minimum four (4) inch stone base for a distance of thirty (30) feet from the right-of-way of the street. All common private driveways, as defined herein and all individual private driveways serving residential uses, other than a single-family or two-family dwelling, shall be paved in accordance with the Borough construction standards and/or the Pennsylvania Department of Transportation Design Manual, Part 2, Chapter 18. Concrete driveways shall have a joint at the public street right-of-way.

B. No driveway shall have a slope of more than fifteen (15) percent. Driveways may extend from the right-of-way line of the street to the cartway of the street, but shall not change the grade or contour of the street right-of-way, nor shall any person cut into, fill or in any way alter any gutter, curbing, drainage ditch or storm sewer within the right-of-way of a street or easement for the purpose of extending a driveway; or for any other purpose without first obtaining a permit therefor from the Borough. Driveways shall maintain the existing gutter line of the street and the roadway shoulder.

C. All private driveways constructed across any pavement shall be of a width not less than ten (10) feet and the curb shall be curved back to the street edge of the footwalk on a radius of one and one-half (1 1/2) feet. Before any private driveway may be constructed, whether across a sidewalk or not and before any curb cut may be made, a permit shall be obtained from the Borough office. All driveways shall be laid according to the specifications furnished by the Borough at the time the permit is granted and must be approved by the Code Enforcement Officer to ensure that the Borough specifications are met. The fee for a driveway or curb cut permit shall be five dollars (\$5.00) as set by the Borough Council.

D. All paved portions of the sidewalk must not be disturbed and the height and grade of same must remain the same as before the driveway was constructed. The balance of the pavement shall remain the same height and grade as before the construction of the driveway. Where the sidewalk and curb needs to be lowered, it shall be reconstructed in accordance with Borough standards and ADA (Americans with Disabilities Act) requirements.

5. Striping of Topsoil Excavation of Clay, Sand Gravel or Rock. The following shall apply in all districts:

A. Topsoil or sod may be removed only under the following conditions:

- (1) As a part of the construction or alteration of a building or the grading incidental to such building.

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(2) In connection with normal lawn preparation and maintenance.

(3) In connection with the construction or alteration of a street or utility improvement.

6. Exception to Height Limitations. The height limitations of this Chapter shall not apply to church spires, belfries, monuments, chimneys, flag poles, residential television antennas.

7. Outdoor Storage Prohibition. Outdoor storage of any type shall not be permitted unless such storage is a part of the normal operations conducted on the premises, subject to design and performance standards for the prevailing zoning district. Junkyards, as defined by this Chapter, are expressly prohibited.

8. Accessory Building and Structures (Excluding Garages). An accessory building may be constructed within the rear yard if entirely separated from the primary structure and if located at least three (3) feet farther back from the front street line than the rear-most portion of the primary structure. In any case in which the rear portion of the lot abuts upon a road not exceeding twenty (20) feet in width, all parts of the accessory building must be at least ten (10) feet distant from the right-of-way line of such roadway. Accessory buildings shall not exceed one hundred fifty (150) square feet in area and one (1) story in height. Such accessory structures shall not be used for garage purposes. All plans for accessory buildings shall be submitted to the Code Enforcement Officer for approval prior to issuance of a building permit. Structures which are to be comprised of makeshift materials, or structures which are subject to extreme weathering and unsightly conditions, shall not be permitted.

9. Fences. No solid fence or wall or other obstruction (except a required retaining wall or a wall of a building permitted under the terms of this Chapter) over six (6) feet in height shall be erected within any of the required open spaces or yard spaces except by special exception. Fences that contain openings therein equal to fifty (50) percent or more of the area of said portion of the fence or wall shall be erected without special exception. All fences must be constructed of weather resistant material, finished side in view of the public, follow all setback requirements, except side yard (which is to be two (2) feet minimum) setback, have support posts cemented into the ground and, if located at a conspicuous place or intersection, must adhere to a clear sight triangle. All fences must be approved by the Code Enforcement Officer and the Zoning Officer to ensure that they meet the requirements of this Chapter. These provisions shall not apply to the required enclosing of outside storage areas in commercial districts as required by §605(3) of this Chapter. All fences shall be kept in good repair.

10. Parking and Storage of Vehicles in All Residential Districts. In any residential district, the following restrictions shall apply: the parking of any vehicle other than an automotive passenger vehicle, a station wagon, a pick-up truck or a panel truck in required front yards shall be prohibited. Parking of any other type of truck, except for temporary loading or unloading, shall be prohibited. Parking of recreational vehicles may be

temporarily permitted in residential districts, provided that such vehicles may be parked only behind the front building line and, where possible, only in the rear of dwellings. Tractor trailers are prohibited in all residential districts.

11. Communication Towers. All communication towers must be erected in the floodway zoning district. To ensure the safety of residents, these towers are restricted to two hundred (200) feet in height with no structure within five hundred (500) feet of the tower.

(Ord. 445, 12/8/1997, §602)

§603. Off-Street Parking and Loading Regulations.

1. Off-Street Parking Regulations.

A. Standards. Off-street parking space(s) with a proper and safe access shall be provided within a structure or in the open, to serve adequately, the uses on each lot within the district.

B. For purposes of computing car space, including stalls and driveways, parking space for one (1) vehicle shall be equal to at least three hundred twenty (320) square feet and shall have a stall of at least nine and one-half by twenty (9 1/2 x 20) feet in size. Parking spaces shall have an approved paved all-weather surface to provide safe and convenient access in all seasons.

C. Multifamily Standards. Off-street parking spaces for multifamily structures shall be provided. No surface parking spaces shall be located in the required front yard areas.

D. Requirements. Required off-street parking space(s) for new construction, enlargement or change in use shall conform to the following:

<u>Use</u>	<u>At Least One (1) Off-Street Parking Space for Each</u>
<u>Residential</u>	
Single-family residence	dwelling unit
Two-family or duplex structure	dwelling unit
Multifamily structure (more than two (2) units per structure)	1.33 dwelling units (in garden apartment areas, parking for service vehicles shall also be provided); no parking spaces shall be provided in required front yard)
<u>Commercial Uses</u>	
Food Market	one (1) for each 200 sq. ft. of floor area

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Personal service establishment	100 sq. ft. of customer service area in addition to one (1) for each employee
Office building	500 sq. ft. of gross floor area, exclusive of the area used for storage, utilities, and building service area
Automobile laundry	Sufficient spaces to handle 45 mins. of capacity of the maximum hourly operation of auto washing facility.
Medical and dental offices and clinics	Two (2) employees plus four (4) spaces per doctor.
Other commercial uses	400 square feet of floor area.
<u>Other Uses, Including Public and Semipublic</u>	
Private recreational facilities	1.5 members
Church	200 sq. ft. of main assembly area
Lodge, library, museum, meeting place, etc.	100 sq. ft. of floor area used for assembly in the building.
<u>All Industrial Uses</u>	One (1) for each two (2) employees.

2. Off-Street Loading Regulations.

A. Standards. Off-street loading and unloading space(s) with proper and safe access from street or alley shall be provided on each lot where it is deemed by the Homer City Planning Commission that such facilities are necessary to adequately serve the uses within the district. Each loading and unloading space:

(1) Shall be at least fourteen (14) feet wide, sixty (60) feet long and shall have at least a fifteen (15) foot vertical clearance.

(2) Shall have an all-weather surface to provide safe and convenient access during all seasons.

(3) Shall not be constructed between the street right-of-way line and the building setback line.

B. Required off-street parking spaces (including aisles) shall not be used for loading/unloading purposes, except during hours when business operations are suspended.

C. Loading and unloading facilities shall be designed so that a truck or any portion thereof, need not park in, or effectively block in any manner, any public right-of-way.

D. No truck shall be allowed to stand in:

- (1) A right-of-way.
- (2) Automobile parking area (including aisles).
- (3) In any way block the effective flow of persons or vehicles.

E. Requirements. At least one (1) off-street loading space shall be provided for all commercial or industrial concerns in excess of three thousand five hundred (3,500) square feet of floor area. The number of loading and unloading spaces shall be left to the discretion of the developer; however, the standards of this Section shall be maintained, and the number of proposed spaces approved by the Planning Commission.

(Ord. 445, 12/8/1997, §603)

§604. Performance Standards for Commercial and Industrial Districts. The following regulations shall be observed in commercial and industrial districts when required by this Chapter:

A. Fire and Explosive Hazards. All activities and all storage of flammable and explosive materials at any point shall be provided with adequate safety devices against the hazards of fire and explosion and adequate firefighting and fire suppression equipment and devices as detailed and specified by the Department of Labor and Industry and the laws of the Commonwealth of Pennsylvania.

B. Radioactivity or Electrical Disturbances. There shall be no activities which emit radioactivity at any point. There shall be no electrical disturbance adversely affecting the operation at any point of any equipment other than that of the creator of the disturbance.

C. Smoke. There shall be no emission at any point from chimney or otherwise for longer than five (5) minutes in any hour of visible gray or visible smoke of any other color with a shade darker than No. 3 of the Standard Ringleman chart as issued by the U.S. Bureau of Mines.

D. Smoke, Ash, Dust, Fume Vapor, Gases and Other Forms of Air Pollution. There shall be no emission at any point from any chimney or otherwise which can cause any damage to health, to animals or vegetation or other forms of property; or which cause any excessive soiling at any point.

E. Liquid and Solid Wastes. There shall be no discharge at any point, into any private sewerage system or stream, or into the ground, of any materials in such a way or of such a nature or temperament as can contaminate or otherwise cause the emission of hazardous materials, except in accord with the standards of the Pennsylvania Department of Environmental Resources and the Borough Council.

F. Noise and Vibration. There shall be no vibration or noise level at the property line greater than the average noise level occurring on adjacent streets.

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G. Glare. No direct or sky reflected glare, whether from flood-lights or from high temperature process, shall be visible from adjoining public streets or adjacent lots when viewed by a person standing on ground level.

H. Odor. There shall be no emission of odorous gases or other odorous matter in such quantities as to be offensive on adjoining streets or adjacent lots.

I. Central Air Conditioning Units. Central air conditioning units shall be located to the rear or top of all structures and in no case shall be closer than fifteen (15) feet from any property line.

(Ord. 445, 12/8/1997, §604)

§605. Design Standards for Commercial and Industrial Districts.

1. Off-Street Parking Design Standards.

A. Parking spaces shall be clearly delineated by painted lines or markers.

B. Stalls shall be provided with bumper guards or wheel stops when necessary for safety or protection to adjacent structures or landscaped areas.

C. Surface drainage shall be connected to the existing or proposed drainage system.

D. All vehicular entrances and exits to parking areas shall be clearly designated for all conditions.

E. Short-term visitor parking spaces shall be differentiated from long-term employee spaces by suitable markings.

F. If spaces are used during evening hours, appropriate lighting shall be provided.

2. Screening.

A. A planted visual barrier or landscape screen shall be provided and maintained by the owner or lessee of a property between any commercial or industrial district and contiguous residentially zoned districts, except where natural or physical manmade barriers exist. This screen shall be composed of plants and trees arranged to form both a low level and a high level screen. The high level screen shall consist of trees planted with specimens no less than ten (10) feet in height and seven (7) feet in diameter and planted at intervals of not more than fifteen (15) feet. The low level screen shall consist of evergreens planted at an initial height of not less than two (2) feet and spaced at intervals of not more than four (4) feet. The low level screen shall be placed in alternating rows to produce a more effective barrier. All plants not surviving three (3) years after planting must be replaced.

B. Any existing business affected by these regulations at the time of passage of this Chapter shall not be required to comply with the above screening requirements, except in case of enlargement or major alteration of such business. Similarly, for any zoning district boundary change after the passage of this Chapter initiated by a residential developer abutting a commercial or industrially zoned property for which these regulations apply, these screening requirements shall not be imposed upon such property.

3. Storage. Any article or material stored temporarily outside an enclosed building as an incidental part of the primary operation shall be so screened by opaque ornamental fencing, walls or evergreen planting that it cannot be seen from adjoining public streets or adjacent lots when viewed by a person standing on the ground level. All organic rubbish or storage shall be contained in airtight vermin proof containers. Any outside storage not now enclosed shall be permanently enclosed or screened within three (3) years from the date of this Chapter.

4. Landscaping. Any part or portion of the site which is not used for buildings, other structures, loading or parking spaces and aisles, sidewalks and designated storage areas shall be planted with an all season ground cover and shall be landscaped with trees and shrubs in accordance with an overall landscape plan and shall be in keeping with natural surroundings. A replacement program for nonsurviving plants should be included.

5. Shopping Cart Storage. Any establishment which furnishes carts or mobile baskets as an adjunct to shopping shall provide definite areas within the required parking spaces areas for storage of said carts. Each designed storage area shall be clearly marked for storage of shopping carts.

6. Lighting. All parking areas, driveways and loading areas shall be provided with a lighting system which shall furnish a minimum of thirty-five (35) foot candles at any point during hours of operation, with lighting standards in parking areas being located not farther than one hundred (100) feet apart. All lighting shall be completely shielded from traffic on any public right-of-way and from any residential district.

7. Interior Circulation, Access and Traffic Control.

A. The interior circulation of traffic shall be designed so that no driveway or street providing parking spaces shall be used as a through street. If parking spaces are indicated by lines with angles other than ninety (90) degrees, then traffic lanes shall be restricted to one-way permitting head-in parking. No driveway or street used for interior circulation shall have traffic lanes less than ten (10) feet in width.

B. Areas provided for loading and unloading of delivery trucks and other vehicles, and for the servicing of shops by refuse collection, fuel and other service vehicles, shall be adequate in size and shall be so arranged that they may be used without blockage or interference with the use of accessways or automobile parking facilities.

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C. All accessways to any public street or highway shall be located at least seventy-five (75) feet from the intersection of any two (2) street lines and shall be designed in a manner conducive to safe ingress and egress as determined by the Planning Commission and the Borough Council. Where practicable, exits shall be located on minor rather than major streets or highways.

D. No design shall be approved which is likely to create substantial traffic hazards endangering the public safety. Safety requirements which may be imposed in such a review shall include traffic control devices, acceleration or deceleration lanes, turning lanes, traffic and lane markings and designs. The developer shall be responsible for the construction of any such traffic control devices.

8. Vehicles. Any movable structure, trailer, automobile, truck or parts of these items or any other items of similar nature, allowed to remain on the premises a longer time than that required to load, unload or otherwise discharge its normal functions, shall be considered subject to all regulations set forth in this Chapter for buildings and structures as defined herein.

(Ord. 445, 12/8/1997, §605)





Part 7

Nonconforming Uses, Premises, Structures and Lots

§701. Statement of Intent.

1. The zoning districts established by this Chapter are designed to guide future use of land in the Borough by encouraging the development of desirable residential and commercial areas with appropriate groupings of compatible and related uses, to the end of promoting and protecting the public health, safety, comfort, prosperity and other aspects of the general welfare.

2. To achieve this end, lawful existing uses which would be prohibited or restricted under the terms of this Chapter or future amendments, and which do not conform to the character and regulations of the zoning district in which they are located, shall be subject to certain limitations. The regulations set forth below are intended to provide a gradual remedy for the undesirable conditions resulting from indiscriminate mixing of uses and to afford a means whereby nonconforming uses can be gradually eliminated and re-established in more suitable locations within the Borough.

3. Similarly, buildings or other structures which do not comply with one (1) or more of the applicable district requirements as to lot width, minimum lot area and yard spaces, off-street parking, lot coverages or building height are deemed to be nonconforming.

4. Nonconforming uses and structures will generally be permitted to remain; the purpose of regulating them is to restrict further investment in uses or structures which are inappropriate to their location.

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

(Ord. 445, 12/8/1997, §701)

§702. Nonconforming Use Regulations. (See definitions in §102 of this Chapter.)

1. Continuation. Lawful uses located either within a building or other structure, or part thereof or on the land, or in combination of both, which, at the effective date of this Chapter or subsequent amendment thereto, become nonconforming, may be continued so long as they remain otherwise lawful, including subsequent sales of the property.

2. Moving of Structure. No nonconforming building or structure shall be moved in whole or in part to another location on the lot unless every portion of said building or structure is made to conform to all the regulations of the district in which it is located.

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3. Discontinuance. If a nonconforming use of land or building ceases operations for a continuous period of more than one (1) year, then this shall be deemed to be an intent to abandon such use and any subsequent use of land shall conform to the regulations of this Chapter. This shall not apply to any single-family, two-family or double-family uses.

### 4 Change in Use.

A. The lawful use of a building existing at the time of the adoption of this Chapter may be continued, although such use does not conform to the provisions hereof, and such use may be extended throughout the building; provided, no structural alterations are made other than those ordered by an authorized public officer to assure safety of the building, structure or its occupants; and, provided further, that such extension does not displace any residence use in a residential district. If no structural alterations are made, a nonconforming use of the same or higher classification. If such a nonconforming use or a portion thereof is so discontinued or changed to a conforming use, any future use of such building, structure or portion thereof shall be in conformity with the provisions of this Chapter.

B. Whenever a use district shall be hereinafter changed, any existing nonconforming use in such changed district may be continued or changed to another nonconforming use of the same or higher classification provided that no structural alterations are made other than those ordered by an authorized public officer to assure the safety of the building, structure or its occupants or of an abutting building, structure or its occupants.

### 5. Damage or Destruction.

A. In the event that a nonconforming building or structure in any district is destroyed or partially destroyed by fire, explosion or other cause, or otherwise damaged to the extent of fifty (50) percent or more of either its assessed valuation (as determined from the assessment rolls effective at the date of damage or destruction) or the bulk of all buildings, structures and other improvements on the lot, such nonconforming uses shall terminate and the lot shall thereafter be used only for conforming uses.

B. In any case, whether conforming or nonconforming, the remains of any building so destroyed must be removed from the premises within six (6) calendar months so that the same is, or shall not remain, as a nuisance thereon and follow all environmental rules and regulations.

6. Expansion. A nonconforming use or building may be expanded up to twenty-five (25) percent of the floor area of the nonconforming building as it existed at the time of adoption of this Chapter. No such use shall be permitted to expand except in accordance with all lot and building regulations contained in this Chapter.

(Ord. 445, 12/8/1997, §702)

§703. Nonconforming Lawful Signs. Lawful signs in existence at the effective date of this Chapter or amendment thereto may be continued subject to the following regulations:

A. Moving. No conforming advertising sign, billboard, commercial advertising structure or statuary shall be moved to another portion on the building or lot on which it is located after the effective date of this Chapter or amendment thereto.

B. Structural Alterations. A nonconforming sign on a nonconforming use may be continued, but the area of such sign, or signs, shall not be increased and such sign, or signs, shall not be structurally altered.

C. Damage or Destruction. In the event that any nonconforming advertising sign, billboard, commercial advertising structure or statuary is damaged by any means to the extent of fifty (50) percent of its cost of replacement at the time of destruction, such sign shall not be restored or replaced.

D. Discontinuance of Signs. Whenever any use of building or structure or land, or of a combination of buildings, structures and land ceases, all signs accessory to such use shall be deemed to become nonconforming and shall be removed within six (6) calendar months.

(Ord. 445, 12/8/1997, §703)

§704. Registration of Nonconformity.

1. Registration of Nonconforming Uses, Buildings, Lots and Signs. In order to administer this Chapter, the Zoning Officer and the Code Enforcement Officer shall prepare, after the adoption of this Chapter, and over a reasonable period of time, a list of all nonconforming uses, lots and signs then in existence.

(Ord. 445, 12/8/1997, §704)



Part 8

Administrative Procedures

§801. Specific Intent. It is the purpose of these regulations to prescribe the procedures by which the administration of this Chapter shall take place. Nothing contained within this Part shall be interpreted as limiting the adoption of administrative regulations which do not supersede required stated procedures. (Ord. 445, 12/8/1997, §801)

§802. Appointment and Powers of Zoning Officer.

1. For the administration of this Chapter, a Zoning Officer, who shall not hold any elective office in the Borough of Homer City, shall be appointed by the Borough Council. The Zoning Officer also holds the office of Borough Manager. (Ord. 343 [Chapter 1, Part 2A])

2. The Zoning Officer shall meet the qualifications established by the Borough of Homer City and shall be able to demonstrate to the satisfaction of the Borough of Homer City a working knowledge of municipal zoning.

3. The Zoning Officer shall administer this Chapter in conjunction with the Zoning Hearing Board and shall not have the power to permit any construction or any use or change of use which does not conform to this Chapter.

4. The Zoning Officer is hereby authorized to institute civil enforcement proceedings as a means of enforcement when acting within the scope of his employment.

§803. Appointment and Powers of the Code Enforcement Officer.

1. For the administration of building codes and ordinances, a Code Enforcement Officer, who shall not hold any elective office in the Borough of Homer City, shall be appointed by the Borough Council.

2. The Code Enforcement Officer shall meet the qualifications established by the Borough of Homer City and possess the knowledge of the BOCA Building Codes.

3. The Code Enforcement Officer shall administer the building codes in accordance with its literal terms and shall have the power to permit any construction which conforms to the codes and ordinances.

4. The Code Enforcement Officer is hereby authorized to institute civil enforcement proceedings as a means of enforcement when acting within the scope of his employment.

(Ord. 445, 12/8/1997, §802A)

§804. Enforcement Notice.

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1. If it appears to the Borough of Homer City that a zoning or building violation of this Chapter has occurred, the Borough of Homer City shall initiate enforcement proceedings by sending an enforcement notice as provided in this Section.

2. The enforcement notice shall be sent to the owner of record of the parcel on which the violation has occurred, to any person who has filed a written request to receive enforcement notices regarding that parcel and to any other person requested in writing by the owner of record.

3. An enforcement notice shall state at least the following:

A. The name of the owner of record and any other person against whom the Borough of Homer City intends to take action.

B. The location of the property in violation.

C. The specific violation with a description of the requirements which have not been met, citing in each instance the applicable provisions of this Chapter.

D. The date before which the steps for compliance must be commenced and the date before which the steps must be completed.

E. That the recipient of the notice has the right to appeal to the Zoning Hearing Board within a period of ten (10) days if the violation is zoning. Code enforcement appeals must be made to the BOCA Appeals Board.

F. That failure to comply with the notice within the time specified, unless extended by appeal to the Zoning Hearing Board or the BOCA appeals board, constitutes a violation, with possible sanctions clearly described.

(Ord. 445, 12/8/1997, §803)

§805. Causes of Action. In case any building, structure, landscaping or land is, or is proposed to be, erected, constructed, reconstructed, altered, converted, maintained or used in violation of this Chapter, the Borough Council or, with the approval of the Borough Council, an officer of the Borough of Homer City, or any aggrieved owner or tenant of real property who shows that his property or person will be substantially affected by the alleged violation, in addition to other remedies, may institute any appropriate action or proceeding to prevent, restrain, correct or abate such building, structure, landscaping or land, or to prevent, in or about such premises, any act, conduct, business or use constituting a violation. When any such action is instituted by a landowner or tenant, notice of that action shall be served upon the Borough of Homer City at least thirty (30) days prior to the time the action is begun by serving a copy of the complaint on the Borough Council. No such action may be maintained until such notice has been given. (Ord. 445, 12/8/1997, §804)

§806. Enforcement Remedies.

1. Any person, partnership or corporation who or which has violated or permitted that violation of the provisions of this Chapter shall, upon being found liable therefore in a civil enforcement proceeding commenced by the Borough of Homer City, pay a judgment of not more than five hundred (\$500.00) dollars plus all court costs, including reasonable attorney fees incurred by the Borough of Homer City as a result thereof. No judgment shall commence or be imposed, levied or payable until the date of the determination of a violation by the district justice. If the defendant neither pays nor timely appeals the judgment, the Borough of Homer City may enforce the judgment pursuant to the applicable rules of civil procedure. Each day that a violation continues shall constitute a separate violation, unless the district justice determining that there has been a violation further determines that there was a good faith basis for the person, partnership or corporation violating this Chapter to have believed that there was no such violation, in which event there shall be deemed to have been only one (1) violation until the fifth day following the date of the determination of a violation by the district justice and thereafter each day that a violation continues shall constitute a separate violation.

2. The court of common pleas, upon petition, may grant an order of stay, upon cause shown, tolling the per diem fine pending a final adjudication of the violation and judgment.

3. Nothing contained in this Section shall be construed and or interpreted to grant to any person or entity other than the Borough of Homer City the right to commence any action for enforcement pursuant to this Section.

4. District justices shall have initial jurisdiction over proceedings brought under this Section.

(Ord. 445, 12/8/1997, §805)

§807. Permits.

1. Zoning Permits.

A. Requirements. A zoning permit shall be required prior to development plans and building application to ensure that the building, structure or any portion thereof conforms to this Chapter. Any change in use of a building or land and prior to the change or extension of nonconforming use requires a zoning permit. A zoning permit is also required prior to the occupancy of any building in the commercial or industrial district as well as electrical service and main panel, major roofing (greater than three hundred (300) square feet), siding (greater than four hundred (400) square), decks that require four (4) steps or more to gain access, sheds, fencing and exterior stairs that have four (4) or more steps.

B. Application for Permits. Application for permits shall be made in writing to the Zoning Officer on such forms as may be furnished by the Borough. Such application shall state the use of the building and contain all information necessary for such official to ascertain whether the proposed action complies with this Chapter. Applications that

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cannot be granted by the Zoning Officer must be presented to the Zoning Hearing Board or a conditional use is approved by Borough Council.

### C. Issuance of Permits.

(1) No building or zoning permit shall be issued, except in conformity with the regulations of this Chapter or after written order from the Zoning Hearing Board or the courts.

(2) Permits shall be granted or refused within ten (10) days after date of application. In case of refusal, the applicant shall be informed of his right to appeal to the Zoning Hearing Board.

## 2. Building Permits.

A. Requirements. A building permit shall be required prior to the erection, construction or alteration of any building, structure or any portion thereof, prior to the moving of a building into the Borough, from one place in the Borough to another. Routine maintenance of a property as defined is minor alterations, \$102, does not require a building permit. However, structural alterations in the amount of two thousand five hundred dollars (\$2,500.00) require an approved building permit as well as electrical and main panel, major roofing (greater than three hundred one (301) square feet), siding (greater than four hundred one (401) square feet), decks that require four (4) steps or more to gain access, sheds, fencing and exterior stairs that have four (4) or more steps.

### B. Certified Survey.

(1) A certified survey shall be required for any application for building permit in and for the Borough of Homer City that requires approval of the Planning Commission of Homer City Borough and/or the Zoning Hearing Board of Homer City Borough. In addition, any accessory structure which reduces the side or rear yard clearance of the principal structure or is to be located on a property line shall require a certified survey.

(2) The Code Enforcement Officer shall be empowered to make a determination upon application for a building permit as to the applicability of the hereinabove required survey.

(3) Any and all applicants for a building permit within the Borough of Homer City shall acknowledge on said application that all the facts are true and correct and it shall be the responsibility of the Code Enforcement Officer and the Zoning Officer to approve said applications, even though said applications do not require the approval of the Planning Commission or the Zoning Hearing Board.

(4) Any applicant for a building permit that provides false information to the Code Enforcement Officer or the Zoning Officer, or it is determined that any false information is contained within the application and exhibits attached to said application, the Code

Enforcement Officer has the right to revoke the permit and to take any and all steps applicable for the cessation of construction and/or any and all other remedies deemed proper and authorized under this Chapter.

C. Stormwater Management.

(1) Without approval from the Code Enforcement Officer or Borough Engineer, no resident or business will be permitted to construct anything that would alter the natural drainage course on their property.

(2) Without approval from the Code Enforcement Officer or the Borough Engineer, no resident or business will be permitted to install any drainage ditches, pipes or structure within the Borough right-of-way.

(3) Without approval from the Code Enforcement Officer or the Borough Engineer, no resident or business will be permitted to alter water runoff from their property in a negligent manner that will create problems for downstream adjoining property owners. This includes driveways and parking lots.

D. Application for Permits. Application for permits shall be made in writing to the Zoning Officer and Code Enforcement Officer or his duly authorized representative on such forms as may be furnished by the Borough. Such application shall include building and usage and plot plan of a satisfactory nature, in duplicate, and shall contain all information necessary for such official to ascertain whether the proposed erection, alteration complies with the BOCA codes. No permit, except for occupancy, shall be considered complete or permanently effective until the Code Enforcement Officer has certified that the work performed meets all the requirements of applicable codes and ordinances.

E. Issuance of Permits.

(1) No building permit shall be issued except in conformity with the regulations of this Chapter, except after written order from the Zoning Hearing Board or the courts.

(2) Permits shall be granted or refused within ten (10) days after date of application. In case of refusal, the applicant shall be informed of his right to appeal to the Zoning Hearing Board.

F. Expiration of Permits. No permit for the erection, razing, change, alteration or removal of buildings shall be valid after one (1) year from the date of the issuance thereof. If the permittee shall be unable to complete the work within the specified period, he shall, prior to the expiration of the permit, present in writing to the Code Enforcement Officer, a request for an extension of time, setting forth therein the reasons for the requested extension. If the Code Enforcement Officer finds that the failure to complete the work under the permit was due to circumstances reasonably beyond the control of the permittee and that an extension of time to complete the work is

necessary and not contrary to the public interest, the permittee may be granted additional time, up to an additional one (1) year, for the completion of the work without additional cost to the permittee.

G. Certificate of Occupancy.

(1) Upon completion of the erection or alteration of any building or portion thereof authorized by any permit, and prior to occupancy or use, the holder of such permit shall notify the Code Enforcement Officer or his duly authorized representative of such completion. No permit shall be considered complete or permanently effective nor shall any building be occupied or lot used until said official has issued an occupancy permit certifying that the work has been inspected and approved as being in conformity with the permit and the provisions of this Chapter and other applicable ordinances.

(2) In commercial or industrial zoning districts in which performance standards are imposed, a safe occupancy permit shall be required, subject to §604 of this Chapter. No certificate of occupancy shall be permanent until thirty (30) days after the facility is fully operating, when, upon a reinspection by the Code Enforcement Officer or his duly authorized representative, it is determined that the facility is in compliance with all performance standards.

(3) Certificate of occupancy shall be granted or denied, within ten (10) days from the date of application.

H. Safe Occupancy Permit.

(1) A safe occupancy permit is required for existing structures and issued only after an inspection is done by the Code Enforcement Officer or a licensed professional and the structure or property meets the minimum requirements of the BOCA codes and this Chapter.

(2) The property shall be maintained in order to keep the permit. If found to be in violation, the permit can be revoked and another inspection must be done, at which time a new permit will be granted or denied.

(3) The cost of this permit is five dollars (\$5.00).

I. Remedies. In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted or maintained or any building, structure or land is used in violation of this Chapter or of any ordinance or other regulation made supplementing this Chapter, the proper authorities of the Borough, in addition to the other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alterations, repairs, conversion, maintenance or use, to restrain, correct or abate such violation or to prevent any illegal act, conduct, business or use in or about such premises.

(Ord. 445, 12/8/1997, §806)

§808. Schedule of Fees.

1. Determination. The Borough Council shall determine a schedule of fees, charges and expenses, as well as a collection procedure for special permits, variances, amendments and other matters pertaining to this Chapter. Said schedule of fees shall be posted in the Borough Office.

A. The Borough Council shall be empowered to re-evaluate the fee schedule and make necessary alterations to it. Such alterations shall not be considered an amendment to this Chapter and may be adopted at any public meeting of Council by resolution.

B. The required fees for zoning district amendments may vary according to advertising costs and thus shall be kept up-to-date by the Borough Council. All such fees shall be paid into the Borough treasury.

C. Fees for special exceptions, conditional use and variances shall be based upon local advertising costs with the applicant being billed after the Zoning Hearing Board has made a decision.

(Ord. 445, 12/8/1997, §807)

§809. Enactment of Zoning Ordinance Amendments.

1. The Borough Council may, from time to time, amend, supplement or repeal any of the regulations and provisions of this Chapter. The procedure for the preparation of a proposed zoning ordinance as set forth in §607 of the Pennsylvania Municipalities Planning Code, 53 P.S. §10607, is hereby declared optional.

2. Before voting on the enactment of an amendment, the Borough Council shall hold a public hearing thereon, pursuant to public notice. In addition, if the proposed amendment involves a zoning map change, notice of said public hearing shall be conspicuously posted by the Borough of Homer City at points deemed sufficient by the Borough of Homer City along the perimeter of the tract to notify potentially interested citizens. The affected tract or area shall be posted at least one (1) week prior to the date of the hearing.

3. In the case of an amendment other than that prepared by the Planning Commission, the Borough Council shall submit each such amendment to the Planning Commission at least thirty (30) days prior to the hearing on such proposed amendment to provide the Planning Commission an opportunity to submit recommendations.

4. If, after any public hearing held upon an amendment, the proposed amendment is changed substantially, or is revised to include land previously not affected by it, the Borough Council shall hold another public hearing, pursuant to public notice, before proceeding to vote on the amendment.

5. At least thirty (30) days prior to the public hearing on the amendment by the Borough Council, the Borough of Homer City shall submit the proposed amendment to the County planning agency for recommendations.

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6. Within thirty (30) days after enactment, a copy of the amendment to this Chapter shall be forwarded to the County planning agency.

(Ord. 445, 12/8/1997, §808)

§810. Procedure for Landowner Curative Amendments.

1. A landowner who desires to challenge on substantive grounds the validity of this Chapter or the zoning map or any provision thereof, which prohibits or restricts the use or development of land in which he has an interest, may submit a curative amendment to the Borough Council with a written request that his challenge and proposed amendment be heard and decided as provided in §916.1 of the Pennsylvania Municipalities Planning Code (hereinafter "MPC"), 53 P.S. §10916.1. The curative amendment and challenge shall be referred to the Planning Commission and the County planning agency as provided in §609 and notice of the hearing thereon shall be given as provided in §§610 and 916.1 of the MPC, 53 P.S. §§10609, 10610 and 10916.1.

2. The hearing shall be conducted in accordance with §908 of the MPC, 53 P.S. §10908, and all references therein to the Zoning Hearing Board shall, for purposes of this Section, be references to the Borough Council. If the Borough of Homer City does not accept a landowners curative amendment brought in accordance with this subsection and a court subsequently rules that the challenge has merit, the courts decision shall not result in a declaration of invalidity for this entire Chapter and zoning map, but only for those provisions which specifically relate to the landowners curative amendment and challenge.

3. The Borough Council, if it determines that a validity challenge has merit, may accept a landowner's curative amendment, with or without revision, or may adopt an alternative amendment which will cure the challenged defects. The Borough Council shall consider the curative amendments, plans and explanatory material submitted by the landowner and shall also consider:

A. The impact of the proposal upon roads, sewer facilities, water supplies, schools and other public service facilities.

B. If the proposal is for a residential use, the impact of the proposal upon regional housing needs and the effectiveness of the proposal in providing housing units of a type actually available to and affordable by classes of persons otherwise unlawfully excluded by the challenged provisions of this Chapter or zoning map.

C. The suitability of the site for the intensity of use proposed by the site's soil, slopes, woodlands, wetlands, floodplains, aquifers, natural resources and other natural features.

D. The impact of the proposed use on the site's soils, slopes, woodlands, wetlands, floodplains, natural resources and natural features, the degree to which these are protected or destroyed, the tolerance of the resources to development and any adverse environmental impacts.

E. The impact of the proposal on the preservation of agriculture and other land uses which are essential to public health and welfare.

(Ord. 445, 12/8/1997, §809)

§811. Procedure for Borough Curative Amendments.

1. If the Borough of Homer City determines that this Chapter, or any portion hereof, is substantially invalid, it shall take the following actions:

A. The Borough of Homer City shall declare by formal action, this Chapter or portions hereof substantially invalid and propose to prepare a curative amendment to overcome such invalidity. Within thirty (30) days such declaration and proposal the Borough Council shall:

(1) By resolution make specific findings setting forth the declared invalidity of this Chapter which may include:

(a) References to specific uses which are either not permitted or not permitted in sufficient quantity.

(b) Reference to a class of use or uses which requires revision.

(c) Reference to this entire Chapter which requires revisions.

(2) Begin to prepare and consider a curative amendment to this Chapter to correct the declared invalidity.

2. Within one hundred eighty (180) days from the date of the declaration and proposal, the Borough of Homer City shall enact a curative amendment to validate or reaffirm the validity of this Chapter pursuant to the provisions of §609 of the Pennsylvania Municipalities Planning Code (hereinafter "MPC"), 53 P.S. §10609, in order to cure the declared invalidity of this Chapter.

3. Upon the initiation of the procedures as set forth in subsection (1), the Borough Council shall not be required to entertain or consider any landowner's curative amendment filed under §609.1 of the MPC, 53 P.S. §10609.1, nor shall the Zoning Hearing Board be required to give a report requested under §§909.1 or 916.1 of the MPC, 53 P.S. §§10909.1, 10916.1, subsequent to the declaration and proposal based upon the grounds identical or substantially similar to those specified by the resolution required by subsection (1)(A). Upon completion of the procedures set forth in subsections (1) and (2), no rights to a cure pursuant to the provisions of §§609.1 and 916.1 of the MPC, 53 P.S. §§10609.1, 10916.1, shall, from the date of the declaration and proposal, accrue to any landowner on the basis of the substantive invalidity of this Chapter for which there has been a curative amendment pursuant to this Section.

4. The Borough of Homer City, having utilized the procedures set forth in this Section, may not again utilize said procedure for a period of

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thirty-six (36) months following the date of enactment of a curative amendment or reaffirmation of the validity of this Chapter; provided, however, if after the date of declaration and proposal there is a substantially new duty imposed upon the Borough of Homer City by virtue of a change in statute or by virtue of a Pennsylvania appellate court decision, the Borough of Homer City may utilize the provisions of this Section to propose a curative amendment to this Chapter to fulfill said duty to obligation.

(Ord. 445, 12/8/1997, §810)

Part 9

Zoning Hearing Board

§901. Zoning Hearing Board.

1. There is hereby created for the Borough of Homer City a Zoning Hearing Board in accordance with the provisions of Article IX of the Pennsylvania Municipalities Planning Code, 53 P.S. §10901 et seq.

2. The membership of the Board shall consist of three (3) residents of the Borough of Homer City appointed by resolution by the Borough Council. The terms of office shall be for three (3) years and shall be so fixed that the term of office of one (1) member shall expire each year. The Board shall promptly notify the Borough Council of any vacancies which occur. Appointments to fill vacancies shall be only for the unexpired portion of the term. Members of the Board shall hold no other office in the Borough of Homer City.

3. Any Board member may be removed for malfeasance, misfeasance or nonfeasance in office or for other just cause by a majority vote of the Borough Council which appointed the member, taken after the member has received fifteen (15) days advance notice of the intent to take such a vote. A hearing shall be held in connection with the vote if the member shall request it in writing.

4. The Board shall elect from its own membership its officers, who shall serve annual terms as such and may succeed themselves. For the conduct of any hearing and the taking of any action a quorum shall not be less than a majority of all members of the Board, but the Board may appoint a hearing officer from its own membership to conduct any hearing on its behalf and the parties may waive further action by the Board as provided in this Chapter.

5. The Board may make, alter and rescind rules and forms for its procedure, consistent with ordinances of the Borough of Homer City and laws of the Commonwealth. The Board shall keep full public records of its business, which records shall be the property of the Borough of Homer City and shall submit a report of its activities to the Borough Council as requested by the Borough Council.

6. Within the limits of funds appropriated by the Borough Council, the Board may employ or contract for secretaries, clerks, legal counsel, consultants and other technical and clerical services. Members of the Board may receive compensation for the performance of their duties as may be fixed by the Borough Council, but in no case shall it exceed the rate of compensation authorized to be paid to the members of the Borough Council.

(Ord. 445, 12/8/1997, §901)

§902. Jurisdiction.

1. The Zoning Hearing Board shall have exclusive jurisdiction to hear and render final adjudications in the following matters:

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A. Substantive challenges to the validity of any land use ordinance, except those brought before the Borough Council pursuant to §§609.1 and 916.1(a)(2) of the Pennsylvania Municipalities Planning Code (hereinafter "MPC"), 53 P.S. §§10609.1, 10916.1.

B. Challenges to the validity of a land use ordinance raising procedural questions or alleged defects in the process of enactment or adoption which challenges shall be raised by an appeal taken within thirty (30) days after the effective date of said ordinance. Where the ordinance appealed from is the initial zoning ordinance of the Borough of Homer City and a Zoning Hearing Board has not been previously established, the appeal raising procedural questions shall be taken directly to court.

C. Appeals from the determination of the Zoning Officer including, but not limited to, the granting or denial of any permit or failure to act on the application therefor, the issuance of any cease and desist order or the registration or refusal to register any nonconforming use, structure or lot.

D. Appeals from a determination by the Borough Engineer or the Zoning Officer with reference to the administration of any floodplain or flood hazard ordinance or such provisions within a land use ordinance.

E. Applications for variances from the terms of this Chapter and flood hazard ordinance or such provisions within a land use ordinance, pursuant to §910.2 of the MPC, 53 P.S. §10910.2.

F. Applications for special exceptions under this Chapter or floodplain or flood hazard ordinance or such provisions within a land use ordinance, pursuant to §912.1 of the MPC, 53 P.S. §10916.2.

G. Appeals from the determination of any officer or agency charged with the administration of any transfers of development rights or performance density provisions of this Chapter.

H. Appeals from the Zoning Officer's determination under §916.2 of the MPC, 53 P.S. §10916.2.

I. Appeals from the determination of the Zoning Officer or Borough Engineer in the administration of any land use ordinance or provision thereof with reference to sedimentation and erosion control and storm-water management insofar as the same relate to development not involving applications under Article V or VII of the MPC, 53 P.S. §§10501 et seq., 10701 et seq.

2. The Borough Council shall have exclusive jurisdiction to hear and render final adjudications in the following matters:

A. All applications for approvals of planned residential developments under Article VII of the MPC pursuant to the provisions of §702 of the MPC, 53 P.S. §10702.

B. All applications pursuant to §508 of the MPC, 53 P.S. §10508, for approval of subdivisions or land developments under Article V of the MPC, 53 P.S. §10501 et seq.

C. Applications for conditional use under the express provisions of this Chapter.

D. Applications for curative amendment to this Chapter or pursuant to §§609.1 and 916.1(a) of the MPC, 53 P.S. §§10609.1, 10916.1(a).

E. All petitions for amendments to land use ordinances, pursuant to the procedures set forth in §609 of the MPC, 53 P.S. §10609.

F. Appeals from the determination of the Zoning Officer or the Borough Engineer in the administration of any land use ordinance or provisions thereof with reference to sedimentation and erosion control and stormwater management insofar as the same relate to applications for land development under Articles V and VII of the MPC, 53 P.S. §§10501 et seq., 10701 et seq. Where such determination relates only to development not involving an Article V or VII application, the appeal from such determination of the Zoning Officer or the Borough Engineer shall be to the zoning arraying board pursuant to this Section. Where the applicable land use ordinance vests jurisdiction for final administration of subdivision and land development applications in the Planning Commission, all appeals from determinations under this subsection shall be to the Planning Commission and all appeals from the decision of the Planning Commission shall be to court.

(Ord. 445, 12/8/1997, §902)

§903. Variances.

1. The Zoning Hearing Board shall hear requests for variance where it is alleged that the provisions of this Chapter inflict unnecessary hardship upon the applicant. The Board may, by rule, prescribe the form of application any may require preliminary application to the Zoning Officer. The Board may grant a variance, provided that all of the following findings are made where relevant in a given case:

A. That there are unique physical circumstances or conditions, including irregularity, narrowness or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property and that the unnecessary hardship is due to such conditions and not the circumstances or conditions generally created by the provisions of this Chapter in the neighborhood or district in which the property is located.

B. That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of this Chapter and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.

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C. That such unnecessary hardship has not been created by the applicant.

D. That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property nor be detrimental to the public welfare.

E. That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue.

2. In granting any variance, the Board may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of this Chapter and the Pennsylvania Municipalities Planning Code, 53 P.S. §10101 et seq.

(Ord. 445, 12/8/1997, §903)

§904. Special Exceptions. Where the Borough Council, in this Chapter, has stated special exceptions to be granted or denied by the Zoning Hearing Board pursuant to express standards and criteria, the board shall hear and decide requests for such special exceptions in accordance with such standards and criteria. In granting a special exception, the board may attach such reasonable conditions and safeguards, in addition to those expressed in this Chapter, as it may deem necessary to implement the purposes of this Chapter and the Pennsylvania Municipalities Planning Code, 53 P.S. §10101 et seq.

(Ord. 445, 12/8/1997, §904)

§905. Conditional Uses. Where the Borough Council, in this Chapter, has stated conditional uses to be granted or denied by the Borough Council pursuant to express standards and criteria, the Borough Council shall hold hearings on and decide requests for such conditional uses in accordance with such standards and criteria. In granting a conditional use, the Borough Council may attach such reasonable conditions and safeguards, in addition to those expressed in this Chapter, as it may deem necessary to implement the purposes of this Chapter and the Pennsylvania Municipalities Planning Code, 53 P.S. §10101 et seq. (Ord. 445, 12/8/1997, §905)

§906. Parties Appellant Before the Board. Appeals raising the substantive validity of any land use ordinance (except those to be brought before the Borough Council pursuant to the Pennsylvania Municipalities Code), procedural questions or alleged defects in the process of enactment or adoption of a land use ordinance; or from the determination of the Zoning Officer including, but not limited to, the granting or denial of any permit, or failure to act on the application therefor, the issuance of any cease and desist order or the registration or refusal to register any nonconforming use, structure or lot; from a determination by the Borough Engineer or the Zoning Officer with reference to the administration of any floodplain or flood hazard ordinance or such provisions within a land use ordinance; from the determination of any officer or agency charged with the administration of any transfers of development rights or performance density provisions of this

Chapter; from the determination of the Zoning Officer or Borough Engineer in the administration of any land use ordinance or provision thereof with reference to sedimentation and erosion control and stormwater management insofar as the same relate to development not involving subdivision and land development or planned residential development, may be filed with the Zoning Hearing Board in writing by the landowner affected, any officer or agency of the Borough of Homer City or any person aggrieved. Requests for a variance and for special exception may be filed with the Board by any landowner or any tenant with the permission of such landowner. (Ord. 445, 12/8/1997, §906)

§907. Time Limitations.

1. No person shall be allowed to file any proceeding with the Zoning Hearing Board later than thirty (30) days after an application for development, preliminary or final, has been approved by the Borough of Homer City if such proceeding is designed to secure reversal or to limit the approval in any manner unless such person alleges and proves that he had not notice, knowledge or reason to believe that such approval had been given. If such person has succeeded to his interest after such approval, he shall be bound by the knowledge of his predecessor in interest. The failure of anyone other than the landowner to appeal from an adverse decision on a tentative plan or from an adverse decision by the Zoning Officer on a challenge to the validity of this Chapter or an amendment hereto or map or an amendment thereto shall preclude an appeal from a final approval, except in the case where the final submission substantially deviates from the approved tentative approval.

2. All appeals from determinations adverse to the landowner shall be filed by the landowner within thirty (30) days after notice of the determination is issued.

(Ord. 445, 12/8/1997, §907)

§908. Stay of Proceedings.

1. Upon filing of any appeal proceeding before the Zoning Hearing Board and during its pendency before the Board, all land development pursuant to any challenged ordinance, order or approval of the Zoning Officer or of any agency or body, and all official action thereunder, shall be stayed unless the Zoning Officer or any other appropriate agency or body certifies to the Board facts indicating that such stay would cause imminent peril to life or property, in which case the development or official action shall not be stayed otherwise than by a restraining order, which may be granted by the Board or by the court having jurisdiction of zoning appeals, on petition, after notice to the Zoning Officer or other appropriate agency or body. When an application for development, preliminary or final, has been duly approved and proceedings designed to reverse or limit the approval are filed with the Board by persons other than the applicant, the applicant may petition the court having jurisdiction of zoning appeals to order such persons to post bond as a condition to continuing the proceedings before the Board.

2. After the petition is presented, the court shall hold a hearing to determine if the filing of the appeal is frivolous. At the hearing, evidence may be presented on the merits of the case. It shall be the burden of the applicant for a bond to prove the appeal is frivolous. After consideration

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of all evidence presented, if the court determines that the appeal is frivolous, it shall grant the petition for a bond. The right to petition the court to order the appellants to post bond may be waived by the appellee, but such a waiver may be revoked by him if an appeal is taken from a final decision of the court.

3. The question whether or not such petition should be granted and the amount of the bond shall be within the sound discretion of the court. An order denying a petition for bond shall be interlocutory.

4. If an appeal is taken by a respondent to the petition for a bond from an order of the court dismissing a zoning appeal for refusal to post a bond and the appellate court sustains the order of the court below to post a bond, the respondent to the petition for a bond, upon motion of the petitioner and after hearing in the court having jurisdiction of zoning appeals, shall be liable for all reasonable costs, expenses and attorney fees incurred by the petitioner.

(Ord. 445, 12/8/1997, §908)

Part 10

The Planning Commission

§1001. Specific Intent. It is the purpose of this Part to cite those Parts and Sections of this Chapter that specifically refer to responsibilities of the Homer City Borough Planning Commission in the administration of this Chapter. Further, it is the purpose of §1002 to establish a site plan review procedure for the Planning Commission. (Ord. 445, 12/8/1997, §1001)

§1002. Administration and Procedure.

1. Appointment. The Planning Commission, consisting of five (5) members, shall be appointed by the Borough Council in the manner prescribed by law, as outlined in §202, Pennsylvania Act No. 247.

2. Rules of Procedure. The Planning Commission shall adopt such rules of procedure as are required in accordance with the provisions of other Borough ordinances and as necessary, to provide the required reviews and recommendations relative to this Chapter. The rules of procedure with regard to zoning matters shall be in accordance with the provisions of Act No. 247 and any other Borough ordinances pertinent to the review functions of the Homer City Borough Planning Commission.

3. Meetings. The Planning Commission shall meet monthly at a regularly prescribed date and meeting place and at other times as the Chairman may deem necessary. All meetings of the Planning Commission shall be open to the public. The Secretary of the Planning Commission shall keep minutes of all meetings.

4. Decisions Regarding Zoning Matters. Within thirty (30) days after any hearing regarding a zoning matter or unless a different time is required within this Chapter, the Planning Commission shall record its review, analysis and recommendations in written form, copies of which shall be forwarded to the appropriate body such as the Borough Council, the Zoning Hearing Board, or, in certain cases, to the Borough Secretary or Chief Inspector. The thirty (30) day period for a decision shall be computed from the day the Planning Commission received the subject matter requiring said decision. If any public hearings are required during the course of the hearing, the thirty (30) day period prescribed above shall be applicable only after the holding of a required public hearing in accordance with public notice required by Act No. 247 and this Chapter.

5. Limitations. The Planning Commission shall function as an advisory body and shall be restricted in its duties to applying the conditions, requirements, restrictions and standards imposed by the various Sections of this Chapter in keeping with its overall intent.

6. Appeals of Planning Commission Review and Recommendations. Any applicant or affected persons may, within ten (10) days of a decision of the Planning Commission under §1003, appeal to the Borough Council for review. Such review shall be conducted during a regularly scheduled meeting. The

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Borough Council may affirm, reverse or modify the findings of the Planning Commission.

7. Activities. The Planning Commission may undertake special studies relating to the comprehensive plan and its implementation which it deems necessary. Public meetings may be undertaken for this purpose. Material may be gathered and printed. The Planning Commission may retain outside consulting assistance as it deems necessary. All appropriations of Borough funds for planning purposes shall first be approved by the Borough Council.

(Ord. 445, 12/8/1997, §1002)

§1003. Powers. The Planning Commission of the Homer City Borough shall have all powers prescribed by law. (See §209, Pennsylvania Act No. 247) These powers shall include:

A. Review of all special exception application in Commercial Districts prior to any final decision of the Zoning Hearing Board.

B. Review of all amendments to this Chapter as prescribed by §809 of this Chapter; and in accordance with the provisions of §609, Pennsylvania Act No. 247.

C. Be of assistance to the Zoning Hearing Board whenever requested and present to such body, facts, records and any other similar information on specific requests to guide such body in reaching its decision.

D. Review of all site plans in accordance with the procedures established by §1004 of this Chapter.

(Ord. 445, 12/8/1997, §1003)

§1004. Site Plan Review Procedure for All Proposed Development Within the Homer City Borough. (See §102 definition of "site plan.")

1. Purpose. In order to assure the satisfactory development of sites with any residential, commercial or industrial districts it shall be required that prior to the use or occupancy of such a lot, building site, parcel or property, a suitable site plan shall be submitted to the Homer City Borough Planning Commission for review prior to the issuance of a building permit to occupy or use the lot for the uses prescribed herein. For the purposes of site plan review, all commercial or industrial proposals regardless of size, configuration, nature or location, and all residential proposals consisting of more than a single dwelling unit shall be subject to the review of the Homer City Borough Planning Commission.

2. Submission Procedure. Such a plan should be submitted through the Borough Manager to the Planning Commission at least ten (10) days prior to its next scheduled meeting and shall consist of the following:

A. Four (4) black-on-white copies of a survey drawn to scale, prepared by a professional engineer, architect or landscape architect registered in the Commonwealth of Pennsylvania, showing the exact size, shape and dimensions of the lot to be built upon.

B. The exact size and location on the lot of all existing buildings and structures.

C. The exact size and location on the lot of the structure or building proposed to be erected, moved, repaired or altered.

D. All adjacent streets or alleys with traffic flow patterns.

E. The proposed parking facilities, including the size, arrangements and number of parking stalls and placement of lighting standards, if needed.

F. The movement of all vehicles and ingress and egress drives for all off-street parking and loading areas both front and rear, to insure the prevention of blockage of vehicles entering and leaving the site.

G. General location and nature of public and private utilities, including underground utilities and other community facilities and services (for nonresidential uses only).

H. General landscape plan, if required.

I. Preliminary architectural and engineering sketches showing plan levels, elevation and any other necessary information related to water runoff control, slope, contours, type of building construction, etc.

J. Areas to be utilized for the exterior storage of materials and type of architectural screen.

K. Such other information as may be required by the Borough Council or the Planning Commission.

3. Review by the Planning Commission. The review of the site plan shall be accomplished by the Planning Commission. Upon arrival of the site plan by the Planning Commission, said Commission shall authorize its Chairman to endorse the plan together with the date of such action.

4. Review by the Borough Council.

A. Upon approval of the site plan by the Planning Commission, the Plan shall then be submitted to the Borough Secretary for submission to the Borough Council at its regularly scheduled meeting.

B. If the Planning Commission disapproves the site plan, said Plan may be modified or changed for further review by the Planning Commission or the site plan shall be returned to the Borough Secretary for appeal to the Borough Council with all recommendations from the Planning Commission attached. The Borough Council may approve the site plan or request changes and modification, in which case the site plan must be resubmitted to the Planning Commission for their review and approval or disapproval.

5. Expiration of Permits. No permit for the erection, razing, change, alterations or removal of buildings in accordance with an approved site plan

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shall be valid or effective after one (1) year from the date of issuance thereof and shall thereafter be void, unless the work authorized by such permit shall have been substantially commenced within one (1) year from the date of issuance and processed with due diligence.

(Ord. 445, 12/8/1997, §1004)

Part 11

Sexually Oriented Businesses

§1101. Purpose and Intent. It is the purpose of this Part to regulate sexually oriented businesses to promote the health, safety and general welfare of the citizens of the Borough, and to establish reasonable and uniform regulations to prevent the continued deleterious location and concentration of sexually oriented businesses within the Borough. The provisions of this Part have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent nor effect of this Part to restrict or deny access by adults to sexually oriented materials protected by the First Amendment or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this Part to condone or legitimize the distribution of obscene material. (Ord. 443, 7/1/1997, §1)

§1102. Definitions.

ADULT ARCADE - any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically or mechanically controlled still or motion picture machines, projectors or other image-producing devices are maintained to show images to five (5) or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of "specified sexual activities" or "specified anatomical areas."

ADULT BOOKSTORE or ADULT VIDEO STORE - a commercial establishment which, as one of its principal purposes, offers for sale or rental for any form of consideration any one (1) or more of the following:

A. Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides or other visual representations which depict or describe "specified sexual activities" or "specified anatomical areas."

B. Instruments, devices or paraphernalia which are designed for use in connection with "specified sexual activities."

A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or describing "specified sexual activities" or "specified anatomical areas" and still be categorized as "adult bookstore" or "adult video store." Such other business purposes will not serve to exempt such commercial establishment from being categorized as an "adult bookstore" or "adult video store" so long as one (1) of its principal business purposes is the offering for sale or rental for consideration the specified materials which depict or describe "specified sexual activities" or "specified anatomical areas."

ADULT CABARET - a nightclub, bar, restaurant or similar commercial establishment which regularly features:

A. Persons who appear in the state of nudity.

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B. Live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities."

C. Films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or specified anatomical areas."

ADULT MOTEL - a hotel, motel or similar commercial establishment which:

A. Offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas"; and has a sign visible from the public right-of-way which advertises the availability of this adult type of photographic reproductions.

B. Offers sleeping rooms for rent four (4) or more times in one (1) calendar day during five (5) or more calendar days in any continuous thirty (30) day period.

ADULT MOTION PICTURE THEATER - a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides or similar photographic reproductions are regularly shown which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical activities."

ADULT THEATER - a theater, concert hall, auditorium or similar commercial establishment which regularly features persons who appear in a state of nudity or live performances which are characterized by the exposure of "specified anatomical areas" or "specified sexual activities."

BOROUGH - the Borough of Homer City.

CHILD ORIENTED BUSINESS - a commercial establishment which, as one (1) of its principal business purposes, serves and/or sells to children and their families food, apparels, goods, services, play and/or entertainment.

ESCORT - a person who, for consideration, agrees or offers to act as a companion, guide or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

ESCORT AGENCY - a person or business associate who furnishes, offers to furnish or advertises to furnish escorts as one of its primary business purposes for a fee, tip or other consideration.

NUDE MODEL STUDIO - any place where a person who appears in a state of nudity or displays "specified anatomical areas" is provided to be observed, sketched, drawn, painted, sculptured, photographed or similarly depicted by other persons who pay money or any form of consideration.

NUDITY or a STATE OF NUDITY - the appearance of a human bare buttock, anus, male genitals, female genitals or female breast.

PERMITTEE and/or LICENSEE - a person in whose name a permit and/or license to operate a sexually oriented business has been issued, as well as the individual listed on the application for a permit and/or license.

PERSON - an individual, proprietorship, partnership, corporation, association or other legal entity.

SEMINUDE - a state of dress in which clothing covers no more than the genitals, pubic region and areola of the female breast, as well as portions of the body covered by supporting straps or devices.

SEXUAL ENCOUNTER CENTER - a business or commercial enterprise that, as one of its primary business purposes, offers for any form of consideration:

A. Physical contact in the form of wrestling or tumbling between persons of the opposite sex.

B. Activities between male and female persons and/or persons of the same sex when one or more of the persons is in a state of nudity or seminude.

SEXUALLY ORIENTED BUSINESS - an adult arcade, adult bookstore or adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio or sexual encounter center.

SPECIFIED ANATOMICAL AREAS - the male genitals in a state of sexual arousal and/or the vulva or more intimate parts of the female genitals.

SPECIFIED SEXUAL ACTIVITIES - includes any of the following:

A. The fondling or other erotic touching of human genitals, pubic region, buttocks, anus or female breasts.

B. Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation or sodomy.

C. Masturbation, actual or simulated.

D. Excretory functions as part of or in connection with any of the activities set forth in subsections (A) through (C), above.

SUBSTANTIAL ENLARGEMENT OF A SEXUALLY ORIENTED BUSINESS - the increase in floor areas occupied by the business by more than twenty-five (25) percent, as the floor areas exist on date of enactment of this Part.

TRANSFER OF OWNERSHIP OR CONTROL OF A SEXUALLY ORIENTED BUSINESS - includes any of the following:

A. The sale, lease or sublease of the business.

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B. The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange or similar means.

C. The establishment of a trust, gift or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

(Ord. 443, 7/1/1997, §2)

§1103. Classification. Sexually oriented businesses are classified as follows:

- A. Adult arcades
- B. Adult bookstores or adult video stores.
- C. Adult cabarets.
- D. Adult motels.
- E. Adult motion picture theaters.
- F. Adult theaters.
- G. Escort agencies.
- H. Nude model studios
- I. Sexual encounter centers.

(Ord. 443, 7/1/1997, §3)

§1104. Permit Required.

1. Any person who operates a sexually oriented business without valid permit issued by the Borough is guilty of a violation of this Chapter.

2. An application for a permit to operate a sexually oriented business must be made on a form provided by the Zoning Officer or Code Enforcement Officer and/or Borough representative. The application must be accompanied by a sketch or diagram showing the floor plan and plot plan configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared, but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches.

3. The applicant must be qualified according to the provisions of this Chapter and the premises must be inspected and found to be in compliance with the building codes and all other Borough ordinances by the Code Enforcement Officer and/or designated Borough representative.

4. If a person who wishes to operate a sexually oriented business is an individual, he must sign the application for a permit as an applicant. If

a person who wishes to operate a sexually oriented business is other than an individual, each individual who has a ten (10) percent or greater interest in the business must sign the application for permit as applicant. If a corporation is listed as owner of a sexually oriented business, or as the entity which wishes to operate such a business, each individual having a direct or indirect interest of ten (10) percent or greater in the corporation must sign the application for a permit as applicant.

5. The fact that a person possesses other types of Borough permits does not exempt the person from the requirement of obtaining a sexually oriented business permit.

(Ord. 443, 7/1/1997, §4)

§1105. Issuance of Permit.

1. The Zoning Officer, Code Enforcement Officer and/or designated Borough representative shall approve the issuance of a permit to an applicant within thirty (30) days after the receipt of an application unless he finds one or more of the following to be true:

A. An applicant is under eighteen (18) years of age.

B. An applicant or an applicant's spouse is overdue in his payment to the Borough of taxes, fees, fines or penalties assessed against him or imposed upon him in relation to a sexually oriented business.

C. An applicant has failed to provide information reasonably necessary for issuance of the permit or has falsely answered a question or request for information on the application form.

D. An applicant is residing with a person who has been denied a permit by the Borough to operate a sexually oriented business within the preceding twelve (12) months, or residing with a person whose license to operate a sexually oriented business has been revoked within the preceding twelve (12) months.

E. The premises to be used for the sexually oriented business have been reviewed and have been disapproved by either the Zoning Officer, Code Enforcement Officer and/or designated Borough representative as not being in compliance with applicable laws and ordinances.

F. The permit fee required by this Part has not been paid.

G. An applicant of the proposed establishment is in violation or is not in compliance with any of the provisions of this Part.

H. An individual applicant, or any individual holding a direct or indirect interest of more than ten (10) percent of a corporate applicant, or any of the officers and directors of a corporate applicant if the applicant is a corporation; or any of the partners, including limited partners, if the applicant is a partnership; or the manager or other person in charge of the operation of the applicant's business has, or have been, convicted of an offense involving sexual misconduct within

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the Commonwealth of Pennsylvania including, but not limited to, prostitution, obscenity and possession of child pornography, or convicted of any offense in any jurisdiction other than the Commonwealth of Pennsylvania that would have constituted an offense involving sexual misconduct if committed within the Commonwealth of Pennsylvania. In order for approval to be denied pursuant to this subsection, the person or persons conviction or release in connection with the sexual misconduct offense must have occurred within two (2) years of the date of application in the event of a misdemeanor and within five (5) years of the date of application in the event of a felony.

2. The permit, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date and the address of the sexually oriented business. The permit shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be easily read at any time.

3. The Zoning Officer, Code Enforcement Officer and/or designated Borough representative shall complete their certification that the premises are in compliance, or not in compliance, within twenty (20) days of receipt of the application by the Borough. The certification shall be promptly presented to the Borough's representative.

(Ord. 443, 7/1/1997, §5)

§1106. Fees. The annual fee for a sexually oriented business permit is one thousand dollars (\$1,000.00). (Ord. 443, 7/1/1997, §6)

§1107. Inspection.

1. An applicant or permittee shall permit representatives of the Police Department, Zoning Officer, Code Enforcement Officer and/or designated Borough representative to inspect the premises of a sexually oriented business for the purpose of insuring compliance with the law, at any time that the sexually oriented business is occupied or open for business.

2. A person who operates a sexually oriented business, or his agent or employee, violates this Part if he refuses to permit such lawful inspection of the premises at any time it is occupied or open for business.

(Ord. 443, 7/1/1997, §7)

§1108. Expiration of Permit.

1. Each permit shall expire one (1) year from the date of issuance and may be renewed only by making application as provided in §1105. Application for renewal should be made at least thirty (30) days before the expiration date and, when made fewer than thirty (30) days before the expiration date, the pendency of the application will not prevent the expiration of the permit.

2. If the Borough, through their representatives, denies renewal of a license, the applicant shall not be issued a permit for one (1) year from the date of denial, except that after ninety (90) days have elapsed since the

date of denial, the applicant may be granted a permit if the Zoning Officer, Code Enforcement Officer and/or designated Borough representative finds that the basis for denial of the renewal permit has been corrected or abated.

(Ord. 443, 7/1/1997, §8)

§1109. Suspension of Permit. The Borough, through its representatives, shall suspend a permit for a period not to exceed thirty (30) days if they determine that a permittee or an employee of a permittee has:

- A. Violated or is not in compliance with any Section of this Part.
- B. Engaged in excessive use of alcoholic beverages while on the sexually oriented business premises.
- C. Refused to allow an inspection of the sexually oriented business premises as authorized by this Chapter.
- D. Knowingly permitted gambling by any person on the sexually oriented business premises.
- E. Failed to man manager's stations and/or maintain viewing rooms as set forth in §1113.

(Ord. 443, 7/1/1997, §9)

§1110. Revocation of Permit.

1. The Borough, through its representatives, shall revoke a permit if a cause of suspension set forth in §1109 occurs and the permit has been suspended within the preceding twelve (12) months.

2. The Borough, through its representatives, shall revoke a permit if they determine that:

- A. A permittee or any of the persons specified in §1105(1)(H) is or has been convicted of the offenses specified in §1105(1)(H).
- B. A permittee gave false or misleading information in the material submitted to the Borough during the application process.
- C. A permittee or an employee of a permittee has knowingly allowed possession, use or sale of controlled substances on the premises.
- D. A permittee or an employee of a permittee has knowingly allowed prostitution on the premises.
- E. A permittee or an employee of a permittee knowingly operates the sexually oriented business during a period of time when the permittee's permit was suspended.
- F. A permittee or an employee of a permittee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation or

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other explicit "sexual conduct" to occur in or on the permitted premises.

G. A permittee is delinquent in payment to the Borough or State of any taxes or fees relating to sexually oriented businesses.

3. When the Zoning Officer, Code Enforcement Officer and/or designated Borough representative revokes a permit, the revocation shall continue for one (1) year and the permittee shall not be issued a sexually oriented business permit for one (1) year from the date revocation became effective, except that if the revocation is pursuant to subsection(2)(A), above, the revocation shall be effective for two (2) years in the event of a misdemeanor or five (5) years in the case of a felony.

4. After denial of an application, or denial of a renewal of an application or suspension or revocation of a permit, the applicant or licensee or permittee shall have the right to appeal said action and to seek prompt judicial review of such administrative action in any court of competent jurisdiction.

(Ord. 443, 7/1/1997, §10)

§1111. Transfer of Permit. A permittee shall not transfer his permit to another person. A permittee shall not operate a sexually oriented business under the authority of a permit at any place other than the address designated in the application. (Ord. 443, 7/1/1997, §11)

§1112. Location of Sexually Oriented Business.

1. A person is guilty of a violation of this Chapter if he operates or causes to be operated a sexually oriented business outside of the district in which a sexually oriented business is a permitted use. No sexually oriented business shall be located outside a district in which a sexually oriented business is a permitted use. Sexually oriented businesses as defined herein shall be permitted in the Industrial District as a special exception.

2. A person is guilty of a violation of this Chapter if he operates or causes to be operated a sexually oriented business within six hundred (600) feet of:

- A. A church.
- B. A public or private pre-elementary, elementary or secondary school.
- C. A public library.
- D. A child care facility or nursery school.
- E. A public park adjacent to any residential district.
- F. A child oriented business.

3. A person is guilty of a violation of this Chapter if he causes or permits the operation, establishment, substantial enlargement or transfer of ownership or control of a sexually oriented business within six hundred (600) feet of another sexually oriented business.

4. A person is guilty of a violation of this Chapter if he causes or permits the operation, establishment or maintenance of more than one (1) sexually oriented business in the same building, structure or portion thereof; or the increase of floor areas of any sexually oriented business in any building, structure or portion thereof containing another sexually oriented business.

5. For the purpose of this Part, measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as a part of the premises where a sexually oriented business is conducted, to the nearest property line of the premises of a church, public or private pre-elementary, elementary or secondary school, public library, child care facility, child oriented business or nursery school; or to the nearest boundary of an affected public park.

6. For purposes of subsection (3) of this Section, the distance between any two (2) sexually oriented businesses shall be measured in a straight line, without regard to intervening structures or objects, from the closest exterior wall of the structure in which each business is located.

7. Any sexually oriented business lawfully operating on date of enactment of this Part that is in violation of subsections (1) through (6) of this Section shall be deemed a nonconforming use. Such nonconforming use shall not be increased, enlarged, extended or altered, except that the use may be changed to a conforming use. In the event that two (2) or more sexually oriented businesses are within six hundred (600) feet of one another and otherwise in a permissible location, the sexually oriented business which was first established and continually operating at a particular location is the conforming use and the later-established business is nonconforming.

8. A sexually oriented business lawfully operating as a conforming use is not rendered a nonconforming use by the location, subsequent to the grant or renewal of the sexually oriented business permit, of a church, public or private pre-elementary, elementary or secondary school, public library, child care facility, child oriented business, nursery school or public park within six hundred (600) feet of the sexually oriented business. This provision applies only to the renewal of a valid permit, and does not apply when an application for permit is submitted after a permit has expired or has been revoked.

(Ord. 443, 7/1/1997, §12)

§1113. Regulations Pertaining to Exhibition of Sexually Explicit Films or Videos.

1. A person who operates, or causes to be operated, a sexually oriented business, other than an adult motel, which exhibits on the premises in a viewing room of fewer than one hundred fifty (150) square feet of floor

ZONING

space, a film or video cassette, or other video or other image production or reproduction which depicts "specified sexual activities" or "specified anatomical area" shall comply with the following requirements:

A. The application for a permit to operate a sexually oriented business shall be accompanied by a floor plan and plot plan diagram of the premises showing a plan thereof specifying the location of one (1) or more manager's stations, the location of all viewing rooms, partitions and doors, and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed thirty-two (32) square feet of floor area. The diagram shall also designate the place at which the permit will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six (6) inches. The Borough, through its representatives, may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.

B. The application shall be sworn to be true and correct by the applicant.

C. No alteration in the configuration or location of a manager's station may be made without the prior approval of the Zoning Officer, Code Enforcement Officer and/or designated Borough representative.

D. It is the duty of the owners and operators of the premises to ensure that a least one (1) employee is on duty and situated in each manager's station at all times that any patron is present inside the premises.

E. The interior of the premises shall be configured in such a manner that there is an unobstructed view from the manager's station of every area of the premises to which any patron is permitted access for any purpose, excluding rest rooms. Rest rooms may not contain video reproduction or viewing equipment. If the premises has two (2) or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one (1) of the manager's stations. The view required in this subsection must be by direct line of sight from the manager's station.

F. It shall be the duty of the owners and operators, and it shall also be the duty of any agents or employees present on the premises, to ensure that the view as is specified in subsection (E) remains unobstructed by any doors, walls, merchandise, display racks or other materials at all times, and to ensure that no patron is permitted access to any area of the premises which has been designated as an area in

which patrons will not be permitted in the application filed pursuant to subsection (1)(A) of this Section.

G. No viewing room may be occupied by more than one (1) person at any time. No connections or openings to an adjoining viewing room shall be permitted.

H. The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not fewer than one (1) foot candle as measured at the floor level.

I. It shall be the duty of the owners and operators, and it shall also be the duty of any agents and employees present in the premises, to ensure that the illumination described above is maintained at all times that any patron is present in the premises.

2. A person having a duty under subsection (1)(A) through (1)(I) is guilty of a violation of this Chapter if he knowingly fails to fulfill that duty.

(Ord. 443, 7/1/1997, §13)

§1114. Exemptions. It is a defense to prosecution under §§1105 and 1112 that a person appearing in a state of nudity did so in a modeling class operated:

A. By a proprietary school, licensed by the Commonwealth of Pennsylvania, or a college, junior college or university supported entirely or partly by taxation.

B. By a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college or university supported entirely or partly by taxation.

C. In a structure:

(1) Which has no sign visible from the exterior of the structure and no other advertising that indicates a nude person is available for viewing.

(2) Where, in order to participate in a class, a student must enroll at least three (3) days in advance of the class.

(3) Where no more than one (1) nude model is on the premises at any one time.

(Ord. 443, 7/1/1997, §14)

§1115. Injunction. A person who operates, or causes to be operated, a sexually oriented business without a valid permit, or in violation of this Part, is subject to an action in equity or a suit for injunction, as well as citation for violation of this Chapter. (Ord. 443, 7/1/1997, §15)



Part 12

Zoning Map Changes

<u>Ord.</u>	<u>Date</u>	<u>Subject</u>
315	1/8/1974	Amending Zoning Map by changing from Zoned R-2 District to a Zoned C-1 District that portion of North Main Street and Miller Avenue and Church Street in said Borough now Zoned R-2.









**ZONING DISTRICTS**  
**HOMER CITY BOROUGH**

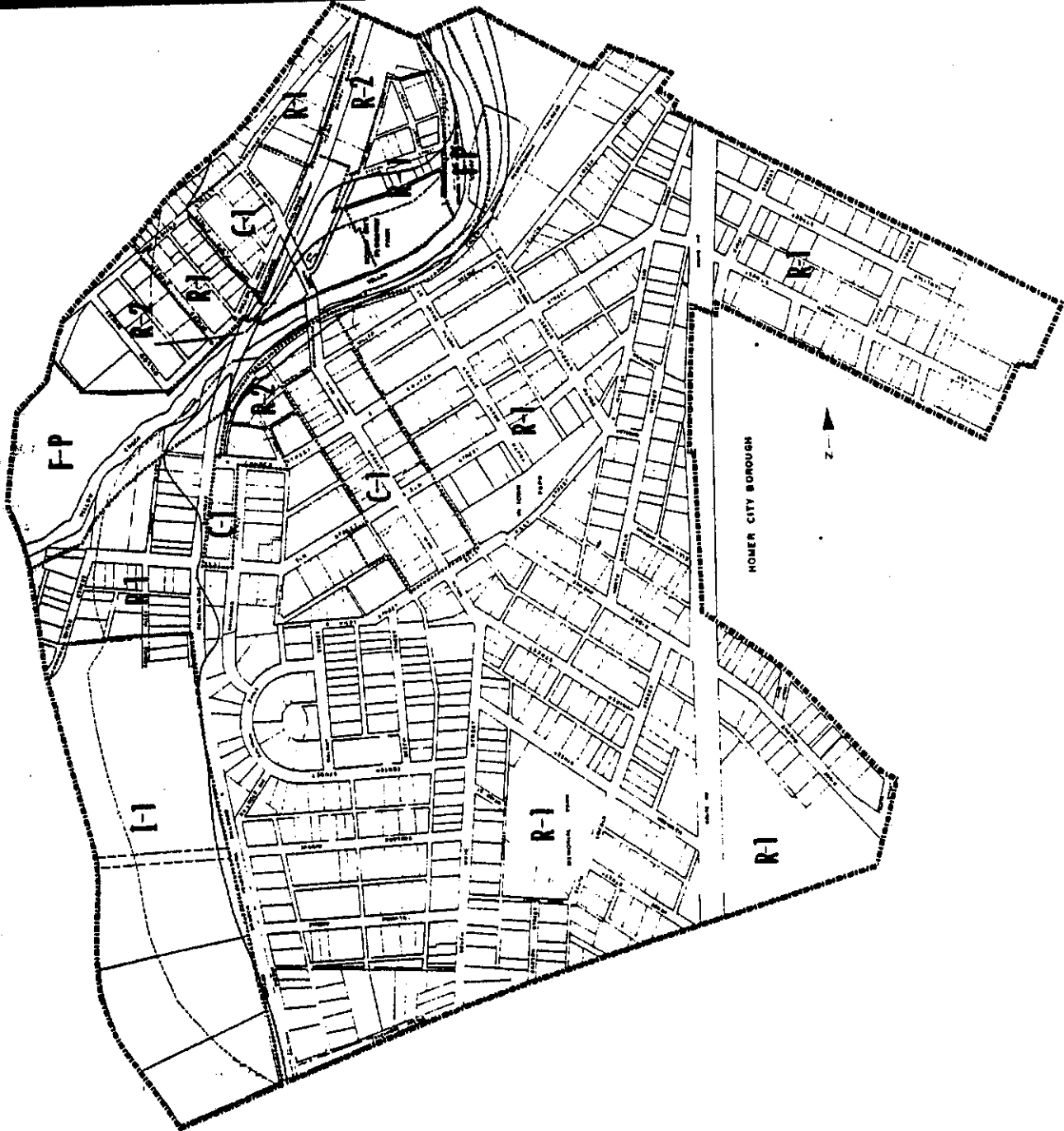
1990

APPROVED BY THE BOARD OF SUPERVISORS

- R-1** SINGLE FAMILY RESIDENTIAL DISTRICT
- R-2** MULTI-FAMILY RESIDENTIAL DISTRICT
- C-1** GENERAL COMMERCIAL DISTRICT
- I-1** INDUSTRIAL DISTRICT
- F-P** FLOOD PLAIN DISTRICT

**LEGEND**

-  BOROUGHS BOUNDARY
-  ZONING DISTRICT BOUNDARY
-  100-YEAR FLOOD BOUNDARY
-  FLOODWAY BOUNDARY
-  FLOODWAY
-  FLOODWAY FINDER





<u>Subject</u>	<u>Chapter</u>	<u>Section</u>
permit, revocation of	27	1110
permit, suspension of	27	1109
permit, transfer of	27	1111
purpose and intent	27	1101
sexually oriented business, location of	27	1112
zoning hearing board		
conditional uses	27	905
jurisdiction	27	902
parties appellant before the board	27	906
special exceptions	27	904
stay of proceedings	27	908
time limitations	27	907
variances	27	903
zoning hearing board	27	901

