

# CITY OF CONCORD

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*In the year of our Lord two thousand and twenty-four*

**AN ORDINANCE** amending the CODE OF ORDINANCES, Title IV, Zoning Code; Chapter 28, Zoning Ordinance

## **The City of Concord ordains as follows:**

**SECTION I:** Amend the CODE OF ORDINANCES, Title IV, Zoning Code, Chapter 28, Zoning Ordinance, Article 28-2, Zoning Districts and Allowable Uses, by amending Section 28-2-3, The Zoning Map, as follows:

### **28-2-3 The Zoning Map.**

The Zoning Map shall consist of a set of maps including the Zoning Base District Map and certain Overlay District Maps, the originals of which shall be kept in the Office of the City Clerk, and shall bear the City Seal and the signature of the Mayor, as attested to by the City Clerk.

- (a) *The Zoning Base District Map.* The Zoning Base District Map shall display the boundaries of all of the Base Districts and of certain Overlay Districts, as established in Section 28-2-2(a), within the City of Concord;
- (b) *The Zoning Overlay District Maps.* The Zoning Overlay District Maps are a series of topical maps displaying those Overlay Districts that are not otherwise displayed on the Zoning Base District Map, as follows:
  - (1) The boundaries of, and special limits within, the Flood Hazard (FH) District shall be identified by the Federal Emergency Management Agency in an engineering report entitled "The Flood Insurance Study for the County of Merrimack, New Hampshire" (FIS), with an effective date of April 19, 2010, as amended or revised with the accompanying Flood Insurance Rate Map (FIRM).
  - (2) The Shoreland Protection Map delineates the limits of the areas subject to the Shoreland Protection (SP) District;
  - (3) The Historic District Map displays the limits of land subject to the Historic (HI) District; and
  - (4) The Aquifer Protection District Map displays the limits of land subject to the Aquifer Protection (AP) District.
- (c) *Amendments to the Zoning Map.* Amendments to the Zoning Map shall be considered in accordance with the provisions of Article 28-10, Amendments, of this ordinance.

- (d) *Interpretation of District Boundaries.* The location of District boundaries shall be as shown on the Official Zoning Maps or as otherwise described in this ordinance. Where any uncertainty exists with respect to the boundary of any District as shown on the Zoning Base District or Overlay District Maps, the following rules shall apply:
- (1) Where a boundary is indicated as a highway, street, alley, railroad, utility right-of-way, watercourse or City boundary, it shall be construed to be the centerline thereof or such City boundary;
  - (2) Where a boundary is indicated as approximately parallel to a highway, street, alley, railroad, utility right-of-way, watercourse or City boundary, it shall be construed as parallel thereto at such distance from the edge of the right-of-way thereof as shown on the Zoning Maps;
  - (3) Where a boundary coincides within ten (10) feet or less with a lot line, the boundary shall be construed to be the lot line; and
  - (4) If no dimension is given on the Zoning Maps, the location of any boundary shall be determined by the ~~[Code Administrator]~~ **Deputy City Manager for Development, or their designee**, by use of the graphic scale shown on the Zoning Maps.

**SECTION II:** Amend the CODE OF ORDINANCES, Title IV, Zoning Code, Chapter 28, Zoning Ordinance, Article 28-2, Zoning Districts and Allowable Uses, Section 28-2-4, Allowable Principal and Accessory Uses in Zoning Districts, by amending sub Section 28-2-4(e), Administrative Classification of Uses Not Specified or Changes in Use, as follows:

**28-2-4 Allowable Principal and Accessory Uses in Zoning Districts.**

(e) *Administrative Classification of Uses Not Specified or Changes in Use.*

- (1) In the event that a proposed use is not specified in the Section 28-2-4(j), Table of Principal Uses, or Section 28-2-4(k), Table of Accessory Uses, of this ordinance, or where a change is proposed from a permitted use to another use, the ~~[Code Administrator]~~ **Deputy City Manager for Development, or their designee** is authorized to render a decision on the classification of said use. Any determination involving a nonconforming use shall be made pursuant to Article 28-8, Nonconforming Lots, Uses, and Structures, of this ordinance.
- (2) In reaching a decision on the classification of a use, the ~~[Code Administrator]~~ **Deputy City Manager for Development, or their designee** shall consider the similarity of the proposed use to other uses included in the Table of Principal Uses and the Table of Accessory Uses, in terms of the characteristics, function, or the intensity of the use. The Code Administrator may also consider the similarity of a proposed nonresidential use to the hierarchy of nonresidential uses as developed by the U. S. Department of Labor, Standard Industrial Classification (SIC) system.
- (3) The ~~[Code Administrator]~~ **Deputy City Manager for Development, or their designee**, shall render a decision which indicates an administrative classification of the proposed

use or change in use, and that said use is either a use which is permitted by right; or is a use which requires a special exception, conditional use permit, or other approval; or is a use which is not permitted under this ordinance.

- (4) Appeals of any such determination of an administrative classification shall require an appeal to the Board of Adjustment under the procedures set forth in Section 28-9-3, Decisions by the Board of Adjustment, of this ordinance.
- (5) A change in use from one nonconforming use to another nonconforming use shall require a special exception from the Board of Adjustment, subject to the review criteria established in Article 28-8, Nonconforming Lots, Uses and Structures, of this ordinance.

**SECTION III:** Amend the CODE OF ORDINANCES, Title IV, Zoning Code, Chapter 28, Zoning Ordinance, Article 28-3, Overlay Districts, Section 28-3-2, Flood Hazard (FH) District, by amending sub Sections 28-3-2(e)(4), Exemptions from Conditional Use Permits Requirements, 28-3-2(f)(4), Development Standards in the FH District, 28-3-2(g), General Application Requirements within the FH District, and 28-3-2(h), Determination of Required Elevation in the FH District, as follows:

**28-3-2 Flood Hazard (FH) District.**

(e) *Conditional Use Permits Required for Encroachments in the Floodway.*

- (4) *Exemptions from Conditional Use Permits Requirements.* Upon presentation to the [~~Code Administrator~~] **Deputy City Manager for Development, or their designee**, of a copy of a permit from the New Hampshire Department of Environmental Services (NHDES), the construction within the floodway of dams; hydroelectric facilities; public water supply, sewage treatment, and stormwater drainage facilities; and other public utilities and appurtenances, shall be exempt from the requirements for a conditional use permit.

(f) *Development Standards in the FH District.*

- (4) *Storage of Flammable or Combustible Fuels.* Flammable or combustible fuels may be stored in the FH District outside of the floodway when installed and stored in accordance with the most recently adopted version of the BOCA National Fire Prevention Code, to the satisfaction of the [~~Code Administrator~~] **Deputy City Manager for Development, or their designee.**

(g) *General Application Requirements within the FH District.* The Code Administrator shall review all applications for permits and approval of new construction or substantial improvements to determine whether proposed building site is in the FH District and if so, to assure that proposed buildings, structures, and improvements will be reasonably safe from flooding and in accordance with the requirements of this Section. Within the FH District, the following plans, data, information, and certification shall be provided by an applicant to the [~~Code Administrator~~] **Deputy City Manager for Development, or their designee:**

- (1) The proposed elevation in relation to the North American Vertical Datum (NAVD) of the lowest floor, including any basement;

- (2) If the structure is proposed to be floodproofed, the elevation in relation to NAVD to which the structure is to be floodproofed;
  - (3) Upon completion of floodproofing, the certification of a licensed professional engineer or architect that the design and methods construction or installation of floodproofing were completed in accordance with accepted standards of practice for the same;
  - (4) Where replacement on-site subsurface disposal systems are proposed outside of the floodway in the FH District, the certification of a licensed professional engineer, assuring that new or replacement systems will be designed to minimize or eliminate infiltration of floodwaters into the systems, and to minimize or eliminate discharges from the systems into floodwaters, and that the systems will be located to avoid impairment to them or contamination from them during periods of flooding; and
  - (5) Copies of all necessary permits from those governmental agencies from which approval is required by Federal or State law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334.
- (h) *Determination of Required Elevation in the FH District.* The ~~[Code Administrator]~~ **Deputy City Manager for Development, or their designee**, shall determine the required elevation for development outside of the floodway in the FH District within the Merrimack River floodplain by adding two (2) feet to the base flood elevation on the FIRM. The ~~[Code Administrator]~~ **Deputy City Manager for Development, or their designee**, shall determine the required elevation for development outside of the floodway within the floodplains of surface waters other than the Merrimack River by adding one foot to the base flood elevation on the FIRM. The flood reference elevations on the FIRM shall be determined in the following order of precedence according to the data available:
- (1) In Zone AE by reference to the base flood elevation data in the FIS and accompanying FIRM;
  - (2) In Zone A with no base flood elevation shown in the FIS or FIRM:
    - a. The Flood Plain Administrator shall obtain, review, and reasonably utilizing any one hundred (100) year flood elevation data available from federal, state, or other sources including data submitted pursuant to development applications;
    - b. Where a base flood elevation is not available or not known, the base flood elevation shall be determined to be at least two (2) feet above the highest adjacent grade;
    - c. For developments greater than five (5) acres, the applicant shall develop a base flood elevation based on a hydrologic and/or hydraulic study.

**SECTION IV:** Amend the CODE OF ORDINANCES, Title IV, Zoning Code, Chapter 28, Zoning Ordinance, Article 28-3, Overlay Districts, Section 28-3-3, Shoreland Protection (SP) District, by amending sub Section 28-3-3(i), Additional Requirements for Applications and Permits in the SP District, as follows:

**28-3-3 Shoreland Protection (SP) District.**

- (i) *Additional Requirements for Applications and Permits in the SP District.* For all applications for permits and approvals in the SP District, including applications to the Zoning Board of Adjustment, the Planning Board, the Heritage Commission, the Technical Review Committee, and the [~~Code Administrator~~] **Deputy City Manager for Development, or their designee**, submittal materials shall include the following in addition to any other requirements:
- (1) Photographs of the lot that display the extent of the existing natural vegetative and woodland buffers; and
  - (2) A sketch plan, to scale, that indicates the location and extent of existing stands of trees, shrub groups, grassed areas, exposed soil, and rock outcrop.

**SECTION V:** Amend the CODE OF ORDINANCES, Title IV, Zoning Code, Chapter 28, Zoning Ordinance, Article 28-5, Supplemental Standards, Section 28-5-22, Heliports, by amending sub Section 28-5-22(a), Permit Requirements, as follows:

**28-5-22 Heliports.**

A heliport, whether as a principal or accessory use, shall be subject to the following regulations:

- (a) *Permit Requirements.* A conditional use permit shall be required for construction and operation of a heliport, as follows:
- (1) In the case of a heliport as a principal use, once a conditional use permit has been granted, it is valid only for the site, equipment, flight frequency, and flight patterns as specified in the application, subject to any conditions and stipulations imposed by the Planning Board. A new conditional use permit shall be required for any proposed changes in the site, equipment, flight frequency, and flight patterns; or
  - (2) In the case of a heliport as an accessory use, the conditional use permit may be granted for a period of time not to exceed three (3) years. At the end of any permit period, the operation of the heliport may be renewed for an additional three-year period. At the time of renewal, if all of the information contained in the prior application for the heliport remains the same, the permit may be renewed by like application to the [~~Code Administrator~~] **Deputy City Manager for Development, or their designee**. If there are any proposed changes to the location or operation of the heliport, the renewal of a permit shall require the filing of another application for a conditional use permit. A permit and any renewal thereof shall not be assignable or transferable without the approval of the Planning Board. An

application for renewal of a permit shall be filed at least thirty (30) days in advance of the permit termination date.

**SECTION VI:** Amend the CODE OF ORDINANCES, Title IV, Zoning Code, Chapter 28, Zoning Ordinance, Article 28-5, Supplemental Standards, Section 28-5-23, Wireless Telecommunications Equipment, by amending sub Sections 28-5-23(b), Permit Requirements, 28-5-23(j), Inspections, and 28-5-23(k), Abandonment and Removal, as follows:

**28-5-23 Wireless Telecommunications Equipment.**

(b) *Permit Requirements.*

- (1) *Permits for Installation, Expansion, or Alteration.* The Planning Board is authorized to administer and grant conditional use permits for the installation, expansion, or alteration of wireless telecommunications equipment, communications towers, and antennae. The requirements of this Section shall be in addition to the requirements of Section 28-9-4(b), Conditional Use Permits, of this ordinance. Each permit granted by the Planning Board pursuant to this Section shall be valid for a period three (3) years, and a permit and any renewal thereof shall not be assignable or transferable without the approval of the [~~Code Administrator~~] ***Deputy City Manager for Development, or their designee.***
- (2) *Renewal of a Permit.* A permit may be renewed for a similar term by submittal of an application to the [~~Code Administrator~~] ***Deputy City Manager for Development, or their designee,*** including a new performance guarantee and the inspection report as required pursuant to Sections 28-5-23(i) and (j), Financial Guarantee and Inspections, of this ordinance, together with a record of any requests for co-location. The renewal application shall be submitted prior to the expiration date of the valid permit and the [~~Code Administrator~~] ***Deputy City Manager for Development, or their designee,*** shall render a decision on the application within sixty (60) days thereafter. In reaching a decision on a renewal application, the [~~Code Administrator~~] ***Deputy City Manager for Development, or their designee,*** shall consider the extent of action by the applicant pursuant to the findings of the inspection report, as well as the extent of compliance with the terms and conditions relative to co-location as established by the Planning Board. A finding by the [~~Code Administrator~~] ***Deputy City Manager for Development, or their designee,*** of a failure to provide co-location opportunities in accordance with the permit granted by the Planning Board shall result in denial of a renewal application.
- (j) *Inspections.* To insure structural integrity, towers, antennae, poles and other similar equipment shall be inspected at least every three (3) years by a structural engineer licensed by the State of New Hampshire. A copy of the inspection report shall submitted be as part of an application for renewal of a permit for a wireless telecommunications equipment installation. Any such equipment which the licensed engineer finds to be structurally deficient shall be repaired or removed within thirty (30) days of the filing of the report with the [~~Code Administrator~~] ***Deputy City Manager for Development, or their designee,*** or the permit renewal application shall be denied, the financial guarantee exercised, and the equipment installation removed.

- (k) *Abandonment and Removal.* All existing and proposed wireless telecommunications equipment shall be subject to the following provisions:
- (1) During the period of validity of the permit, if the applicant or owner of a wireless telecommunications equipment installation issues a declaration of intent to abandon the use of the installation, it must be removed or demolished and the materials properly disposed of by the applicant or owner within ninety (90) days of said declaration;
  - (2) During the period of validity of the permit, if a wireless telecommunications equipment installation remains unused for a period of twelve (12) consecutive months, it shall be deemed to be abandoned and shall be removed or demolished and the materials properly disposed of within ninety (90) days of notification to the applicant or owner by the ~~[Code Administrator]~~ ***Deputy City Manager for Development, or their designee***;
  - (3) When a permit for a wireless telecommunications equipment installation expires and an application for renewal has not been filed prior to the expiration date, or when an application for renewal of a permit is denied, the wireless telecommunications equipment installation shall be deemed to be abandoned and shall be removed or demolished and the materials properly disposed of by the applicant or owner within ninety (90) days of the expiration date; and
  - (4) In the event that the applicant or owner fails to remove or demolish a wireless telecommunications equipment installation and properly dispose of the materials within ninety (90) days of abandonment, the financial guarantee may be exercised by the City and the City will use the proceeds to enter upon the site and remove or demolish the wireless telecommunications equipment installation and properly dispose of the materials.

**SECTION VII:** Amend the CODE OF ORDINANCES, Title IV, Zoning Code, Chapter 28, Zoning Ordinance, Article 28-5, Supplemental Standards, Section 28-5-26, Earth Materials Removal, by amending sub Section 28-5-26(h), Inspections and Enforcement, as follows:

**28-5-26 Earth Materials Removal.**

(h) *Inspections and Enforcement.*

- (1) The ~~[Code Administrator]~~ ***Deputy City Manager for Development, or their designee***, shall have the right to enter upon the property for a period beginning with the date of the granting of the permit and ending one year after the expiration of the permit to inspect the excavation and reclamation operations and to ensure compliance with the terms and conditions of the permit. The ~~[Code Administrator]~~ ***Deputy City Manager for Development, or their designee***, may suspend operations found to be in violation of a permit pending a compliance hearing by the Planning Board concerning any violation;
- (2) Upon recommendation of the ~~[Code Administrator]~~ ***Deputy City Manager for Development, or their designee***, or the receipt of a valid complaint which in the opinion of the Planning Board warrants investigation and a hearing, the Planning

Board may order a public hearing to review the conditions of, or the extent of compliance with, a permit. After a hearing, an excavation permit may be modified or revoked by the Planning Board if the Board finds that the operation is being carried on in violation of any of the terms and conditions of the permit. The modification or revocation of a permit shall not relieve the applicant from any of obligations under the permit; and

- (3) Pursuant to RSA 155-E, the Planning Board may initiate proceedings to require the completion of the reclamation of an existing or abandoned excavation whether or not subject to permitting requirements.

**SECTION VIII:** Amend the CODE OF ORDINANCES, Title IV, Zoning Code, Chapter 28, Zoning Ordinance, Article 28-5, Supplemental Standards, Section 28-5-36, Outside Display and Sales of Merchandise Accessory to a Principal Retail Use, by amending sub Section 28-5-36(c), Design Standards, as follows:

**28-5-36 Outside Display and Sales of Merchandise Accessory to a Principal Retail Use.**

- (c) *Design Standards.* All merchandise placed on outside display, and the outside sales of merchandise, shall be subject to the following design standards:
  - (1) Such merchandise shall be placed within fenced enclosures, walled enclosures, or roofed areas, which shall be visually screened from the side and rear lot lines, and which shall not be located within any of the yards as required in Section 28-4-1(h), Table of Dimensional Regulations, of this ordinance;
  - (2) Such merchandise shall be located upon areas which are surfaced and maintained with concrete, asphalt, or other durable and dust free surfaces and which are graded and drained to the satisfaction of the [~~Code Administrator~~] ***Deputy City Manager for Development, or their designee***;
  - (3) The space occupied by such merchandise shall not exceed an area equal to fifteen (15) percent of the area of the building occupied by the principal retail use;
  - (4) When placed within a fenced or walled enclosure, the maximum height of the displayed merchandise shall not exceed the height of the fence or wall. When not placed within a fenced or walled enclosure, the maximum height of the displayed merchandise shall not exceed six (6) feet; and
  - (5) No merchandise shall be placed or located so as to interfere with pedestrian or building access or egress, with required vehicular parking, aisles, access or egress, with loading space parking or access, with public or private utilities, services or drainage systems, with fire lanes, alarms, hydrants, standpipes, or other fire protection equipment, or with emergency access or egress.



**SECTION IX:** Amend the CODE OF ORDINANCES, Title IV, Zoning Code, Chapter 28, Zoning Ordinance, Article 28-5, Supplemental Standards, Section 28-5-47, Small Wind Energy Systems, by amending sub Sections 28-5-47(a), Building Permit, 28-5-47(e), Applications, 28-5-47(f), Abutter and Regional Notification, 28-5-47(g), Standards for Review and 28-5-47(h), Abandonment, as follows:

### **28-5-47 Small Wind Energy Systems.**

These supplemental standards for small wind energy systems are enacted in accordance with RSA 674:62-66, and the purposes outlined in RSA 672:1. The purpose of this regulation is to accommodate small wind energy systems in appropriate locations, while protecting the public's health, safety and welfare. In addition, these regulations provide a permitting process for small wind energy systems to ensure compliance with the provisions of the requirements and standards established herein.

- (a) *Building Permit.* Small wind energy systems and meteorological towers (met towers) are an accessory use permitted in all zoning districts where structures of any sort are allowed. A person shall not erect, construct, or install a small wind energy system or a meteorological tower without first receiving a building permit from the Code Administrator. A building permit shall be required for any physical modification to an existing small wind energy system. Building permits for meteorological towers shall be permitted on a temporary basis not to exceed three (3) years from the date the building permit was issued.
- (e) *Applications.* Applications submitted to the ~~[Code Administrator]~~ **Deputy City Manager for Development, or their designee**, shall contain a site plan with the following information in addition to the information required for building and electrical permits required for the installation.
- (f) *Abutter and Regional Notification.* In accordance with RSA 674:66, the ~~[Code Administrator]~~ **Deputy City Manager for Development, or their designee**, shall notify all abutters and the local governing body by certified mail upon application for a building permit to construct a small wind energy system. The public will be afforded thirty (30) days to submit comments to the ~~[Code Administrator]~~ **Deputy City Manager for Development, or their designee**, prior to the issuance of the building permit. The ~~[Code Administrator]~~ **Deputy City Manager for Development, or their designee**, shall review the application for regional impacts per RSA 36:55. If the proposal is determined to have potential regional impacts, the ~~[Code Administrator]~~ **Deputy City Manager for Development, or their designee**, shall follow the procedures set forth in RSA 36:57, IV.
- (g) *Standards for Review.* The ~~[Code Administrator]~~ **Deputy City Manager for Development, or their designee**, shall evaluate the application for compliance with the following standards prior to the issuance of a building permit.
- (h) *Abandonment.* At such time that a small wind energy system is scheduled to be abandoned or discontinued, the owner will notify the ~~[Code Administrator]~~ **Deputy City Manager for Development, or their designee**, by certified U.S. mail of the proposed date of abandonment or discontinuation of operations.

- (1) Upon abandonment or discontinuation of use, the owner shall physically remove the small wind energy system within ninety (90) days from the date of abandonment or discontinuation of use. This period may be extended at the request of the owner and at the discretion of the ~~[Code Administrator]~~ **Deputy City Manager for Development, or their designee**. "Physically remove" shall include, but not be limited to:
  - a. Removal of the wind generator and tower and related above-grade structures.
  - b. Restoration of the location of the small wind energy system to its natural condition, except that any landscaping, grading or below-grade foundation may remain in its same condition at initiation of abandonment.
  - c. In the event that an owner fails to give such notice, the system shall be considered abandoned or discontinued if the system is out-of-service for a continuous twelve-month period. After the twelve (12) months of inoperability, the ~~[Code Administrator]~~ **Deputy City Manager for Development, or their designee**, may issue a notice of abandonment to the owner of the small wind energy system. The owner shall have the right to respond to the notice of abandonment within thirty (30) days from notice receipt date. After review of the information provided by the owner, the building inspector shall determine if the small wind energy system has been abandoned. If it is determined that the small wind energy system has not been abandoned, the ~~[Code Administrator]~~ **Deputy City Manager for Development, or their designee**, shall withdraw the notice of abandonment and notify the owner of the withdrawal.
  - d. If the owner fails to respond to the notice of abandonment or if, after review by the ~~[Code Administrator]~~ **Deputy City Manager for Development, or their designee**, it is determined that the small wind energy system has been abandoned or discontinued, the owner of the small wind energy system shall remove the wind generator and tower at the owner's sole expense within three (3) months of receipt of the notice of abandonment. If the owner fails to physically remove the small wind energy system after the notice of abandonment procedure, the building inspector may pursue legal action to have the small wind energy system removed at the owner's expense.

**SECTION X:** Amend the CODE OF ORDINANCES, Title IV, Zoning Code, Chapter 28, Zoning Ordinance, Article 28-6, Sign Regulations, by amending Section 28-6-2, Permit Requirement for Signs, as follows:

#### **28-6-2 Permit Required for Signs.**

Except as otherwise provided in this article, no sign may be erected, placed, replaced, moved, enlarged, or substantially altered in the City of Concord without a permit in accordance with the provisions of this ordinance. No permit shall be issued until a Master Signage Plan is filed pursuant to Section 28-6-5, Master Signage Plan, with the City of Concord for the parcel on which a permit is being sought. A permit application and fee shall be submitted to the ~~[Code Administrator]~~ **Deputy City Manager for Development, or their designee**, together with a set of

plans at an appropriate scale, together with architectural elevations or photographs, showing the location, size, colors, copy, method of illumination, and materials proposed for said sign. The ~~[Code Administrator]~~ ***Deputy City Manager for Development, or their designee***, shall review the permit application, refer it for action to the appropriate Board or Committee if required by the provisions of this ordinance, or otherwise act to approve or deny it. If approval for development of the parcel on which a sign is to be located is required pursuant to the Site Plan Review Regulations in accordance with Section 28-9-4(b), Site Plan Review, of this ordinance, said site plan approval is inclusive of all signs proposed on the premises and must be received from the Planning Board prior to issuance of any permit for a sign on the premises. Other sign approvals are required pursuant to Section 28-6-9(f), Requirements for Architectural Design Review, and Section 28-3-4, Historic (HI) District, of this ordinance. In addition to the requirements of this ordinance, the terms and conditions of the issuance and expiration of sign permits are those imposed by the Building Code, and the Electrical Code.

**SECTION XI:** Amend the CODE OF ORDINANCES, Title IV, Zoning Code, Chapter 28, Zoning Ordinance, Article 28-6, Sign Regulations, by amending Section 28-6-11, Insurance Requirements for Nongovernmental Signs Over a Public Right-of-Way, as follows:

**28-6-11 Insurance Requirements for Nongovernmental Signs Over a Public Right-of-Way.**

- (a) Any applicant for a permit to locate a projecting sign over a public right-of-way, in accordance with this ordinance, shall file with the ~~[Code Administrator]~~ ***Deputy City Manager for Development, or their designee***, a certificate of insurance indemnifying the City of Concord against any form of liability in a minimum amount as specified by the Finance Director. No permit shall be issued prior to the receipt of said certificate and the permit shall be valid only so long as the certificate remains in effect. The policy shall provide for advance notification to the ~~[Code Administrator]~~ ***Deputy City Manager for Development, or their designee***, in the event of cancellation. If the policy should lapse or be canceled, the applicant shall remove the sign immediately.
- (b) Signs projecting over a public right-of-way shall be safely and securely affixed to and supported by a building such that no part of the sign is lower than nine (9) feet above the sidewalk or if there is no sidewalk, the surface of the right-of-way.

**SECTION XII:** Amend the CODE OF ORDINANCES, Title IV, Zoning Code, Chapter 28, Zoning Ordinance, Article 28-6, Sign Regulations, by amending Section 28-6-12, Removal of Certain Signs From a Public Right-of-Way or Public Property, as follows:

**28-6-12 Removal of Certain Signs From a Public Right-of-Way or Public Property.**

The ~~[Code Administrator]~~ ***Deputy City Manager for Development, or their designee***, shall cause to be removed any sign placed on or over any public right-of-way or public property that is without a valid permit or is not in compliance with the terms of a valid permit, or where such a sign is exempt from permit requirements, the sign is not in compliance with the standards and provisions of this ordinance.

- (a) *Political Advertising.* Any political advertising that is placed on or over any public right-of-way or public property in violation of this ordinance or State statutes shall be removed in accordance with RSA 664:17, Placement and Removal of Political Advertising;
- (b) *Signs Related to an Adjacent Principal Use.* Where a sign that is placed on or over any public right-of-way or public property in violation of this ordinance is related to a principal use of adjacent private property, the ~~[Code Administrator]~~ **Deputy City Manager for Development, or their designee**, shall notify the owner of the principal use or the property that a violation exists and shall specify a time limit for removal of the sign. If the owner fails to comply with the order for removal, the ~~[Code Administrator]~~ **Deputy City Manager for Development, or their designee**, shall remove the sign and the owner shall be liable for the cost of said removal and subsequent storage. If the owner does not redeem the sign within thirty (30) calendar days from the date that the sign is removed, the sign shall be deemed to be abandoned and may be disposed of by the City as abandoned property; and
- (c) *Other Signs.* Where a sign that is placed on or over any public right-of-way or public property in violation of this ordinance is not erected in connection with elections or political campaigns, and is unrelated to a principal use of adjacent private property, the ~~[Code Administrator]~~ **Deputy City Manager for Development, or their designee**, shall remove the sign and it shall be deemed to be abandoned and may be disposed of by the City as abandoned property.

**SECTION XIII:** Amend the CODE OF ORDINANCES, Title IV, Zoning Code, Chapter 28, Zoning Ordinance, Article 28-7, Access, Circulation, Parking and Loading, Section 28-7-2, Off-Street Parking Requirements, by amending sub Section 28-7-2(b), Parking Requirements for Uses Not Listed, as follows:

**28-7-2 Off-Street Parking Requirements.**

- (b) *Parking Requirements for Uses Not Listed.* The parking requirement for a use that does not fall within one of the categories in Section 28-7-2(e), Table of Off-Street Parking Requirements, of this ordinance, shall be as required for the closest similar use, as determined by the ~~[Code Administrator]~~ **Deputy City Manager for Development, or their designee**.

**SECTION XIV:** Amend the CODE OF ORDINANCES, Title IV, Zoning Code, Chapter 28, Zoning Ordinance, Article 28-7, Access, Circulation, Parking and Loading, Section 28-7-7, Parking Area Design Standards, by amending sub Section 28-7-7(i), Curbing and Guardrails, as follows:

**28-7-7 Parking Area Design Standards.**

Parking area design shall be regulated by the following provisions:

- (i) *Curbing and Guardrails.* Except at exit or access driveways or walkways, curbing or guard rails shall be placed around the perimeter of parking areas containing more than five (5) spaces. For parking areas requiring less than twenty-five (25) spaces, the

curbing or guardrails may be omitted along the sides and rear of said parking area with the approval of the [~~Code Administrator~~] ***Deputy City Manager for Development, or their designee***, provided that there will be no negative impact to abutting property.

**SECTION XV:** Amend the CODE OF ORDINANCES, Title IV, Zoning Code, Chapter 28, Zoning Ordinance, Article 28-7, Access, Circulation, Parking and Loading, Section 28-7-11, Alternative Parking Arrangements, by amending sub Section 28-7-11(b), Construction of Fewer Parking Spaces, as follows:

**28-7-11 Alternative Parking Arrangements.**

In order to provide for more flexible alternatives to satisfy the parking requirements of this Article, the Planning Board may issue a conditional use permit in accordance with the requirements of Section 28-9-4(b), Conditional Use Permits, of this ordinance, for one or more alternative parking arrangements in the following circumstances:

- (b) *Construction of Fewer Parking Spaces.* Authorization may be granted to construct fewer parking spaces than are required by Section 28-7-2(d), Table of Parking Requirements, of this ordinance, provided that a sufficient land area is allocated and shown on a site plan for the full number of spaces required. Such authorization may be granted where the Planning Board finds that projected parking demand, the presence of public transportation, or other factors indicate that a lower number of parking spaces will sufficiently accommodate the parking needs of the principal use. Once such a principal use has been established with fewer parking spaces, the [~~Code Administrator~~] ***Deputy City Manager for Development, or their designee***, may require the construction of up to the full number of spaces required by this ordinance upon finding that the actual parking demand has exceeded the projected demand, or that other factors or conditions upon which the Planning Board based its decision have changed or failed to materialize.

**SECTION XVI:** Amend the CODE OF ORDINANCES, Title IV, Zoning Code, Chapter 28, Zoning Ordinance, Article 28-7, Access, Circulation, Parking and Loading, Section 28-7-13, Off-Street Loading Requirements, by amending sub Section 28-7-13(a), Table of Off-Street Loading Requirements, as follows:

**28-7-13 Off-Street Loading Requirements.**

- (a) *Table of Off-Street Loading Requirements.* In order to accommodate the delivery or shipment of goods or merchandise to a principal use, off-street loading spaces shall be provided in accordance with the following Table of Off-street Loading Requirements. Where more than one principal use or more than one structure are located on the same lot, the loading space requirements shall be computed for each use or structure, and the number of spaces provided shall not be less than the sum of the number of spaces so calculated for each use or structure. The loading space requirement for a use that does not fall within one

of the categories in Table of Off-Street Loading Requirements shall be as required for the closest similar use, as determined by the ~~[Code Administrator]~~ **Deputy City Manager for Development, or their designee**.

**SECTION XVII:** Amend the CODE OF ORDINANCES, Title IV, Zoning Code, Chapter 28, Zoning Ordinance, Article 28-8, Nonforming Lots, Uses and Structures, Section 28-8-2, Determination of a Nonconformity, by amending sub Section 28-8-2(a), Evidence of Nonconformity, as follows:

**28-8-2 Determination of a Nonconformity.**

- (a) *Evidence of Nonconformity.* In reviewing an application for a building permit, or other application for land use change or structural alteration involving a nonconforming use, building or lot, the ~~[Code Administrator]~~ **Deputy City Manager for Development, or their designee**, shall make a determination as to the existence of a nonconformity. The applicant bears the burden of presenting evidence sufficient to allow the ~~[Code Administrator]~~ **Deputy City Manager for Development, or their designee**, to make findings required to support the determination of the existence of a nonconformity. The applicant, or his agent, shall produce acceptable evidence attesting to said legal nonconforming status. Such evidence shall include, but is not restricted to, such documents as rent receipts, affidavits, documentation of utility services, or other information as may be deemed to be necessary in a particular case.

**SECTION XVIII:** Amend the CODE OF ORDINANCES, Title IV, Zoning Code, Chapter 28, Zoning Ordinance, Article 28-8, Nonforming Lots, Uses and Structures, Section 28-8-3, Nonconforming Lots, by amending sub Section 28-8-3(a), Evidence of Nonconforming Lot, as follows:

**28-8-3 Nonconforming Lots.**

- (a) *Evidence of Nonconforming Lot.* A nonconforming lot shall be deemed to exist where the ~~[Code Administrator]~~ **Deputy City Manager for Development, or their designee**, determines, based on information submitted by the property owner or by the public record, that all of the following conditions are true:
- (1) The lot was created prior to the effective date of this ordinance, or prior to the effective date of relevant amendments affecting the conformity of the lot, and no further division has occurred since that date;
  - (2) The lot met the minimum size, frontage and area standards which were in effect when the lot was created; and
  - (3) The lot does not conform with present size, frontage, or other dimensional standards of the zoning district, and the present owner does not own, and has no contract, option or other enforceable legal right to acquire any adjoining property to the extent necessary to make the lot conforming with present standards, or is prevented by law from doing so.

**SECTION XIX:** Amend the CODE OF ORDINANCES, Title IV, Zoning Code, Chapter 28, Zoning Ordinance, Article 28-9, Administration and Enforcement, by amending Section 28-9-2, Administrative Decisions, as follows:

**28-9-2 Administrative Decisions.**

- (a) *Administration and Interpretation of Ordinance.* It shall be the duty of the [~~Code Administrator~~] ***Deputy City Manager for Development, or their designee***, to administer the provisions of this ordinance, and to interpret this ordinance for the purpose of determining the compliance of existing or proposed buildings, structures, and other development applications with the provisions thereof.
- (b) *Issuance of Building Permits.* In conjunction with administrative duties in accordance with the Building Code relative to the issuance of building permits, the [~~Code Administrator~~] ***Deputy City Manager for Development, or their designee***, is hereby empowered to require that an applicant for a building permit submit application forms and supporting documentation which is deemed reasonably necessary by the [~~Code Administrator~~] ***Deputy City Manager for Development, or their designee***, in order to make findings of compliance with the provisions of this ordinance. No building permit shall be issued until all approvals required in conjunction with this ordinance are secured by the applicant. Such approvals may include, but shall not be limited to, special exceptions, variances, conditional use permits, architectural design approvals, site plan approvals, subdivision approvals, or certificates of approval. Verification of such approvals and compliance with all associated conditions imposed pursuant to the approvals shall be made by the [~~Code Administrator~~] ***Deputy City Manager for Development, or their designee***, prior to issuance of a building permit.
- (c) *Issuance of Sign Permits.* The [~~Code Administrator~~] ***Deputy City Manager for Development, or their designee***, is empowered to issue permits for the erection and placement of signs in accordance with the requirements of Article 28-6, Sign Regulations, of this ordinance, and with the applicable provisions of the Building Code and Electrical Code.
- (d) *Issuance of Temporary Use Permits.* The [~~Code Administrator~~] ***Deputy City Manager for Development, or their designee***, is empowered to issue permits for the following events and temporary activities:
  - (1) *Yard Sales.* The holding of a public sale of personal property by the resident of a dwelling from the dwelling unit or its accessory building or yard in any district, provided that the length of time of such sale shall not exceed a period of four (4) days in any one calendar year;
  - (2) *Special Events.* Special promotion signs and banners for public, neighborhood, or institutional events occurring within or relating to the City of Concord provided such signs shall be displayed only for a period of one week prior to the event described thereon and shall be removed after the completion of the event;
  - (3) *Temporary Use of a Manufactured Home.* The use of a manufactured home on the same lot as, and temporarily in lieu of, a single-family residence which has been rendered uninhabitable by fire, explosion or other accidental or natural disaster. Such manufactured home shall be permitted on the lot subject to State and municipal

requirements for water supply and sewage disposal. A manufactured home which is placed on a lot under this provision shall not attain the status of a vested nonconforming use, and shall be removed from the premises upon completion of repairs to the single-family residence, or the issuance of a Certificate of Occupancy, or within twelve (12) months, whichever occurs first;

- (4) *Carnivals*. A carnival or lawn party operated by an educational, religious or philanthropic organization for a period not exceeding five (5) days in any one year; and
- (5) *Outdoor Sale of Agricultural Goods*. In nonresidential districts, the outdoor sale by local growers and producers of seasonally available agricultural goods such as vegetables, flowers, fruits, maple syrup, and the like, for those periods of the year when such locally raised goods are available. Such outdoor sale shall be limited to areas with appropriate space for any related stands and displays and shall be in areas free of traffic hazards and with sufficient available parking.

**SECTION XX:** Amend the CODE OF ORDINANCES, Title IV, Zoning Code, Chapter 28, Zoning Ordinance, Article 28-9, Administration and Enforcement, Section 28-9-3, Decisions by the Zoning Board of Adjustment (ZBA), by amending sub Sections 28-9-3(a)(1), 28-9-3(d), Administrative Appeals and 28-9-3(e)(3) Equitable Waiver of a Dimensional Requirement, as follows:

**28-9-3 Decisions by the Zoning Board of Adjustment (ZBA).**

- (a) *Generally*. In accordance with the powers granted by RSA 674:33, Powers of the Zoning Board of Adjustment, the ZBA shall hold hearings and make decisions on the following:
  - (1) Appeals of decisions of the [~~Code Administrator~~] ***Deputy City Manager for Development, or their designee***;
- (d) *Administrative Appeals*.
  - (1) *Consideration of Appeals*. The ZBA shall hear and decide appeals where it alleged that there is an error in any order, requirement, decision, or determination by the [~~Code Administrator~~] ***Deputy City Manager for Development, or their designee***, in the administration of this ordinance. The ZBA may affirm or reverse such order, requirement, decision, or determination, in whole or in part, or may modify the same.
  - (2) *Timing and Content of Appeal*. A notice of appeal must be filed with the ZBA and the [~~Code Administrator~~] ***Deputy City Manager for Development, or their designee***, within thirty (30) days of the order, requirement, decision, or determination, and shall contain a statement of the grounds for the appeal.
  - (3) *Burden of Persuasion*. The applicant bears the burden of presenting evidence sufficient to allow the ZBA to reach conclusions and make findings to support a reversal or modification of an order, requirement, decision, or determination by the [~~Code Administrator~~] ***Deputy City Manager for Development, or their designee***.



(e) *Other Appeals.*

- (3) *Equitable Waiver of a Dimensional Requirement.* The ZBA shall hear and decide applications for an equitable waiver of a dimensional requirement pursuant to Section 28-4-1, Dimensional Standards, of this ordinance. An equitable waiver may be granted only where the ZBA confirms in writing each of the following findings based upon the evidence and arguments presented to it upon appeal:
- The violation was not noticed or discovered until after a structure in violation had been substantially completed, or a lot or other division of land in violation had been conveyed to a bona fide purchaser for value;
  - The violation was caused by either a good faith error in measurement or calculation made by an owner or owner's agent, or by an error in the interpretation or administration of this ordinance by the ~~[Code Administrator]~~ ***Deputy City Manager for Development, or their designee***;
  - The violation does not constitute a nuisance, diminish the value of properties in the area, or adversely affect any present or permissible future uses of the premises;
  - Presuming construction or investment in ignorance of the facts constituting the violation, the cost of correction far outweighs any public benefit to be gained in requiring the violation to be corrected; and
  - In lieu of the findings in Sections 28-9-3(e)(3)a. and b., the violation has existed for ten (10) years or more and no enforcement action has been commenced against the violation during that time.

An equitable waiver of a dimensional requirement granted in accordance with this Section shall not be deemed to establish a nonconformity pursuant to Article 28-8, Nonconforming Lots, Uses, and Structures, of this ordinance.

**SECTION XXI:** Amend the CODE OF ORDINANCES, Title IV, Zoning Code, Chapter 28, Zoning Ordinance, Article 28-9, Administration and Enforcement, by amending Section 28-9-8, Enforcement, as follows:

**28-9-8 Enforcement.**

- Administrative Duty.* It shall be the duty of ~~[Code Administrator]~~ ***Deputy City Manager for Development, or their designee***, to enforce this ordinance.
- Enforcement of Conditions of Approval.* Where approvals or permits are granted by the Planning Board, the Zoning Board of Adjustment, the Heritage Commission, or the Technical Review Committee, it shall be the duty of the ~~[Code Administrator]~~ ***Deputy City Manager for Development, or their designee***, to enforce the specific conditions of approval attached to such approvals or permits by the respective board.
- Violations.* Whenever a violation of this ordinance occurs or is alleged to occur, any person may file a written complaint. Such complaint, stating fully the cause and basis thereof, shall be filed with and recorded by the ~~[Code Administrator]~~ ***Deputy City Manager for***

***Development, or their designee.*** Upon being informed of a possible violation or upon personal initiative, the ~~[Code Administrator]~~ ***Deputy City Manager for Development, or their designee***, may make or cause to be made an investigation of the alleged violation. If the ~~[Code Administrator]~~ ***Deputy City Manager for Development, or their designee***, determines that there is a violation, the ~~[Code Administrator]~~ ***Deputy City Manager for Development, or their designee***, may issue an order to the person responsible for the violation as provided for in RSA 676:17-b, Local Land Use Citations; Pleas by Mail, informing the person responsible that a violation exists and ordering that the violator abate the violation within a reasonable time as determined by the ~~[Code Administrator]~~ ***Deputy City Manager for Development, or their designee***. If after such notice and order the violation has not been abated within the time specified, the ~~[Code Administrator]~~ ***Deputy City Manager for Development, or their designee***, may institute any appropriate action as provided for in RSA 676:15, Injunctive Relief, to enjoin, abate, or remove said violation, or may issue a citation as provided for in RSA 676:17-b, or both.

- (d) ***Penalties.*** Any person or corporation, whether as principal, agent, occupant, employee, or otherwise who violates any provisions of this ordinance shall be subject to the penalties provided for in RSA 676:17, Fines and Penalties. A separate offense shall be deemed to be committed upon each day during which a violation occurs or continues. Penalties are to be paid to the Clerk of the Concord District Court.

**SECTION XXII:** Amend the CODE OF ORDINANCES, Title IV, Zoning Code, Chapter 28, Zoning Ordinance, Article 28-10, Amendments, Section 28-10-3, Procedure for Consideration of a Proposed Amendment, by amending sub Section 28-10-3(e) Publication of the Amended Ordinance, as follows:

**28-10-3 Procedure for Consideration of a Proposed Amendment.**

- (e) ***Publication of the Amended Ordinance.*** Upon receipt of a copy of an amendment to the text of the ordinance, as adopted by the City Council and attested by the City Clerk, the ~~[Code Administrator]~~ ***Deputy City Manager for Development, or their designee***, cause the text of this ordinance to be duly revised to reflect the amendment in all subsequent publications of this ordinance.

**SECTION XXIII:** This ordinance shall take effect on adoption.