



THE CITY OF DELAWARE CITY

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CITY OF DELAWARE CITY

DELAWARE CITY, DELAW

Ordinance No. 23-0717-01

**ORDINANCE TO AMEND CHAPTER 46 (ZONING) OF THE CITY OF
DELAWARE CITY CODE BY AMENDING ARTICLES II, III, IV & V
REGARDING THE CHAPTER'S PURPOSE, DEFINITIONS,
DESIGNATION OF DISTRICTS AND USE REGULATION WITHIN
THE RESIDENTIAL DISTRICTS**

WHEREAS, pursuant to Article V, Section 5-02(A) of the City of Delaware City Charter ("Charter"), and pursuant to the "Powers of the City," outlined in Article II, § 2-01 of the Charter, the Mayor and the City Council of the City of Delaware City ("City Council") possess the authority to adopt, amend, modify, or repeal the City of Delaware City Code ("Code");

WHEREAS, the Mayor and the City Council, in accordance with the City of Delaware City Comprehensive Plan and with reasonable consideration, among other things, as to the character of the Residential District and the City as a whole and its peculiar suitability for particular uses, desire to amend Chapter 46 of the City Code by updating, revising and clarifying certain sections within the Code.

NOW THEREFORE, making the express finding that the below changes enhance and perpetuate the City of Delaware City's cultural, social, economic, religious, political or architectural history, as set forth in Chapter 49 of the Code, the Mayor and the City Council of the City of Delaware City hereby ordain and adopt the following Code changes and revisions:

Section 1. Article II (Purpose) of Chapter 46 (Zoning) of the Code is hereby amended by deleting the following stricken language and inserting the following underlined language:

ARTICLE II. PURPOSE

Sec. 46-2. Purpose.

The zoning regulations and districts as herein set forth have been made in accordance with a general comprehensive development plan and designed to lessen congestion in the streets; to secure safety from fire, panic and other dangers; to promote health, morals and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements. They have been made with reasonable consideration, among

other things, as to the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout Delaware City.

A guiding principle has been maintaining the residential districts primarily residential with minimal commercial activity and the commercial districts primarily commercial with minimal residential activity while recognizing the historical nature of the downtown area and some mixed uses are beneficial to the community at large. A four-tier approval system was used to determine the required approval process for uses in each district based on the compatibility and potential impact in the district. The physical size of each district was also used when considering uses.

1. Allowed – Specifically permitted in a zoning district.
2. Board of Adjustments approval needed – A variance from the Code that to allow a use that is not otherwise permitted. A variance request would require a public hearing at which the applicant would be required to meet the legal standard for a variance to be approved.
3. Special Use Permit required – Code designated uses that potentially have an adverse impact within a zoning district that require a Special Use Permit for approval.
4. Not allowed – incompatible with the character of a district and any use not specifically listed as allowed by conditions in 1 through 3 above is not allowed without an Ordinance that changes the code for that district.

Section 2. Article III (Definitions) of Chapter 46 (Zoning) of the Code is hereby amended by deleting the following stricken language and inserting the following underlined language:

ARTICLE III. DEFINITIONS

Sec. 46-3. Definitions.

For the purpose of this chapter, certain words and phrases used herein shall be interpreted or defined as follows:

Words used in the present tense include the future tense; words in the singular number include the plural, and words used in the plural number include the singular; the word "person" includes a firm, association, organization, partnership, corporation, trust and company as well as an individual; the word "lot" includes the word "plot" or "parcel"; the word "building" includes the word "structure"; the word "shall" is always mandatory and not directory; the words "used" or "occupied" as applied to any land or building shall be construed to include the words "intended", "arranged" or "designed to be used or occupied"; the word "Map", "Zoning Map" or "Delaware City Zoning Map" shall mean the "Official Zoning Map of the City of Delaware City, Delaware".

Accessory building: A detached or subordinate building, the use of which is incidental and subordinate to that of the main building on the same lot.

Accessory use: A use customarily incidental and subordinate to the principal use or building and located on the same lot with such principal use or building.

Adult day care center: A center that provides daytime care for two or more adults-within a resident's home. (This section does not prevent anyone from caring for family members in their homes and are therefore exempt from this code).

Advertise: To advise, announce, apprise, command, give notice of, inform, make known, publish or call to the public attention by any means whatsoever.

Advertisement: Notice to be given in a manner designed to attract public attention, information communicated to the public or to the individual concerned, as by handbills, newspaper, television, billboards, radio or by other similar means.

Animated sign: A mechanical or electronically illuminated or non-illuminated sign which displays letters, words, characters or symbols which are not stationary.

Apartments: Residential multifamily dwelling in groups not exceeding 4 all on the same lot. (See Dwelling, multifamily).

Area of a building: The area of a horizontal section of a building taken at its greatest outside dimensions, excluding cornices, eaves, gutters, steps and balconies.

Automotive garage: Any premise used for the repair of vehicles, but not including automotive wrecking.

Automotive self-service station: An establishment where liquids used as motor fuels are stored and dispensed into the fuel tanks of motor vehicles by persons other than the service station attendant and may include facilities available for the sale of other retail products.

Automotive sales building: A building used for the sale or hire of automotive equipment. It is interpreted to include auto accessory sales rooms but not the sale of "junked" automotive equipment.

Automotive service station: An establishment providing servicing for automobiles and other motor vehicles where all service and fuel are supplied by an attendant.

Automotive and/or trailer sales area: An open area, other than a public or private street or way, used for the display or sale of new and used automobiles, trailers, trucks, or farm equipment and where no repair work is done except that which is minor and incidental, not including body and fender work.

Balloon sign: A sign composed of an inflatable, nonporous bag.

Banner sign: A fabric, plastic, or other sign made of non-rigid material without an enclosing structural framework. The manipulation of the aforesaid materials onto a solid surface(s) shall not constitute a sign of another description as defined herein.

Bank and other financial institutions: An establishment for the custody, loan, exchange or issue of money for the extension of credit and for facilitating the transmission of funds.

Bed and breakfast facility/tourist home: A building in which there are no more than three guest rooms or suites of rooms available for temporary occupancy for varying lengths of time, with compensation to the owner, by the general public and in which meals may be prepared for them by the owner, provided, that no meals may be sold to persons other than such guests and that the owner or manager resides therein as his or her principal place of residence.

Billboard: A freestanding, off-site advertising sign between 25 square feet and not to exceed 50 square feet in size.

Buffer area: A strip of required yard space adjacent to the boundary of a property or zoning district on which is placed year-around shrubbery, hedges, evergreens or other suitable plantings of sufficient height and density to constitute an effective screen and give maximum protection and immediate screening to an abutting property or zoning district. A buffer area may include a wall or fence or solid wall or fence not exceeding four feet in height, provided that such wall or fence shall be screened or constructed in such a manner that it will not conflict with the character of the abutting zoning district.

Building: Any structure having a roof supported by columns or by walls and intended for shelter, housing or enclosure of persons, animals or chattel.

Building Code: The current regulations, code or codes in effect in the city that govern the erection, alteration, maintenance, use and removal of buildings, structures, or signs.

Building dimensional requirements: Minimum specifications for any building or structure erected in a particular district, as set forth in the Dimensional Requirements Table in article VI, section 46-31.

Building height: The vertical distance from the mean elevation of the finished grade along the front of the building to the highest point of a flat roof, or to the deck line of a mansard roof, or to the mean height level between eaves and ridge for gable, hip and gambrel roofs.

Building principal: A building in which is conducted the main use of the lot on which said building is located.

Building setback line: A line establishing the minimum allowable distance between the main wall of the building and the street or highway right-of-way line when measured perpendicularly thereto. Covered porches whether enclosed or not shall be considered as part of the main building and shall not project into the required yard.

Buildings, attached: A building having two party walls, one opposite to the other.

Buildings, detached: A building having no party wall.

Buildings, semi-detached: A building having a side yard on one side and a party wall on the opposite side. Provided, however, that two semi-detached buildings having a common party wall and owned by the same person or persons shall for the purpose of this chapter be considered a detached building.

Business: An activity, employment, occupation, profession, or enterprise, whether for profit or not for profit, in which an individual is willing to invest time and capital on future outcome.

Carriage house: (See Connected Homes)

Car wash, automated: A building that contains mechanical devices for washing and drying motor vehicles with or without attendants.

Car wash, self-service: A use which provides equipment to enable customers to handwash motor vehicles themselves.

Cemeteries (commercial): An area where people may be buried that is operated by a business or religious organization. Commercial cemeteries must comply with all applicable state, county and local rules and laws.

Certificate of occupancy: A statement signed by a duly authorized officer setting forth that a building, structure or use legally complies with this chapter and other applicable codes and regulations and that the same may be used for the purpose stated therein.

Clean fill: A non-water soluble, non-decomposable, environmentally inert solid such as rock, soil, gravel, concrete, broken glass and/or clay or ceramic products.

Club: An organization for social and fraternal purposes, whose buildings and services are for members and their guests only.

Code: Delaware City Zoning Code.

Connected Homes: Connected homes are groups of homes such as townhouses, row houses, carriage houses, that have at least one shared wall each on a separate lot in groups not exceeding four (4).

Customary home occupation: A use customarily carried on within a dwelling by the inhabitants thereof, which use is incidental and subordinate to the residential use. A home occupation includes, but is not limited to art studios, dressmaking, professional offices of a physician, lawyer, architect, accountant or real estate broker. Home occupations shall not be interpreted to include barbershops, beauty parlors, beauty schools, tourist homes and convalescent homes.

Day care center: A center defined by DELACARE Regulations for Family, Large family, and Early Care and Education School-age Centers that provides daytime care or instruction for two or more children 11 years of age or under and operates on a regular basis.

Digital sign: An electronic display that shows programmed images, information and/or other messages commonly controlled remotely by a computer or similar device.

Dimensional variance (area or bulk area variance): A departure from the dimensional or physical requirements of this chapter, including front, side, and rear set-backs, lot frontage, lot area, building height, off-street parking requirements, and lot coverage percentages.

Directional sign: A sign regulating traffic, or a sign indicating entry or exit, loading or service area, fire lanes, parking, no trespassing or a similar sign incidental to the primary use and not itself advertising or naming that use except as required by law.

Dormitory: A building, as at a college or other school, containing a number of private or semiprivate rooms for residents.

Dwelling, multifamily: A building arranged, intended or designed to be occupied by three or more families living independently of each other on the same lot.

Dwelling, one-family: A detached dwelling, including a manufactured home, on a single-family lot, designed for and occupied by a single family.

Dwelling, one-family, semi-detached: A dwelling designed for and occupied by a single family having one party wall and one side yard.

Dwelling, two-family: A detached dwelling designed for and occupied by two families living independently of each other.

Dwelling unit: One or more rooms physically arranged so as to create an independent housekeeping establishment for occupancy by one family with separate facilities for all of the following: sanitation, living, sleeping, cooking and eating.

Early Care and Education and School-Age Centers: (13 or more children).

Family: Any number of individuals legally related through blood, marriage, adoption or guardianship, including individuals placed for foster care by an authorized agency, or up to four unrelated individuals living and cooking together and functioning as a single-housekeeping unit using certain rooms and housekeeping facilities in common.

Family day care centers: Level one (maximum 5-6 children). Level two (maximum 9 children). Level three (maximum 12 children).

Floor area:

Residential use: The sum of the gross horizontal area of the several floors of a building and its accessory buildings, excluding cellar, basement and garage or carport floor areas not devoted to residence.

Office, commercial or manufacturing use, except shopping centers: The sum of the gross horizontal area of the several floors of a building and its accessory buildings.

Garage, community: one or more groups of private garages.

Garage, private: A garage accessory to a principal building, and in which no business, commercial service or industry connected directly or indirectly with motor vehicles is conducted.

Garage, public: Garage, other than a private garage, available to the public, operated for gain, and which is used for the storage, repair or servicing of automobiles or other motor vehicles, not intended for the sale of gasoline.

Garden apartments: A group of multi-family dwellings on a single lot designed for rental of the individual housekeeping units, having common open spaces, and designed, in accordance with the special requirements for such dwellings as set forth in this chapter, to give the maximum amount of open space per family.

Half-way house: A residential facility established to provide a residence for those persons re-entering society from an institution and such facility has all the state-required licenses and permits for that facility.

Hospital or sanitarium: An institution providing public health services primarily for inpatient medical or surgical care of the sick or injured and including related facilities such as laboratories, outpatient departments, training facilities, central service facilities and staff offices which are an integral part of the facility.

Hotel/motel: A building or group of buildings offering transient lodging accommodations on a daily rate to the general public. Additional services to be provided may include a restaurant, meeting rooms and recreational facilities.

Identification sign: A sign on a private residence which lists the house number or address of the occupant.

Kennel: A structure or place used for the breeding or boarding of domestic animals.

Kindergarten, pre-school, or day nursery school: A school which provides day-time care and instruction for two or more children from two to six years of age inclusive, and operates on a regular basis.

Landscape screen: A completely painted visual barrier composed of evergreen plants and trees arranged to form both a low-level and high-level screen. The high-level screen shall consist of evergreen trees planted with specimens having an initial height of not less than five feet and planted at intervals of not more than ten feet on center. The low-level screen shall consist of evergreen shrubs planted at an initial height of not less than two feet and spaced at intervals of not more than five feet on center. The low-level screen shall be placed in alternating rows to produce a more effective barrier.

Large family day care center: (see Family Daycare Centers).

Loading space: Accommodation off the street for loading and unloading of trucks in the form of one or more truck berths located either within a building or in open space on the same lot. The area of each berth shall be not less than 200 square feet and it shall have a minimum clear height, including access to it from the street, of 14 feet.

Lodging Home: (see rooming house).

Long-term rentals: Rentals to a person or group of persons for a continuous length of time greater than 30 days.

Lot: A parcel of land in single or common ownership and occupied or intended to be occupied by one principal building or use or by a group of principal buildings together with any accessory buildings, including such yards or open spaces as are arranged or designed to be used in connection with such buildings.

Lot area: The area of a lot taken at its perimeter exclusive of any portion within a public or private street right-of-way.

Lot corner: Any lot which occupies the interior angle at the intersection of two streets which make an angle of less than 135 degrees with each other, the owner of a corner lot having the privilege of specifying which street lot line shall be deemed the front line and being required, when requesting a certificate of occupancy, so to specify.

Lot coverage: That portion of the lot area that is covered by buildings; the building area divided by the lot area; e.g., a lot containing 10,000 square feet has a principal and accessory buildings planned or existing whose area is 2,500 square feet; thus the lot coverage is 25 percent.

Lot, depth of: The average depth measured in the main direction of the side lot lines from the front street line to the rear lot line. The rear line shall be a minimum of 70 percent of the lot width required for the zoning district. In applying this definition to a corner lot, the side street right-of-way line, as determined in accordance with the definition of a corner lot shall be considered to be a side lot line.

Lot width: The horizontal distance between the side lot lines, measured across the rear of the required front yard. Where no front yard is required, lot width shall be measured along the street right-of-way.

Manufactured home: A one-family dwelling unit fabricated in an off-site manufacturing facility for installation or assembly at the building site, bearing a seal certifying that it was built in compliance with the Building Code or the Federal Manufactured Housing Construction and Safety Code.

Marina: A boat basin offering dockage and other service for small craft.

Mobile home or mobile dwelling unit: A transportable one-family dwelling larger than 320 square feet, designed to be used as a year-round residence. This definition shall not include motor homes or travel trailers.

Motor home: A travel vehicle that contains the living section and the power source in a single unit.

Multifamily homes: See Dwelling, multifamily.

Mural sign: A design or representation painted or drawn on a wall which does not contain promotional or commercial advertising; any wall decorated without lettering.

Nonconforming building: A building or parts thereof lawfully existing at the time these regulations or subsequent amendment hereto, became effective which does not conform to the dimensional requirements of the district in which it is located.

Nonconforming use: A use of land or use of a building lawfully existing at the time these regulations, or subsequent amendments hereto, became effective which does not conform to the use requirements of the district in which it is located.

Nursing or convalescent home: A facility providing nursing services on a continuing basis and which admits the majority of the occupants upon advice of a physician as ill or infirm persons requiring nursing services and provides for physicians' services or supervision and maintains medical records including also provisions for other and similar medical or nursing services. Care for the acutely ill or surgical or obstetrical services shall not

be considered similar services under this definition nor shall hospitals be construed to be included in this definition.

Open area: That portion of a lot excluding area set aside or used for buildings, parking, loading and streets. Land devoted to recreation purposes to include land for swimming pools tennis courts and similar recreation uses shall be considered totally enclosed buildings.

Open storage: Goods, equipment or supplies held for the safekeeping or eventual sale or distribution, not entirely within totally enclosed buildings. T-structures, lean-to-type structures or roofed over, fenced-in areas shall not be considered totally enclosed buildings.

Parking lot, commercial: An area used for the storage or parking of automobiles, not including mobile home dwelling units, for any period of time and operated for gain.

Parking space: Accommodation for the parking of a motor vehicle on a lot provided for restricted use in connection with a particular business or private enterprise, or as an adjunct to a housing development or private residence, whether operated for gain or not or whether cooperatively established and operated or not. Such parking spaces may consist of parking lots, private garages or other structures and accessories; they may be surface facilities or facilities above or under ground.

Paved area: A portion of land paved with a weatherproofed surface for parking spaces, driveways, sidewalks or streets, in the computation of such, that area covered by buildings shall be excluded.

Payday/title loan establishment: Any establishment which advances or lends a small, short-maturity loan on the security of (i) a check, (ii) any form of assignment of an interest in the account of an individual at a depository institution, (iii) any form of assignment of income payable to an individual, other than loans based on income tax refunds or (iv) title of a motor vehicle.

Premises: Any lot, area or tract of land, whether used in conjunction with a building or not.

Residence manufactured/mobile home community: A parcel of land of at least eight acres consisting of a series of lots to be rented or sold for the purpose of accommodating more than two manufactured or mobile homes. A developer of over 25 units shall have the option of declaring a section of the community either sales or rental within the same residence manufactured/mobile home community. Each sales or rental section must meet the minimum applicable standards and be designated on the record plan.

Right-of-way: Shall mean that area shown and designated on an approved record as the area in which a street is dedicated for public or private use in accordance with the standards set forth in this chapter. In no case shall a right-of-way be construed to mean easement.

Roofline: The eave line of a roof or building parapet, whichever is higher, but excluding any cupolas, chimneys, or other minor projections.

Roof sign: A sign erected on a roof which extends above the roofline of the building.

Rooming house: A dwelling or part thereof that is the primary residence of the owner containing not more than three rooming units designed to be used for sleeping accommodations and to be let, for compensation, by the owner thereof to persons who are not legally related by blood, marriage, adoption or guardianship to all the other residents or to the owner of the rooming house. The rooming unit must be let for a minimum of 30 continuous days.

Row Houses: (See connect homes)

School, private: A duly organized school, other than a public school or a parochial school, giving regular instruction in subjects ordinarily taught in the public schools at least five days a week for eight or more months per year.

Setback: An area extending the full width of the lot line between the street right-of-way and the building setback line within which no buildings or parts of buildings may be erected.

Setback line: A line extending between the two side lot lines of a lot or parcel of land which is parallel to and a state distance from, a street line.

Shall: Mandatory.

Short-term rentals: Rental of a residential dwelling or rooms within a dwelling occupied by a resident to individuals or groups of individuals rented for less than 30 days.

Signs: Any form of publicity, visible from any public highway conveyed by means of words, figures, numerals, lettering, emblems, devices, designs, trade marks or trade names or other pictorial matter designed to convey such information and displayed by means of bills, panels, posters, paints or other devices erected on an open framework, or attached or otherwise applied to posts, stakes, poles, trees, buildings or other structures or supports.

Sign area: The total "area" of a sign shall include all sides or area of display of a single-faced or multifaceted sign, together with all moldings, battens, cappings, nailing strips and latticing which are attached and are part of the sign proper and/or incidental to its decoration. Structural elements, such as aprons or skirting, which serve to shade, deflect or block light generated by a sign and which do not display advertising on their surfaces shall not be included in the total "area" of a sign. For the purpose of this code, signs which are composed of letters, words or representations only and which follow no square or rectangular pattern shall be considered to include in the "sign area" a square or rectangle as drawn at the outer limits of the letters, words, or representations.

Sign, illumination: Lighted shall mean illuminated only by light cast upon the sign from a concealed light source. Luminous shall mean illuminated by any type of source.

Sign, portable: Any sign not permanently attached to the ground or other permanent structure, or a sign designed to be transported, including, but not limited to, signs designed to be transported by means of wheels; signs converted to A or T frames, including but not limited to "sandwich board signs"; and signs attached to or painted on vehicles parked and visible from the public right-of-way.

Sign, projecting: A sign that is perpendicular and adequately attached to and projects at an angle of not less than 45 degrees from the structure or building face. A projecting sign shall provide an eight foot clearance between its bottom edge and the ground if it hangs over a public right-of-way and shall not exceed 20 square feet.

Sign setback: An open space on the same premises with a sign or signs, which open space lies between the nearest edge of the sign or signs and the nearest street line or property line.

Special exception: A use that would not generally be appropriate throughout the zoning district, but which may be permitted in specific circumstances without harm to the intent of the zoning chapter. Such uses may be

permitted in zoning districts where provisions thereof are made by this chapter.

Special use permit: A permit that is required for Code-designated uses that potentially have an adverse impact within a zoning district.

Stacked Townhouses: Residential units with one or two adjoining walls, horizontally or vertically, in groups not exceeding four where no more than two units may be on a single lot.

Story: A story is that part of a building between the surface of one floor and the ceiling immediately above. A cellar, basement, or half-story (no more than 50 percent of which is above ground) shall not count as a story.

Street: A strip of land, comprising the entire area within the right-of-way, intended for possible use as a means of vehicular and pedestrian circulation to provide access to more than one lot. The word "street" includes road, thoroughfare, parkway, avenue, boulevard, court, expressway, highway, land, throughway, place, square, alley or however designated within the above-mentioned right-of-way, however, the establishment of a common driveway for access purposes for no more than three separate parcels contiguous to one another shall not be considered a street as that term is defined herein.

Street line: The dividing line between a lot and the street.

Street, private: Any street right-of-way not dedicated to public use.

Street, public: Any street right-of-way dedicated to public use and/or maintained by the State Highway Department.

Street right-of-way: An area set aside or used as a means of ingress, egress or approach. No parts of private group parking no areas or driveways that service such parking areas are to be classified as street right-of-way.

Structural alterations: Any change in supporting members of a building such as bearing walls, columns, beams or girders and floor joists, ceiling joists, roof rafters or stairways.

Swimming club, private (commercial): A private club operated for profit, maintaining and operating a swimming pool and apparatus and equipment pertaining to the swimming pool, with specified limitations upon the number of members, for the exclusive use of members and their guests.

Swimming club, private (nonprofit): A private club organized as a nonprofit club or organization, maintaining and operating a swimming pool for the exclusive use of members and guests.

Swimming pool, commercial: A swimming pool, and the apparatus and equipment pertaining to the swimming pool, operated for profit, open to the public upon payment of an hourly, daily, weekly, monthly, annual or other fee.

Swimming pool, private: A swimming pool, and the apparatus and equipment pertaining to the swimming pool, maintained and operated by an individual for the sole use of his household and guests without charge for admission and not for the purpose of profit or in connection with any business operated for profit, located on a lot as an accessory use to a residence.

Swimming pool, public: A swimming pool, and the apparatus and equipment pertaining to the swimming pool, maintained and operated by a municipality or other unit of government for the general public, whether or not an admission fee is charged.

Temporary sign: A sign which is erected for a time not to exceed a cumulative period of eight weeks per calendar year unless approval is obtained from the city manager or city code official for an extension of time.

Townhouse: (See Connected Homes)

Travel trailer: A vehicular, portable structure built on a chassis and designed to be used for temporary occupancy for travel, recreational or vacation use. For the purpose of this definition, travel trailers shall not include trailers in excess of 28 feet in length or in excess of 4,500 pounds gross weight.

Used car lot: An area used for the storage and display of used automobiles advertised for sale.

Vacation Rentals: See *Short-term Rentals*. days.

Variance: A departure from the terms of this zoning chapter.

Yard: An unoccupied space open to the sky on the same lot with a building or structure.

Yard, front: A yard extending the full width of the lot between the front street line and the parts of the principal building erected thereon setting back from and nearest such street line.

Yard, rear: A yard across the full width of the lot extending from the rear line of the building to the rear line of the lot. In the case of a corner lot, the rear yard shall not extend beyond the building setback line on the street side.

Yard, side: A yard between the building and the adjacent side line of the lot and extending from the front yard to the rear yard.

Section 3. Article IV (Designation of Districts) of Chapter 46 (Zoning) of the Code is hereby amended by deleting the following stricken language and inserting the following underlined language:

ARTICLE IV. DESIGNATION OF DISTRICTS

Sec. 46-4. Classes for districts.

For the purpose of this chapter, the portions of Delaware City for which the zoning map is adopted under this chapter are hereby divided into the following 12 districts:

R-1 District (one-family residential)

R-2 District (one- and two-family residential)

R-3 District (multifamily)

R-MM District (manufactured/mobile home)

C-1 District (central commercial)

C-1L District (commercial low impact)

C-1M District (commercial marine)

C-2 District (general commercial)

OS-R District (open space and recreational)

OS-BA (open space and buffer area)

M-1 District (light industrial)

HPR District (Historic Preservation and Redevelopment)

Sec. 46-5. Adoption of zoning map.

The above said districts are as shown, defined and bounded on the "Zoning Map of Delaware City, Delaware," adopted by the mayor and city council and certified by the city manager. Said map and all explanatory matter thereon is hereby made a part of this chapter, and will hereinafter be referred as the "zoning map."

Sec. 46-6. Rules for determining boundaries of districts.

Where uncertainty exists with respect to the boundaries of any of the districts shown on the zoning map, the following rules shall apply:

- (a) Where district boundaries are indicated as approximately following the center lines of the streets, or street lines, such center lines or street lines shall be construed to be such boundaries.
- (b) Where district boundaries are so indicated that they approximately follow the lot lines, such lot lines shall be construed to be such boundaries.
- (c) Where the boundaries are neither lot lines nor center lines of streets, nor street lines, unless dimensioned or otherwise clearly indicated on the zoning map, they shall be determined by the use of the scale on said zoning map.

Sec. 46-7. Changes in the zoning map.

If, in accordance with the provisions of article XV of this chapter and chapter 3, title 22 of the State Code, changes are made in the zoning district boundaries, such changes shall be made on the official zoning map promptly after the change has been approved by the mayor and city council. The amending ordinance shall provide that such changes or amendments shall not become effective until they have been duly entered upon the official zoning map.

Sec. 46-8. Replacement of official zoning map.

In the event that the official zoning map becomes damaged, destroyed, lost or difficult to interpret because of the nature or number of changes and additions, the mayor and city council may by resolution, adopt a new official zoning map.

Sec. 46-9. Special Use Permit Standards and Procedures.

(a) Special Use Permit Standards. Special use permits may be granted, but are not required to be granted, in the sole discretion of the City Council. In considering whether to grant a special use permit, all of the following factors should be considered: (i) consistency with the Comprehensive Development Plan and the purposes of this Chapter; (ii) consistency with the character of the neighborhood and greater City of Delaware City; (iii) consistency with zoning and use of nearby properties; (iv) suitability of the property for the uses for which it has been proposed or restricted; (v) effect on nearby properties, including, without limitation, the visual impact on adjacent lands; (vi) adverse effect on the area; and (vii) whether it is detrimental to the health, safety, convenience or public welfare of persons living within the City of Delaware City.

(b) Special Use Permit Procedures.

- i. The owner or potential owner of the property must make written application for a special use permit, including plans, supporting materials, and payment of the application fee, to the Mayor and the City Council.
- ii. The application shall be forwarded to the Planning Commission for consideration and recommendation to the City Council.
- iii. Thereafter, a public hearing on the application shall be held at the next available regular City Council meeting, adhering to notice requirements, no sooner than three (3) weeks following receipt of the recommendation of the Planning Commission, to allow time for the City Council and the City Engineer to review the application.
- iv. Any special use permit application must be granted by a majority vote of the City Council members, with the Mayor being permitted to cast the deciding vote in the event of a tie.

Secs. 46-910—46-15. Reserved.

Section 4. Article V (Use Regulations) of Chapter 46 (Zoning) of the Code is hereby amended by deleting the following stricken language and inserting the following underlined language:

ARTICLE V. USE REGULATIONS

Sec. 46-16. R-1 district (one-family residential).

In R-1 District, one-family residential, no building or premises shall be used and no building shall be erected or altered which is arranged, intended or designed to be used, except for one or more of the following uses:

- (a) One one-family dwelling per lot, framed on site, which conforms to the following requirements:
 - (1) It is permanently mounted on a solid foundation system and anchored in accordance with the building code of Delaware City.
 - (2) All utilities shall be permanently mounted in accordance with plumbing and mechanical codes of Delaware City.
 - (3) It has storage areas either in a basement located beneath the living area, in an attic area, in a closet area, in an attached or detached garage or an enclosed structure on a permanent foundation and having an area of at least 160 square feet or any combination thereof. The total storage area must not be less than 15 percent of the gross living area of the dwelling unit. It shall have a weather-resistant exterior covering material or materials comparable in appearance, quality and durability to the materials used on the dwelling such as brick, stone facing, treated lumber, masonry or masonry veneer, which shall extend to the ground.
 - (4) It complies with all other pertinent provisions of applicable building and housing codes, and the fire and health codes of the State of Delaware.
- (b) Any public or private schools and public or private colleges, may be permitted, subject to the special use permit standards and procedures, as outlined in Section 46-9.
- (c) Cemeteries (public).
 - (1) Allowed on Church properties if they meet all state, county, and city regulations and obtain approval from the Floodplain Administrator and receive a Special Use Permit.
 - (2) The area to be used for a cemetery must be a minimum of 2000 sq ft and be designed for a minimum of 50 graves.
- (d) Libraries, museums and art galleries. Require a Special Use Permit
- (e) Playgrounds, parks and buildings operated on a non- commercial basis for recreational purposes. with Board of Adjustment approval.
- (f) Police and fire stations. Require a Special Use Permit.

(g) Water towers, water storage tanks, water reservoirs, water pumping stations and water treatment plants if a special exception is granted by the board of adjustment.

(h) Substations, electric and gas, and telephone central offices, if a special exception is granted by the board of adjustment, provided that there shall be:

(1) No storage of materials and trucks, and no repair facilities or housing of repair crews except within completely enclosed buildings.

(2) The architectural design of the exterior on any building shall be in keeping with other structures in the neighborhood.

(i) Day-care centers, kindergartens, preschools, and day nursery schools, if a special exemption is granted by the board of adjustment, provided there shall be: (This section does not prevent anyone from caring for children who are related to them in their homes without a state license and are therefore exempt from this code)

(1) Childcare facilities within Delaware City must meet the State of Delaware regulations and requirements for a daycare facility as outlined in the two State Guidelines by reference, and as may be amended.

a. *DELACARE Regulations for Family and Large Family Childcare Homes - 2019*

b. *DELACARE Regulations for Early Care and Education and School-Age Centers*

(2) For purposes of this section, the following definitions shall apply:

a. *Family daycare*: Family childcare is a licensed childcare service offered by a person or a person who formed an entity. OCCL names this person or entity as a licensee. A licensee provides this service for less than 24 hours per day and children attend without a parent/guardian. A licensee receives payment for services provided. There are two types of family childcare; a level I may have a maximum of five or six children depending on their ages and a level II may have a maximum of nine children depending on their ages. Children living in the home who do not attend kindergarten or a higher-grade count in these numbers. These regulations describe the ages of children allowed to be present in each type. A licensee provides care, education, protection, supervision, or guidance to children in his or her private home. Children provided only to a person's own children, grandchildren, nieces, nephews, or stepchildren does not require a family childcare license even if payment is received.

b. *Large family daycare*: Large family childcare is a licensed

childcare service offered by a person or entity such as a company. OCCL names this person or entity as a licensee. A licensee provides this service for less than 24 hours per day and children attend without a parent/guardian. A licensee receives payment for services provided. A licensee may have a maximum of 12 children. The ages of the children will determine the number of staff needed. Children living in the home who do not attend kindergarten or a higher-grade count in these numbers. A licensee provides care, education, protection, supervision, or guidance to children in a private home or non-residential setting. Children provided only to a person's own children, grandchildren, nieces, nephews, or stepchildren does not require a family childcare license even if payment is received.

- c. *Early care and education and school-age centers:* Early care and education and school-age centers provide care, education, protection, supervision, and guidance for 13 or more children, including children who are related to the licensee. This service is provided for less than 24 hours per day and children attend without a parent/guardian. A licensee receives payment for services provided. This definition includes, but is not limited to, full- and part-time childcare or daycare, early care and education, preschool, nursery school, before- or after-school care, school vacation or holiday care, and summer childcare.
 - (3) Family daycare facilities in the R-1, R-2, R-3 and HPR Districts, if a special exemption is granted by the board of adjustment, and it can meet all of the state requirements.
 - (4) Large family daycare facilities may be located in the licensee's home in the R-1, R-2, R-3 and HPR Districts if a special exemption is granted by the board of adjustment, and it can meet all of the state requirements, as set forth in (i)(1)a. and b., above.
 - (5) Large family daycare facilities may be located in a non-residential setting and early care and education and school-age centers may be located in the C-1 and C-1L Districts if a special exemption is granted by the board of adjustment, and it can meet all of the state requirements, as set forth in (i)(1)a. and b., above.
 - a. Plan review shall include consideration of parking for staff and the ability to safely discharge and pick-up children.
 - (6) Large family daycare facilities may be located in a non-residential setting and early care and education and school-age centers in the HPR District if it is located in a primarily commercial area and a special exemption is granted by the board of adjustment, and it can meet all of the state requirements.
 - a. Plan review shall include consideration of parking for staff and the ability to discharge and pick-up children safely.
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- (j) Utility distribution line and transmission line.
 - (k) Swimming pools, private for personal use.
 - (l) Petroleum storage, accessory to a permitted principal use or building, subject to the Fire Prevention Code of the National Board of Fire Underwriters.
 - (m) Private garages.
 - (n) Professional office or studio of a physician, dentist, lawyer, architect, engineer, musician, artist, teacher, real estate broker, registered nurse or other similar professional person, subject to the following special requirements in addition to all other applicable requirements of this chapter for the residential district in which such uses are located:
 - (1) The practice of such professional occupations shall be permitted in a dwelling provided the principal person so engaged is a resident thereof.
 - (2) Professional occupations shall be subject to the following standards:
 - a. Three off street parking spaces in addition to those otherwise required in this chapter.
 - b. No more than two persons, except a resident, shall be employed by the practitioner of the professional occupation to provide secretarial, clerical, technical or similar assistance.
 - c. The area used for the practice of a profession shall occupy no more than 25 percent of the total floor area.
 - d. No manufacturing, repairing or other mechanical work shall be performed outside the dwelling unit. When such activity is conducted inside the dwelling unit, it shall be conducted in such a way that no noise, heat, glare, odor, vibration, electromagnetic interference or smoke shall be perceptible at or beyond the property line.
 - e. No storage of materials or products outside the dwelling unit shall be permitted unless completely housed.
 - f. The profession shall be clearly incidental to the residential use of the dwelling unit and shall not change the essential residential character of the dwelling.
 - g. No external alterations inconsistent with the residential use of the dwelling unit shall be permitted.
 - h. No display of products shall be visible from outside the building.
 - i. Signs must comply with section 46-81 and 46-82.
 - j. A business permit issued by the city is required.
 - (o) Customary home occupations subject to the following special requirements in addition to all other applicable requirements of this chapter for the residential district in which such cases are located:
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- (1) The practice of a home occupation shall be permitted in a dwelling provided the person so engaged is a resident thereof.
 - (2) All home occupations shall be subject to the following standards:
 - a. The area used for the practice of a home occupation shall occupy no more than 25 percent of the total floor area.
 - b. No manufacturing, repairing or other mechanical work shall be performed outside the dwelling unit. When such activity is conducted inside the dwelling unit, it shall be conducted in such a way that no noise, heat, glare, odor, vibration, electromagnetic interference or smoke shall be perceptible at or beyond the property line.
 - c. No storage of materials or products outside the dwelling unit shall be permitted unless it is completely housed.
 - d. The home occupation shall be clearly incidental with the residential use of the dwelling and shall not change the essential residential character of the dwelling.
 - e. No external alterations of the inconsistent with the residential use of the dwelling shall be permitted.
 - f. No display of products shall be visible from outside the building.
 - g. A business permit issued by the city is required if the occupation includes selling items from the home. Hobby type activities do not require a business permit.

(p) Accessory uses on the same lot with and customarily incidental to any of the permitted uses. The term "accessory uses" shall not include commercial uses but shall include professional offices. Such accessory uses shall not generate excessive noise, smoke, dust, smell or other conditions detrimental to the character of the surrounding area.

(q) Bed and breakfast as described in the definition in section 46-3 - tourist home subject to the following conditions:

- (1) A special exception by the board of adjustment is required.
- (2) Resident manager on site.
- (3) At least one full bathroom for the exclusive use of the occupants of each two guest rooms or portion thereof, which shall be accessible from each guest room without going through another guest room or sleeping room.

(r) Conversion of a one family dwelling into dwelling units for two families, if a special exception is granted by the board of adjustment as provided in article XIII, section 46-121, of this chapter if such board declares such dwelling to be structurally sound but too large to be in demand for one family use and that conversion for the use of two families would not impair the character of the neighborhood, subject to conformance with the following requirements:

- (1) The dwelling shall have been constructed at least 20 years before the date of the application.
- (2) There shall be a lot area of at least 4,000 square feet for each family to be accommodated thereon.
- (3) There shall be a gross floor area, computed as the sum of those areas enclosed by the outside faces of all exterior walls surrounding each story used for the residence exclusive of any area used for an attached private garage, of at least 500 square feet per family to be accommodated therein.
- (4) No dwelling shall be so converted unless in connection therewith it be placed in a reasonable state of repair and modernization.
- (5) No addition shall extend within the front yard, side yards or rear yards required for the district within which it is located.
- (6) Fire escape and outside stairways leading to a second or higher story shall, be located on the rear of the building and shall not be located on any building wall facing a street.
- (7) One off-street parking space shall be provided for each additional dwelling unit created.
- (8) The owner shall be one of the two families living on the premises. When property is titled in more than one name or is incorporated, the majority owner shall reside on the premises.

(s) One family, semi-detached dwellings, each on a separate lot, shall be permitted if a special exception is granted by the board of adjustment.

(t) *SHORT TERM RENTAL USE*

A). Purpose; applicability; definitions; compliance.

- (a) *Purpose.* The City of Delaware City wishes to permit the limited and temporary rental use of one family dwellings (residences) in established areas of the city as an economic asset, allowing for increased travel, visitation and tourism and affording property owners of the opportunity to earn revenue from such occupancy, while ensuring that such uses do not become a nuisance, that neighborhood character is not compromised, and that such businesses are properly operated and maintained. The purpose of this Code shall be to minimize public safety risks and public nuisances, such as noise, trash and parking problems; to ensure that traditional neighborhoods are not turned into tourist areas to the detriment of long-term residents; and to ensure that individual dwellings are not turned into pseudo hotels or party houses.
- (b) *Applicability.* A short term rental use (STRU) shall be allowed in R-1 District as defined in Section 46-16, 46-17 and 46-18.
- (c) *Definitions.* The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Good neighbor brochure means a document provided by the owner to the guest or guests and containing: the name and telephone number for the owner; notification on standards of behavior and occupancy relating to parking, noise, trash collection, waste disposal, street maintenance, snow removal, and public safety services and including contact and web access information; and such other information as the city may from time to time prescribe.

Guest or guests means the individual or individuals securing the short-term rental use for the purposes of staying overnight.

Owner means the person or persons holding legal or equitable title to the property being offered as a short-term rental use.

Short term rental use (STRU) means rental of all or a part of a residential one family dwelling unit which is made available by agreement for a residential occupancy by a tenant in exchange for compensation for a duration of a temporary occupancy of less than 30 days.

- (d) *Compliance.* No person shall operate, offer for occupancy or let to another for occupancy as a short-term rental use any dwelling which is not in compliance with this article or any other applicable codes.

B.) Registration and inspection requirements; inspection required for life safety and building purposes; short-term rental use license required.

- (a) The owner of any dwelling proposed for a short-term rental use must obtain an annual short term rental use license.
- (b) An inspection by the city code enforcement office shall be required to determine compliance with property maintenance and all other applicable codes. Any items in non-compliance shall be remedied before a license is granted. The inspection shall be required the first time a license is issued and may be required at renewal at the discretion of the code enforcement office. The rental license must be kept current during anytime the dwelling is offered as a short-term rental use.
- (c) The license shall be valid for up to one year and must be renewed no later than January 31 of each year of continued operation.
- (d) The short-term rental use license must be clearly displayed inside the dwelling along with any state licenses or permits.
- (e) The short term rental use license may not be transferred to any party except heirs and assigns and shall be void upon transfer of ownership of the property where the short term rental use is located.

C.) Owner obligations.

An owner of a dwelling seeking to use a property as a short term rental use shall comply with the following obligations:

- (1) The owner of the property being offered as a short term rental use must be a resident of the city. Determination of residency shall be based on meeting city voting residency eligibility. Such owner may offer for short term rental use only that property which is the owner's primary residence.
- (2) A property not owned by a resident of the city shall not be used as a short term rental use. Such property shall not be used for overnight accommodations unless such property otherwise qualifies under the Code.
- (3) A good neighbor brochure must be provided in the dwelling listing city provisions as required.

D.) Limitations on occupancy and use.

- (a) The number of guests 12 years and older permitted at any time shall not exceed twice the number of bedrooms (i.e. three bedrooms \times two = six occupants), with a maximum of 12 individual occupants of all ages at any one time regardless of the number of bedrooms available.
- (b) No more than two vehicles, plus one vehicle per bedroom shall be allowed, not to exceed six extra in total; all parking shall comply with all requirements relating to street maintenance, fire access, parking on paved

surfaces, trash collection, obstacles to travel, or other requirements. Violations shall be ticketed offenses.

- (c) Access to a full bath must be provided.
- (d) Guests shall be prohibited from further subletting the dwelling. All rentals shall be for overnight, with no purely daytime rentals.
- (e) Weddings, graduation parties, corporate events, commercial functions, large gatherings, or other special events associated with the STRU shall be prohibited unless a city special event permit shall have been granted for a specific activity and date.
- (f) The owner has the responsibility to not knowingly allow any illegal or criminal activity on the property nor permit the guests to create a public nuisance including, but not limited to, creating noise, causing odors, permitting an unsafe condition, maintaining a disorderly premise, generation of trash, or other behavior which unreasonably disturbs the peace, safety and general welfare of the neighborhood as provided in this Code.

E.) Enforcement, fees and penalties, reporting.

- (a) *Short term rental license.* Payment of a short term rental use license fee of \$200 per annum for two bedroom and fewer dwellings, and \$300 for more than two bedroom dwellings, which is required annually beginning January 31 of each year; the fee will be prorated for a partial year.
- (b) *Failure to register and obtain a license.* Penalties fines for failure to register and obtain a license shall be \$200 for the first offense, \$300 for the second offense and \$500 for third offense.
- (c) A violation of any of the provisions of the Short Term Rental Uses shall be \$200 for the first offense, \$300 for the second offense and \$500 for third offense.
- (d) A dwelling cited three times by the Code official or by any city department as a nuisance or the location of illegal or criminal activity within any consecutive 12-month period shall have its short term rental use license suspended for not less than the rest of the license year or a longer period up to permanently.
- (e) **Short-Term Rentals shall pay the Lodging Tax as set forth in the City of Delaware City Code.** The owner shall voluntarily report to the city annually documenting the occupancy and frequency of rentals obtained, such report to be completed by January 31 of the following year as part of the license renewal and for the purposes of building a database of STRU activity and economic impact, not for enforcement or tax purposes.

F.) Enforcement, notice and appeals.

Enforcement of violations of this Section shall be enforced by the City of Delaware City Code Officer.

G.) Short-Term Rentals require the approval of a Special Exception, to be considered by the City of Delaware City Board of Adjustment(u) Adult Day Care within a residential home.

(Ord. No. 08-0507-01, 6-16-2008; Ord. No. 21-0816-01, 11-15-2021; Ord. No. 21-0816-03, 11-15-2021)

Sec. 46-17. R-2 district (one- and two-family residential).

In the R-2 District, one-family and two-family residential, no building or premises shall be used and no building shall be erected or altered which is arranged, intended or designed to be used, except for one or more of the following uses:

- (a) All uses permitted in the R-1 District.
- (b) One two-family dwelling per lot, framed on site.
- (c) One-family, semi-detached dwellings.
- (d) Connected homes not exceeding groups of 3 or 4 units, each on its own lot, if a special exception is granted by the board of adjustment.
- (e) Stacked townhouses in groups not exceeding 4 with no more than 2 units on a single lot if a special exception is granted by the board of adjustment.

Sec. 46-18. R-3 district (multifamily residential).

In R-3 District, multifamily residential, no building or premises shall be used and no building shall be erected or altered which is arranged, intended or designed to be used, except for one or more of the following uses:

- (a) All uses permitted within the R-1 and R-2 Districts.
- (b) A community garage consisting of one or more groups of private garages, not more than one story high, having a joint capacity of not more than six cars, arranged in a row or surrounding a common means of access, used by owners or tenants of dwellings on nearby lots, and subject to the special regulations of Article VIII, Section 46-59, of this Chapter. A Special Use Permit is required.
- (c) New or major modification of existing multifamily dwellings including garden apartments are subject to the following
 - (1) *Number of dwelling units per building.* The maximum number of dwelling units per building shall be 24 for buildings up to three stories in height.
 - (2) *Lot coverage.* The maximum lot coverage shall be 35 percent of the lot area, which is to be developed for a multifamily complex.
 - (3) *Number of dwellings per unit acre.* The maximum number

of dwelling units per gross acre shall be 20 for buildings up to three stories in height and the maximum number of dwelling units for buildings with elevator service of over three stories in height shall be 40.

(4) *Distance between buildings or groups of attached buildings.* No portion of any side of any building or groups of attached buildings, shall be nearer than 25 feet to any other building, or group of attached buildings, and no portion of the front or rear of any buildings, or group of attached buildings, shall be nearer than

50 feet to any part of another building or groups of attached buildings. No more than three buildings may be attached to one another.

(5) *Street frontage.* Each multifamily development shall have at least 50 feet frontage along a public street.

(6) *Minimum lot size.* One acre.

(7) *Open area.* At least 25 percent of the lot area shall be devoted to open area.

(8) *Setbacks.* Each story or part of a building, exclusive of cornices and uncovered steps and uncovered porches, shall be at least:

- a. Forty feet from the line of all perimeter streets.
- b. Twenty-five feet from the line of all interior streets.

(9) *Parking and loading spaces.* All parking and loading spaces shall be located at least ten feet from all abutting perimeter streets and property lines. Parking bays adjacent to interior private streets are permitted.

(10) *Plan approval.* Before a building permit is issued for the erection of any building, a subdivision plan shall be reviewed and approved by the Planning Commission and Mayor and City Council, as complying with its policies and standards.

(d) A Special Use Permit is required.

(1) A dwelling or part thereof that is the primary residence of the owner

(2) Contains not more than three rooming units designed to be used for sleeping accommodations and to be let, for compensation, by the owner thereof to persons who are not legally related by blood, marriage, adoption or guardianship to all the other residents or to the owner of the rooming house.

(3) The rooming units must be let for a minimum of 30 continuous days.

Section 5. Severability. The provisions of this Ordinance shall be severable. If any provisions of this Ordinance are found by any court of competent jurisdiction to be unconstitutional or void, the remaining provisions of this Ordinance shall remain valid, unless the court finds that the valid provisions of this Ordinance are so essentially and inseparably connected with, and so dependent upon, the unconstitutional or void provision that it cannot be presumed that City Council would have enacted the remaining valid provisions without the unconstitutional or void provision; or unless the court finds that the remaining valid provisions, standing alone, are incomplete and incapable of being executed in accordance with the City Council's intent.

Section 6. Effective Date. This Ordinance shall become effective immediately upon its adoption by City Council.


ADOPTED BY THE MAYOR AND COUNCIL, this 18 day of December 2023.

ATTEST:


City Secretary


APPROVED AS TO FORM:


City Solicitor


Mayor


Council Member


Council Member

 opposed
Council Member

Council Member

Council Member

First Reading on 7/17/23

Second Reading, Public Hearing, and Final Passage on 12/18/23