

**ARTICLE 10
SPECIAL USE PERMITS**

1. General Considerations:

- A. Delegation of Power: The Governing Body is hereby authorized to decide whether special use permits shall be granted subject to the general and specific standards contained in the ordinance; to grant special use permits with such conditions or restrictions as are appropriate to protect the public interest and to secure compliance with these regulations; and to deny requests which fail to satisfy the standards and requirements contained herein and which are not in harmony with the purposes and interest of these regulations and the health, safety, and welfare of the community. The Governing Body shall decide whether special use permits shall be granted only after having received a recommendation from the Planning Commission. In no event shall a special use permit be granted where the proposed use is not authorized by the terms of these regulations, or where the standards of this article are not found to exist.
- B. Conditions and Guarantees: Prior to the granting of any special use permit, the Planning Commission or Governing Body may stipulate such conditions and restrictions upon the establishment, location, construction, maintenance and operation of the special use permit as is deemed necessary for the protection of the public interest and to secure compliance with the standards and conditions contained herein. In all cases in which a special use permit is granted, the Planning Commission may recommend or the Governing Body may require such evidence and guarantees as may be deemed necessary to ensure that the conditions stipulated are being, and will be, fully complied with.
- C. Special Use Permits in Residential Districts: In no event shall special use permits in residential districts be transferable from an owner-applicant to a subsequent owner of the subject real estate or structure.

2. Procedures

- A. Application: A written application for a special use permit shall be filed with the Planning and Zoning Department and shall include a statement indicating the section of the ordinance under which the permit is sought, the grounds upon which it is requested, and sufficient evidence to show that the use will conform to the standards set forth. The application shall be accompanied by an area map and site plan of the subject property.
- B. Fees: Every application for a special use permit shall be subject to a filing fee as established by the Governing Body.

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- C. Site Plan: All applicants for special use permit shall submit with their application copies of a development plan for the property in accordance with the City’s Application and Review Schedule and the requirements of Article 11, Site Plan Review.

- D. Hearing: Upon receipt of the formal application and all accompanying material, the Planning and Zoning Department shall call a public hearing for the next scheduled meeting of the Planning Commission; provided, however, that notice must be published in the *same manner required for a zoning district amendment as directed in Article 13, Section 3*. The Planning Commission shall submit a recommendation to their Governing Body within 30 days after the close of the public hearing. **(Ord. 2049)**

- E. Findings: In making a recommendation to the Governing Body, the Planning Commission shall specify the particular grounds relied upon and their relation to the proposed use and shall make affirmative findings that the proposed use conforms with the general standards set forth in this article. In no case shall an exception be granted if the proposed use will constitute a nuisance or a public health or safety hazard to adjacent properties or to the community at large.

- F. Action by Governing Body: The Governing Body shall consider the Planning Commission's recommendation at the next regularly scheduled Governing Body meeting for which the agenda item can be docketed. The Governing Body shall consider the recommendation of the Planning Commission and act in accordance with the procedures for amending zoning district boundaries. If the Governing Body fails to act upon a recommendation within 120 days from the receipt thereof, the application shall be deemed to have been denied.

3. **Standards for Issuance of Special Use Permits:** *In order to recommend approval or disapproval of a proposed special use permit, the Planning Commission and Governing Body shall determine whether the proposed use is found to be generally compatible with surrounding development and is in the best interest of the City. In making such determination, the Planning Commission and Governing Body may consider all factors they deem relevant to the questions of compatibility and the best interest of the City, including the following: (Ord.2056 Amends entire section, adding G-J below)*

- A. *The character of the neighborhood, including but not limited to: zoning, existing and approved land use, platting, density (residential), natural features, and open space.*

- B. *The nature and intensity of the proposed use and its compatibility with the zoning and uses of nearby properties. Such determination should include the location, nature, and height of structures, walls, fences, and other improvements connected with the proposed use, their relation to adjacent property and uses, and the need for buffering or screening.*

- C. *The extent to which there is a need in the community for the proposed use.*

- D. *The availability and adequacy of required utilities and services to serve the proposed use. These utilities and services include, but are not limited to, sanitary and storm sewers, water, electrical and gas service, police and fire protection, schools, parks and recreation facilities and services, and other similar public facilities and services.*
- E. *The adequacy of ingress and egress to and within the site of the proposed use, traffic flow and control, the adequacy of off-street parking and loading areas, the adequacy of required yard and open space requirements and sign provisions.*
- F. *The extent to which the proposed use would adversely affect the capacity or safety of that portion of the street network influenced by the proposed use, or present parking problems in the vicinity of the property.*
- G. *The environmental impacts that the proposed use would create (if any) including, but not limited to, excessive storm water runoff, water pollution, air pollution, noise pollution, excessive nighttime lighting or other environmental harm.*
- H. *The economic impact of the proposed use on the community.*
- I. *The extent to which the proposed use may detrimentally affect nearby property.*
- J. *The relative gain (if any) to the public health, safety, and welfare from a denial of the application for special use permit as compared to the hardship imposed upon the special use applicant from such denial.*
- K. *Consistency with the Comprehensive Plan, Utilities and Facilities Plans, Capital Improvement Plan, Area Plans, ordinances, policies, and applicable City Code of the City of De Soto, and the general safety, health, comfort and general welfare of the community.*
- L. *The recommendation of professional staff.*

4. Additional Conditions for Particular Special Uses In granting a special use, the City may impose such conditions, safeguards and restrictions upon the premises to reduce or minimize any potential injurious effect of such special uses upon other property in the neighborhood, and to carry out the general purpose and intent of these regulations. The following additional conditions shall be requirements for the approval of the following special uses:

- A. Day care centers shall obtain a special use permit for the care of more than six children in zoning districts permitting residents, provided that:
 - (1) One off-street parking space is provided for each non-resident or non-family member employee, in addition to the two spaces per single-family or duplex unit required. The residential driveway is acceptable for this purpose.
 - (2) If located on an arterial or collector street, an off-street drop-off/pick-up area must be provided.
 - (3) The requirements for accessory uses for the proposed day care home are met.
- B. Auto wrecking yards, junk yards, salvage yards, and scrap processing yards:
 - (1) Shall be located at least 300 feet from a residential district zone.

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- (2) The operation shall be conducted wholly within a noncombustible structure or within an area completely enclosed by a fence or wall at least eight feet high. The fence or wall shall be of uniform height, color and texture, and shall be maintained in good condition by the property owner. No scrap, junk or other salvaged materials shall be piled to exceed the height of this wall or fence.
 - (3) No junk or salvaged material shall be loaded, unloaded or stored, either temporarily or permanently, outside the enclosed structure, fence or wall.
 - (4) Burning of paper, trash, junk or other waste materials shall be permitted only after approval of the Fire Department, except when prohibited by the Kansas Department of Health and Environment.
- C. Funeral, mortuary or crematory services shall be located on a collector or arterial street as shown on the Comprehensive Plan.
- D. *Wind-powered generating systems shall conform to the following standards: (Ord. 2244 Amends and expands section)*
- (1) *The goal of these regulations is to help residents and businesses reduce dependence upon energy providers, decrease pollution caused by conventional energy sources, reduce peak power demands and help to diversify the overall energy supply needs for the City while offsetting the visual impact of such systems upon the surrounding properties and the City as a whole.*
 - (2) *Special Use Permit Required.*
 - (a) *A Special Use Permit shall be required for a private WECS or facility if it is expected to exceed the requirements set forth in Section 15, Article 5, Supplementary Height and Use Regulations.*
 - (b) *These regulations are not considered sufficient for the regulation of utility level energy systems or facilities. Such systems shall be examined on a case by case basis and regulated according to their benefit to the community and the need to mitigate the impact of such facility upon the community.*
 - (3) *System Heights*
 - (a) *The maximum height shall be the minimum height necessary for the tower to operate efficiently, but no more than two hundred (200') feet. When considering height, the Planning Commission shall examine such issues as:*
 - (i) *Any regulations imposed by the Federal Aviation Administration (FAA) regarding air facilities in the area;*
 - (ii) *Wind height requirements as verified by wind surveys*
 - (iii) *Land forms, obstructions and other site specific impediments.*
 - (iv) *The zoning and use of the site and surrounding area.*
 - (b) *In no case shall the proposed height exceed the height recommended by the manufacturer or distributor of the system.*
 - (c) *The minimum height of the lowest sweep of the blades shall be at least 12 feet above average ground level.*
 - (4) *Setbacks.* *The system tower shall be no closer to the property line than the total height of the system and no part of the system, including guy wire anchors, may extend closer*

than 10 feet to the property boundary. No part of the system shall be located in any required front or side yard.

(5) Security and Safety.

- (a) *Guy wires must be marked and clearly visible to a height of six feet above the guy wire anchors. To prevent the loosening of the guy wires as a result of vibration or vandalism, safety wires shall be installed on the turnbuckles of the guy wires.*
- (b) *The system shall contain a braking device for winds in excess of 40 m.p.h.*
- (c) *At least one, very legible sign shall be posted at the base of a WECS, or on the gate of a fence, if required, and shall contain a warning of high voltage, an emergency phone number, and emergency shutdown procedures.*
- (d) *Property owner shall maintain sufficient liability insurance coverage for the system and be able to produce proof of such upon request.*

(6) Nuisance.

- (a) *Decibel levels for the system shall not exceed those established by Article 8 of Chapter VIII of the City Code as measured at the property line, except during short-term events such as utility outages and severe windstorms. Exceptions to these levels may be granted as part of the permit conditions.*
- (b) *The system shall not cause or intensify interference to radio, television or other communications reception on nearby properties.*

(7) Design. *The application shall include standard signed and sealed drawings and an engineering analysis of the system's tower prepared by a licensed professional mechanical, structural or civil engineer registered in the State of Kansas. This analysis may be supplied by the manufacturer.*

(8) FAA Requirements. *The system shall comply with all applicable Federal Aviation Administration requirements. Individual wind turbine lighting and markings shall comply with but not exceed FAA requirements. If lighting of turbines or other structures is required, "daytime white/nighttime red" shall be required. All required tower lighting shall be shielded from the ground and area residences.*

(9) Construction and maintenance.

- (a) *A Building Permit is required prior to beginning of construction activities. All Building Permit applications shall be accompanied by the approved site plan and information from the Special Use Permit.*
- (b) *All wind energy facilities shall be constructed according to manufacturer's specifications.*
- (c) *A certificate of completion provided by a licensed electrical contractor shall be provided certifying that all electrical work for the installation has been completed in accordance with the manufacturer's specifications and the adopted electrical code for the City of De Soto.*
- (d) *Wind facilities shall be required to meet any applicable flood plain requirements.*
- (e) *Construction and operation shall be done in a manner so as to minimize soil erosion and other negative effects upon the environment.*
- (f) *Systems shall be maintained according to manufacturer's recommendations.*

- (e) General layout of typical travel trailer space showing size of space and proposed improvements.
 - (f) Layout of roadway within the camp.
 - (g) Net density of proposed project, expressed in terms of units per acre.
 - (h) General landscaping plan indicating all new & retained plant material to be incorporated within the new development & layout of outdoor lighting system.
 - (i) Plan and method of sewage disposal and water supply.
 - (j) Location plan and number of proposed sanitary conveniences, including proposed toilets, washrooms, laundries and utility areas.
 - (k) The development shall provide a general refuse storage area or areas that shall be provided with a paved concrete surface and shall be enclosed to screen it from view.
- (7) The travel trailer camps shall be planned and constructed in accordance with the minimum standards as established in this section and as outlined below:
- (a) All parking areas and roadways shall be constructed and paved with a hard surface bituminous or concrete material.
 - (b) All camps shall be provided with general outdoor lighting with a minimum of 0.3-foot candles of general illumination.
 - (c) All yard areas and other open spaces not otherwise paved or occupied by structures shall be sodded and/or landscaped and shall be maintained.
- F. Kennels-Breeding and Boarding:
- (1) The minimum lot size shall not be less than two acres.
 - (2) No kennel structures or runs shall be located nearer than 75 feet to any property lines.
 - (3) All kennel runs or open areas shall be screened around such areas or at the property lines to prevent the distraction or excitement of the dogs. Such screening may be mature, dense deciduous foliage (double row), solid masonry, brick, or stone wall, louvered wood, stockade, or chain link fence with aluminum strip intertwined or other equivalent fencing, providing a sight barrier to the dogs.
- G. Bed and Breakfast: The following requirements shall apply:
- (1) Two off-street parking spaces with one additional off-street parking space per lodging room shall be provided.
 - (2) The structure shall contain no less than 2,000 square feet of habitable floor area, and shall comply with standards for minimum dwelling size as required in the “R-3” district for multifamily dwellings.
- H. Adult entertainment business subject to the following conditions:
- (1) The applicant must specify the exact use proposed, i.e. adult bookstore, adult theater, modeling studio, strip show, etc as defined by the City’s adopted adult entertainment ordinance.
 - (2) An adult entertainment business shall be subject to the standards and conditions of the City’s adopted adult entertainment ordinance.
 - (3) Additional conditions may be required as deemed necessary.

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I. Mines and Quarries: (Section added 2003/Ord. 2005)

Recognizing that certain uses may be desirable when located in the community, but that these uses may be incompatible with other uses permitted in a district, mine and quarry special use permits, when found to be in the interest of the public health, safety, morals and general welfare of the community may be permitted. In addition to the requirements for other special use permits, mining and quarrying operations shall obtain a special use permit in accordance with this section. The requirements contained herein are deemed appropriate for quarry and mining activities due to the differing nature and broad range of activities associated with different mining and quarrying operations, as well as the uniqueness of a proposed site's topography, location within the community, access conditions, geological characteristics, and proximity to environmentally sensitive regions. The approval of such special use permit application by the Governing Body is a purely discretionary act that will be decided based upon the facts and circumstances discovered in the review of each application. There is no implied "right" for any person or landowner to obtain a special use permit for any use on any property.

- (1) As stipulated in Appendix A of the Zoning Regulations, applications for mining or quarrying special use permits can be considered for properties within any of the City's zoning districts, with the exceptions of the "C-1" and "R-H" districts.*
- (2) Required Quarry and Mine Special Use Permit Submittal Information.*
 - (a) Before a public hearing is held, the applicant must submit, in accordance with the City's application and review schedule, the following plans, calculations, details, maps and information relating to the operation, buffering and reclamation of any proposed mine or quarry site:*
 - (b) Mine or Quarry Operations Plan*
 - (i) The Mine or Quarry Operations Plan must be submitted under separate cover and contain the following information. All required studies and evaluation of existing conditions must have been completed within one year of the application for special use permit.*
 - (ii) A detailed Site Plan as required in Article 11 of these regulations, with the exception that the area of the site plan need only include the areas of the quarry associated with any crushing operations, scale house, parking, offices, storage facilities, direct site access drives, or other operational areas used to process, store, sell or transport the material being mined or quarried.*
 - (iii) An overall Site Plan showing all property lines, quarry operational and expansion areas, surrounding property owners, zoning districts, public rights-of-way, and topographical features within 1,320 feet of the mine or quarry property line.*
 - (iv) Traffic Impact Study in accordance with Section 4N of Article 11 of these regulations. In addition, the traffic impact study must identify and report truck routes to be utilized to and from the proposed site and*

report the existing road conditions including details of the road pavement section and the impact of the proposed truck traffic to existing City streets.

- (v) *Hours of operation.*
 - (vi) *Environmental impacts of operation and proposed means to mitigate such impacts including stormwater runoff control, air pollution and noise mitigation.*
 - (vii) *Area and progression of the quarrying activity with anticipated timelines of expansions, including maximum open area of quarry operation.*
 - (viii) *Quarry or mine operation setbacks.*
 - (ix) *Specific limits for noise and vibration associated with blasting activities.*
 - (x) *Blasting specifics including reporting requirements, storage and handling of explosives, charge limitations, charge sequencing, and safety measures, as well as security for on-site operations and material storage associated with blasting activity.*
 - (xi) *An executive summary that clearly and concisely outlines specific restrictions on all mining or quarrying operations.*
- (c) *Screening and Buffering Plan*
- (i) *A screening and buffering plan must be submitted under separate cover and contain the following information relevant to the particular site and operation:*
 - (ii) *Detailed maps of the mine or quarry site and surrounding areas showing existing features including property lines, zoning classifications (districts), land uses, ownership information, water courses or water bodies, floodplain, wetlands, public and private roads, structures of any kind, trees or tree lines, and contours. The maps must also indicate the proposed means of screening the mine or quarry operations from view of adjacent properties or public roads including the height, width & length of any proposed berms, fences, or vegetation.*
 - (iii) *Cross-sections of the mine or quarry site and surrounding area to indicate the effectiveness of the proposed screening and buffering measures. At least two cross sections shall be provided in each direction through the site.*
 - (iv) *Maps, narratives, or details outlining any proposed measures for screening or buffering the truck routes stipulated in the Quarry Operations Plan from adjacent properties.*

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- (v) *Proposed means for mitigating dust, noise, airborne percussion, or other airborne pollutants.*
- (vi) *A pictorial survey of the mine or quarry site and surrounding areas showing views from adjacent properties, existing vegetation, vistas, views from public roads and any other unique geological or natural features of the proposed site.*
- (d) *Reclamation Plan*
 - (i) *A reclamation plan must be submitted under separate cover and contain the following information relevant to the particular site and operation:*
 - (ii) *Descriptions, details or plans depicting the proposed reclamation process and final condition of the site after reclamation. These should include the methods used for reclamation as they relate to the mining or quarrying operations, proposed soil and vegetative covers, trees, water bodies, roads, or other features resulting from the reclamation process.*
 - (iii) *A detailed engineer’s estimate of the cost of full reclamation of the quarried or mined site. The estimate must include an inflationary adjustment schedule that accounts for the time value of money. The duration of the inflationary schedule must be consistent with the duration of the proposed mining or quarrying operations stipulated in the Quarry Operations Plan.*
 - (iv) *This estimate shall be the basis for the determination of the reclamation bond, letter of credit, or other appropriate assurance amount as required in these regulations. Such bond amount shall be based on the maximum area allowed to be left un-reclaimed or partly reclaimed at any one time.*
 - (v) *Proposed reclamation scheduling. The reclamation activities shall be conducted on an ongoing basis throughout the time of the quarry or mining activity. The reclamation plan must report the maximum area of disturbed or un-reclaimed ground proposed to be allowed. This area must be based on the reasonable operational area of the proposed operations and site-specific geographical features.*
- (e) *Environmental Study.*
 - (i) *If deemed appropriate by the City, an environmental study may be required for mines or quarries that pose a recognized threat to the environment either by the nature of their operations or proximity to environmentally sensitive areas. The study should address the operation’s impact on wildlife and riparian areas, and report possible soil contaminants, siltation and other pollution hazards.*
- (f) *Drainage Study.*

- (i) *Application for a mining or quarrying special use permit must include a drainage study in accordance with Section 4.05 of the City of De Soto Subdivision Regulations. Mines and quarries shall comply with the stormwater detention requirements as stipulated in Section 5606 of the American Public Works Association, Kansas City Chapter.*
- (3) *Citizen Participation Plan.*
 - (a) *Every application for mining and quarrying operations shall include a citizen participation plan which must be implemented no sooner than 60 day prior to application and no later than 14 days prior to the Planning Commission meeting at which the application will be considered.*
 - (b) *The purpose of the citizen participation plan is to:*
 - (i) *Ensure that applicants pursue early and effective citizen participation in conjunction with their applications, giving them the opportunity to understand and try to mitigate any real or perceived impacts their application may have on the community;*
 - (ii) *Ensure that the citizens and property owners of De Soto have an adequate opportunity to learn about applications that may affect them and to work with applicants to resolve concerns at an early stage of the process; and*
 - (iii) *Facilitate ongoing communication between the applicant, interested citizens and property owners, City staff, and elected officials throughout the application review process.*
 - (c) *The citizen participation plan is not intended to produce complete consensus on all applications, but to encourage applicants to be good neighbors and to allow for informed decision making.*
 - (d) *At a minimum, the citizen participation plan shall include the following information:*
 - (i) *Which residents, property owners, interested parties, political jurisdictions and public agencies may be affected by the application.*
 - (ii) *How and when those interested in and potentially affected by an application will be notified that an application has been made.*
 - (iii) *How those interested and potentially affected parties will be informed of the substance of the development proposed by the application.*
 - (iv) *How those affected or otherwise interested will be provided an opportunity to discuss the applicant's proposal with the applicant and express any concerns, issues, or problems they may have with the proposal in advance of the public hearing.*
 - (v) *The applicant's schedule for completion of the citizen participation plan.*

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- (vi) *How the applicant will keep the City informed on the status of their citizen participation efforts.*
- (e) *The level of citizen interest and area of involvement will vary depending on the nature of the application and the location of the site. A target area for early notification will be determined by the applicant after consultation with the City. At a minimum, the target notification area shall include the following:*
 - (i) *Property owners within one thousand feet of the subject site;*
 - (ii) *The head of any homeowners association or registered neighborhood within two hundred feet of the subject site; and*
 - (iii) *Other interested parties, including public agencies, who have requested that they be contacted.*
- (f) *These requirements apply in addition to any notice provisions required elsewhere by City ordinance.*
- (g) *The applicant may submit a citizen participation plan and begin implementation prior to formal application at their discretion. This shall not occur until after a pre-application meeting and consultation with City staff.*
- (4) *Citizen Participation Report.*
 - (a) *The applicant shall provide a written report on the results of their citizen participation effort no later than 14 days prior to the Planning Commission meeting at which the application will be considered. This report will be attached to the Staff report and distributed to the Planning Commission to aid in consideration of the application.*
 - (b) *At a minimum, the citizen participation report shall include the following information:*
 - (i) *Details of the citizen participation plan implementation, including:*
 - 1). *Dates and locations of all meetings where citizens were invited to discuss the applicant’s proposal;*
 - 2). *Copies of all mailings, including letters, meeting notices, newsletters, and other publications;*
 - 3). *Names and addresses of all members of the target notification area, including residents, property owners, and interested parties receiving notices, newsletters, or other written materials; and*
 - 4). *The number of people that participated in the process.*
 - (ii) *A summary of concerns, issues, and problems expressed during the process, including:*
 - 1). *The substance of the concerns, issues, and problems;*
 - 2). *How the applicant has addressed or intends to address concerns, issues, and problems expressed during the process; and*

- 3). *Concerns, issues, and problems the applicant is unwilling or unable to address and why.*

(5) *Public Hearing, Public Notification, Adoption.*

Special Use Permits for mines and quarries shall follow the public hearing, public notice, and adoption process in accordance with Article 13 of these regulations, with the exception that written notice of a proposed special use permit shall be mailed at least 20 days before the public hearing to all owners of record of lands located within 1,000 feet of the mine or quarry property.

(6) *Inspections and Enforcement.*

Generally, specific requirements or authority for tests and inspections by the City shall be included in the Operations Plan, Reclamation Plan, and Screening & Buffering plan as appropriate.

(a) *Report of Compliance*

All special use permits for mines or quarries shall include a condition requiring the permittee to submit semi-annual reports to the Governing Body that verify their compliance with the terms and conditions of the special use permit. The first report of compliance shall be due no later than 180 days after the issuance of the permit. Subsequent reports shall be due at 6 month intervals thereafter throughout the term of the permit. City staff shall, within 5 working days of the submittal of the report, verify its completeness and formally accept it for review. If the report is found not to be complete, staff shall not accept the report for review and notify the permittee of the areas of deficiency. Failure to submit a complete report by the deadline shall be a violation of the conditions of the permit and will make the permittee subject to the penalty provisions of Article 15, Section 2 of these regulations.

(i) *Each report of compliance shall include, but may not be limited to, the following:*

- 1). *Summaries of all environmental, blasting, safety or monitoring reports accumulated during the 6 month reporting period.*
- 2). *Full details of all complaints reported to the permittee by the City or residents along with the follow-up actions taken to resolve the complaints.*
- 3). *Maps or aerial photographs detailing the progress of the quarried area with a table reporting the current area of the operation and area of any unreclaimed property.*
- 4). *Copies of all permits required by state or federal agencies required to operate the facility.*
- 5). *A report of the progress relating to the Operations Plan, Screening and Buffering Plan, and Reclamation Plan.*
- 6). *A report of the traffic generated by the use during the reporting period.*
- 7). *Any other parameters as required by the Special Use Permit.*

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(ii) *Administration of Compliance Report*

Within 30 days of the receipt of the Report of Compliance, City Staff shall perform a review of the report, conduct an inspection of the mine or quarry operation, as necessary, to verify the report’s accuracy. City staff may request specific environmental tests or other information be submitted by the permittee in conjunction with the compliance report. The results of such tests shall be submitted within a time frame specified by staff.

Upon acceptance and full review of the compliance report, staff shall submit findings to the Governing Body regarding any violations of the permit conditions. If violations are found to have occurred, staff shall notify the permittee, via registered letter, of said violations. The notification shall include the precise nature of the violations, the steps to be taken to correct the violations, and the timeframe in which the corrections are to be made. The permittee shall be given a 10-day period in which to present information disputing that a violation occurred. If the permittee does not comply with the conditions of the violation notification, or if the permittee is aggrieved by the conditions of the notification, a hearing will be held before the Governing Body at which the permittee may present evidence on his behalf. The Governing Body shall determine the course of action needed to resolve the issue. The administration of the compliance report shall not be construed as limiting the City’s enforcement powers pursuant to any other regulations of the City.

(b) *Reimbursement*

Mine or Quarry special use permits shall include provisions for the reimbursement of City expenditures relating to the inspections stipulated in the Quarry Operations Plan and enforcement of the Screening & Buffering and Reclamation plans.

(7) *Duration of Approval.*

Special use permits for the initial operation of mines and quarries shall be valid until the mining or quarrying operations consume the permitted area as defined in the Quarry Operations Plan and all stockpiled materials are depleted, or for a period not to exceed 10 years, whichever is less. Special use permits for ongoing or existing mining or quarrying activities shall be valid until the mining or quarrying operations consume the permitted area as defined in the Quarry Operations Plan and all stockpiled materials are depleted, or for a period not to exceed 5 years, whichever is less. The Governing Body may reduce the permit time if deemed appropriate. When a special use permit for mining or quarrying expires, such expired use shall not be considered a nonconforming or vested use. In addition to any other remedies provided for by law, the special use permit for the operation of mining and quarrying facilities may be revoked at any time by the Governing Body when a violation of any of the provisions of this Code has occurred. Prior to revocation of the special use permit, the

City shall give notice to the permit holder and a hearing before the Governing Body shall be held.

(8) *Setbacks.*

The minimum required setbacks for mine and quarry operations, which were not in existence and active and have not been approved pursuant to these regulations, shall not be less than those reported in the table below. Expanded areas of an existing mine or quarry shall also be subject to all the setbacks set forth below.

	From Property Lines	From Adjacent Occupied Residential Structures *	From water courses or bodies
Area of extraction or removal of mined or quarried material	750'	1,000'	100'
Area of crushing, processing, stockpiling, selling or other operational activities	500'	1,000'	200'
* Setbacks shall be from structures existing at the time of the original permit approval pursuant to these regulations. Setbacks for subsequent permits shall be set from the structures existing at the time of the original permit approval providing that the mine or quarry has not been abandon as defined in Section 5.B. of these regulations.			

Figure 14 – Illustration of Setback Minimums for Extraction and Removal Areas

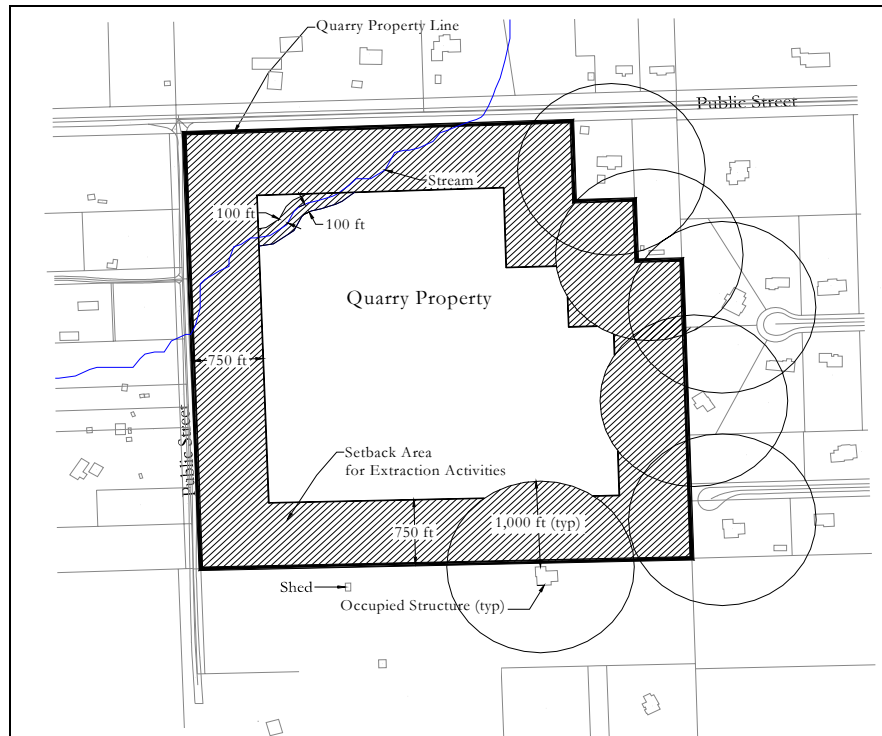
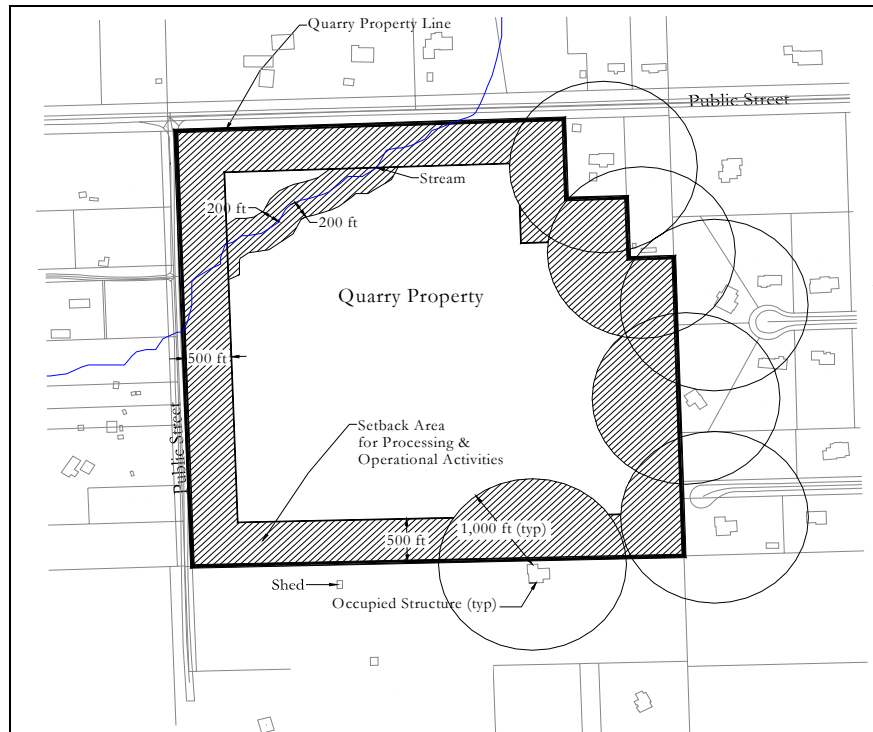


Figure 15 – Illustration of Setback Minimums for Processing and Operational Areas



(9) *Mine and Quarry Special Use Permit Approval.*

The approval of a quarry or mine special use permit shall require the approval of the Quarry Operations Plan, the Screening & Buffering Plan, and the Reclamation Plan by the Governing Body. Recognizing that certain uses may be desirable when located in the community, but that these uses may be incompatible with other uses permitted in a district, mine and quarry special use permits, when found to be in the interest of the public health, safety, morals and general welfare of the community may be permitted. The conditions, restrictions, methods, and assurances stipulated in these plans shall become part of the special use permit and be enforced by the City throughout the life of the permit. The official permit documentation shall consist of an ordinance granting the use of the subject property for mining or quarrying.

The ordinance shall include language relating to the following:

- (a) *The adoption of the approved Operations Plan, Screening & Buffering Plan, and Reclamation Plan.*
- (b) *The reclamation bond, letter of credit, or other appropriate assurance amount. This amount shall be determined based on the engineer's estimate of the cost of full reclamation as required in the Reclamation Plan. The assurance amount shall not be less than the amount required to fully reclaim any areas allowed by the Quarry Operations Plan to remain un-reclaimed or partly reclaimed.*

Regardless of the engineer’s estimate, assurance amounts shall not be less than as stipulated below:

<i>For Dredging or sand pits:</i>	<i>\$1,000/Acre of operation</i>
<i>For Underground Mines:</i>	<i>\$500/Acre of mining operation.</i>
<i>For Open Pit Quarries:</i>	<i>\$5,000/Acre of open quarry</i>

Assurance amounts shall be reduced by the amount required by and held with the State.

- (c) Any maintenance bonds required for the upkeep of public roadways.*
 - (d) Any inspection and enforcement reimbursement required.*
 - (e) The Permit length.*
 - (f) Required park or infrastructure fees beyond those that would be required by the laws and ordinances of the City.*
- (10) Notification of Leasehold/Ownership Change.*

The Mine or Quarry Operator shall, within five (5) days of any change in leasehold/ownership, notify City Planning Staff, who shall meet with the new operators and obtain a written statement that they will abide by the regulations and terms of the original permit. If no such written agreement is obtained, the permit shall be revoked and the mine or quarry operation stopped until such time as a new permit has been approved.

J. Telecommunications: (Section added 2004/Ord. 2060)

The general purpose of this section is to regulate the placement, construction and modification of telecommunications towers, support structures, and antennae, while at the same time not unreasonably interfering with the development of the competitive wireless telecommunications marketplace. Specifically, this section is intended to:

- o Minimize adverse visual impacts of communications antennae and support structure through careful site design, siting, landscape screening and innovative camouflaging techniques;*
 - o Maximize the use of existing and new support structures so as to minimize the need to construct new or additional facilities;*
 - o Ensure that any new telecommunications tower or structure is compatible with the neighborhood or surrounding community to the greatest extent possible;*
 - o Ensure that regulation of telecommunications towers and structures does not have the effect of prohibiting the provision of personal wireless services, and does not unreasonably discriminate among functionally equivalent providers of such service.*
- (1) Special Use Permit Required.*

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All proposals to install, build or modify an antenna or support structure not permitted by Paragraph 2 below, shall require the approval of Special Use Permit following a duly advertised public hearing by the Planning Commission, subject to the forthcoming limitations. All Special Use Permit applications shall include a landscaping plan and site plan as stipulated in Articles 8 and 11 of these regulations. In addition, the site plan shall include the location of and distance to off-site residential structures, required setbacks, required buffer and landscape areas, required lighting if any, hydrologic features, and the coordinates and height AGL of the existing or proposed tower.

(a) Applications.

(i) Applications of Special Use Permits shall be filed and processed subject to the requirements of and in the manner and time frame as established in this Article.

(b) Additional Minimum Requirements.

(i) No Special Use Permit shall be issued unless the applicant has clearly demonstrated that placement of an antenna or support structure pursuant to the City’s Permitted Uses requirements of this Article is not technologically or economically feasible. The Planning Commission may consider current or emerging industry standards and practices, among other information, in determining feasibility.

(c) Basis of Approval.

In addition to the determinations or limitations specified by this Article for the consideration of Special Use Permits, the Planning Commission shall also base its decision upon the existence of the following conditions:

(i) Applications for a new tower structure shall be considered only after a letter, certified by a Radio Frequency Engineer, clearly demonstrates that the planned telecommunication equipment cannot be accommodated on an existing structure, building, or approved transmission tower within the necessary geographic area for the applicant’s tower and clearly demonstrates one or more of the following conditions:

- 1). Planned telecommunications equipment would exceed the height or structural capacity of an existing or approved transmission tower, and the transmission tower cannot be reinforced to accommodate planned telecommunication equipment at a reasonable cost;*
- 2). Planned telecommunications equipment will cause radio frequency interference with other existing or planned telecommunications equipment for that transmission tower and the interference cannot be prevented at a reasonable cost;*
- 3). Existing or approved towers do not have space on which the planned telecommunications equipment can be placed so it can*

function effectively and at least in parity with other similar telecommunications equipment in place or approved by the City and or the appropriate county;

- 4). *Retrofitting or redesigning the applicant’s tower network is not technologically or economically feasible;*
 - 5). *Addition of planned equipment to an existing or approved transmission tower would result in NIER levels in excess or those permitted under Subsection e; or*
 - 6). *Other reasons that make it impractical to place the telecommunications equipment planned by the applicant on an existing and approved transmission tower.*
- (ii) *No application for a new tower structure shall be considered unless the applicant is unable to lease or otherwise secure space on an existing or planned telecommunication tower. Once the City finds that the telecommunications equipment proposed by the applicant cannot be accommodated on an existing or approved tower, each tower so found is presumed unable to accommodate similar equipment that may be proposed in the future, unless evidence is introduced to demonstrate otherwise.*
- (iii) *The design of the tower or structure, including the antennae, shelter and ground layout should reduce visual degradation and otherwise comply with the provisions and intent of this section. New towers shall be of a monopole design.*
- (iv) *That the applicant has not previously failed to take advantage of reasonably available shared use opportunities or procedures provided by this Article or otherwise.*
- (v) *The City may require, at the expense of the petitioner, any additional studies or the hiring of an external consultant to review exhibits and/or other requirements in accordance with this section.*

If any one, but not more than one, of the first four conditions is not satisfied, approval may be granted only upon a determination of unique circumstances otherwise necessitating approval to satisfy the purposes of this section.

(d) *Additional Height Limitations.*

- (i) *No tower shall be approved at a height exceeding 150-feet AGL (Above Ground Level) unless the applicant clearly demonstrates that such height is required for the proper function of the applicant's system or that of a public safety communications system of a governmental entity sharing the tower. Such showing must also be supported by the opinion of a telecommunications consultant hired by the city at the expense of the applicant. The opinion of the consultant shall include a*

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statement that no available alternatives exist to exceeding the height limit or the reason why such alternatives are not viable.

(e) *Non-Ionizing Electromagnetic Radiation (NIER) Standards.*

(i) *All transmission facilities shall conform to the relevant sections of the “American National Safety Levels with respect to Human Exposure to Radio Frequency Electromagnetic Fields, 3 KHz to 300 GHz”. This standard as identified by as ANSI- C95.1-1999 and is published by the American National Standards Institute, a copy of which is incorporated herein by reference and will be made available upon request to the Planning Department.*

(f) *Term of Special Use Permit.*

(i) *An initial Special Use Permit for a communication tower shall not be approved for a duration longer than 5-years. Subsequent renewal periods shall not exceed 10-years. At the time of each renewal the applicant shall demonstrate to the satisfaction of the City that a good-faith effort has been made to cooperate with other service providers to establish co-location at the site. Good-faith effort may include, but is not limited to, reasonable and timely response to co-location inquiries from other service providers and sharing of technical information to evaluate the feasibility of establishing co-location. Failure to demonstrate that good-faith efforts have been made may result in the denial of the request for a renewal.*

(2) *Permitted Uses.*

(a) *The placement of Antenna and Towers are permitted upon the issuance of a Building Permit, without the issuance of a Special Use Permit, only under the following circumstances:*

(i) *The attachment of additional antennae or shelters, or replacement thereof, to any tower existing on the effective date of this Article or subsequently approved in accordance with these regulations, including the enlargement of the existing tower compound area as long as all other requirements of this section and the underlying zoning district are met.*

(ii) *The mounting of antennae on any existing building or structure, such as a water tower, provided that the antenna does not extend higher than 10-feet above the structure.*

(iii) *The mounting of antennae on or within any existing high-voltage electric transmission tower, but not exceeding the height of such tower by more than 10-feet.*

(iv) *The installation of antennae or the construction of a tower or support structure on buildings or land owned by the city following the approval of a lease agreement by the City Council.*

- (v) *The one-time replacement of any tower existing on the effective date of this Article or subsequently approved in accordance with these regulations so long as the purpose of the replacement is to accommodate shared use of the site or to eliminate a safety hazard. The new tower shall be of the same type as the original except that a guyed or self-supporting (lattice) tower may be replaced by a monopole. If the guyed or lattice tower to be replaced is 180 feet or less in height, it shall only be replaced with a monopole, and the height of the new tower may exceed that of the original by not more than 20-feet.*
- (b) *Application and Appeal Procedures.*
 - (i) *Applications for Building Permits shall be made in the same manner as those for any other Building Permit within the City.*
- (3) *General Requirements.*

The requirements set forth in this section shall be applicable to all towers, antennae and other support structures installed, built or modified after the effective date of this Article to the full extent permitted by law.

 - (a) *Principal or Incidental Use.*

Antennae and support structures may be either a principal use in all zoning districts except “C-1” Business Central or “R-H” Residential Historic districts or an incidental use to institutional or non-residential uses, subject to any applicable district requirement relating to yard or setback.
 - (b) *Regulatory Compliance.*

All antennae and support structures shall meet or exceed current standards and regulations of the Federal Aviation Administration (FAA), Federal Communications Commission (FCC) and any other state or federal agency with the authority to regulate communications antennae and support structures. No approval for any placement, construction or modification of any antenna or structure permitted by this section shall be granted for any applicant having an uncured violation of any other governmental regulatory requirement related to such antenna or structures within the City.
 - (c) *Lighting.*

Antennae, equipment cabinets, shelters, and support structures shall not be lighted unless required by the FAA or other state or federal agency with authority to regulate.
 - (d) *Advertising.*

Except for a disguised antenna support structure in the form of an otherwise lawfully permitted pylon sign, the placement of advertising on structures regulated by this section is prohibited.
 - (e) *Design.*

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- (i) *Subject to the requirements of the FAA or any applicable state or federal agency, towers shall be painted a neutral color consistent with the natural or built environment of the site.*
- (ii) *Equipment shelters or cabinets shall have an exterior finish compatible with the natural or built environment of the site and shall also comply with any design guidelines as may be applicable to the particular zoning district in which the facility is located.*
- (iii) *Antennae attached to a building or disguised antenna support structure shall be of a color identical to or closely compatible with the surface to which they are mounted.*
- (iv) *All towers and support facilities shall be surrounded by a minimum 6 foot high decorative fence consisting of elements of brick, stone or comparable masonry materials. Chain link or similar wire fencing shall not be allowed for the exterior screening fences. In lieu of the required fence and landscaping, an alternative means of screening may be approved by the Planning Commission, upon demonstration by the applicant that an equivalent degree of visual screening will be achieved.*
- (v) *All towers, disguised support structures, and related structures, fences and walls shall be separated from the property line of any adjacent property at least a distance equal to the height of the tower except where adjacent to property zoned for commercial or industrial uses, in which case the tower and related facilities shall be separated from adjacent property lines at least a distance equal to one-half of the height of the tower or structure. Decreased setbacks may be approved at the discretion of the Planning Commission in the case of a Special Use Permit.*
- (vi) *Vehicle or outdoor storage on any tower site is prohibited, unless otherwise permitted by the zoning.*
- (vii) *On-site parking for periodic maintenance and service shall be provided at all antenna or tower locations consistent with the underlying zoning district.*
- (f) *Shared Use.*
 - (i) *Tower Inventories. Prior to the issuance of any permit to install, build or modify any tower, the tower owner shall furnish the Zoning Administrator an inventory of all of that owner's towers in or within one and one-half miles of the City limits. The inventory shall include the tower's reference name or number, the street location, latitude and longitude, structure type, height, type and mounting height of existing antennas and an assessment of available ground space for the placement of additional equipment shelters.*

- (ii) *Shared Use Required - New Towers. Any new tower approved at a height of 60 feet AGL or higher shall be designed and constructed to accommodate at least one additional user.*

(4) *Obsolete Non-Complying Tower Structures.*

Any upper portion of a tower which is not occupied by active antennae for a period of twelve months, and any entire tower which is not so occupied for a period of six months, shall be removed at the owner's expense. Any applicant for a new tower or disguised structure not built as disguised part of another existing or permitted structure shall place a bond or other security with the City prior to any final approval for the purpose of removing any tower or disguised structure as required herein and to compensate the City for performing proper maintenance of such towers or disguised structures to ensure such structures do not become unsafe or otherwise fail to be maintained in compliance with this Article. The bond or security shall be in the form approved by the City, and in the amount of \$15,000, or such other amount as is determined by the City to satisfy the requirements hereof with regard to the specific tower or structure to which it would apply. Removal of upper portions of a tower manufactured as a single unit shall not be required. Failure to comply with this provision shall constitute a nuisance that may be remedied by the City at the tower owner's expense.

K. *Accessory Structures shall be permitted within established front yards subject to the following conditions: (Section Added 2007/Ord. 2165)*

- (1) *Property must be no less than three (3) acres. Adjoining parcels under common ownership shall not be included in this figure.*
- (2) *Accessory structure must not infringe upon front or side yard setbacks.*
- (3) *Accessory structure must be constructed of the same or similar materials and have an appearance and landscaping consistent with the principal structure on the property.*
- (4) *The request must arise from environmental or topographical conditions unique to the applicant's property that would make siting the accessory building elsewhere unfavorable.*

At the time of application submittal, the applicant shall submit a letter to the Planning commission stating the reasons for their request.

5. Time Limit:

- A. **Sunset:** A special use permit shall expire, upon public hearing, unless a building permit is taken within 12 months to effectuate such specially permitted use; or if no building permit is required, evidence of use is filed with building inspector.

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- B. Abandonment: Once a specially permitted use ceases or is abandoned for a period of more than 12 months, the special use permit shall expire upon public hearing; except that the special use permit for an auto salvage yard shall automatically expire if the state license for operating the auto salvage yard lapses for a period of time more than six months.

Home Occupation: A special use permit for a home occupation shall not be transferable to a new owner of the real estate.