

OFFICE OF THE CITY SOLICITOR
M E M O R A N D U M

TO: Patricia Reynolds, Director of Planning and Development
Peter Friedrichs, City Planner

FROM: Christopher J. Behan, Esq., City Solicitor

DATE: February 26, 2020

RE: Short Term Rental Ordinances 

Here are the further revised short-term rental ordinances.

Please note:

1. For Section 17.04.050 (E), in the provision for “Dwelling Units per Lot”, I did not delete the term “transient guest facilities”. I am not aware of the reason for this request and not sure what are the effects of doing so.
2. I cleaned up further the definition of “Guest House”. I thought the language from Jeff and his subcommittee “one or more dwelling units and/or no more than 5 rooms for sleeping” could lead to ambiguity.
3. I revised the “Transient Guest Facilities” definition further to keep the language “dependent on external facilities to the room...” because we are keeping the “Vacation Guest Facilities” definition.

Any other changes were more of the nature of clean-up rather than substantive in nature.

17.08.010. - Definitions.

For the purpose of this zoning code, certain words and terms shall have the meanings listed below. Doubts as to the precise meaning of other words and terms shall be determined by the zoning board of review with reference to the General Laws and Webster's Third New International Dictionary, respectively.

"Abutter" means one whose property abuts, that is, adjoins at a border, boundary, or point with no intervening land.

"Accessory family dwelling unit" means a dwelling unit for the sole use of one or more members of the family of the occupant or occupants of the principal residence, but not needing to have a separate means of ingress and egress.

"Accessory use" means a use of land or of a building, or portion thereof, customarily incidental and subordinate to the principal use of the land or building. An accessory use shall be restricted to the same lot as the principal use, and shall not be permitted without such principal use.

"Affiliate" means, with respect to a specific owner: (a) such owner's parents or parents-in-law (blood or adoptive), spouse, children or grandchildren (blood or adoptive) or any blood relative residing with such owner; (b) a trustee of a trust for the benefit of such owner or of any person identified in the immediately preceding clause; or (c) a corporation, partnership, firm, business or entity of which the majority of the voting interest is owned by such owner or any person identified in clause (a) and (b) above; or (d) a person who is an officer, director, stockholder (fifteen (15) percent or more), trustee, employee, or partner of any entity or person referred to in clauses (a), (b) and (c) above.

"Aggrieved party" means:

1. Any person or persons or entity or entities who can demonstrate that their property will be injured by a decision of either the zoning officer or the planning board or the zoning board of review or any official of the city involved in the enforcement of this zoning code; or
2. Anyone requiring notice pursuant to this zoning code.

"Agricultural land" means land suitable for agriculture by reason of suitability of soil or other natural characteristics or past use for agricultural purposes. Agricultural land includes that defined as prime farm land or additional farm land of statewide importance for Rhode Island by the Soil Conservation Service of the United States Department of Agriculture.

"Applicant" means an owner or authorized agent of the owner submitting an application or appealing an action of the zoning officer, planning board or the zoning board of review or any official of the city involved in the enforcement of this zoning code.

"Application" means the completed form or forms and all accompanying documents, exhibits, and fees required of an applicant by the applicable department, board or commission of the city for review, approval, or permitting purposes.

"Arcade" means any premises where the principal use is maintaining coin-operated machines for the general public and is defined as a game room subject to Section 5-2-10 of the General Laws of the State of Rhode Island, as amended.

"Buffer" means land which is maintained in either a natural or landscaped state, and is used to screen and/or mitigate the impacts of development on surrounding areas, properties or rights-of-way.

"Building" means any structure used or intended for supporting or sheltering any use or occupancy.

"Building envelope" means the three-dimensional space within which a structure is permitted to be built on a lot and which is defined by regulations governing building setbacks, maximum height, and bulk; by other regulations; and/or any combination thereof.

"Building height" means the vertical distance from established grade, as prescribed by this zoning code, to the top of the highest point of the roof or structure. The distance shall exclude spires, chimneys, flag poles, and the like.

"Building line" means a line parallel to the street line at a distance equal to the required setback or a greater distance.

"Carry Out Restaurant. See "restaurants."

"Casino type gambling" means the operation or conducting of any games played with cards, roulette wheels, dice, slot machines, video lottery terminals, mechanical, electro-mechanical or electronic amusement devices or machines for money, property, checks, credit or any representative of value including, without limiting the generality of the foregoing, baccarat, faro, monte, poker, keno, black jack, bingo, fan-tan, twenty-one, seven-and-a-half, big injun, klondike, chuck-a-luck, wheel of fortune, chemin de fer, pai gow, beat the banker, and panguingui and similar games of chance for the return of money, cash or prizes or anything that could be redeemed for money, cash or prizes. This definition does not apply to any such games of chance operated by charitable organizations licensed under Rhode Island General Laws Title 11, Chapter 19 as amended.

"Clubs for outdoor recreation" means an incorporated or unincorporated association for active recreational activities operated for the benefit of its members and not open to the general public. Active recreation activities include but are not limited to tennis, swimming, boating, golf, and shuffleboard.

"Cluster" means a site planning technique that concentrates buildings in specific areas on the site to allow the remaining land to be used for recreation, common open space, and/or preservation of environmentally, historically, culturally, or other sensitive features and/or structures. The techniques used are but not limited to, reduction in lot areas, setback requirements, and/or bulk requirements, with the resultant open land being devoted by deed restrictions for one or more uses. Under cluster development there is no increase in the number of lots that would be permitted under conventional development except where zoning code provisions include incentive bonuses for certain types or conditions of development.

"Combined use lot" means for purposes of Chapter 17-76 titled "Signs," a combined use lot shall be, either a parcel of land or no more than three contiguous lots under common ownership, containing no less than seven hundred fifty thousand (750,000) square feet of land and located in the commercial-industrial district.

"Commercial indoor recreation" means a recreational activity, excluding arcades, which may be viewed or participated in by patrons, for which an entry or user fee is charged, and which takes place inside a building.

"Commercial outdoor recreation" means a recreational activity, excluding arcades, which may be viewed or participated in by patrons, for which an entry or user fee is charged, and which takes place out of doors or in temporary structures, such as pavilions or tents.

"Commercial parking lot" means a parcel of land or portion thereof used for the parking or storage of motor vehicles as a commercial enterprise for which any compensation is charged independently of any other use of the premises.

"Commercial scale energy system" means a wind energy system (also known as a turbine) consisting of blades, wind generator, tower and associated control or conversion equipment, having a rated capacity of greater than ten kilowatts and not exceeding one hundred (100) kilowatts for onsite consumption (not precluding net metering).

"Common ownership" means either:

1. Ownership by one or more individuals or entities in any form of ownership of two or more contiguous lots; or
2. Ownership by any association (such ownership may also include a municipality) of one or more lots under specific development techniques.

"Community residence" means a home or residential facility where children and/or adults reside in a family setting and may or may not receive supervised care. This ~~shall~~ does not include halfway houses or ~~substance-use-disorder-treatment facilities~~ substance abuse treatment facilities. This does ~~shall~~ include, but ~~is not~~ is limited to, the following:

1. Whenever six (6) or fewer ~~retarded~~ children or adults with intellectual and/or developmental disability reside in any type of residence in the community, as licensed by the state pursuant to R.I.G.L. Chapter 24 of Title 40.1. All requirements pertaining to this zoning code are waived for these community residences;
2. A group home providing care or supervision, or both, to not more than eight (8) persons with disabilities, and -mentally disabled or mentally handicapped or physically handicapped persons; ~~as~~ licensed by the state pursuant to R.I.G.L. Chapter 24 of Title 40.1;
3. A residence for children providing care or supervision, or both, to not more than eight (8) children including those of the care-giver, and ~~as~~ licensed by the state pursuant to R.I.G.L. Chapter 72.1 of Title 42;
4. A community transitional residence providing care or assistance, or both, to no more than six (6) unrelated persons or no more than three (3) families, not to exceed a total of eight (8) persons, requiring temporary financial assistance, and/or to persons who are victims of crimes, abuse, or neglect, and who are expected to reside in that residence not less than sixty (60) days nor more than two (2) years. Residents will have access to, and use of, all common areas, including eating areas and living rooms, and will receive appropriate social services for the purpose of fostering independence, self-sufficiency, and eventual transition to a permanent living situation.

"Comprehensive plan" means the comprehensive land use plan prepared by the Newport planning board with technical assistance from the Newport planning department as adopted by the city council and to which all zoning provisions adopted shall be in compliance.

"Conservation land" means any parcel or area of undeveloped land conserved in its natural state for perpetuity through deeds or other legal means.

"Convalescent homes and rest homes" is housing consisting of state-licensed nursing homes and state-licensed assisted living facilities providing housing and services primarily to the elderly. Such facilities shall contain common use areas, which may include common dining and recreation areas. Expansion of such facilities which existed prior to July 1, 1971, is permitted by right on the same property or adjacent parcels under common ownership at the time of passage of the ordinance codified in this section.

"Day care" or "day care center" means any other day care center which is not a family day care home.

"Day care" or "family day care home" means any home other than the individual's home in which day care in lieu of parental care or supervision is offered at the same time to six or less individuals who are not relatives of the care giver, but may not contain more than a total of eight individuals receiving day care.

"Day care center" means day care for five or more unrelated persons at the same time in a nonresidential structure, or for more than twelve (12) unrelated persons at the same time in a residential structure other than the provider's.

"Demolition" means the razing or removal of greater than fifty (50) percent of the gross area of a structure (including structural floor and roof decking as well as exterior skin and framing). This definition is applicable to all principal structures outside of any local historic district. Gross area comprises the aggregate of wall surface areas, floor surface areas and roof surface areas. Hazardous materials, window assemblies, and non-structural roofing materials are excluded from the calculation of gross area.

Density, Residential. "Residential density" means the number of dwelling units per lot.

"Development" means the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any structure; any mining, excavation, landfill or land disturbance; any change in use, or alteration or extension of the use, of land.

"Development plan review" means the process whereby authorized officials of the City of Newport review the site plans, maps, and other documentation of a development to determine the compliance of the stated purposes and standards of this zoning code.

"Dormitory" means a structure used for housing for persons generally unrelated to each other by blood or marriage, containing not more than one kitchen or dining facility and affiliated with a school, college or university by contract or otherwise.

"Drainage system" means a system for the removal of water from land by drains, grading, or other appropriate means. These techniques may include runoff controls to minimize erosion and sedimentation during and after construction or development, the means for preserving surface and groundwaters, and the prevention and/or alleviation of flooding.

Drive-in Restaurant. See "restaurants."

"Dwelling unit" means a structure or portion thereof occupied by a family of a structure, providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation, and containing a separate means of ingress and egress.

"Established grade." For the purposes of building height, established grade is calculated as the mean of the highest and lowest points within the building envelope (as defined within the zoning code), upon the natural topography on site prior to any development, filling grading, or other land disturbance. Established grade is calculated through examination of topographical maps repositied with the city engineer. Final determination of established grade is made by the city building official.

"Established museum parking" means parking incidental to a museum use, including the parking of cars and/or buses, motor coaches, and other motor vehicles, on lots used in whole or in part for the parking of any motor vehicles incidental to that museum use as of November 9, 1994.

"Extractive industry" means the extraction of minerals, including: solids, such as coal and ores; liquids, such as crude petroleum; and gases, such as natural gases. The term also includes quarrying; well operation; milling, such as crushing, screening, washing, and flotation; and other preparation customarily done at the extraction site or as a part of the extractive activity.

"Family" means a person or persons related by blood or marriage, or other legal means.

Fast Food Restaurant. See "restaurants."

"Floodplains" or "flood hazard area" means an area that has a one percent or greater chance of inundation in any given year, as delineated by the federal emergency agency pursuant to the National Flood Insurance Act of 1968, as amended (P.L. 90-448) [42 U.S.C. 4011 et seq.].

"Governmental employee parking lots" means a parcel of land or portion thereof the principal use of which is parking personal motor vehicles of employees of any agency of government.

"Gross square footage" means the floor space area contained by the outer perimeters of a building.

"Groundwater" means water found underground which completely fills the open spaces between particles of sand, gravel, clay, silt and consolidated rock fractures. The zone of materials filled with groundwater is called the "zone of saturation."

"Guest facilities" means establishments for renting of rooms or dwelling units are defined as follows:

1. Guest House. A building in which one or more dwelling units or five or less rooms for sleeping are rented to no more than ten persons for lodging accommodations for periods of twenty-nine (29) consecutive days or less not longer than thirty (30) days on a daily, weekly, or monthly basis, with or without the furnishing of meals and with the owner or a manager who is in charge and manages such rentals, thereof residing on the guest house premises property. In those districts where guest houses are permitted by right, the requirement for the owner or manager to reside on the guest house premises property shall not apply. No more than a total of five rooms for sleeping shall be allowed to be rented irrespective of the number of dwelling units or rooms for sleeping that are contained in the building. Only one building on a lot or parcel of land shall be allowed a guest house use.

~~Guest house shall also include a dwelling unit including but not limited to residences, homes, apartments, or condominium units which are rented for lodging accommodations for not more than thirty (30) days.~~

2. Historic Guest House. A building the sole principal use of which is the rental of no more than eighteen (18) rooms rented on a daily, weekly, or monthly basis, with or without the providing of meals and which: (a) is listed on the National Register of Historic Places; and (b) is in a building which is subject to the jurisdiction of the Newport historic district commission pursuant to Chapter 17.80 of this zoning code; and (c) does not contain any other uses, accessory or otherwise, without being granted by a special use permit;
3. Transient Guest Facilities. ~~Buildings or facilities of six or more with rooms or units offered to the public for occupancy as lodging accommodations designed primarily for occupancy~~ on a day-to-day, or week-to-week basis and dependent on external facilities to the ~~room or guest unit~~ for the furnishing of meals, including ~~but not limited to hotels, motels, inns and time-share properties and time-share units, as defined by Rhode Island General Laws Chapter 34-41;~~
4. "Vacation guest facilities" means facilities of ten or more units with kitchens, designed primarily for occupancy on a day-to-day or week-to-week basis and for not more than thirty-one (31) consecutive days by any one guest or guest family, including time-share properties and time-share units as defined by Rhode Island General Laws Section 34-41.

Guest House. See "guest facilities."

"Halfway house" means a residential facility for adults or children who have been institutionalized for criminal conduct and who require a group setting to facilitate the transition to becoming functional members of society.

"Historic district" means one or more historic properties or sites and intervening or surrounding property significantly affecting or affected by the quality and character of the historic site or properties, and has been registered, or is deemed eligible to be included, on the National Register of Historic Places, or which is within the historic district zoning map as defined in Section 17.80.030 of this zoning code.

Historic Guest House. See "guest facilities."

"Historic site" means any real property, man-made structure, natural object, or configuration or any portion or group of the foregoing which has been registered, or is deemed eligible to be included, on the National Register of Historic Places.

"Home occupation" means any activity customarily carried out for gain by a resident, conducted as an accessory use in the resident's dwelling unit.

"Household" means one or more persons living together in a single dwelling unit, with common access to, and common use of, all living and eating areas and all areas and facilities for the preparation and storage of food within the dwelling unit. The term "household unit" shall be synonymous with the term "dwelling unit" for determining the number of such units allowed within any structure on any lot in a zoning district. An individual household shall consist of any one of the following:

1. A family, which may also include servants and employees living with the family; or
2. No more than five unrelated persons living together.

"Incentive zoning" means the process whereby a developer may be granted additional development capacity in exchange for the developer's provision of a public benefit or amenity as may be specified in this zoning code.

"Infrastructure" means facilities and services needed to sustain residential, commercial, industrial, institutional, and other activities.

"Kitchen" means an area within a housekeeping unit which contains a cooking facility. A cooking facility can be a stove, oven, microwave oven, toaster oven, hot plate, or other similar appliance.

"Land development project" means a project in which one or more lots, tracts, or parcels of land are to be developed or redeveloped as a coordinated site for a complex of uses, units, or structures, including, but not limited to, planned development and/or cluster development for residential, commercial, institutional, recreational, open space, and/or mixed uses as provided for in this zoning code.

"Lot" means either:

1. The basic development unit for determination of lot area, depth, and other dimensional regulations; or
2. A parcel of land whose boundaries have been established by some legal instrument such as a recorded deed or recorded map and which is recognized as a separate legal entity for purposes of transfer of title.

"Lot area" means the total area within the boundaries of a lot, excluding any street right-of-way, usually reported in acres or square feet.

"Lot building coverage" means that portion of the lot that is or may be covered by buildings and accessory buildings.

"Lot depth" means the distance measured from the front lot line to the rear lot line. For lots where the front and rear lot lines are not parallel, the lot depth is an average of the depth.

"Lot frontage" means that portion of a lot abutting a street.

"Lot line" means a line of record, bounding a lot, which divides one lot from another lot or from a public or private street or any other public or private space and shall include:

1. Front. The lot line separating a lot from a street right-of-way or lot line nearest the street;
2. Rear. The lot line opposite and most distant from the front lot line, or in the case of triangular or otherwise irregularly shaped lots, an assumed line at least ten feet in length entirely within the lot, parallel to and at a maximum distance from the front lot line; and
3. Side. Any lot line other than a front or rear lot line.

Lot, Through. "Through lot" means a lot which fronts upon two parallel streets, or which fronts upon two streets which do not intersect at the boundaries of the lot.

"Lot width" means the horizontal distance between the side lines of a lot measured at right angles to its depth along a straight line parallel to the front lot line at the minimum front setback line.

"Marina" means a waterfront facility containing docks and/or slips and/or piers at which boats are berthed, and/or a basin for mooring boats. Such facilities may provide utilities and offer supplies, and perform minor repairs.

"Maritime museum" means a museum, as defined herein, which specializes in display of collections, objects of interest, and works of art relating to traditional maritime activities, including fishing, yachting, transport, defense, surveillance, and rescue. Maritime museums are a separate and distinct use, which are permitted only in the traditional maritime and waterfront business districts.

"Meteorological tower" means the tower, base plate, anchors, guy wires and hardware, anemometers (wind speed indicators), wind direction vanes, booms and equipment, data loggers, instrument wiring, and any telemetry devices that are used to monitor or transmit wind speed and wind flow characteristics over a fixed period of time, providing instantaneous wind information or to characterize wind resources at a fixed location.

"Mixed use" means a mixture of land uses within a single development, building, or tract.

mobile Home. See "moveable dwellings."

Motorized Camper. See "moveable dwellings."

"Moveable dwellings" means:

1. Mobile Home. A moveable or portable dwelling built on a chassis, connected to utilities, and designed without a permanent foundation for year-round living.
2. Motorized Camper. A dwelling designed and constructed as an integral part of a self-propelled vehicle to be used as a temporary dwelling for travel, camping, recreational and vacation use.

3. Pick-Up Coach and Pick-Up Camper. A structure designed primarily to be mounted on a pick-up or truck chassis and with sufficient equipment to render it suitable for use as a temporary dwelling for travel, camping, recreational and vacation use.
4. Tent Trailer. A folding structure, mounted on wheels to be used as a temporary dwelling for travel, camping, recreational and vacation use.
5. Travel Trailer. A vehicular, portable structure built on a chassis, designed to be used as a temporary dwelling for travel, camping, recreational and vacation use.

"Multifamily dwelling" means a building containing three or more dwelling units.

"Museum" means a building having public significance by reason of its architecture or former use or occupancy or a building serving as a repository for natural, scientific, historical or literary collections or objects of interest, or works of art, and arranged, intended and designed to be used by members of the public for viewing, with or without an admission charge, and which may include as an accessory use the sale of goods to the public as gifts or for their own use.

"Neighborhood parking lot" means a lot set aside for the parking of noncommercial motor vehicles controlled by, and for the exclusive benefit of residential neighbors of the lot.

"Nonconformance" means a building, structure, or parcel of land, or use thereof, lawfully existing at the time of the adoption or amendment of this zoning ordinance and not in conformity with the provisions of this zoning code or amendment. Nonconformance shall be of only two types:

1. Nonconforming by Use. A lawfully established use of land, building, or structure which is not a permitted use in that zoning district. A building or structure containing more dwelling units than are permitted by the use regulations of this zoning code shall be nonconforming by use.
2. Nonconforming by Dimension. A building, structure, or parcel of land not in compliance with the dimensional regulations of this zoning code. Dimensional regulations include all regulations of this zoning code, other than those pertaining to the permitted uses. A building or structure containing more dwelling units than are permitted by the use regulations of this zoning ordinance shall be nonconforming by use; a building or structure containing a permitted number of dwelling units by the use regulations of this zoning code, but not meeting the lot area per dwelling unit regulations, shall be nonconforming by dimension.

"Nursery school" means a facility operated primarily for educational instruction of pre-school children.

"Open space" means any parcel or area of land or water set aside, dedicated, designated, or reserved for public or private use or enjoyment.

"Overlay district" means a zoning district that is superimposed on one or more zoning districts or parts of zoning districts and that imposes specific requirements in addition to, but not less than, those otherwise applicable for the underlying zoning district.

"Performance standards" means a set of criteria or limits relating to elements which a particular use or process either must meet or may not exceed.

"Permitted use" means a use by right which is specifically authorized in a particular zoning district.

"Pre-application conference" means a review meeting of a proposed development held between applicants and reviewing officials before formal submission of an application for a permit or for a development approval.

"Principal structure" means the building on a lot where a use is conducted.

"Private garage" means a building or portion of a building used for the housing of noncommercial motor vehicles, and in which no occupation, business or service connected in any way with motor vehicles is carried on.

"Professional and business offices" means offices of doctors, dentists, attorneys, real estate agents, insurance agents, accountants, brokers, engineers, architects, landscape architects, photographers,

musicians, offices for data processing, telephone answering services, studios of artists and craftsmen, and the like.

"Public garage" means a building or portion of a building, used for the housing of commercial or noncommercial motor vehicles and in which no repair facilities are provided and no commercial repair work is carried on.

"Public service corporation" means a city or state owned enterprise or corporation providing services essential to the general public convenience or safety (such as Newport Utilities Department, Rhode Island Public Transit Authority.) All projects proposed by a public service corporation must be reviewed and approved by the city administration through the development plan review chapter of this zoning code. In addition, in the case of R.I.P.T.A., any facility that would be permitted must be adjacent to a state highway.

A public charitable corporation incorporated under the laws of the state of Rhode Island exempt from federal income taxation under the provisions of Section 501 (c)(3) of the Internal Revenue Code, may also be considered a public service corporation in those circumstances where the following conditions are met:

1. The corporation owns and manages property that has been purchased by the corporation directly from the City of Newport;
2. The corporation's primary purpose is the preservation and restoration of historic structures; and
3. The standards established in Chapter 17.100.190 of this zoning code are complied with.

"Public utilities — Private electrical services" means any private and/or investor-owned company which engages in the transmission of electricity, or owns, operates, or controls private electric transmission or substation facilities.

"Residential scale energy system" means a wind energy system (also known as a turbine) consisting of blades, wind generator, tower and associated control or conversion equipment, having a rated capacity of up to ten kilowatts or less for onsite consumption (not precluding net metering).

"Restaurants" means establishments for the serving of foods and beverage are defined as follows:

1. "Carry-out restaurant" means any establishment whose principal business is the sale of foods, frozen desserts or beverages to the customer in a ready-to-consume state and whose design or method of operation is such that foods, frozen desserts or beverages are usually served in edible containers, or paper, plastic or other disposable containers, and no provision is made for consuming said items on the premises.
2. "Drive-in restaurant" means any establishment whose principal business is the sale of foods, frozen desserts or beverages to the customer in a ready-to-consume state and whose design, method of operation or any portion of whose business is such that foods, frozen desserts or beverages are served directly to the customer in a motor vehicle, either by a car-hop or by other means which eliminate the need for the customer to exit the motor vehicle, or where the consumption of food, frozen desserts or beverages within a motor vehicle parked on the premises is allowed, encouraged or permitted.
3. "Fast-food restaurant" means any establishment whose principal business is the sale of foods, frozen desserts or beverages to the customer in a ready-to-consume state for consumption either on the premises or off the premises and whose design or principal method of operation is such that customers are normally served their foods, frozen desserts or beverages in edible containers or in paper, plastic or other disposable containers.
4. No type of fast-food or franchise operation, nor the sale of prepackaged food, shall be permitted as an accessory use to any retail use or to any standard restaurant.
5. "Standard restaurant" means any establishment whose principal business is the sale of foods, frozen desserts or beverages to the customer in a ready-to-consume state and whose design or principal method of operation is such that customers, normally provided with an individual menu, are served their foods, frozen desserts or beverages by a restaurant employee at the

same table or counter at which said items are consumed. It also means a cafeteria-type operation provided foods, frozen desserts, or beverages are not served in edible containers or in paper, plastic or other disposable containers, and are consumed on the premises.

6. Incidental take-out service of food and/or beverages shall be considered an accessory use to a standard restaurant use provided that the proprietor can demonstrate upon the annual renewal of the victualing license that the incidental take-out constitutes less than twenty-five (25) percent of the annual gross dollar value of the business activity.

"School," "college" and "university" means a public or private institution giving regular educational instruction for eight or more months in a year, but not including a school of limited instruction.

"School of limited instruction" means a public or private institution giving special or limited educational instruction, such as in business, trade, music or dancing, or a training school for delinquents or the mentally impaired.

"Setback line or lines" means a line or lines parallel to a lot line at the minimum distance of the required setback for the zoning district in which the lot is located that establishes the area within which the principal structure must be erected or placed.

"Shadow flicker" means visible flicker effect when rotating blades of the wind generator cast shadows on the ground and nearby structures causing a repeating pattern of light and shadow.

"Shopping center" means a group of stores where goods are sold or service is rendered primarily at retail, planned, developed and managed as a unit, located on a lot of at least ten acres.

"Single-family dwelling" means a building containing one dwelling unit.

"Site plan" means the development plan for one or more lots on which is shown the existing and/or the proposed conditions of the lot.

"Site restoration plan" means detailed drawings with topographic lines showing existing and proposed vegetation and required grading or backfilling.

"Special use" means a use so identified under a zoning use district and which is allowed only pursuant to a special use permit (formerly referred to as a "special exception") issued by the zoning board of review.

"Special use permit" means authorization granted by the zoning board of review to allow a special use on the property. The granting of a special use permit precludes the applicant from carrying out any uses on the property allowed by right under the zoning use district, until the special use permit is either cancelled or abandoned.

Standard Restaurant. See "restaurants."

"Street line" means the dividing line between the street and the lot.

"Structure" means a combination of materials to form a construction for use, occupancy, or ornamentation, whether installed on, above, or below, the surface of land or water.

"Substandard lot of record" means any lot lawfully existing at the time of adoption or amendment of this zoning code and not in conformance with the dimensional and/or area provisions of this zoning code.

"System height" means the vertical distance from established grade to the tip of the wind generator at the maximum height.

"Tavern" means an establishment whose principal business is the sale of alcoholic beverages where consumption occurs on the premises.

Tent Trailer. See "moveable dwellings."

"Theater" means a building used for the showing of motion pictures or live stage performances.

"Tower" means the monopole, guyed monopole or lattice structure that supports a wind generator."

~~"Transient guest facilities" means facilities primarily for occupancy on day-to-day or week-to-week basis and dependent on external facilities to the unit for the furnishing of meals and timeshare property and timeshare units, as defined by Rhode Island General Laws 34-41, with or without internal cooking facilities. See "qGuest Facilities"~~

Travel Trailer. See "moveable dwellings."

"Two-family dwelling" means a building containing two dwelling units.

"Use" means the purpose or activity for which land or buildings are designed, arranged, or intended, or for which land or buildings are occupied or maintained.

"Utility scale energy system" means a wind energy system (also known as a turbine) consisting of blades, wind generator, tower and associated control or conversion equipment, having a rated capacity of greater than one hundred (100) kilowatts especially for sale or distribution into the power grid.

Vacation Guest Facilities. See "guest facilities."

"Variance" means permission granted by the zoning board of review to depart from the literal requirements of this zoning code. An authorization granted by the zoning board of review for the construction or maintenance of a building or structure, or for the establishment or maintenance of a use of land, which is not permitted by this zoning code. There shall be only two categories of variance, a use variance or a dimensional variance.

1. Use Variance. Permission to depart from the use requirements of this zoning code where the applicant for the requested variance has shown by evidence upon the record that the subject land or structure cannot yield any beneficial use if it is to conform to the provisions of this zoning code.
2. Dimensional Variance. Permission to depart from the dimensional requirements of this zoning code, where the applicant for the requested relief has shown, by evidence on the record, that the hardship that will be suffered by the applicant if the dimensional variance is not granted shall amount to more than a mere inconvenience. However, the fact that a use may be more profitable or that a structure may be more valuable after the relief is granted shall not be grounds for relief.

"Video lottery terminal gambling" means gambling by the use of any electronic computerized video game machine that upon the insertion of cash, is available to play a video game authorized by the lottery commission, and which uses a video display and microprocessor in which, by chance, the player may receive free games or credits that can be redeemed for cash. This definition shall include any game or device that is commonly known as a video game of chance or a video gaming machine or that is commonly known as or considered to be a video gambling machine, except a video device authorized by the lottery commission to permit the sale of tickets by retailers in a game authorized under Title 42, Chapter 61 of the Rhode Island General Laws if all of the following apply:

1. The device does not determine whether the player has won a prize;
2. The device does not indicate whether the player has won a prize other than verifying that the player's ticket or some or all of the player's symbols or numbers on the player's ticket have been selected in a chance drawing, or by verifying that the player's ticket has been randomly selected by a central system computer at the time of purchase;
3. Any game that is similar to a game listed in the preceding categories.

"Waters" means all surface waters including all waters of the territorial sea, tidewaters, all inland waters of any river, stream, brook, pond, or lake, and wetlands.

Wetland, Coastal. "Coastal wetland" means any salt marsh bordering on the tidal waters of this state, whether or not the tide waters reach the littoral areas through natural or artificial water courses, and such uplands contiguous thereto, but extending no more than fifty (50) yards inland therefrom, as the executive director of the coastal resources management council shall deem reasonably necessary to protect those salt marshes.

Wetland, Freshwater. "Freshwater wetland" includes but is not limited to, marshes; swamps; bogs; ponds; rivers; river and stream flood plains and banks; areas subject to flooding or storm flowage; emergent or submergent plant communities in any body of fresh water including rivers or streams and that area of land within fifty (50) feet of the edge of any bog, marsh, swamp or pond.

"Wind generator" means the blades and associated mechanical and electrical conversion components mounted on the tower whose purpose is to convert kinetic energy of the wind into rotational energy to generate electricity.

"Yachting organization" means the crew, support staff, and families of a yacht temporarily housed in the city for, any race sponsored by a local yacht club, or organized by a national sailing organization, including related training.

"Zoning certificate" means a document signed by the zoning officer, as required by this zoning code, which acknowledges that a use, structure, building, or lot either complies with or is legally nonconforming to the provisions of this zoning code or is an authorized variance, or modification therefrom.

"Zoning map" means the map or maps which are a part of this zoning code and which delineate the boundaries of all mapped zoning use districts within the physical boundary of the city.

"Zoning code" means an ordinance enacted by the city council of the City of Newport pursuant to Title 45 Chapter 24 of the General Laws of Rhode Island which sets forth regulations and standards relating to the nature and extent of uses of land and structures, which is consistent with the comprehensive plan of the city, which includes a zoning map, and complies with the provisions of Title 45 Chapter 24 of the General Laws of Rhode Island.

"Zoning district" means the basic unit in zoning, either mapped or unmapped, to which a uniform set of regulations applies, or a uniform set of regulations for a specified use. Each zoning district may include sub districts. Zoning districts may be combined.

"Zoning officer" means person appointed by the city council to perform duties in accordance with Sections 17.112.010 and 17.112.020 of this zoning code.

(Ord. 2006-1 § 1, 2006; Ord. 2004-43 § 1, 2004; Ord. 2004-10 § 1, 2004; Ord. 2003-31 § 1, 2003; Ord. 2003-19 § 1, 2003; Ord. 2000-4 (part), 2000; Ord. 97-50A § 1, 1997; Ord. 12-96 § 1 (1), 1996; Ord. 65-94 (part), 1994; prior code § 1260.04)

(Ord. No. 2011-025, § 1, 9-14-2011; Ord. No. 2012-011, § 1, 6-13-2012; Ord. No. 2012-019, § 1, 12-12-2012; Ord. No. 2013-016, § 1, 10-9-2013; Ord. No. 2018-12, § 1, 11-14-2018)

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[2/25/20 revisions](#)

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17.04.050. - General requirements.

- A. Generally. The provisions of this zoning code shall be minimum standards and shall apply uniformly to each class or kind of structure or land, except as hereinafter provided, and particularly as follows:
1. No building, structure or land shall hereafter be used or occupied, and no building or structure or part thereof shall hereafter be erected, constructed, reconstructed, moved or structurally altered, except in conformity with all of the regulations herein specified for the district in which it is located;
 2. No building or other structure shall hereafter be erected or altered:
 - a. To exceed the building height or bulk herein permitted,
 - b. To accommodate or house a greater number of families than herein permitted,
 - c. To occupy a greater percentage of lot area than herein permitted,
 - d. To have less setback than herein required, or
 - e. In any other manner contrary to the provisions of this zoning code;
 3. No setback or off-street parking or loading space required around or in connection with any building for the purpose of complying with this zoning code shall be included as part of a setback or off-street parking or loading space similarly required for any other building;
 4. No setback or lot existing at the time of April 13, 1977 shall be reduced in dimension or area below the minimum requirements set forth herein. Setbacks and lots created after this effective date shall meet the minimum requirements established herein.
- B. Prohibited Uses. It is intended that any use not included in this zoning code as a permitted use is prohibited. To assist in the interpretation of such permitted uses, the following uses, the list of which is not intended to be complete, are specifically prohibited: motor vehicle race tracks; drive-in theaters; drive-in restaurants, except in a shopping center in the commercial-industrial (CI) district; carry-out restaurants; junk yards, marine salvage operations; mobile home parks; ammonia, chlorine or bleaching powder manufacture; industrial processes utilizing the combustion of soil coal; blast furnaces; incinerators, including those in conjunction with any waste to energy plan; board, steam and drop hammers; creosote treatment and manufacture; petrochemical manufacture; distillation of coal, petroleum, refuse, grain, wood or bones; explosive manufacture or storage; glue, size or gelatin manufacture; grain drying; reduction, storage or dumping of slaughterhouse refuse, garbage, dead animals or offal; radioactive materials or waste; rawhides or skin storage, cleaning, curing or tanning; soap manufacture from animal fats; sulfuric, nitric, picric, carbolic or hydrochloric acid manufacture; the open storage of more than one unregistered or inoperable motor vehicle per lot, with the one unregistered or inoperable vehicle per lot not to be stored openly for more than thirty (30) days; casino-type gambling, including but not limited to video lottery terminal gambling, as a principal use of or accessory use, the renting of structures buildings or portions thereof for occupancy for lodging accommodations for periods of twenty-nine (29) consecutive days or less not more than thirty (30) days with the exception of Guest Houses, Historic Guest Houses, Transient Guest Facilities and Vacation Guest Facilities as defined in Section 17.08.010 and the rental of rooms as a Home Occupation pursuant to Section 17.100.130 (I)(9) as defined in Section 17.08.040;
- C. Setbacks. No structure shall extend within less than the minimum distances of any front line, side line or rear line as specified in this zoning code, except as follows or as otherwise provided:
1. Belt course, canopies, cornices, eaves, marquees pilasters and similar architectural features may project three feet into the area required for setback from a street or other line;
 2. Fences, walls, and posts may be located without reference to setbacks, provided there is compliance with height limitations and other applicable sections of this zoning code;
 3. Athletic equipment may not be located within five feet of a side or rear line or within fifteen (15) feet of a front line;

4. Outdoor lighting facilities greater than ten feet in height shall not extend within ten feet of any front line;
 5. In the case of a portion of a lot in a nonresidential district, which portion is contiguous to a railroad right-of-way, no setback from such a contiguous side or rear lot line is required;
 6. The setback from the front line can be decreased from that required by a particular zoning district provided that such reduced setback may be no less than the front setback of either structure on the adjoining lots. This provision is applicable only when a lot is bounded on one or both side by another lot. A lot entirely bounded by streets must comply with the standard setback provision as required;
 7. Setbacks applicable to accessory uses are as provided for in Chapters 17.96, 17.100 and 17.104;
- D. Height of Structures. Except as otherwise provided, no structure shall exceed the maximum height specified in this zoning code, unless in the residential districts the median height of the primary structures on the abutting properties of the subject lot exceeds that height. Should this be the case, the subject structure may reach the median height of the abutting structures provided that the roof pitch of the subject structure reflects the median pitch of the abutting properties as well. Such regulations shall not apply to spires, belfries, cupolas, flagpoles, water tanks, ventilators, farm silos, elevator penthouses, chimneys or other appurtenances usually required to be above the roof level and not intended for human occupancy, provided that such structures are incidental to a permitted use located on the same property, and except that for buildings which are located in a general business district and which were erected prior to the date of April 13, 1977, where all or a portion of any such building is in excess of the maximum building height permitted in this zoning code, rehabilitation and alteration of such building is permitted within the confines of the width and length dimensions of the building to a height not to exceed fifty (50) feet, or the highest portion of the structure presently existing, whichever is lower. Schools, colleges and universities including fraternity or sorority houses or dormitories for faculty or students, and libraries may reach a maximum height of forty-five (45) feet.
- E. Dwellings Units. Whenever in this Code the terms "single-family dwelling(s)", "two family dwelling(s)" or "multifamily dwelling(s)" are used in District Use Regulations, the term "family" used therein shall have the same meaning as "household" and the term "dwellings" shall have the same meaning as "dwelling unit", as these terms are defined in Section 17.08.010.
- Dwelling Units per Lot. No more than one principal residential building shall be permitted on a lot except in the case of transient guest facilities and multifamily dwellings and as otherwise provided in this zoning code.
- F. Outside Storage in Nonresidential Districts. Except as otherwise provided in nonresidential districts, outside storage, including storage of merchandise, supplies, machinery and other materials and the outside manufacture, processing or assembling of goods, but excluding areas for parking of registered motor vehicles in daily use, shall not extend into the area required for setback from any line and shall be enclosed by buildings, fences, walls, embankments or evergreen shrubs or trees so as to screen the storage area from view from any other lot or from any street.
- G. Site Development in Nonresidential District. Except as otherwise provided site development in nonresidential districts shall be as follows:
1. Off-Street Parking and Loading. All off-street parking and loading shall conform to the standards specified in this zoning code.
 2. Driveways. There shall be not more than one driveway entering any lot from any one street if such lot has a frontage of less than one hundred (100) feet. For other lots, there shall be not more than two driveways entering from any one street, except that there may be one additional driveway for each additional three hundred (300) feet of lot frontage in excess of three hundred (300) feet. Driveways shall not exceed thirty (30) feet in width at the street line unless greater width is required by the state. Driveways shall intersect with the street line at an angle of about ninety (90) degrees.

3. Landscaping. All areas not used for structures, off-street parking and loading, outside storage and vehicular and pedestrian ways, shall be suitably landscaped with trees and/or shrubs, lawns or other suitable landscape development features and suitably maintained. Along and adjacent to any residential district boundary line, there shall be a screen consisting of existing vegetation, evergreen planting or wooden fencing, depending on the uniqueness of the property, which screen shall be of sufficient density and height to effectively screen the nonresidential use from the adjacent residential district.
- H. Wetlands. Except as otherwise provided in the R-60, R-120 and R-160 districts, no main structure shall be located within one hundred (100) feet of the mean high water level of tidal waters or within one hundred (100) feet of a wetland so designated by the State Department of Environmental Management and no septic system or any part thereof shall be located within two hundred (200) feet of the mean high water level of tidal waters or within two hundred (200) feet of a wetland so designated by the State Department of Environmental Management.
- I. Off-street Parking and Loading. It is the intent of the off-street parking and loading provisions to ensure that off-street parking and loading spaces are provided to accommodate the motor vehicles of all persons normally using or visiting a use or structure at any one time. For any permitted use, to include changes from one permitted use to another permitted use, such spaces shall be provided in accordance with the standards hereinafter specified and as amended. However, if the existing and proposed uses are permitted by right and the change of use is occurring within a structure that exists at the time of the adoption of this amendment, (Ord. No. 2010-25), and the new use requires an equal or less amount of off-street parking as required under other provisions of this Code, then such additional spaces shall not be required. All spaces required to be provided by this zoning code shall be permanently maintained and made available for occupancy in connection with and for the full duration of the use of land or structures for which such spaces are herein required.
- J. Damage or Destruction. For any existing conforming or legally nonconforming building or use which subsequently thereto is damaged or destroyed by fire, collapse, explosion or other cause, and which is reconstructed, reestablished or repaired within one year, off-street parking or loading facilities need not be provided within such period of reconstruction, re-establishment or repair; except that parking or loading shall be restored or continued in operation. However, in no case shall it be necessary to restore or maintain parking or loading facilities in excess of those required by this zoning code for equivalent new uses or construction.

In those instances where the building official certifies that the condition of the building is structurally unsound and a hazardous safety situation to the general public exists, the preceding approval process need not be followed.

(Ord. 2003-40 § 1, 2003; Ord. 2000-4 (part), 2000; Ord. 65-94 (part), 1994; prior code § 1260.16)

(Ord. No. 2010-25, § 1, 6-23-2010; Ord. No. 2012-011, § 1, 6-13-2012; Ord. No. 2014-019, § 1, 8-27-2014)

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[Revised 2/24/20](#)

17.100.130. - Home occupations.

Home occupations are subject to the following conditions:

- A. The use must be clearly incidental and subordinate to the use of the dwelling unit for residential purposes, and must occupy not more than twenty-five (25) percent of the floor area within the dwelling unit;
- B. No more than one nonresident employee is authorized;
- C. There is no change in the outside appearance of the building or premises or any visible or audible evidence detectable from outside the lot of the conduct of such business except for a sign as allowed by Chapter 17.76 of this zoning code;
- D. Traffic, including traffic by commercial delivery vehicles, shall not be generated in greater volumes than would normally be anticipated in a residential neighborhood;
- E. Required parking shall be provided on site;
- F. No hazard or nuisance shall be created to any greater or more frequent extent than would normally be expected in the neighborhood under normal circumstances wherein no home occupation exists;
- G. There shall be no retail sales or the display of goods on the premises;
- H. The following are conditions for the keeping of chicken hens, subject to the issuance of a special use permit pursuant to subsection J herein.
 - 1. The keeping of chicken hens pursuant to this section shall be primarily for the purpose of raising chicken hens and collecting the eggs produced thereof; this section shall not be construed to allow for the slaughter and sale of any chicken hens or their eggs for any purpose.
 - 2. Any building used for housing of chicken hens or manure must meet the setbacks required under Sections 17.100.080(B) and (C) from any property or street line.
 - 3. The keeping of chicken hen(s) pursuant to this Section shall be permitted in residential zones only.
 - 4. There shall not be more than one hen per eight hundred (800) square feet of total lot area, with a maximum of six on any lot.
 - 5. No person shall keep any rooster.
 - 6. All chicken hens must be provided with both a hen house (coop) and a fenced outdoor enclosure, subject to the following provisions:
 - a. The hen house must be covered, predator resistant, and well-ventilated;
 - b. The hen house must provide a minimum of two square feet per chicken and shall be no more than eight feet in height and a maximum of sixty-four (64) square feet in area;
 - c. The hen house must be kept clean, dry, free from decaying food, dirt, dirty water and fecal matter and sanitary at all times; manure must be composted in enclosed bins;
 - d. The hen house must be located upon a permeable surface that prevents waste run-off;
 - e. The hen house and fenced outdoor enclosure must meet the setbacks required under Section 17.100.080(B) and (C);
 - f. The fenced outdoor enclosure must adequately contain the chicken hens; such enclosure shall be securely enclosed and designed to prevent the chicken hens from escaping and predatory animals from gaining access;

- g. The fenced outdoor enclosure must be kept clean, free from decaying food, dirty water and fecal matter and sanitary at all times; must have proper food, water and accessible shelter; and manure must be composted in enclosed bins, at all times;
 - h. The hen house must provide the chicken hens with adequate protection from the elements and inclement weather and chicken coops must provide for the chicken hens' good health and prevent any unnecessary or unjustified suffering; and
 - i. The owner of the hen(s) must be a resident of the property on which they are located.
 7. No hen house (coop) shall be built onto any shared fence.
 8. No chicken hens may be kept or raised within any dwelling unit or otherwise roam freely on or off the property, other than in approved enclosures.
 9. All feed must be stored securely.
 10. No person shall place food in the open for the feeding of any chicken hen(s) except in such containers as will prevent the scattering of such food upon the ground. After such feed, such food shall not be allowed to remain where it is accessible to rodents or other animals.
 11. All chicken hens must be confined within the hen house between the hours of 9:00 p.m. and 7:00 a.m.
 12. No chicken hen may be slaughtered on the premises.
- I. The following uses are permitted home occupations provided they do not violate any of the provisions outlined above:
 1. Dressmaking, sewing and tailoring,
 2. Telephone answering,
 3. Photography studio,
 4. Tutoring,
 5. Home cooking and preserving,
 6. Home crafts,
 7. Studios for artists or craftsmen,
 8. Offices for doctors, dentists, attorneys, real estate agents, insurance agents, accountants, stock brokers, engineers, architects, landscape architects, musicians, writers, data programming and/or processing and the like,
 9. Rental of two guest bedrooms or less to no more than a total of four persons in an owner-occupied dwelling unit, with said dwelling unit being also the principal residence of the owner of said dwelling unit; only one such use shall be permitted on a lot;
- J. The following shall be considered a special use and be granted or denied by the zoning board of review only upon the issuance of a special use permit upon consideration of those standards contained in subsection H of this section:
 1. The keeping of six or fewer chickens.
- K. The following are prohibited as home occupations:
 1. Barber shops and beauty parlors excluding single operator hairdresser,
 2. Animal hospitals,
 3. Dancing studios,
 4. Restaurants,

5. Nursery schools,
 6. Automobile repair or paint shops,
 7. Convalescent or nursing home,
 8. Private clubs,
 9. Undertakers' establishments,
 10. Gunsmith shop,
 11. Catering;
- L. Any proposed home occupation that is neither specifically permitted or prohibited shall be considered a special use and be granted or denied by the zoning board of review upon consideration of those standards contained in subsection G of this section;
- M. All home occupations must be registered with the zoning administrative officer for the City of Newport.

(Ord. 2000-4 (part), 2000: Ord. 65-94 (part), 1994: prior code § 1264.03.12)

(Ord. No. 2013-013, § 1, 9-11-2013)