



PROJECT STATUS

Due to the length and complexity of the project, the consultants working with the City will be updating the zoning and subdivision code in manageable sections. City staff, the City Attorney, and the steering committee charged with providing initial feedback will review each section that the consultants will then revise before posting on the project website.

This packet includes a draft of the first section of code which covers two separate chapters of the Kirkwood Codified Ordinances. The draft sections of the code related to the establishment and roles of the Architectural Review Board and Board of Adjustment are part of Chapter 2, Article VII. This article is separate from the rest of the zoning and subdivision code but is where the City addresses the role of all boards and commissions. The remaining language contained in this draft are the first two articles of the updated zoning and subdivision code, which will now be housed in Chapter 25 of the codified ordinances. These two articles address the general provisions for the entire code as well as the review procedures for all forms of permits and approvals established under the zoning and subdivision code. Throughout the document, please note that the “<>” symbol is a placeholder for future dates, cross-references, and other pieces of information.

In order to keep this project moving forward, the steering committee will have a final discussion regarding this draft section at their next meeting unless an issue has been specifically called out to revisit at a later time. If you have any questions or comments on this draft section, please contact City Planner Jonathan Raiche at raichejd@kirkwoodmo.org or 314-984-5926 by noon on August 28th.

CONTENT SUMMARY

While there was some reorganization of materials and information for easier use of the code, the changes to the sections noted above primarily consisted of consolidating and clarifying review procedures and minor updates to language involving the Board of Adjustments and the Architectural Review Board. The most significant changes include:

Staff-level review of site plans for permitted uses

This change would result in staff reviewing and making decisions on site plans for any use that is permitted in the zoning district and which meets all zoning standards. Currently all site plans, except for minor changes, goes through a review process with the Planning and Zoning Commission and City Council even though the development meets all the zoning standards. This change would not alter requirements for architectural review, but would streamline the process for projects that meet all city requirements. Any use that is listed as a special use will still be subject to review by the Planning and Zoning Commission and City Council.

ARB approval for all commercial projects

As discussed in the Code Diagnosis Report, this change involves giving the ARB binding authority in their review of all nonresidential projects, as opposed to their current advisory role for nonresidential projects outside of downtown.



ARB review of single-family residential uses

There are still ongoing discussions about whether there will be changes to how the ARB makes decisions on single-family residential uses because many of issues raised by residents are related more to setbacks, building height, and massing, all of which are already outside of the scope of the ARB. The steering committee, staff, and consultants decided to postpone a decision on the ARB's role regarding single-family homes until the committee reviews the site development standards (e.g., lot area, setback, height, massing, etc.) and architectural standards (design elements) in later sections of the code update process.

Minor subdivision procedure

There are currently certain allowances in the subdivision code where staff can administratively approve lot boundary adjustments or condominium plats. Staff suggested an expansion of this procedure to reflect what is commonly considered by other communities to be a minor subdivision. This procedure would allow staff level review of subdivisions with five or fewer lots where there will not be creation of any new streets, dedication of right-of-way, or a need for any public improvements provided the new lots will meet all the applicable lot size and width requirements.

TOPICS FOR THE NEXT CODE SECTION

The next section of code will cover zoning districts and principal uses, subdivision design standards, and nonconformities. It is tentatively scheduled to be released for public review in September.

For more information, go to www.KirkwoodByDesign.com

Chapter 2 – Administration
Article VII – Boards and Commissions
Division 3 – Architectural Review Board¹

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¹ We have removed two sections from the existing language including Section 2-540 on facilities and personnel as well as Section 2-541 on the annual report. The first section on facilities is an internal operational policy and not language typically mandated by codes. The section on the annual report is also more policy based and failure to comply with preparing an annual report puts the City in violation of its own code.

§ 2-531. Created; Purpose.² (Revised 2-531)

- (a) An Architectural Review Board is hereby created and established for the purpose of promoting high standards of architectural design, thereby serving the general welfare of the community. The purpose for having architectural review is to ensure that the architectural design of proposed new buildings, renovations, additions, and signs, in designated areas, are in harmony with the architectural scheme of the building, site, and surrounding area as well as contributing to sense of place found in the City's neighborhoods, gateways, and business activity areas. The intent of the review process, standards, and guidelines is to enhance these qualities in the City while striving not to destroy individual creativity for the sake of conformity and avoiding the precise standards that direct attention to superficialities of style rather than general aspects of design.
- (b) Those members presently serving in office under the prior ordinance shall continue to serve for the remainder of their respective terms and all business before the present Architectural Review Board shall continue to be considered by the Architectural Review Board pursuant to the authority granted to it by this code.

§ 2-532. Composition; Terms; Removal; Vacancies. (Existing 2-532)

- (a) The Architectural Review Board shall consist of seven members³. Each member shall be a resident of the City of Kirkwood and shall be appointed by the Mayor with approval of the City Council.
- (b) Four members shall constitute a quorum for conducting its business.
- (c) The term of office of the members of the Architectural Review Board shall be for three years.
- (d) Three alternate members may be appointed to serve in the absence of or the disqualification of the regular members.
- (e) All members and alternates shall be removable for cause by the City Council upon written charges and after public hearing.
- (f) Each member shall serve until a successor is duly appointed and qualified.
- (g) In the event of death, resignation, or removal of any member, a successor shall be appointed to serve for the unexpired term for which such member has been appointed.
- (h) Preferably, one member of the Architectural Review Board shall be a commercial property owner, business owner, business operator, or employee of a business within the City of Kirkwood and at least two members of the Architectural Review Board shall be professionals in architecture, landscape design, graphic arts, industrial design, urban planning, or similar fields.

§ 2-533. Organization. (Existing 2-533)

- (a) The Architectural Review Board shall elect from its members a Chairman and Vice-Chairman.
- (b) The Chairman and Vice-Chairman shall be elected for a term of one year but shall hold the office until a successor has been elected.

² The only change to this section was to remove the language about what the ARB does, which really belongs within the powers and duties section. We also revised the language to give some stronger purpose behind architectural review beyond just wanting good architectural design.

³ There remains a question as to whether the City wants to increase the number of members of the ARB to 10 with the additional three members being non-voting members who participate in all discussions. This question will need to be resolved as part of a later discussion.

(c) The Vice-Chairman is to act as Chairman in the absence of the Chairman.

§ 2-534. Rules of Procedures; Meetings. (Existing 2-534)

- (a) The Architectural Review Board shall make rules and regulations as it shall deem necessary for the conduct of its affairs, provided that such rules and regulations shall not be inconsistent with the provisions of this Code and other ordinances of the City.
- (b) A motion made on a decision shall carry when at least four members of the Architectural Review Board concur.
- (c) Non-decision items, such as continuance or approval of minutes, shall only require a majority of the quorum of the Architectural Review Board to concur.
- (d) The Architectural Review Board shall hold public meetings as are necessary in order to conduct its business.
- (e) All meetings of the Architectural Review Board shall be duly publicized and open to the public.

§ 2-535. Powers and Duties. (Revised 2-535)⁴

The Architectural Review Board shall have the authority to review building plans for new construction, exterior renovations, or additions to structures, as well as permanent signs, as designated in Chapter 25, Article II, Section <> of the City of Kirkwood Zoning and Subdivision Code.

§ 2-536. Definitions. (Revised 2-536)⁵

The definitions and the rules of construction and interpretation for language related to this division is as set forth in Chapter 25, Article XII of the Municipal Code of Ordinances.

⁴ We will revisit this section once we start reviewing the site development standards and architectural review standards to make a clean determination of where ARB decisions should be advisory and where they should be mandatory.

⁵ No other board or commission have definitions related to the board so as we reorganize items from this division, we are recommending a simple cross-reference to the zoning and subdivision code to ensure consistency.

Chapter 2 – Administration

Article VII – Boards and Commissions

Division 9 – Board of Adjustment¹

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¹ Per the diagnosis report, we recommended that the basic information on the Board of Adjustment be moved from the zoning code to Chapter 2, Article VII with all the other Boards and Commissions that administer and enforce the code.

§ 2-590. Created. (Revised A-1110.1)²

There is hereby created a Board of Adjustment. Those members presently serving in office under the prior ordinance shall continue to serve for the remainder of their respective terms and all business before the present Board of Adjustment shall continue to be considered by the Board of Adjustment pursuant to the authority granted to it by this code.

§ 2-591. Composition; Terms; Removal; Vacancies. (Revised A-1110.1)

- (a) The Board of Adjustment shall consist of five members. Each member shall be a resident of the City of Kirkwood and shall be appointed by the Mayor with approval of the City Council.
- (b) Four members shall constitute a quorum for conducting its business.
- (c) The concurring vote of four members of the Board of Adjustment shall be necessary to reverse or modify any order, requirement, decision or determination of the Director of Public Services³, or to decide in favor of the applicant on any matter upon which it is required to pass under the zoning and subdivision code or to effect any variation in such code.
- (d) The term of office of the members of the Board of Adjustment shall be for five years.
- (e) Three alternate members may be appointed to serve in the absence of or the disqualification of the regular members.
- (f) All members and alternates shall be removable for cause by the City Council upon written charges and after public hearing.
- (g) Vacancies shall be filled for the unexpired term of any member who fails to complete their term of office.
- (h) Each member shall serve until a successor is duly appointed and qualified.

§ 2-592. Organization. (Revised A-1110.1)

- (a) The Board of Adjustment shall elect from its members a Chairman, Vice-Chairman, and Secretary.
- (b) The Chairman, Vice-Chairman, and Secretary shall be elected for a term of one year but shall hold the office until a successor has been elected.
- (c) The Vice-Chairman is to act as Chairman in the absence of the Chairman.

§ 2-593. Rules of Procedures; Meetings. (Revised A-1110.1)

- (a) The Board of Adjustment shall make rules and regulations as it shall deem necessary for the conduct of its affairs, provided that such rules and regulations shall not be inconsistent with the provisions of this Code and other ordinances of the City.
- (b) Meetings of the Board of Adjustment shall be held at the call of the Chairman and at such other times as the Board of Adjustment may determine.
- (c) The Chairman may administer oaths and compel the attendance of witnesses.
- (d) All meetings of the Board of Adjustment shall be duly publicized and open to the public.

² We duplicated the language currently used for the PZC.

³ Since we also consistently reference the Director of Public Services in the zoning code, we have included that title here.

- (e) The Board of Adjustment shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the Board of Adjustment and shall be a public record.
- (f) All testimony, objections thereto, and rulings thereon, shall be taken down by a reporter employed by the Board of Adjustment for that purpose.
- (g) The Kirkwood Code of Ordinances, including Chapter 25 (Zoning and Subdivision Code), the Comprehensive Plan, and the Zoning District Map, which are or may hereafter be in force, shall automatically be part of the evidence at each hearing before the Board of Adjustment to the extent applicable, without being specifically introduced at a hearing.

§ 2-594. Powers and Duties. (Revised A-1110.3)

- (a) The Board of Adjustment shall have the following roles and powers as it relates to Chapter 25 (Zoning and Subdivision Code) of the City of Kirkwood Municipal Code of Ordinance:
 - (1) Hear, review, and decide on appeals in which it is alleged there is an error in any order, requirement, decision, or determination made by the Building Commissioner, Director of Public Services, or an administrative official in the enforcement of the Zoning Enabling Act, Sections 89.010 through 89.140 (1992), RSMo., as amended, or Chapter 25 of the Municipal Code of Ordinances;
 - (2) Hear, review, and decide all matters referred to it or upon which it is required to pass under the zoning and subdivision code;
 - (3) Hear, review, and decide on variance requests pursuant to the provisions of the zoning and subdivision code;
 - (4) To permit the extension of a district where the boundary line of a district divides a lot of record in single ownership;
 - (5) To grant an extension of time for the reconstruction of a nonconforming building which has been damaged by fire, explosion, floods, wind or other acts of God, or the public enemy, or by any other cause unrelated or unattributable to the owner as authorized under Chapter 25, Article <> (Nonconformities);
 - (6) To interpret the provision of the zoning and subdivision code where the street layout actually on the ground varies from the street layout as shown on the map fixing the several districts, which map shall be on file in the office of City Clerk and available for review and inspection; and
- (b) In exercising the above mentioned powers, the Board of Adjustment may, in conformity with the provisions of Sections 89.010 to 89.140, RSMo., reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as ought to be made and to that end shall have all the powers of the officer from whom the appeal is taken.

§ 2-595. Definitions. (New)

The definitions and the rules of construction and interpretation for language related to this division is as set forth in Chapter 25, Article XII of the Municipal Code of Ordinances.

Chapter 25 – Zoning and Subdivision Code

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Article I: General Provisions

§ 25-1. Purpose. (Revised B-200)¹

It is the purpose of this, the City of Kirkwood's Zoning and Subdivision Code, to promote and protect the public health, safety, convenience, and general welfare of the people of Kirkwood through the establishment of minimum regulations governing the subdivision, development, and use of land, buildings, and structures. Furthermore, the intent of this code is:

- (a) To provide consistency with the City of Kirkwood's Comprehensive Plan, the Master Plan Report for Downtown Kirkwood, Pedestrian and Bicycle Plan, and other policies or plans adopted by the City as it relates to the subdivision, development, and use of land, buildings, and structures;
- (b) To promote the orderly and beneficial development of the City of Kirkwood in accordance with the City's land use policies;
- (c) To preserve the character and quality of residential neighborhoods and business activity areas;
- (d) To encourage compatibility between different land uses and to protect the scale and character of existing development from the encroachment of incompatible uses without limiting the potential for the mixture of compatible uses;
- (e) To regulate the location, bulk, height, design, and land coverage of buildings to protect the character and value of the City's residential, business, industrial, institutional, and recreational areas;
- (f) To regulate the area and dimension of lots, yards, setbacks, and other open spaces to provide adequate area for light and air;
- (g) To regulate the density of population, as identified in the comprehensive plan, to prevent overcrowding of the land and excessive concentration of the population;
- (h) To provide for adequate access to all areas of the City by people of all abilities and by varied modes of transportation;
- (i) To ensure efficient and safe traffic and pedestrian circulation, manage congestion on the streets, and improve public safety by locating buildings and uses adjacent to streets in such a manner that they will cause the least interference with, and be damaged least by, traffic movements;
- (j) To facilitate adequate provisions for public utilities and facilities such as schools, recreation facilities, sewer, water, transportation, and other public necessities;
- (k) To guide the future development of the City so as to bring about the gradual conformity of land and building uses in accordance with the objectives of the City's adopted plans;
- (l) To accomplish the specific intents and purposes set forth in the introduction of the respective articles; and
- (m) To provide regulations, standards and procedures for the administration, amendment and enforcement of the City of Kirkwood Zoning and Subdivision Code.

¹ The current zoning code does not have a purpose statement but the subdivision code does so we have expanded the purpose for both to reflect the purpose of modern development codes.

§ 25-2. Title. (Revised A-100 and B-100)

- (a) Ordinance No. <>², passed on <>, and ordinances supplementing or amending such ordinance shall be known, cited, and referred to as the “City of Kirkwood Zoning and Subdivision Code”, or referred to as the “zoning and subdivision code” or the “code.”
- (b) Any references to the “zoning code” or the “subdivision code” are deemed a reference to this code.

§ 25-3. Effective Date. (New)

This code and any amendments thereto, shall take effect and be in full force and effect from and after the earliest period allowed by law.

§ 25-4. Authority. (New)

The authority for the preparation, adoption, and implementation of this code is derived from the City of Kirkwood Charter and the legislative enactments of the City Council.

§ 25-5. Applicability. (Revised A-200.1)

(a) General Applicability

- (1) No structure shall be located, erected, constructed, reconstructed, moved, converted, or enlarged; nor shall any structure or land be used, occupied, or be designed to be used, except in full compliance with all the provisions of this code and, when required, after the lawful issuance of the permits or approvals required by this code.
- (2) No land shall be subdivided after the effective date of this code without complying with the requirements of this code.
- (3) No building construction or improvement, such as sidewalks, water supply, stormwater drainage, sewage facilities, gas service, electric service, street lighting, or the grading, paving or surfacing of any street, shall hereafter be made within any such subdivision by any owner or owners or his or their agent, or by any public service corporation at the request of such owner or owners or by his or their agent until the final plat for the subdivision has been properly reviewed by the Planning and Zoning Commission and officially approved by the City Council of the City of Kirkwood.
- (4) Existing lots, buildings, structures and uses of land that do not comply with the regulations of this code are subject to the regulations set forth in [Article XI: Nonconformities](#).

² The “<>” symbol is a placeholder for future dates, cross-references, or other pieces of information.

(b) Essential Services Exempted

- (1)** The erection, construction, alteration, or maintenance by public utilities or municipal departments, boards, or commissions, of overhead, surface or underground gas, electrical steam, or water, distribution or transmission systems, collection, communications (except for wireless telecommunication facilities as regulated in this code), supply or disposal systems, including mains, sanitary sewers, water lines, drains, sewers, pipes, conduits, tunnels, wires, cables, fire alarm boxes, police call boxes, traffic signals, hydrants, poles, electrical substation, gas regulator stations and other similar equipment and accessories in connection therewith, reasonably necessary for the furnishing of adequate service by such public utility or municipal department, board, or commission or for the public health, safety, convenience, or general welfare, shall be exempt from the regulations of this code provided, however, that the installation shall conform to Federal Communications Commission and Federal Aviation Agency rules and regulations, and those of other authorities having jurisdiction.
- (2)** Buildings required in conjunction with an essential service identified in Subsection [\(1\)](#) above shall be subject to the regulations of this code and shall be reviewed in a manner as determined in [Section <>](#).

§ 25-6. Relationship to Plans. (New)

The administration, enforcement, and amendment of this code should be consistent with the most recently adopted version of a comprehensive plan for the City of Kirkwood, as amended and herein referred to as the “comprehensive plan.” Such plan, or references to such plan, shall also include other adopted plans within the City that are related to development including, but not limited to, a downtown plan, parks and recreation plan, pedestrian and bicycle plan, etc. Amendments to this code should maintain and enhance the consistency between this code and the comprehensive plan.

§ 25-7. Interpretation and Conflict. (Revised A-120)

(a) Interpretation of Provisions

The provisions of this code shall be held to be the minimum requirements, adopted for the promotion of the public health, safety, convenience, and general welfare.

(b) Conflict with Other Public Laws, Ordinances, Regulations, or Permits

This code is intended to complement other City, State, and Federal regulations that affect land use and the division of land. This code is not intended to revoke or repeal any other public law, ordinance, regulation, or permit. However, where conditions, standards, or requirements imposed by any provision of this code are more restrictive than comparable standards imposed by any other public law, ordinance, or regulation, the provisions of this code shall govern.

(c) Repeal of Conflicting Ordinance

All ordinances or parts of ordinances in conflict with this code or inconsistent with the provisions of this code are hereby repealed to the extent necessary to give this code full force and effect.

§ 25-8. Relationship with Third-Party Agreements. (New)

- (a) This code is not intended to interfere with or abrogate any third-party private agreements including, but not limited to, easements, covenants, or other legal agreements between third parties. However, where this code proposes a greater restriction or imposes higher standards or requirements than such easement, covenant, or other private third-party agreement, then the provisions of this code shall govern.
- (b) Nothing in this code shall modify or repeal any private covenant or deed restriction, but such covenant or restriction shall not excuse any failure to comply with this code.
- (c) In no case shall the City be obligated to enforce the provisions of any easements, covenants, or agreements between private parties unless the City is a named party in the agreement.

§ 25-9. Severability. (Revised A-110 and B-1500)

- (a) If any court of competent jurisdiction invalidates any provision of this code, then such judgment shall not affect the validity and continued enforcement of any other provision of this code.
- (b) If any court of competent jurisdiction invalidates the application of any provision of this code to a particular property, structure, or situation, then such judgment shall not affect the application of that provision to any other property, structure, or situation not specifically included in that judgment.
- (c) If any court of competent jurisdiction judges invalid any condition attached to the approval of a development review application, then such judgment shall not affect any other conditions or requirements attached to the same approval that are not specifically included in that judgment.

§ 25-10. Transitional Rules. (New)³

- (a) **Purpose**
The purpose of these transitional rules is to resolve the status of properties with pending applications or recent approvals, and properties with outstanding violations, on the effective date of this code, or amendments thereto.
- (b) **Violations Continue**
 - (1) Any violation that existed at the time this amendment became effective shall continue to be a violation under this code and is subject to penalties and enforcement under [Section <>](#) unless the use, structure, development, construction, or other activity complies with the provisions of this code.
 - (2) If the use, structure, development, construction, or other activity comes into compliance and is no longer in violation of this code, there shall be no additional enforcement actions taken except that the City may still collect any penalties, or other remedies, assessed for the violations that occurred under the previous code.

³ These transitional rules were identified in the code diagnosis report and are intended to address actions, applications, and other related activities that are under review when the new, updated code goes into effect.

(c) Nonconformities Continue

- (1)** Any legal nonconformity that existed at the time this amendment became effective shall continue to be a legal nonconformity under this code as long as the situation that resulted in the nonconforming status under the previous code continues to exist, and shall be controlled by [Article XI: Nonconformities](#).
- (2)** If a legal nonconformity that existed at the time this amendment became effective becomes conforming because of the adoption of this amendment, then the situation will be considered conforming and shall no longer be subject to the regulations pertaining to nonconformities.

(d) Processing of Applications Commenced or Approved Under Previous Regulations

(1) Pending Projects

- (i)** Any complete application that has been submitted and accepted for approval, but upon which no final action has been taken by the appropriate decision-making body prior to the effective date of this code, shall be reviewed in accordance with the provisions of the regulations in effect on the date the application was deemed complete by the City.
- (ii)** If a complete application is not filed within the required application filing deadlines in effect prior to the adoption of this code, the application shall expire and subsequent applications shall be subject to the requirements of this code.
- (iii)** Any re-application for an expired project approval shall meet the standards in effect at the time of re-application.
- (iv)** An applicant with a pending application may waive review available under prior regulations through a written letter to the City and request review under the provisions of this code.

(2) Approved Projects

- (i)** Approved planned developments, development plans, site plans, subdivision plats, variances, special uses, or other approved plans or permits that are valid on the effective date of this code shall remain valid until its expiration date, where applicable.
- (ii)** Any building or development for which a permit or certificate was granted prior to the effective date of this code shall be permitted to proceed to construction, even if such building or development does not conform to the provisions of this code, as long as the permit or certificate remains valid.
- (iii)** If the development for which the permit or certificate is issued prior to the effective date of this code fails to comply with the time frames for development established for the permit or certificate, the permit or certificate shall expire, and future development shall be subject to the requirements of this code.

(e) Vested Rights

The transitional rule provisions of this section are subject to Missouri's vested rights laws.

§ 25-11. Restoration of Unsafe Buildings. (New)

Nothing in this code shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by an official charged with protecting the public safety, upon order of such official.

§ 25-12. Use of Graphics, Illustrations, Figure, and Cross-References. (New)

- (a) Graphics, illustrations, and figures are provided for illustrative purposes only and shall not be construed as regulations. Where a conflict may occur between the text and any graphic, illustration, or figure, the text shall control.
- (b) In some instances, cross-references between chapters, sections, and subsections are provided that include the chapter, section, or subsection number along with the name of the reference. Where a conflict may occur between the given cross-reference number and name, the name shall control.
- (c) A table shall be considered text for the purposes of this code unless specifically identified as a figure.

§ 25-13. Burden of Proof. (New)

The burden of demonstrating that an application or any development subject to this code complies with applicable review and approval standards is on the applicant. The burden is not on the City or other parties to show that the standards have been met by the applicant or person responsible for the development.

Article II: Review Procedures

§ 25-14. Purpose.

The purpose of this article is to establish the review procedures that will ensure that the regulations set forth in this code are soundly and consistently applied, and that this code be properly administered.

§ 25-15. General Requirements.

(a) Building Permit Required (Revised 1100.1)

No building or structure shall be erected, added to, or structurally altered until a building permit has been issued by the Building Commissioner for the applicable work approved as authorized by this code. No such building permit shall be issued in violation of the provisions of this code.

(b) Certificate of Occupancy (Existing 1100.2)

- (1) Prior to the initial occupancy of any building or structure and prior to any change in occupancy or use, after all requirements of the City ordinances have been met, a certificate of occupancy shall be issued by the Building Commissioner, stating that the proposed use thereof complies with the requirements of the ordinances of the City of Kirkwood.
- (2) No nonconforming use shall be maintained, renewed or changed without a certificate of occupancy having first been issued by the Building Commissioner.
- (3) No permit for excavation for, the erection or alteration of, or repairs to any building shall be issued until an application has been made for a certificate of occupancy.

§ 25-16. Common Review Requirements.

The requirements of this section shall apply to all applications and procedures subject to development review under this code, unless otherwise stated.

(a) Authority to File Applications

- (1) Unless otherwise specified in this code, development review procedures established in this code may be initiated by any person with a financial, contractual, or proprietary interest in the property to be developed according to the submitted plan;
- (2) The Planning and Zoning Commission or City Council may initiate code text and map amendments under this code with or without written authorization or application from the property owners who may be affected.

(b) Application Submission Schedule

The schedule for the submission of applications in relation to scheduled meetings and hearings of the review bodies shall be established by the Director of Public Services⁴, and made available to the public.

⁴ We have made the Director of Public Services the designated staff person for actions in the zoning and subdivision code. There is draft language in the interpretation section (part of the definitions article) that states that where a specific staff person is identified in the code, it is to be interpreted as that person or any one of their designees. That means the Director can delegate to other staff members without the code having to spell out the individual role of every staff person and job title, which is traditionally done outside of the code.

(c) Application Contents

- (1) Applications required under this code shall be submitted in a form, in such numbers, and in a manner (digital or hard copy) as established by the Director of Public Services, and made available to the public.
- (2) The Director of Public Services may waive any of the items required as part of an application. However, such a waiver shall not prohibit the Planning and Zoning Commission, City Council, or Board of Adjustment, Architectural Review Board from requesting items previously waived by the Director of Public Services or any other additional information as deemed appropriate by such body.
- (3) Applications shall be accompanied by a fee as established by City Council pursuant to [§ 25-16\(g\)](#).

(d) Complete Application Determination⁵

- (1) The Director of Public Services shall only initiate the review and processing of applications submitted as part of this code if such application is determined to be complete.
- (2) An application shall be determined to be complete if the applicant has submitted all of the forms, maps, and other submittal information required for the specified application, in the numbers required.
- (3) The Director of Public Services shall make a determination of application completeness within 14 days of the application filing.
- (4) If the application is determined to be complete, the application shall then be processed according to the procedures and timelines set forth in this code.
- (5) If an application is determined to be incomplete, the Director of Public Services shall provide written notice to the applicant along with an explanation of the application's deficiencies. No further processing of an incomplete application shall occur until the deficiencies are corrected and the Director of Public Services determines that the application is complete.
- (6) The City shall not be required to process an incomplete application, forward an incomplete application to any decision-making body, or be subject to any required timelines of review for incomplete applications.
- (7) If the applicant fails to correct all deficiencies and submit a complete application within 90 days of the notice provided by the Director of Public Services, the incomplete application shall not be reviewed, the applicant's original filing fee shall be forfeited, and the incomplete application shall be deemed withdrawn. The Director of Public Services may grant one 60-day extension if just cause is shown.
- (8) No reconsideration of an incomplete application shall occur after expiration of the 90-day period or any granted extension, and an applicant in need of further development approval under the code shall, pursuant to all of the original requirements this code, submit a new application, and submit a new filing fee.
- (9) If any false or misleading information is submitted or supplied by an applicant on an application, that application shall be deemed incomplete.

⁵ The current code speaks to "complete applications" but does not clarify that that means so this section is intended to specify the process of determining whether an application is complete. The number of days specified in Section (3) may be modified to fit the needs of the City.

(e) Simultaneous Processing of Applications⁶

- (1) Whenever two or more forms of review and approval are required under this code, the Director of Public Services shall determine the order and timing of review.
- (2) The Director of Public Services may authorize a simultaneous review of applications, so long as all applicable requirements are satisfied for all applications.

(f) Pre-application Meetings

- (1) Prior to filing an application, an applicant may request a meeting with the Director of Public Services or other staff members for a pre-application meeting to discuss the proposed application or project.
- (2) The purpose of the pre-application meeting shall be to discuss the proposed application or project, review submittal requirements, and discuss compliance with the provisions of this code and consistency with the recommendations of the comprehensive plan prior to the submission of an application.
- (3) The applicant should be prepared to provide all of the application submittal requirements established for the applicable review procedure pursuant to [§ 25-16\(c\)](#).
- (4) No action can be taken by the staff until the applicant submits an actual application and/or plan to the City pursuant to the laws and policies of the City. Therefore, all discussions that occur between the applicant and/or applicant's representative and staff that occur prior to the date the applicant submits an actual application and/or plan are not binding on the City and do not constitute official assurances or representations by the City or its officials regarding any aspects of the plan or application discussed.

(g) Fees

- (1) Any application for development review under this code shall be accompanied by such fee as shall be specified in Chapter 5, Article VIII⁷ of the Municipal Code of Ordinances.
- (2) The fees shall be in addition to any other fees that may be imposed by the City, State, St. Louis County, or other agency having jurisdiction.
- (3) Such fees are adopted to cover the cost to the City for investigations, legal advertising, postage, and other expenses resulting from the administration of the respective zoning activities.
- (4) Application fees are not refundable except where the Director of Public Services determines that an application was accepted in error, or the fee paid exceeds the amount due, in which case the amount of the overpayment will be refunded to the applicant.

⁶ This replaces a lot of duplicative language throughout the codes that allows for the simultaneous review of different applications (e.g., special use and site plan review).

⁷ The current zoning code cross-references the wrong article so we have updated this to direct people to the correct section of the code.

(h) Professional Services, Legal Services, and Associated Studies (Existing A-210 and B-600)

- (1)** The City has and continues to reserve the authority to charge and collect reimbursement for third-party building plan, site, or other review of any application, including, but not limited to, civil engineer, traffic engineer, landscape architect, urban forester, arborist, attorney, or any other professional costs and associated expenses. The City may implement an administrative escrow and/or deposit procedure whereby funds are deposited with the City in an amount equal to estimated third-party costs.
- (2)** If the City makes a determination that an application requires professional services, the City may utilize its own professional staff such as the City Attorney's Office, Director of Public Services, City Forester, or may engage a professional to conduct the study and deliver the results to the City. The applicant shall pay the cost of the professional service plus administrative costs to the City of Kirkwood to retain the professional.
- (3)** The professional services shall not commence without agreement of the applicant as to the costs of such study and the deposit with the City of the estimated fee for the professional services plus administrative costs of 10 percent of the estimated cost of the services or a minimum as set by City Council, by resolution, from time to time. The applicant shall be refunded any overpayment at the conclusion of the professional report, except the administrative cost to the City which is a nonrefundable fee.
- (4)** The professional report or study shall become the property of the City for its sole use.

(i) Public Notification for Public Meetings

- (1)** For all public meetings required by this code, the City shall comply with the City of Kirkwood Municipal Code of Ordinances and all applicable State requirements regarding public notice.
- (2)** The Public Services Director shall post notice on any property requesting action by the Planning and Zoning Commission except for requests for time extensions.

(j) Public Notification for Public Hearings

- (1)** Applications for development approvals that require public hearings shall comply with all applicable State requirements and the public meeting notice requirements established in [§ 25-16\(i\)](#), above.
- (2)** The Director of Public Services shall be responsible for providing the required notice as specified by this subsection.

(3) Content

Notices for public hearings, whether by publication or mail (written notice), shall, at a minimum:

- (i)** Identify the address or location of the property subject to the application and the name of the applicant or the applicant's agent;
- (ii)** Indicate the date, time, and place of the public hearing;
- (iii)** Describe the land involved by street address, St. Louis County parcel identification number, or by legal description;
- (iv)** Describe the nature, scope, and purpose of the application or proposal;

- (v) Identify the location (e.g., the offices of the Director of Public Services) where the public may view the application and related documents; and
- (vi) Include a statement that the public may appear at the public hearing, be heard, and submit evidence and written comments with respect to the application.

(4) Notice Requirements

Published and mailed notice for public hearings shall be provided as defined in [Table 1](#), below.

TABLE 1: NOTICE REQUIREMENTS FOR PUBLIC HEARINGS⁸		
Development Review Procedure	Published Notice	Written (Mailed) Notice
Code Text Amendment		No written notice is required for a text amendment.
Zoning Map Amendment	Published notice required a minimum of 15 calendar days before the applicable public hearing	Written notice to the applicant and all property owners shown by the City tax records to be within 300 feet of the outermost boundaries of the project shall be required a minimum of 15 calendar days prior to the hearing. City Council may waive the written notice requirement in the event of a comprehensive zoning map amendment.
Site Plan Review ⁹ , Special Use Permit, Variance, Appeals	Published notice required a minimum of 15 calendar days before the City Council or Board of Adjustment public hearing	Written notice to the applicant and all property owners shown by the City tax records to be within 300 feet of the outermost boundaries of the project shall be required a minimum of 15 calendar days prior to the City Council or Board of Adjustment public hearing.
Development Plan Review	Published notice required a minimum of 15 calendar days before the City Council hearings	Written notice to the applicant and all property owners shown by the City tax records to be within 300 feet of the outermost boundaries of the project shall be required a minimum of 15 calendar days prior to the City Council public hearing ¹⁰ .

(5) Published Notice

- (i) Published notice shall be provided in a minimum of one newspaper of general circulation.
- (ii) The content and form of the published notice shall be consistent with the requirements of this section and State law.

⁸ We will add in the notice requirements for Community Unit Plans once we have a discussion about those planned developments in a later article.

⁹ There may be instances in the B-4 and B-5 District where a public hearing will not be required and we will identify those in the district and use regulations, as applicable.

¹⁰ Currently development plans in the B-4 and B-5 Districts only have a public hearing in front of the Planning and Zoning Commission but we have proposed to switch that to City Council to be consistent with other review procedures.

(6) Written (Mailed) Notice

- (i) Written notification of property owners shall apply only to the initial public hearing and shall not be required for any continuation of said hearing provided the continuation complies with Section <> below..
- (ii) Written notice shall be sent by first-class mail and shall be postmarked no later than amount of days specified in [Table 1](#) prior to the hearing date at which the item will be considered.

(7) Constructive Notice

- (i) Minor defects in any notice shall not impair the notice or invalidate proceedings pursuant to the notice if a bona fide attempt has been made to comply with applicable notice requirements. Minor defects in notice shall be limited to errors in a legal description, typographical or grammatical errors, or errors of actual acreage that do not impede communication of the notice to affected parties. Failure of a party to receive written notice shall not invalidate subsequent action. In all cases, however, the requirements for the timing of the notice and for specifying the time, date, and place of a hearing shall be strictly construed. If questions arise at the hearing regarding the adequacy of notice, the decision-making body shall direct the department having responsibility for notification to make a formal finding as to whether there was substantial compliance with the notice requirements of this code, and such finding shall be made available to the decision-making body prior to final action on the request.
- (ii) When the records of the City document the publication, mailing, and/or posting of notices as required by this chapter, it shall be presumed that notice of a public hearing was given as required by this section.

(8) Incorrect Notice

If there is an instance where notice is not provided, or is incorrectly provided (excluding minor issues addressed in [§ 25-16\(j\)\(7\)](#), above), due to an error outside of the applicant's control, the hearing or meeting shall be rescheduled for the next regularly scheduled meeting or may be rescheduled as a special meeting at the discretion of the applicable review board or City Council.

(k) Conduct of Public Meetings and Hearings

(1) Rights of All Persons

Any person may appear at a public hearing and submit information or evidence, either individually or as a representative of a person or an organization. Each person who appears at a public hearing shall be identified, state his or her address, and if appearing on behalf of a person or organization, state the name and mailing address of the person or organization being represented.

(2) Continuance of a Public Meeting or Hearing, or Deferral of Application Review

- (i) An applicant may request that a review or decision-making body's consideration of an application at a public meeting/hearing be deferred by submitting a written request for deferral to the Director of Public Services prior to the publication of notice as may be required by this code. The Director of Public Services may grant such requests, in which case, the application will be considered at the next regularly scheduled meeting.

- (ii) A request for deferral of consideration of an application received by the Director of Public Services after publication of notice of the public hearing as required by this code shall be considered as a request for a continuance of the public hearing, and may only be granted by the review or decision-making body.
- (iii) The review or decision-making body conducting the public hearing may, on its own motion or at the request of the applicant, continue the public hearing to a fixed date, time, and place. No additional notice is required if the fixed date, time, and place is announced at the time of the continuance.

(l) Withdrawal of Application

Any request for withdrawal of an application shall be either submitted in writing to the Director of Public Services by the applicant prior to action by the review or decision-making body.

- (1) The Director of Public Services shall approve a request for withdrawal of an application if it has been submitted prior to publication of notice for the public hearing on the application in accordance with this code.
- (2) If the request for withdrawal of an application is submitted after publication of notice for the public hearing in accordance with this code, the request for withdrawal shall be placed on the public hearing agenda and acted upon by the review or decision-making body. Such action shall not be deemed as a decision on the subject application.

(m) Examination and Copying of Application and Other Documents

Documents and/or records may be inspected and/or copied in accordance with State law. At a minimum, the documents and/or records shall be available in the office of the Director of Public Services during the same time that notice is required in [Table 1](#).

(n) Effect of any Approvals

- (1) The issuance of any approval, certificate, or permit under this code shall authorize only the particular development, alteration, construction, or use approved in the subject application.
- (2) All approvals shall run with the land or use and shall not be affected by change in ownership unless otherwise specifically stated.

(o) Modifications or Amendments of Approved Applications¹¹

- (1) For any review procedure, the Director of Public Services is authorized to allow minor changes related to design of an approved application where the change is insignificant and has minimal impact to the overall design of the development or subdivision. This shall not give the Director of Public Services the authority to vary the requirements of this code or any conditions of approval.
- (2) Where the Director of Public Services determines that the proposed modification, amendment, or change is not minor, the applicant shall be required to resubmit an application and payment of additional fees for the application to be reviewed in accordance with the procedures and standards established for its original approval.

(p) Reapplication after Denial of an Application (New)

If an application is denied, the applicant may:

¹¹ This is also common language found in several procedures and consolidated within these common requirements.

- (1) Appeal the decision in accordance with the applicable appeals procedure established in this code or State law; or
- (2) Make changes to the application that will fully address all issues and findings identified for the denial and resubmit a new application, including any required fees. Any such resubmission shall contain evidence that shows how the new application has substantially changed to address each of the findings of the original decision. The Director of Public Services shall have the authority to determine if the evidence submitted substantially changes the application to address all issues as part of the complete application determination in [§ 25-16\(d\)](#). If it does not, the Director of Public Services shall return the application, with reasons for their determination in writing, along with any paid fees¹²;
- (3) Submit the same application after a 24-month waiting period; or
- (4) Submit a new application if the proposed use and design of the site will be entirely different than the denied application.

(q) Subsequent Development

- (1) Development authorized by any approval under this section and this code shall not be carried out until the applicant has secured all other approvals required by this code or any other applicable provisions of the City or other agencies with jurisdiction over the proposed activity.
- (2) The granting of any approval, certificate, or permit shall not guarantee the approval of any other required certificate, permit, or application.
- (3) The City shall not be responsible for reviewing the application for compliance with any permits, certificates, or other approvals that may be required by the St. Louis County, State, or other agencies having jurisdiction.

(r) Computation of Time

- (1) In computing any period of time prescribed or allowed by this code, the date of the application, act, decision, or event, from which the designated period of time begins shall not be included. The last date of the period of time to be computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which case the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday as observed by the City of Kirkwood where the City administrative offices are closed for the entire day.
- (2) When the period of time is prescribed in days, the presumption shall be that it is in calendar days, including Saturdays, Sundays, and legal holidays unless otherwise stated.
- (3) When the period of time prescribed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded from the computation (i.e., business days and not calendar days).
- (4) All specified time periods shall be counted as consecutive days, weeks, months, etc., unless otherwise specified.

¹² This standard would prevent someone from reapplying over and over again with essentially the same application and plans.

- (5) When the City offices are closed to the public for the entire day which constitutes the last day of the period of time, then such application, act, decision, or event may be performed on the next succeeding day which is not a Saturday, a Sunday, or a legal holiday observed by the City of Kirkwood in which the City administrative offices are closed for the entire day.

§ 25-17. Code Text and Map Amendment. (Revised Article XII)

(a) Purpose

The purpose of the code text and zoning map amendment procedure is to provide a process for amending the zoning map and text of this code.

(b) Applicability

This section shall apply to requests to amend the text of this code or amend the Zoning Map of the City of Kirkwood, Missouri, hereafter referred to as the “zoning map.”

(c) Initiation

- (1) Any person who has authority to file an application (See [§ 25-16\(a\).](#)) may initiate an amendment by filing an application with the Director of Public Services.
- (2) City Council may initiate a code text or map amendment by passing a motion to initiate such amendment and referring said motion to the Planning and Zoning Commission.
- (3) The Planning and Zoning Commission may initiate a code text or map amendment by adopting a motion to make such an amendment.

(d) Code Text or Map Amendment Review Procedure

The review procedure for a code text or map amendment shall be conducted as established in this section. A pre-application meeting (See [§ 25-16\(f\).](#)) is encouraged, but not mandatory, prior to submission of the application.

(1) Step 1 – Application

- (i) For amendments that are not initiated by the Planning and Zoning Commission or City Council, the applicant shall submit an application in accordance with [§ 25-16](#), and with the provisions of this section.
- (ii) Amendments initiated by City Council or the Planning and Zoning Commission shall be reviewed in accordance with the procedure of this section.

(2) Step 2 – Staff Review and Transmission to the Planning and Zoning Commission

Upon determination that a zoning map amendment application is complete, the Director of Public Services shall distribute the application and any related reports and documentation to the Planning and Zoning Commission's meeting where the application is to be reviewed.

(3) Step 3 – Planning and Zoning Commission Review and Recommendation

- (i) Within 90 days after the application is determined to be complete, the Planning and Zoning Commission shall review the code or zoning map amendment application at a public meeting.
- (ii) Notification of the public meeting shall be provided in accordance with [§ 25-16\(i\).](#)

- (iii) In reviewing the application, the Planning and Zoning Commission shall at a minimum, consider the reports and opinions transmitted by the Director of Public Services and the review criteria for site plans as established in this section.
- (iv) In making its decision, the Planning and Zoning Commission may recommend approval, approval with modifications, or denial of the application.
- (v) If the Planning and Zoning Commission fails to act within 90 days from the date the application is determined to be complete, or an extended period of time as may be agreed upon by the Planning and Zoning Commission and the applicant, then the application shall move forward to Step 4 with a recommendation of approval.

(4) Step 4 – City Council Review and Decision

- (i) Following receipt of the code text or zoning map amendment application and recommendation from the Planning and Zoning Commission, the City Council shall hold a public hearing to review the application.
- (ii) Notification of the public meeting shall be provided in accordance with [§ 25-16\(i\)](#).
- (iii) In reviewing the application, City Council shall at a minimum, consider the reports and opinions transmitted by the Director of Public Services, the recommendation from Planning and Zoning Commission, and the review criteria of this section.

(iv) Voting Requirements

- a. In the case that the Planning and Zoning Commission recommends denial of the application or in the case of a protest (See [§ 25-17\(d\)\(4\)\(iv\)b](#), below.) the City Council can only approve the application, or approve with modifications, with a favorable vote of two-thirds of all members of City Council.
- b. A protest petition against any amendment application may be presented, in writing, to the City Clerk, in the form of a document duly signed and acknowledged by the owners of 30 percent or more either of the area of the land (exclusive of streets, places and alleys) included within the areas subject to such application or within an area determined by lines drawn parallel to and 185 feet distant from the boundaries of the district proposed to be amended.
- c. If there is no protest or if the Planning and Zoning Commission recommends approval or approval with modification, City Council shall adopt, adopt with some modification, or deny the recommendation of the Planning and Zoning Commission with the concurrence of a simple majority of all members of City Council.

(e) Review Criteria (New)

(1) Zoning Map Amendments

Recommendations and decisions on zoning map amendment applications shall be based on consideration of the following review criteria. Not all criteria may be applicable in each case, and each case shall be determined on its own facts.

- (i) The proposed amendment is consistent with the comprehensive plan, other adopted City plans, and the stated purposes of this code;
- (ii) The proposed amendment is necessary or desirable because of changing conditions, new planning concepts, or other social or economic conditions;
- (iii) The proposed amendment will promote the public health, safety, convenience, and general welfare;
- (iv) The uses that would be permitted on the property if it were reclassified would be compatible with the uses permitted on other property in the immediate vicinity;
- (v) Adequate utility, sewer, and water facilities, and all other needed public services exist or can be provided to serve the uses that would be permitted on a property if it were reclassified;
- (vi) The proposed amendment is not likely to result in significant adverse impacts upon the natural environment, including air, water, noise, storm water management, wildlife, and vegetation, or such impacts will be substantially mitigated;
- (vii) The proposed amendment will not constitute an instance where special treatment is given to a particular property or property owner that would not be applicable to a similar property, under the same circumstances;
- (viii) The proposed amendment is not likely to result in significant adverse impacts upon other property in the vicinity of the subject tract; and
- (ix) The proposed amendment would correct an error in the application of this code as applied to the subject property.

(2) Zoning and Subdivision Code Text Amendments

Recommendations and decisions on text amendment applications shall be based on consideration of the following review criteria:

- (i) The proposed amendment is consistent with the comprehensive plan, other adopted City plans, and the stated purposes of this code;
- (ii) The proposed amendment is necessary or desirable because of changing conditions, new planning concepts, or other social or economic conditions;
- (iii) The proposed amendment will promote the public health, safety, convenience, and general welfare; and
- (iv) The proposed amendment would correct an error in the application of this code as applied to the subject properties.

§ 25-18. Development Plan Review.¹³

(a) Purpose

The purpose of the development plan review process is to set forth a procedure for certain intense uses and development activities in downtown and planned commercial districts. The intent is to encourage opportunities for a broader mixture of uses and more intense development where such uses would be appropriate as recommended by the comprehensive plan and other adopted plans and as determined appropriate by the City of Kirkwood through this development plan review process.

(b) Applicability

- (1)** No construction or expansion of a building or structure, or use of land, buildings, or structures, shall be permitted in the following districts without the review and approval of a development pursuant to this section.
 - a.** B-4 Planned Commercial District
 - b.** B-5 Planned Commercial District
- (2)** No construction or expansion of a mixed-use building or mixed-use development, or alteration of a site with such development, in the B-2 General Business District shall be permitted without the review and approval of a development pursuant to this section.
- (3)** Where a development plan is required, no building permit shall be issued until a site plan has been approved in accordance with the requirements of this section and [§ 25-19](#).
- (4)** If the Director of Public Services determines that the proposed development involves only accessory or temporary structures, contains a single building on a lot, or is of such a small-scale as to not warrant the need for a separate development plan and site plan review, the Director of Public Services may authorize a simultaneous review of the development plan and site plan. The Director of Public Services shall always retain the authority to require any development to go through a two-step development plan and site plan review process.
- (5)** A change in use, re-occupancy of an existing building, or the internal construction or change in floor area of a building or structure that does not increase gross floor area, increase the intensity of use, or affect parking or landscaping requirements on a site that meets all of the development standards of this code shall not require a development plan approval.

(c) Development Plan Review Procedure

The review procedure for a development plan review shall be conducted as established in this section. A pre-application meeting (See [§ 25-16\(f\)](#)) is encouraged, but not mandatory, prior to submission of the application.

(1) Step 1 – Application

The applicant shall submit an application in accordance with [§ 25-16](#), and with the provisions of this section.

¹³ This is intended to consolidate the review procedures for planned developments and mixed-use developments in the B-2 District.

(2) Step 2 – Staff Review and Transmission to the Planning and Zoning Commission

Upon determination that a development plan application is complete, the Director of Public Services shall distribute the application and any related reports and documentation to the Planning and Zoning Commission prior to the hearing where the application is to be reviewed.

(3) Step 3 – Review and Recommendation by the Planning and Zoning Commission

- (i) Within 120 days after the application is determined to be complete, the Planning and Zoning Commission shall review the development plan application at a public meeting.
- (ii) Notification of the public meeting shall be provided in accordance with [§ 25-16\(i\)](#).
- (iii) In reviewing the application, the Planning and Zoning Commission shall at a minimum, consider the reports and opinions transmitted by the Director of Public Services and the review criteria for development plans as established in this section.
- (iv) In its review of an application, the Planning and Zoning Commission may request that the applicant supply additional information that the Planning and Zoning Commission deems necessary to adequately review and evaluate the proposed development.
- (v) In making its decision, the Planning and Zoning Commission may recommend approval, approval with modifications or supplementary conditions, or denial of the application.
- (vi) If the Planning and Zoning Commission fails to act within 120¹⁴ days from the date of the initial public hearing, or an extended period as may be agreed upon by the Planning and Zoning Commission and the applicant, then the application shall move forward to Step 4 with a recommendation of approval.

(4) Step 4 –Review and Decision by the City Council

- (i) Following receipt of the site plan application and recommendation from the Planning and Zoning Commission, the City Council shall hold a public hearing to review the application.
- (ii) Notification of the public hearing shall be provided in accordance with [§ 25-16\(j\)](#).
- (iii) In reviewing the application, the City Council shall at a minimum, consider the reports and opinions transmitted by the Director of Public Services, the recommendation from the Planning and Zoning Commission, and the review criteria for development plans as established in this section.
- (iv) In its review of an application, the City Council may request that the applicant supply additional information that the City Council deems necessary to adequately review and evaluate the proposed development.

¹⁴ The planned commercial districts give the PZC 60 days but the mixed-use development in B-2 has 120 days. We have given the PZC 120 days for everything, to be consistent.

- (v) The City Council shall also have the authority to return the application to the Planning and Zoning Commission for further study and report.
- (vi) In making its decision, the City Council may approve, approve with modifications or supplementary conditions, or deny the application by resolution.

(5) Step 5 – Final Site Plan Review

- (i) No building permit shall be issued to construct any part or all of the development in the district until such time as the City Council has approved a site plan for the subject development. However, site grading to prepare the tract for development may be permitted by the City Council as a condition of approval of the development plan.
- (ii) The site plan shall be reviewed in accordance with [§ 25-19](#).

(d) Review Criteria¹⁵

Decisions on development plan review applications shall be based on consideration of the following criteria:

- (1) The development is consistent with all the requirements of this code, and other related codes and ordinances enforced by the City;
- (2) The development complies with the applicable zoning district regulations;
- (3) The development will result in a harmonious grouping of buildings within the proposed development and in relationship to existing and proposed uses on adjacent property;
- (4) The development will preserve and be sensitive to the natural characteristics, including topography, of the site in a manner that complies with the applicable regulations set forth in this code and is not designed in a manner that will adversely affect the normal and orderly development or improvement of surrounding properties;
- (5) Adequate provision is made for safe and efficient pedestrian, bicycle, and vehicular circulation within the site and to adjacent property;
- (6) The development plan demonstrates functional and beneficial uses of open space areas and preservation and protection of natural features of a development site, inclusive of preservation, planting, maintenance, restoration, protection and survival of desirable tree canopy areas within the development site;
- (7) The development plan takes into consideration the impact on neighboring residential properties resulting from nonresidential uses within the development, including but not limited to protecting the existing neighborhood assets and quality of life;
- (8) The development plan accommodates rational and cost-effective development in relation to public services and the installation and maintenance of public and private infrastructure by reducing the distance utilities are extended and installed, and/or by reducing the width and length of streets;
- (9) The development plan takes into consideration the impact on nearby historic districts and landmarks whether designated locally or nationally;

¹⁵ This is a paired down list of review criteria from the site plan where we have removed the criteria that address very detailed site design criteria that would be best addressed in site plan review. We also replaced some with the development objectives that were originally identified as site plan standards.

- (10) The design of the site surface drainage provides for the reasonable removal of stormwater so as not to adversely affect neighboring properties;
 - (11) All structures have access to a public street, walkway or other area designated for common use;
 - (12) The proposed development does not adversely affect off-site public services, including sewer, water, and streets, nor adversely affect the character of the neighborhood, nor adversely affect the general welfare of the community;
 - (13) Pedestrian and cyclist connectivity will be provided in accordance with the Kirkwood Pedestrian and Bicycle Plan;
 - (14) Points of ingress/egress to the development are controlled and designed in such manner as to minimize conflicts with adjacent properties and developments;
 - (15) Adequate provision is made for emergency vehicle access and circulation; and
 - (16) If the project is to be carried out in progressive stages, each stage shall be so planned that the foregoing criteria are complied with at the completion of each stage.
- (e) **Alternative Equivalency Review**
Any application for alternative equivalency review proposed as part of the development plan shall be considered simultaneously with the site plan review and shall be further subject to the requirements of [§ 25-22](#).
- (f) **Time Limit**
Within 12 months of the date the development plan is approved, the applicant shall file a site plan application (See [§ 25-19](#).) or the development plan approval shall expire unless an alternative time schedule has been approved as part of the development plan review.
- (g) **Appeals**
Any person or entity claiming to be injured or aggrieved by any final action of the City Council shall have the right to appeal the decision to the St. Louis County Circuit Court.

§ 25-19. Site Plan Review. (Revised A-220)

- (a) **Purpose**
The purpose of this section is to require site plan review for buildings, structures, and uses to analyze the impacts on natural resources, traffic patterns, adjacent parcels, and the character of future development. The regulations contained herein are intended to provide and promote orderly developments within the City to meet the purposes of this code as established in [§ 25-1](#) and furthermore to ensure:
- (1) The compatibility with adjoining and neighboring parcels;
 - (2) The maintenance and improvement of the general welfare and character of the developments within the community, with proper attention to setting and the avoidance of unsightly appearances; and
 - (3) Other factors conducive to the proper development of the City.
- (b) **Applicability and Review Authority**
- (1) Unless specifically exempted in [§ 25-19\(c\)](#), no construction or expansion of a building or structure, or use of land, buildings, or structures, shall be permitted without the review and approval of a site plan pursuant to this section.

(2) Minor Site Plan Review Applicability¹⁶

- (i) The Director of Public Services shall be responsible for reviewing and making a decision on site plan review applications for any application where the proposed use, building, or structure is permitted or permitted with standards as established in Section <> unless the application contains a simultaneous application for alternative equivalency review, in which case the site plan shall be subject to major site plan review.
- (ii) The Director of Public Services shall have the authority to forward a minor site plan review application to the Planning and Zoning Commission and City Council for review as a major site plan if the Director of Public Services finds:
 - a. That the proposed use or development could potentially create significant impacts on an adjacent property based on the intensity or proximity of the proposed use or development; or
 - b. There is difficulty in interpreting the application of a standard or regulation as it pertains to the subject site.
- (iii) Any site plan review application that includes a request for alternative equivalency review pursuant to [§ 25-22](#) shall be reviewed as a major site plan review.

(3) Major Site Plan Review Applicability

- (i) Any use, building, or structure that is considered a special use in Section <> or that requires a development plan approval prior to a site plan review shall be reviewed as a major site plan.
- (ii) Any site plan application that includes a request for alternative equivalency review (See Section <>.), shall be classified as a major site plan.
- (iii) All other development and activities not identified in [§ 25-19\(b\)\(2\)](#) above, or activities specifically exempted from site plan review, shall be reviewed as a major site plan.

(c) Exemptions

The following activities shall be exempted from site plan review:

- (1) Construction or modification of single-family dwellings;
- (2) Construction or modification of accessory structures or uses established on a lot with a single-family dwelling;¹⁷
- (3) Temporary uses allowed as part of Section <>; and

¹⁶ This is a revised applicability standard that establishes a minor versus major site plan review to distinguish between staff and board level review. Uses and structures that are permitted by-right in the applicable zoning district will be reviewed administratively unless the use or structure requires a variance, special use approval, or other board level approvals. The steering committee will be revisiting this applicability section at a later date, following a discussion of what uses are permitted, permitted with standards, or are special uses, as part of later drafts of this code.

¹⁷ We will revisit this list of exemptions when we discuss accessory uses and buildings for other districts to determine the best way to demonstrate applicability of site plan review.

- (4) A change in use, re-occupancy of an existing building, or the internal construction or change in floor area of a building or structure that does not increase gross floor area, increase the intensity of use, or affect parking or landscaping requirements on a site that meets all of the development standards of this code.

(d) Minor Site Plan Review Procedure

The review procedure for a minor site plan review shall be conducted as established in this section. A pre-application meeting (See [§ 25-16\(f\)](#).) is encouraged, but not mandatory, prior to submission of the application.

(1) Step 1 – Application

The applicant shall submit an application in accordance with [§ 25-16](#), and with the provisions of this section.

(2) Step 2 – Staff Review and Decision

- (i) The Director of Public Services shall make a decision on the minor site plan review application. In making its decision, the Director of Public Services may approve or deny the application.
- (ii) Prior to finalizing approval of the application, the Director of Public Services shall have the authority to provide comments to the applicant regarding necessary revisions to bring the application into full compliance. The application shall not be deemed formally approved until the applicant makes all of the appropriate changes and submits all necessary revised forms, maps, and documents to the Director of Public Services.¹⁸ The Director of Public Services shall make a final decision within 30 days after the resubmission of revised plans that show compliance with this code.

(e) Major Site Plan Review Procedure

The review procedure for a major site plan review shall be conducted as established in this section. A pre-application meeting (See [§ 25-16\(f\)](#).) is encouraged, but not mandatory, prior to submission of the application.

(1) Step 1 – Application

The applicant shall submit an application in accordance with [§ 25-16](#), and with the provisions of this section.

(2) Step 2 – Staff Review and Transmission to the Planning and Zoning Commission

Upon determination that a site plan application is complete, the Director of Public Services shall distribute the application and any related reports and documentation to the Planning and Zoning Commission prior to the meeting where the application is to be reviewed.

(3) Step 3 – Review and Recommendation by the Planning and Zoning Commission

- (i) The Planning and Zoning Commission shall review the site plan application at a public meeting.

¹⁸ This is an alternative to approving with conditions. In this situation, the applicant will have to produce plans that show full compliance before the approval is given.

- (ii) Notification of the public meeting shall be provided in accordance with [§ 25-16\(i\)](#).
 - (iii) During the public meeting, the Planning and Zoning Commission will hear a presentation from the applicant and allow other interested parties to make comments.
 - (iv) In reviewing the application, the Planning and Zoning Commission shall at a minimum, consider the reports and opinions transmitted by the Director of Public Services and the review criteria for site plans as established in this section.
 - (v) In its review of an application, the Planning and Zoning Commission may request that the applicant supply additional information that the Planning and Zoning Commission deems necessary to adequately review and evaluate the proposed development.
 - (vi) In making its decision, the Planning and Zoning Commission may recommend approval, approval with modifications or supplementary conditions, or denial of the application.
 - (vii) If the Planning and Zoning Commission fails to act within 120 days from the date the application is determined to be complete, or an extended period of time as may be agreed upon by the Planning and Zoning Commission and the applicant, then the application shall advance to Step 4 with a recommendation of approval.
- (4) Step 4 –Review and Decision by the City Council**
- (i) Following receipt of the site plan application and recommendation from the Planning and Zoning Commission, the City Council shall hold a public hearing to review the application.
 - (ii) Notification of the public hearing shall be provided in accordance with [§ 25-16\(j\)](#).
 - (iii) In reviewing the application, the City Council shall at a minimum, consider the reports and opinions transmitted by the Director of Public Services, the recommendation from the Planning and Zoning Commission, and the review criteria for site plans as established in this section.
 - (iv) In its review of an application, the City Council may request that the applicant supply additional information that the City Council deems necessary to adequately review and evaluate the proposed development.
 - (v) The City Council shall also have the authority to return the application to the Planning and Zoning Commission for further study and report.
 - (vi) In making its decision, the City Council may approve, approve with modifications or supplementary conditions, or deny the application by resolution.
 - (vii) If the City Council imposes conditions or restrictions, it shall designate specific requirements which must be met before an applicant may be granted final approval of a site plan. Failure to comply with any of these conditions or restrictions shall constitute a violation of this code punishable as set forth in Section <>.

(f) Alternative Equivalency Review

Any application for alternative equivalency review proposed as part of the site plan shall be considered simultaneously with the site plan review and shall be further subject to the requirements of [§ 25-22](#).

(g) Review Criteria

Decisions on site plan review applications shall be based on consideration of the following criteria:

- (1) The development is consistent with recommendations in the approved comprehensive plan and other plans and policies adopted by the City;
- (2) The development complies with all the requirements of this code, and other related codes and ordinances enforced by the City;
- (3) The development complies with the applicable zoning district regulations;
- (4) The development meets all the requirements or conditions of any applicable development approvals (e.g., special use approvals, variance approvals, etc.);
- (5) The development will result in a harmonious grouping of buildings within the proposed development and in relationship to existing and proposed uses on adjacent property;
- (6) The development will preserve and be sensitive to the natural characteristics, including topography, of the site in a manner that complies with the applicable regulations set forth in this code and is not designed in a manner that will adversely affect the normal and orderly development or improvement of surrounding properties;
- (7) The application includes a reasonable plan and guarantees for the private care and maintenance of all open spaces or green spaces;
- (8) Adequate provision is made for safe and efficient pedestrian, bicycle, and vehicular circulation within the site and to adjacent property.
- (9) The development will provide adequate lighting for safe and convenient use of the streets, walkways, driveways, and parking areas;
- (10) The landscaping and buffering will be preserved in its natural state, insofar as reasonably practicable, by minimizing tree and soil removal, and by topographic modifications which result in harmony with adjacent areas giving consideration to the landscape requirements set forth in [Article VIII: Landscaping and Buffering Standards](#);
- (11) The design of the site surface drainage provides for the reasonable removal of stormwater so as not to adversely affect neighboring properties;
- (12) All structures have access to a public street, walkway or other area designated for common use;
- (13) The proposed development does not adversely affect off-site public services, including sewer, water, and streets, nor adversely affect the character of the neighborhood, nor adversely affect the general welfare of the community;
- (14) Pedestrian and cyclist connectivity will be provided in accordance with the Kirkwood Pedestrian and Bicycle Plan;
- (15) Fences and walkways are used, as appropriate, for the protection and enhancement of property, for the safety of pedestrians, and for the privacy of its occupants and occupants of adjacent property;

- (16) Points of ingress/egress to the development are controlled and designed in such manner as to minimize conflicts with adjacent properties and developments;
- (17) Adequate provision is made for emergency vehicle access and circulation; and
- (18) If the project is to be carried out in progressive stages, each stage shall be so planned that the foregoing criteria are complied with at the completion of each stage.

(h) Financial Guarantees

As part of the site plan review process, a financial guarantee shall be required in accordance with Section <>¹⁹ to ensure restoration of the site, protection and installation of public improvements, and compliance with the conditions of approval, including the requirements for drives, walkways, utilities, parking, public improvements, landscaping, screening, and the like.

(i) Significance of an Approved Plan

- (1) An approved site plan shall become, for the proposed development, a binding commitment of the specific elements approved for development. The approved site plan may be transferred to another person, corporation, or group of individuals or corporations prior to the issuance of a building permit. Such a transfer shall occur only if the new ownership entity satisfies the administrative, financial, legal and all other financial guarantees approved with the original site plan.
- (2) All construction and development under any building permit shall be in accordance with the approved site plan. Any departure from such plan shall be cause for revocation of the building permit, and the property owner or other responsible parties are subject to penalties as prescribed by this code.

(j) Site Plan Review and the Board of Adjustment

The completion of the site plan review process as outlined herein shall be considered a necessary step in the exhausting of all available alternatives that is required prior to applying to the City's Board of Adjustment for a variance. However, if a modification requested during the site plan review process is based upon a question of undue hardship or practical difficulty, the City Council may require the applicant to apply to the Board of Adjustment prior to making a final decision.

(k) Phased Development (Revised 220.8)

- (1) In the event an applicant desires to present a site plan identifying the construction of a complex of buildings and site improvements to be developed over an extended period of time, a detailed site plan shall be submitted for approval by the Planning and Zoning Commission and City Council in accordance with this section for each specific building project. The site plan shall include a proposed time schedule for each phase of the project.
- (2) Such detailed site plans may be submitted in advance of or in conjunction with an application for a building permit.
- (3) Of primary importance in this review will be a determination that the detailed site plan complies with the site plan approval for the total development or project.

¹⁹ We will be developing a single section on financial guarantees and the requirements for such in a later chapter and this will be a cross-reference to that section.

- (4) In instances of phased development, the portions of the site not under active construction shall be maintained according to all City codes and in no way shall the active construction cause the remaining portions to become a property maintenance issue.

(l) Time Limit

- (1) Within 12 months of the date the site plan is approved, the applicant shall be required to gain approval of a building permit for the relevant work and have commenced substantial construction. Failure to comply with this timing shall result in the expiration of the site plan approval unless an alternative time schedule has been approved as part of a phased development (See [§ 25-19\(k\)](#).) or as part of a development plan approval, where applicable.
- (2) The City Council may, by resolution, grant up to two extensions not exceeding 12 months each upon written request submitted no later than 30 days prior to the date such site plan approval shall expire. Such written request shall include the original application, documentation of a need for a time extension, and a filing fee in accordance with [§ 25-16](#). The City Council shall have the authority in such cases to attach new conditions to its reapproval or disapprove the reapplication. Where the application for reapproval contained changes which the City Council concludes materially alter the initial application, it shall refer the application to the Director of Public Services who shall initiate a new site plan review procedure in accordance with the provisions herein.

(m) Appeals

Any person or entity claiming to be injured or aggrieved by any final action of the City Council shall have the right to appeal the decision to the St. Louis County Circuit Court.

§ 25-20. Special Use Permit. (Revised A-900)

(a) Purpose

The purpose of a special use permit is to allow consideration for certain uses that due to the use's unique and special nature relative to location, design, size, operations, circulation, or general impact on the community, may be appropriate in the designated districts but need to be evaluated on a case-by-case basis.

(b) Applicability

- (1) This section shall apply to all applications for establishment of a new special use.
- (2) This section shall also apply to any proposed change, modification, enlargement, or alteration of an approved special use, or the site development conditions, or operations of an approved special use unless the Director of Public Services determines that the alteration is minor in nature, in which case, the alteration can be reviewed through the building permit application.

(c) Existing Use Reclassified as a Special Use (New)²⁰

In the event an existing use that was permitted, without a special use approval, at the time the use was established is thereafter reclassified as a special use in the applicable district due to a zoning text amendment, such use shall be considered to be an approved special use without any further action. However, any subsequent change to such use shall require review and approval by the Planning and Zoning Commission in accordance with this section. Such use, provided it is established as a special use in the applicable district, shall not be considered a nonconforming use.

(d) Special Use Review Procedure²¹

- (1)** A special use permit application shall be reviewed in the same manner as a site plan review, as set forth in [§ 25-19\(e\)](#).
- (2)** Any notifications required for public meetings and public hearings shall be as set forth for special use permits in [§ 25-16\(i\)](#) and [§ 25-16\(j\)](#), as applicable.
- (3)** In reviewing the application, the Planning and Zoning Commission and City Council shall at a minimum, consider the reports and opinions transmitted by the Director of Public Services and the review criteria for site plans as established in this section. City Council shall also consider any recommendation from the Planning and Zoning Commission.
- (4)** As part of City Council's public hearing, City Council shall determine whether such buildings, structures, or use will:
 - (i)** Substantially increase traffic hazards or congestion;
 - (ii)** Substantially increase fire hazards;
 - (iii)** Adversely affect the character of the neighborhood;
 - (iv)** Adversely affect the general welfare of the community; or
 - (v)** Overtax public utilities.

(e) Review Criteria²²

Decisions on a special use application shall be based on consideration of the following review criteria. All special uses shall be subject to review under the criteria of this section, as applicable, and may be subject to additional use-specific standards established in [Article III: Zoning Districts and Principal Uses](#).

- (1)** The proposed special use is established as an allowed special use in the applicable zoning district;
- (2)** The proposed use and design are consistent with the general purpose of this code;
- (3)** The proposed use complies with any use-specific standards as may be established for the special use;

²⁰ This provides guidance in the chance the new codes changes a currently permitted use to a special use.

²¹ Given that the review process is identical, we did not see a need to reiterate the individual steps of the procedures.

²² These criteria are generally new to the city and move away from all the very site plan type requirements to broader requirements that allow the PZC and City Council to better evaluate these special uses on a case-by-case basis.

- (4) Any building or structure constructed, reconstructed, or altered as part of a special use in a residential zoning district shall, to the maximum extent feasible, have an exterior appearance that the Planning and Zoning Commission and City Council deems compatible with surrounding residential buildings in scale, height, and massing.
 - (5) The special use shall have suitable landscaping, screening, and fencing wherever deemed necessary by the Planning and Zoning Commission and City Council to protect surrounding uses;
 - (6) The proposed use will comply with all applicable development standards subject to provisions for waivers and/or variances as established in this code;
 - (7) The proposed use will be harmonious with the existing or intended character of the general vicinity, and that such use will not change the essential character of the same area;
 - (8) The proposed use will not involve uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to any persons, property, or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare, or odors;
 - (9) The circulation on and access to the property shall be so designed as not to create an interference with traffic on surrounding public thoroughfares;
 - (10) The design of the buildings, structures, and site will not result in the destruction, loss or damage of a natural, scenic, or historic feature of major importance;
 - (11) The proposed use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district; and
 - (12) Wherever no specific areas, frontage, height, or setback requirements are specified in the requirements for a specific special use, then such use shall be subject to the site development standards for the applicable zoning district.
- (f) Additional Criteria and Conditions**
- (1) The City Council may impose additional conditions, guarantees, and safeguards as it deems necessary to protect the general welfare and individual property rights, and to ensure that the special use will meet the intent and purposes of this code.
 - (2) All activities, programs and other events proposed on plans shall be directly related to the special use so granted, and shall be adequately and properly supervised so as to prevent any hazard and to assure against any disturbance or nuisance to surrounding properties, residents or to the community in general.
- (g) Revocation of a Special Use Approval**
- The breach of any condition, safeguard, or requirement shall constitute a violation of this code. Such violation may result in revocation of said approval and shall be punishable as specified in Section <>.
- (h) Time Limit**
- (1) A special use approval shall be deemed to authorize only one particular special use and said permit shall automatically expire if, for any reason, the special use shall be voluntarily abandoned for more than 120 consecutive days.
 - (2) The applicant shall have commenced operation of the special use or commenced construction of the special use within one year of the approval of the special use or the special use approval shall expire.

- (3) The applicant may seek to extend the expiration date established by Section <> or <>, above by submitting a request to City Council, in writing, no later than 30 days prior to the date such special use approval will expire. The City Council may extend such application for an additional one year from the anticipated date of expiration, unless the conditions pertaining to the granting of such special use permit have materially changed and such special use permit would not have been granted if an original application were then submitted. Subsequent one-year extensions may be granted provided, however, no more than three such extensions may be granted. No special use permit shall be deemed to terminate pending consideration by the City Council of a timely filed application for extension.
- (4) Unless expressly authorized at the time of the granting of a special use permit, or upon subsequent application after notice and hearing in the same manner as provided for in the original application, all construction and site development shall be completed within 18 months after the issuance of the related building permit or the special use permit shall expire.
- (5) As part of the special use approval, the City Council may authorize alternative time limits for building permit issuance based on the scale of the proposed development.
- (6) Upon expiration of a special use approval, a new application, including all applicable fees, shall be required before a special use application will be reviewed.

(i) **Appeals**

Any person or entity claiming to be injured or aggrieved by any final action of the City Council shall have the right to appeal the decision to the St. Louis County Circuit Court.

§ 25-21. Architectural Review.²³

(a) **Purpose (New)**

The purpose of the architecture review is to provide a procedure by which to review building construction, renovation, and expansion, as well as signs, in a manner that encourages development which will contribute to the City of Kirkwood's unique sense of place. The purpose is not to set a specific architectural style or mandate uniformity but rather to encourage creativity while simultaneously improving design quality in neighborhoods, gateways, downtown, and business activity areas that reflects the community's physical and historic character, while adding to it in appropriate ways.

(b) **Applicability**

- (1) The Architectural Review Board is responsible for architectural review in the City of Kirkwood and its decisions are either advisory or binding based on the types and locations of the buildings and structures as defined herein.
- (2) No building permit for construction, reconstruction, or other exterior alteration of buildings and structures identified in this section shall be issued without a decision of the Architectural Review Board as set forth in this section unless otherwise stated.

²³ This section incorporates revised procedural information pulled from the existing Sections 2-537, 2-538, 2-539, and 2-542.

(3) Advisory Decisions²⁴

- (i) Architectural review shall be required for the construction or expansion of all new single-family dwellings and the construction and expansion of all accessory buildings related to single-family dwellings.
- (ii) Such review shall be advisory as further defined in this section unless the structure is located within a local historic district, or is designated as a local historic structure, in which case, the review shall be binding, subject to [§ 25-21\(c\)\(3\)\(iv\)](#), below.

(4) Binding Decisions

Architectural review shall be required and shall be binding for all of the following development and activities:

- (i) The construction and expansion of all new multi-family dwellings, including mixed-use buildings that contain dwelling units, and any related accessory buildings;
 - (ii) The construction and expansion of new principal and accessory buildings in all nonresidential zoning districts;²⁵
 - (iii) The construction of permanent signs, unless specifically exempted in Section <>, in all zoning districts; and²⁶
- (5) The following development and activities are exempt from architectural review:**
- (i) Painting or general maintenance of a structure;
 - (ii) Changes in occupancy not involving structural or exterior work; and
 - (iii) Any interior renovations which will not alter and/or affect the exterior elevations and facade of the building or structure or any architectural features that are visible from the outside.

(c) Architectural Review Procedure

The review procedure for architectural review shall be conducted as established in this section. A pre-application meeting (See [§ 25-16\(f\)](#).) is encouraged, but not mandatory, prior to submission of the application.

(1) Step 1 - Application

- (i) The applicant shall submit an application in accordance with [§ 25-16](#), and with the provisions of this section.

²⁴ For the time being, we are maintaining an advisory procedural requirement for single-family dwellings until both the site development standards (e.g., setbacks, scale, massing, etc.) and architectural standards are drafted. We will revisit this distinction when considering those additional standards to determine if the decision should continue to be advisory or if the decision should be binding. Additionally, part of this discussion will be whether the ARB should have a stronger say in architectural review for historic districts or if this should solely lie under the authority of the Landmarks Commission

²⁵ This is a new provision that would expand the ARB binding decisions to all development in nonresidential districts per discussions with the steering committee in June.

²⁶ We will revisit the issue of what signs are reviewed by the ARB when discussing the sign code update when we can consider each sign type on a case-by-case basis.

- (ii) In submitting an application, the Director of Public Services or the Architectural Review Board may request that the applicant provide exhibits, sketches, examples of materials, renderings, or other documentation to assist in its decision.

(2) Step 2 – Staff Review and Transmission to the Architectural Review Board

Upon determination that an architectural review board application is complete, the Director of Public Services shall distribute the application and any related reports and documentation to the Architectural Review Board prior to the meeting where the application is to be reviewed.

(3) Step 3 – Architectural Review Board Review and Decision

- (i) The review of applications by the Architectural Review Board shall be as set forth in this subsection.
- (ii) The following shall apply to all applications for architectural review, regardless if the decision is related to signs, advisory decisions, binding decisions, or historic structures.
 - a. Following receipt of the building permit application, the Architectural Review Board shall hold a public meeting to review the application.
 - b. Notification of the public meeting shall be provided in accordance with [§ 25-16\(i\)](#).
 - c. In reviewing the application, the Architectural Review Board shall at a minimum, consider the reports and opinions transmitted by the Director of Public Services and the review criteria of this section.
 - d. In making its decision, the Architectural Review Board may approve, approve with modifications or supplementary conditions, or deny the application.
- (iii) **Advisory Decisions**
 - a. Within 180 days after the building application is determined to be complete, the Architectural Review Board shall review any application for a development or activity that is subject to an advisory decision on architectural review.
 - b. For advisory decisions, the Architectural Review Board shall not be authorized to deny an application, however, if the Architectural Review Board and the applicant fail to reach an agreement on design modifications to a structure subject to an advisory decision within 180 days, the Building Department shall process the building permit application as submitted by the applicant.
 - c. If the Architectural Review Board fails to act within 180 days²⁷ from the date the application is determined to be complete, or an extended period of time as may be agreed upon by the Architectural Review Board and the applicant, then the application shall be considered approved as submitted by the applicant.

²⁷ Currently there is a time limit of 120 days for multi-family dwellings and 180 days for everything else so we have proposed 180 days to be consistent.

(iv) Binding Decisions

- a. Within 180 days after the architectural review board application is determined to be complete, the Architectural Review Board shall review any application for a development or activity that is subject to a binding decision on architectural review.
- b. If the Architectural Review Board fails to act within 180 days from the date the application is determined to be complete, or an extended period of time as may be agreed upon by the Architectural Review Board and the applicant, then the application shall be considered approved as submitted.

(v) Sign Permit (Binding) Decisions

- a. Within 30 days after the building application is determined to be complete, the Architectural Review Board shall review any application for a sign subject to architectural review.
- b. If the Architectural Review Board fails to act within 30 days from the date the application is determined to be complete, or an extended period of time as may be agreed upon by the Architectural Review Board and the applicant, then the application shall be considered approved as submitted.

(vi) Additional Review for Historic Structures or Structure in Historic Districts

If the application concerns a structure that is located within a locally designated historic district, or if the structure itself is a designated local historic structure, the architectural review process will include the following additional steps.

- a. The Landmarks Commission will review the proposed development or activity and make a decision prior to the Architectural Review Board's review under this section.
- b. If there is a conflict between the Landmarks Commission decision and the Architectural Review Board's decision, a joint meeting of both boards will be held to discuss the application.
- c. If there is any conflict between the historic district design guidelines and the architectural standards and guidelines of [Article VII: Architectural Standards](#), the historic design guidelines shall govern.

(d) Review Criteria (New)

Decisions on architectural review shall be based on consideration of the following criteria:

- (1) The proposed development complies with all the requirements of this code and other related codes and ordinances enforced by the City;
- (2) The proposed development incorporates any applicable guidelines (See [Article VII: Architectural Standards](#).) to the maximum extent feasible;
- (3) The application is appropriate to the preservation of the environmental, architectural, or the historic character (if applicable) of the structure and property pursuant to the design criteria found in this code; and
- (4) The proposed development meets all the requirements or conditions of any applicable development approvals (e.g., planned development approvals, special use approvals, variance approvals, etc.).

(e) Time Limit

- (1) Within 12 months of the date the architectural review application is approved, the applicant shall be required to gain approval of a building permit for the relevant work and have commenced substantial construction. Failure to comply with this timing shall result in the expiration of the architectural review approval unless an alternative time schedule has been approved by the Architectural Review Board.
- (2) The Architectural Review Board may grant up to two extensions not exceeding 12 months each upon written request submitted no later than 30 days prior to the date such architectural review approval shall expire, with a submittal, including the original applicant, resubmission of the application and filing fee in accordance with [§ 25-16](#), if the application as resubmitted is substantially the same as the initially approved application.

(f) Appeals

Any person or entity claiming to be injured or aggrieved by any binding decision of the Architectural Review Board shall have the right to appeal the decision to the St. Louis County Circuit Court.

§ 25-22. Alternative Equivalency Review.

(a) Purpose

The alternative equivalency review is a procedure that allows applicants to propose unique design options as an alternative to a development standard established in this code provided it meets or exceeds the intent of the design-related provisions of this code. It is not a variance, waiver, or weakening of regulations; rather, this procedure permits a site-specific plan that is equal to or better than the strict application of a design standard specified in this code. An alternative equivalency approval shall apply only to the specific site for which it is requested and does not establish a precedent for assured approval of other requests.

(b) Applicability²⁸

The equivalency provision review procedure shall be available only for the following sections of this code:

- (1) Section <> (Outdoor Lighting);
- (2) [Article VII: Architectural Standards](#);
- (3) [Article VIII: Landscaping and Buffering Standards](#); and
- (4) [Article IX: Parking, Access, and Mobility Standards](#).

(c) Review Board

- (1) Any alternative equivalency review application related to an architectural standard shall be reviewed by the Architectural Review Board as part of the architectural review application.
- (2) All other alternative equivalency review applications shall be reviewed by the Planning and Zoning Commission and City Council as part of a development plan (if applicable) or site plan review application.

²⁸ Note that the list provided is only a starting list and we can modify where alternative equivalency is allowed based on discussions after the development of the standards.

(d) Review Timing

A request for an alternative equivalency review shall be made concurrently with a development plan, site plan, or architectural review application, whichever is applicable.

(e) Alternative Equivalency Review Procedure

The review procedure for an alternative equivalency review shall be conducted as established in this section. A pre-application meeting (See [§ 25-16\(f\).](#)) is encouraged, but not mandatory, prior to submission of the application.

(1) Step 1 – Application

The applicant shall submit an application in accordance with [§ 25-16.](#) and with the provisions of this section.

(2) Step 2 – Staff Review and Transmission to the Applicable Board or Commission

Upon determination that an alternative equivalency review application is complete, the Director of Public Services shall distribute the application to Architectural Review Board or Planning and Zoning Commission, as applicable.

(3) Step 3 – Board Review and Decision

(i) The applicable review board shall consider the application as part of the architectural review, site plan review, and/or development plan review application as set forth in this article.

(ii) The applicable board or commission shall make a decision on the application. In making its decision, the applicable board or commission may approve, approve with modifications or supplementary conditions, or deny the application.

(iii) If approved, any building permit application shall demonstrate compliance with the equivalency provision review approval.

(f) Review Criteria

Decisions on an alternative equivalency review application shall be based on consideration of the following criteria:

(1) That the proposed alternative achieves the intent of the subject design or development standard to the same or better degree than the subject standard;

(2) That the proposed alternative achieves the goals and policies of the comprehensive plan to the same or better degree than the subject standard;

(3) That the proposed alternative results in benefits to the community that are equivalent to or better than compliance with the subject standard; and

(4) That the proposed alternative imposes no greater impacts on adjacent properties than would occur through compliance with the specific requirements of this code.

(g) Conditions

The Planning and Zoning Commission or the Architectural Review Board, as applicable, may impose conditions on an approval for an alternative equivalency review provided such conditions are related to ensuring the performance of the equivalency provision review to meet or exceed the subject standard. Such conditions may include required timeframes, amendments or revisions to the proposal, or the ability to revoke an approval for an equivalency provision review.

(h) Decisions

Any decision on an alternative equivalency review application shall not be binding on the City related to future applications requesting an alternative to any of the applicable standards. Each case shall be reviewed and decided upon based on the individual circumstances.

(i) Time Limit

- (1)** An approval of an alternative equivalency review application shall expire if the related site plan approval or building permit expires.
- (2)** Upon expiration of an alternative equivalency review approval, a new application, including all applicable fees, shall be required before a new application will be reviewed.

(j) Appeals

Any person or entity claiming to be injured or aggrieved by any final action on an alternative equivalency review shall have the right to appeal the decision based on the appeals procedure for the architectural review, site plan review, and/or development plan review, as applicable, with which the alternative equivalency review application is being reviewed simultaneously.

§ 25-23. Administrative Waivers.

(a) Purpose

The purpose of the administrative waiver is to allow for minor waivers of dimensional requirements where the applicant can demonstrate a true practical difficulty but that the request is minor in nature and can be evaluated by the Director of Public Services rather than the Board of Adjustment.

(b) Applicability

- (1)** The Director of Public Services may grant administrative waivers for any area or dimensional regulation that does not exceed 10 percent of the applicable minimum or maximum regulation. Area and dimensional regulations include, but are not limited to, minimum front, side, and rear yard setbacks; maximum height of structures; maximum sign height; maximum sign area, etc.
- (2)** An administrative waiver may only be requested for applications related to the expansion or alteration of an existing principal or accessory building or structure on a lot where the principal use will be a single-family dwelling. Administrative waivers shall not be considered for the new construction of a building or structure.
- (3)** An administrative waiver for a minimum lot area or lot width requirement is prohibited.
- (4)** The applicant shall be required to apply for a variance for any waiver request that exceeds 10 percent or other variations from the code that do not qualify for administrative waivers.

(c) Administrative Waiver Review Procedure and Decision

- (1)** Administrative waivers shall be reviewed as part of the building permit review.
- (2)** In making a decision on the administrative waiver, the Director of Public Services shall approve, deny, or refer the application to the Board of Adjustment. All granted waivers shall be reported quarterly to the Board of Adjustment.

- (3) In approving an administrative waiver, the Director of Public Services may impose conditions as they may determine are required to ensure compliance with the standards of this administrative waiver section and the purpose of this code. Any conditions established by the Director of Public Services shall relate directly to the requested administrative waiver.
- (d) **Review Criteria for Administrative Waivers**
The review criteria for an administrative waiver shall be the same as an area or dimensional variance as established in Section <>.
- (e) **Time Limits**
An approval of an administrative waiver shall expire if the approval of the building permit expires or if the building permit is revoked.
- (f) **Right to Apply for Variance**
If the Director of Public Services denies the application, the applicant shall have the right to apply for a variance as established in Section <> (Variances).

§ 25-24. Variances.

- (a) **Purpose**
The purpose of a variance is to provide limited relief from the requirements of this code in those cases where strict application of a particular requirement will create a practical difficulty or unnecessary hardship. It is not intended that a variance be granted merely to remove inconveniences or financial burdens that the requirements of this code may impose on property owners in general. Variances are intended to address extraordinary, exceptional, or unique situations that were not caused by the applicant's act or omission.
- (b) **Variance Review Procedure**
The review procedure for a variance shall be conducted as established in this section. A pre-application meeting (See [§ 25-16\(f\)](#).) is encouraged, but not mandatory, prior to submission of the application.
- (1) **Step 1 – Application**
The applicant shall submit an application in accordance with [§ 25-16](#), and with the provisions of this section.
- (2) **Step 2 – Staff Review and Transmission to the Board of Adjustment**
Upon determination that a variance application is complete, the Director of Public Services shall distribute the application and any related reports and documentation to the Board of Adjustment prior to the meeting where the application is to be reviewed.
- (3) **Step 3 – Board of Adjustment Review and Decision**
- (i) Within a reasonable amount of time after the application is determined to be complete, Board of Adjustment shall hold a contested public hearing²⁹ on the variance application.
- (ii) The Board of Adjustment shall review the variance application during a contested public hearing.

²⁹ The term “contested public hearing” has a specific meaning in the court of law and will be defined in this code.

- (iii) Notification of the contested public hearing shall be provided in accordance with [§ 25-16\(j\)](#).
- (iv) In reviewing the application, the Board of Adjustment shall at a minimum, consider all sworn testimony, documents, records, reports, and the reports and opinions transmitted by the Director of Public Services and the review criteria of this section.
- (v) The Board of Adjustment may request that the applicant supply additional information that the Board of Adjustment deems necessary to review and evaluate the request for a variance.
- (vi) In making its decision, the Board of Adjustment may approve, approve with modifications or supplementary conditions, or deny the application.
- (vii) In making its decision, the Board of Adjustment shall make specific findings of fact based directly on the particular evidence presented that the reasons set forth in the application and as presented by the applicant during the public hearing, justify the approval, approval with modifications or supplementary conditions, or denial of the variance application that will make possible a reasonable use of the land, building, or structure.
- (viii) In approving a variance, the Board of Adjustment may impose conditions on the approval, the proposed use, and the premises to be developed or used pursuant to such approval as it determines are required to be ensure compliance with the standards of this section and the purpose of this code. Any conditions established by the Board of Adjustment shall relate directly to the requested variance.
- (ix) Any violation of the conditions of approval shall be a violation of this code, subject to the enforcement and penalties of [Section <>](#).

(c) Review Criteria³⁰

(1) Area or Dimensional Variance

Where an applicant is seeking an area or dimensional variance, the following factors shall be considered and weighed by the Board of Adjustment to determine if a practical difficulty exists that would justify approval of the variance. However, no single factor listed below may control, and not all factors may be applicable in each case. Each case shall be determined on its own facts.

- (i) Whether special conditions and circumstances exist which are peculiar to the land or structure involved and which are not applicable generally to other lands or structures in the same zoning district. Examples of such special conditions or circumstances are exceptional irregularity; narrowness, shallowness or steepness of the lot; or proximity to non-conforming and inharmonious uses, structures or conditions;
- (ii) Whether the variance is not substantial and is the minimum necessary to make possible the reasonable use of the land or structures;
- (iii) Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer substantial detriment as a result of the variance;

³⁰ These are revised criteria based on the City's current criteria and known case law.

- (iv) Whether the variance would adversely affect the delivery of governmental services such as water, sewer, trash pickup;
- (v) Whether the property owner's request can be obviated through some method other than a variance;
- (vi) Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting a variance; and
- (vii) Whether a strict interpretation of the provisions of this code would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this code.

(2) Use Variance

In order to grant a use variance, the Board of Adjustment shall determine that strict compliance with the terms of this code will result in unnecessary hardship to the applicant. The applicant must demonstrate such hardship by clear and convincing evidence that all of the following criteria are satisfied:

- (i) The property cannot be put to any economically viable use under any of the permitted uses in the zoning district in which the property is located;
- (ii) The variance requested stems from a condition which is unique to the property at issue and not ordinarily found in the same zone or district;
- (iii) The hardship condition is not created by actions of the owner not including the purchase or acquisition of the property;
- (iv) The granting of the variance will not adversely affect the rights of adjacent property owners or residents;
- (v) If there is an existing building on the lot, that such building, due to its design, cannot be reasonably reused for a permitted use or special use in the district;
- (vi) The granting of the variance will not adversely affect the public health, safety, convenience, or general welfare;
- (vii) The proposed use to be authorized by the use variance would not constitute a change in the district map, impair an adequate supply of light and air to adjacent property, increase congestion in public streets, increase the danger of fire, materially diminish or impair established property values within the surrounding area, and would not in any other respect impair the public health, safety, convenience, and general welfare of the City;
- (viii) The variance will be consistent with the general spirit and intent of this code; and
- (ix) The variance sought is the minimum that will afford relief to the applicant.

(d) Time Limit

- (1) The applicant shall submit a completed application for a building permit within one year of the date the variance was approved or the approval shall expire unless an alternative schedule was approved by the Board of Adjustment in its approval.
- (2) Any variance granted by the Board of Adjustment that does not require an application for a building permit, is automatically rescinded after one year from the date of the Board of Adjustment's decision if no use of the variance is made within the one-year period.
- (3) The Building Commissioner shall notify the Board of Adjustment of all variances which are rescinded.

- (4) Upon expiration of a variance approval, a new application, including all applicable fees, shall be required before a new variance will be reviewed.

(e) Appeals of the Board of Adjustment Decision (Existing 1110.5)

- (1) Any person or persons jointly or severally aggrieved by any decision of the Board of Adjustment, any neighborhood organization as defined in Section 32.105, RSMo., representing such person or persons, or any officer, department, board or bureau of the City, may present to the circuit court having jurisdiction in St. Louis County, a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality and asking for relief therefrom. Such petition must be presented to the court within 30 days after the filing of the decision in the office of the Board of Adjustment.
- (2) Upon the presentation of such petition, the court may allow a writ of certiorari directed to the Board of Adjustment to review such decision of the Board of Adjustment and shall prescribe therein the time within which a return thereto must be made and served upon the relator's attorney, which shall not be less than 10 days and may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the Board of Adjustment and on due cause shown, grant a restraining order. The Board of Adjustment shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by such writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified. If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take additional evidence or appoint a referee to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which a determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.
- (3) Costs shall not be allowed against the Board of Adjustment unless it shall appear to the court that it acted with gross negligence, or in bad faith, or with malice in making the decision appealed from. All issues in any proceedings under this section shall have preference over all other civil actions and proceedings.

§ 25-25. Appeals.

(a) Purpose

This section sets out the procedures to follow when a person claims to have been aggrieved or affected by an administrative decision made in the administration or enforcement of this code.

(b) Applicability

- (1) An appeal may be made where it is alleged there is an error in any order, requirement, decision, or determination made by the Director of Public Services, or any other administrative official given the authority to make such order, requirement, decision, or determination by this code.
- (2) An appeal may not be made to the Board of Adjustment when the Planning and Zoning Commission is making a recommendation to City Council as part of a legislative action such as a code text or map amendment.

(c) Initiation

The appeals may be taken by any person aggrieved, by any neighborhood organization as defined in Section 32.105, RSMo., or by any officer, department, board or bureau of Kirkwood affected by any order, requirement, decision or determination of the Director of Public Services or any other administrative official given the authority to make a decision as authorized by this code.

(d) Appeals Review Procedure

The review procedure for appeals shall be as follows:

(1) Step 1 – Submission of Appeal

The aggrieved party must file an application to appeal within 30 days of the order, requirement, decision or determination appealed from. The application to appeal must be filed with the Director of Public Services and with the Board of Adjustment specifying the grounds for appeal.

(2) Step 2 – Forwarding of the Record to the Board of Adjustment

Upon receiving the written appeal of an administrative decision or determination, the Director of Public Services or other staff member responsible for maintaining the related records, shall transmit the written appeal with all papers, documents, and other materials related to the appealed decision or determination to the Board of Adjustment. This material shall be included in the record of the appeal.

(3) Step 3 – Board of Adjustment Review and Decision

(i) The Board of Adjustment shall hold a contested public hearing within a reasonable period of time of the filing of the appeal provided adequate notification is provided pursuant to [§ 25-16\(i\)](#).

(ii) Any person affected by the appeal may appear at the contested public hearing and testify under oath, in person, or by attorney or agent and may submit documents and evidence into the record.

(iii) Within a reasonable period of time following the contested public hearing, the Board of Adjustment shall render a decision on the appeal. The Director of Public Services shall notify the appellant in writing of the decision of the Board of Adjustment. An extended timeframe may be authorized if agreed upon by the Board of Adjustment and applicant.

(iv) The decision of the Board of Adjustment shall become effective immediately.

(v) The order, requirement, decision or determination of the Board may be made a part of any building permit ordered to be issued by a decision of the Board.

(e) Review Criteria

A decision or determination shall not be reversed or modified unless there is competent material and substantial evidence in the record that the decision or determination is in error.

(f) Appeals

Appeals of the Board of Adjustment's decision may be made in the same manner as established in [§ 25-24\(e\)](#).

§ 25-26. Minor Subdivision. (Revised B-410 & B-420)³¹

(a) Purpose

The purpose of the minor subdivision process is to allow for small subdivisions of land, consolidation of lots, or transfer of a portion of a lot to an adjacent lot where there will not be the creation of a new street, dedication of right-of-way (unless specifically allowed herein), or a need for any public improvements. It is furthermore the purpose of this section to allow for the administrative approval of condominium plats.

(b) Applicability

- (1)** For the purposes of this code, a minor subdivision includes a lot split, lot consolidation, or transfer of land between adjacent property owners that complies with the following requirements.
 - (i)** The proposed subdivision is located along an existing public street and involves no opening of any new street, or the widening or extension of an existing street, or the installation of any other public improvements;
 - (ii)** The subdivision shall not result in or create more than five lots³² after the original parcel has been completely subdivided, unless otherwise allowed in the B-4 and B-5 Districts as established below;
 - (iii)** The subdivision shall be in compliance with all applicable site development standards in this code or with any approved variance from such standards;
 - (iv)** The subdivision shall not require the dedication of rights-of-way; and
 - (v)** No landlocking of parcels shall occur as a result of the minor subdivision, unless otherwise allowed in the B-4 and B-5 Districts as established below.
- (2)** A minor subdivision process shall be applicable for the creation of condominium plats as defined by Chapter 448, RSMo.
- (3)** Where the City Council has approved a development plan in the B-4 or B-5 Districts that includes the subdivision of land into any number of lots³³ and where the subject development plan includes a cross-easement agreement or other form of agreement, such subdivision of land may be reviewed as a minor subdivision provided that the property remains under the terms and conditions of the development plan.
- (4)** All other forms of land subdivision and/or public improvements shall be subject to the provisions of Section <>.

³¹ We are recommending incorporating a minor subdivision process which allows for the administrative approvals of lot consolidations, boundary adjustments, and limited lot splits where there are no public improvements in line with what is currently allowed under the boundary adjustment and condominium plat language of the existing subdivision regulations.

³² This is a common number of lots to cap a minor subdivision at but can be increased or decreased per the City's recommendations and comfort level.

³³ This provision is within the current code but may be moot if the City allows the five lots discussed previously unless the City believes there will be a development plan with even more lots.

(c) Sale of Land in Subdivisions, Start of Construction, and Permitting (New)

- (1) No owner, or authorized agent, of any land located within a subdivision shall transfer, sell, agree to sell or negotiate to sell any land by reference to, by exhibition of, or by the use of, a plan or plat of a subdivision, nor proceed with any construction work before such plan or plat has been approved and recorded in the manner prescribed in these regulations.
- (2) Any sale or transfer contrary to the provisions of this section is void. The description of such lot or parcel by metes and bounds in the instrument of transfer or other documents used in the process of selling or transferring shall not exempt the transaction from the provisions of these regulations.
- (3) The Director of Public Services shall not issue building permits for any structure or activity on a lot in a subdivision for which a plat has not been approved and recorded in the manner prescribed in these regulations.

(d) Minor Subdivision Review Procedure

The review procedure for a minor subdivision shall be conducted as established in this section.

(1) Step 1 – Application

- (i) The applicant shall submit an application in accordance with Section [§ 25-16](#), and with the provisions of this section.
- (ii) A boundary adjustment shall be accomplished by plat prepared by a surveyor licensed in the State of Missouri and shall include an adequate legal description of the boundaries of the original lots and of the adjusted lots.

(2) Step 2 – Review and Decision by the Director of Public Services and City Clerk

- (i) The Director of Public Services and City Clerk shall review the application and approve, approve with modifications that will bring the application into compliance with codes, or deny the application based on the review criteria established below.
- (ii) If the application is approved with modifications, the applicant shall be required to revise all documents prior to final signing and recording.

(e) Review Criteria

In order to approve a minor subdivision, the Director of Public Services shall determine the following:

- (1) That the application complies with all applicable provisions of this code;
- (2) That the application complies with all other applicable regulations and plans of the City;
- (3) That the Director of Public Services and any other applicable review agencies have no objections that cannot be resolved by the applicant; and
- (4) For condominium plats, such plat shall comply with the requirements of a condominium plat as established by Chapter 448, RSMo.

(f) Recording

After approval, the applicant shall then be responsible for submitting the signed conveyance with the Recorder of Deeds of St. Louis County and returning a copy of said recorded document to the city.

(g) Time Limit³⁴

If the applicant does not record the plat within 90 days of signed approval, the plat approval shall expire. After the plat approval expires, any new minor subdivision will require a new application and related fees in accordance with this code.

(h) Appeals

Any person or entity claiming to be injured or aggrieved by any final action of the Director of Public Services shall have the right to appeal the decision to the Board of Adjustment as established in Section [§ 25-25](#).

§ 25-27. Major Subdivision. (Revised Article V)

(a) Purpose

The purpose of the major subdivision process is to provide a method of review for any subdivision that exceeds the scope of a minor subdivision and which includes multiple lots, the creation or expansion of new streets, and/or the installation of public improvements.

(b) Applicability

Any subdivision of land or replat of an existing subdivision that does not meet the applicability requirements of a minor subdivision in [§ 25-26](#) shall be subject to the requirements of this section and require the submission and approval of a preliminary plat and a final plat.

(c) Sale of Land in Subdivisions, Start of Construction, and Permitting (New)

- (1)** No owner, or authorized agent, of any land located within a subdivision shall transfer, sell, agree to sell or negotiate to sell any land by reference to, by exhibition of, or by the use of, a plan or plat of a subdivision, nor proceed with any construction work before such plan or plat has been approved and recorded in the manner prescribed in these regulations.
- (2)** Any sale or transfer contrary to the provisions of this section is void. The description of such lot or parcel by metes and bounds in the instrument of transfer or other documents used in the process of selling or transferring shall not exempt the transaction from the provisions of these regulations.
- (3)** The Director of Public Services shall not issue building permits for any structure or activity on a lot in a subdivision for which a plat has not been approved and recorded in the manner prescribed in these regulations.

(d) Major Subdivision Review Procedure

The review procedure for a major subdivision shall be conducted as established in this section. A pre-application meeting (See [§ 25-16\(f\)](#).) is encouraged, but not mandatory, prior to submission of the application for any of the required plans.

(1) Step 1 – Sketch Plan Consideration (Optional)

- (i)** Prior to submitting a preliminary plat of a subdivision, a developer may submit a sketch plan to the Director of Public Services.
- (ii)** The submission of a sketch plan shall not require the payment of a fee.

³⁴ We have suggested incorporating a time limit for recording the boundary adjustment or condominium plat before having it expire. This timeline can be adjusted as the City sees fit.

- (iii) The Director of Public Services shall review and evaluate the sketch plan as soon as practical and shall advise the developer of the general observations and feasibilities of the proposed subdivision.
 - (iv) The review shall be subject to the same provisions as a pre-application meeting, as set forth in [§ 25-16\(f\)](#).
- (2) Step 2 – Application and Filing of a Preliminary Plat**

The developer or subdivider shall submit an application and preliminary plat in accordance with [§ 25-16](#), and with the provisions of this section.
- (3) Step 3 – Staff Review and Transmission to the Planning and Zoning Commission**

Upon determination that a preliminary plat application is complete, the Director of Public Services shall distribute the application and any related reports and documentation to the Planning and Zoning Commission prior to the meeting where the application is to be reviewed.
- (4) Step 4 – Review and Recommendation by the Planning and Zoning Commission³⁵**
 - (i) The Planning and Zoning Commission shall review the preliminary plat application at a public meeting.
 - (ii) Notification of the public meeting shall be provided in accordance with [§ 25-16\(i\)](#).
 - (iii) In reviewing the application, the Planning and Zoning Commission shall at a minimum, consider the reports and opinions transmitted by the Director of Public Services and the review criteria for preliminary plats as established in this section.
 - (iv) In its review of an application, the Planning and Zoning Commission may request that the applicant supply additional information that the Planning and Zoning Commission deems necessary to adequately review and evaluate the proposed development.
 - (v) In making its decision, the Planning and Zoning Commission may recommend approval, approval with modifications or supplementary conditions, or denial of the application.
 - (vi) If the Planning and Zoning Commission fails to act within 120 days from the date the application is determined to be complete, or an extended period of time as may be agreed upon by the Planning and Zoning Commission and the applicant, then the application shall move forward to Step 5 with a recommendation of approval.
- (5) Step 5 – Review and Decision by the City Council**
 - (i) Following receipt of the preliminary plat application and recommendation from the Planning and Zoning Commission, the City Council shall hold a public meeting to review the application.

³⁵ There were no deadlines for review in the subdivision so we have proposed mimicking the deadlines set up in the site plan process.

- (ii) Notification of the public meeting shall be provided in accordance with [§ 25-16\(i\)](#).
 - (iii) In reviewing the application, the City Council shall at a minimum, consider the reports and opinions transmitted by the Director of Public Services, the recommendation from the Planning and Zoning Commission, and the review criteria for preliminary plats as established in this section.
 - (iv) In its review of an application, the City Council may request that the applicant supply additional information that the City Council deems necessary to adequately review and evaluate the proposed development.
 - (v) The City Council shall also have the authority to return the application to the Planning and Zoning Commission for further study and report.
 - (vi) In making its decision, the City Council may approve, approve with modifications or supplementary conditions, or deny the application by resolution.
 - (vii) If the preliminary plat is approved by the Council by resolution, the applicant is authorized to proceed with the preparation of the final plat.
- (6) Step 6 – Application and Filing of a Final Plat**
- (i) The developer shall submit an application and final plat in accordance with [§ 25-16](#), and with the provisions of this section.
 - (ii) Improvement plans for public improvements shall be submitted simultaneously with the filing of a final plat.
- (7) Step 7 – Staff Review and Transmission to the Planning and Zoning Commission**
- Upon determination that a final plat application, including the improvement plans, is complete, the Director of Public Services shall distribute the application and any related reports and documentation to the Planning and Zoning Commission prior to the meeting where the application is to be reviewed.
- (8) Step 8 – Review of Improvement Plans and Decision by the Director of Public Services**
- (i) The Director of Public Services shall review the improvement plans and approve, approve with modifications that will bring the plans into compliance with codes³⁶, or deny approval of the improvement plans based on the review criteria established in this section.
 - (ii) If the improvement plans approved with modifications, the applicant shall be required to revise all documents prior to City Council's decision in Step 10.
 - (iii) The decision of the Director of Public Services on the improvement plans shall not guarantee the approval of the final plat or acceptance of any public improvements.

³⁶ The code article on subdivision standards will include a requirement to comply with any construction drawings and manuals the City uses outside of the code related to public improvements. It is common for engineering standards to be maintained outside of the actual zoning and subdivision codes.

(9) Step 9 – Review and Recommendation by the Planning and Zoning Commission³⁷

- (i) The Planning and Zoning Commission shall review the final plat application at a public meeting.
- (ii) Notification of the public meeting shall be provided in accordance with [§ 25-16\(i\)](#).
- (iii) In reviewing the application, the Planning and Zoning Commission shall at a minimum, consider the reports and opinions transmitted by the Director of Public Services and the review criteria for preliminary plats as established in this section.
- (iv) In its review of an application, the Planning and Zoning Commission may request that the applicant supply additional information that the Planning and Zoning Commission deems necessary to adequately review and evaluate the proposed development.
- (v) In making its decision, the Planning and Zoning Commission may recommend approval, approval with modifications or supplementary conditions, or denial of the application.
- (vi) If the Planning and Zoning Commission fails to act within 120 days from the date the application is determined to be complete, or an extended period of time as may be agreed upon by the Planning and Zoning Commission and the applicant, then the application shall move forward to Step 9 with a recommendation of approval.

(10) Step 10 – Review and Decision by the City Council

- (i) Following receipt of the final plat application and recommendation from the Planning and Zoning Commission, the City Council shall hold a public meeting to review the application.
- (ii) Notification of the public meeting shall be provided in accordance with [§ 25-16\(i\)](#).
- (iii) In reviewing the application, the City Council shall at a minimum, consider the reports and opinions transmitted by the Director of Public Services, the recommendation from the Planning and Zoning Commission, and the review criteria for final plats as established in this section.
- (iv) In its review of an application, the City Council may request that the applicant supply additional information that the City Council deems necessary to adequately review and evaluate the proposed development.
- (v) The City Council shall also have the authority to return the application to the Planning and Zoning Commission for further study and report.
- (vi) In making its decision, the City Council may approve, approve with modifications or supplementary conditions, or deny the application by ordinance.
- (vii) Following the approval of the final plat, as so submitted, by the Planning and Zoning Commission, such approval with all supporting data shall be forwarded to the City Council for final approval.

³⁷ There were no deadlines for review in the subdivision so we have proposed mimicking the deadlines set up in the site plan process.

- (viii) Approval of the final plat by the City Council shall be by ordinance and shall be certified on the document to be filed for record over the signature of the City Clerk and the seal of the City of Kirkwood. After the City Council has approved the performance guarantee posted by the subdivider, the final plat, endorsed with the approval of the City Council, together with a certified copy of the ordinance granting such approval, shall be filed for record in the office of the St. Louis County Recorder of Deeds at the sole expense of the subdivider within 90 days of the passage of the ordinance or said ordinance and subdivision plat approval shall become null and void.
- (ix) Within 10 days after the recording of the final plat, the subdivider shall file with the City Clerk one paper print of the recorded plat and one paper copy of the recorded ordinance, all of which shall bear the print of the recorder's stamp thereon.
- (x) No plat of a subdivision in the City of Kirkwood shall be recorded in the St. Louis County's Recorder's Office or have any validity until it has been approved in the manner prescribed in this chapter

(e) Review Criteria (New)

(1) Preliminary Plat Review Criteria

Decisions on preliminary plat applications shall be based on consideration of the following criteria:

- (i) That the subdivision plat complies with all applicable provisions of this code;
- (ii) That the subdivision plat does not conflict with other regulations, the comprehensive plan, or other adopted plans and policies of the City;
- (iii) That applicable review agencies have no objections that cannot be resolved by the applicant;
- (iv) That public facilities, including but not limited to streets, water, electric, sanitary and storm sewers will be adequate to support and service the area of the proposed subdivision, and that definite provision has been made for a water supply system that is sufficient in terms of quantity, dependability, and quality to provide an appropriate supply of water for the type of subdivision proposed;
- (v) That the proposed subdivision will not result in an isolated subdivision of land that leaves undeveloped parcels of land lacking urban services between developed parcels;
- (vi) That the subdivider has allowed sufficient area to meet the requirements for open space, if applicable; and
- (vii) That the subdivider has taken every effort to ensure that the public health, safety, and welfare are perpetuated by the proposed subdivision.

(2) Final Plat Review Criteria

Decisions on final plat applications shall be based on consideration of the following criteria:

- (i) That the final subdivision plat complies with all applicable provisions of this code;

- (ii) That the final subdivision plat, improvement plans, and construction drawings substantially complies with all specific requirements, the purposes, intent and basic objectives of the preliminary subdivision plat, and any commitments made or conditions agreed to with approval of the preliminary plat, and any applicable regulations in this code.
- (iii) That applicable review agencies have no objections that cannot be resolved by the applicant; and
- (iv) That the final subdivision plat is in full compliance with the approved preliminary plat, where applicable.

(3) Improvement Plans Review Criteria

In order to approve improvement plans, the Director of Public Services shall determine the following:

- (i) That the plans comply with all applicable provisions of this code;
- (ii) That the application complies with all other applicable regulations, plans, design manuals, and standard drawings of the City related to public improvements; and
- (iii) That the Director of Public Services and any other applicable review agencies have no objections that cannot be resolved by the applicant.

(f) Amendments of Plats (New)

- (1) No changes, erasures, modifications, or revisions shall be made in any plat of a subdivision after final approval has been given by the Planning and Zoning Commission and City Council unless the plat is first resubmitted and the changes approved by the Planning and Zoning Commission and City Council, or unless otherwise authorized under this section.
- (2) If the applicant finds, in the process of preparing improvement plans, that the approved preliminary plat is not workable and changes in layout are required, the applicant shall inform the Director of Public Services. The Director of Public Services may require that a revised preliminary plat be submitted for re-approval following the review procedure in [§ 25-27\(d\)](#), above if the changes significantly alter the design of the subdivision.
- (3) During the final plat process, the Director of Public Services is authorized to allow minor changes related to the public improvements or design where there is minimal impact to the overall design of the subdivision. This shall not give the Director of Public Services the authority to vary the requirements of this code.
- (4) If during the course of construction, any changes or modifications are encountered that are not in conformance with the original approved improvement plans or construction drawings, the subdivider shall submit the modified improvement plans or construction drawings to the Director of Public Services, who, if in agreement with such modifications, shall affix their signature to these drawings indicating approval of the modifications.

(g) Subdivisions in Flood Hazard Areas (Existing B-540)

- (1) All subdivision applications for areas located within the flood hazard areas as that term is defined in the Code of Ordinances shall be reviewed with respect to the following criteria:
 - (i) The proposed development is consistent with the need to minimize flood damage.

- (ii) Subdivision proposals greater than five acres or 50 lots, whichever is lesser, include regulatory flood elevation data.
 - (iii) Adequate drainage is provided so as to reduce exposure to flood hazards.
 - (iv) All proposed public utilities and facilities are located so as to minimize or eliminate flood damage.
- (2) No subdivision application for areas located within a flood hazard area shall be approved by the City Council without a favorable finding of fact with respect to each criterion set forth in [§ 25-27\(g\)\(1\)](#), above.

(h) Time Limit

- (1) Preliminary approval by the City Council shall confer upon the applicant the following rights for a one-year period from the date of approval:
- (i) That the general terms and conditions under which the preliminary approval was granted will not be changed; and
 - (ii) That the applicant may submit on or before said expiration date the whole or part or parts of said plat for final approval. In the case of a subdivision being developed in stages, the applicant may elect to have final approval delayed for a period not to exceed three years from the date of preliminary approval for the remaining portions of the plat, after submission of one portion within the specified period. Failure to submit the remaining portions for approval in final plat form within the three-year period from the date of preliminary approval will require reprocessing of the application for preliminary approval.
- (2) Where the applicant proposes to subdivide a tract of land in several stages, over a period of years, the preliminary plat shall illustrate the entire subdivision as a whole and include a proposed phasing plan. Such phasing plan shall identify the sections of the subdivision to be developed along with related time frames for completion. If City Council approves such phased plan, the applicant may submit final plat and improvement plans for individual phases of the subdivision in accordance with the approved phasing plan.

(i) Subdivision Modifications

(1) Purpose

The purpose of a subdivision modification is to provide limited relief from standards that apply to the subdivision of land including standards for improvements. Subdivision modifications are intended for those cases where strict application of a particular requirement will create a practical difficulty or extraordinary hardship prohibiting the use of land in a manner otherwise allowed under these regulations. It is not intended that modifications be approved merely to remove inconveniences or financial burdens that the requirements of these regulations may impose on property owners or applicants in general.

(2) Applicability

- (i) If the proposed subdivision requires a deviation from the minimum site development standards (e.g., lot area, lot width, etc.) or other standards identified in Section <>, the applicant will be required to apply for and receive all the necessary variance (See [§ 25-24.](#)) or administrative waiver (See [§ 25-23.](#)) approvals prior to approval of a preliminary plat.

- (ii) If the applicant seeks a modification of standards required by [Article X: Subdivision Design Standards](#), then the request for a modification shall be accomplished through the procedure outlined in this section.

(3) Subdivision Modification Review

- (i) A request for a subdivision modification shall be reviewed as part of the preliminary plat review procedure.
- (ii) The Planning and Zoning Commission and City Council shall review the request and may approve, approve with conditions, or deny the request to modify any or all of the modifications.
- (iii) In approving a modification, the Planning and Zoning Commission and City Council may impose conditions on the approval as it determines are required to ensure compliance with the provisions and purpose of these regulations.
- (iv) If the preliminary plat is denied or if the approval of the preliminary plat expires, so does the approval of the subdivision modification. Any future request for preliminary subdivision plat approval that includes the same modifications shall require a new review and decision on the request for modifications.

(4) Review Criteria

The review criteria for a subdivision modification shall be the same as those for a variance as established in [§ 25-24\(c\)](#).

(j) Appeals

Any person or entity claiming to be injured or aggrieved by any final action of the City Council shall have the right to appeal the decision to the St. Louis County Circuit Court.

§ 25-28. Interpretation of the Code. (New)³⁸

It is the intent of this code that all questions of interpretation related to the administration and enforcement of this code shall be first presented to the Director of Public Services, and that such questions shall be presented to the Board of Adjustment only on appeal from the decision of the Director of Public Services. Such appeals shall be in accordance with [§ 25-25](#).

³⁸ This is new in that it requires a decision to be made before a question of interpretation can be brought to the Board of Adjustment instead of an applicant seeking that interpretation from the Board at will.

Article XIII: Definitions

§ 25-29. Rules of Construction and Interpretation

- (a) Intent**
All provisions, terms, phrases, and expressions contained in this code shall be construed according to this code's stated purpose and intent.
- (b) Lists and Examples**
Unless otherwise specifically indicated, lists of items or examples that use terms such as including, such as, or similar language are intended to provide examples, and not to be exhaustive lists of all possibilities.
- (c) References to Other Regulations, Publications, and Documents**
Whenever reference is made to an ordinance, resolution, statute, regulation, or document, that reference shall be construed as referring to the most recent edition of such regulation (as amended), resolution, statute, or document or to the relevant successor document, unless otherwise expressly stated.
- (d) Public Officials and Agencies**
All public officials, bodies, and agencies to which references are made are those of the City of Kirkwood, Missouri, unless otherwise expressly stated.
- (e) Delegation of Authority**
Whenever a provision appears requiring the head of a department or another officer or employee of the City to perform an act or duty, that provision shall be construed as authorizing the department head or officer to delegate the responsibility to subordinates, unless the terms of the provision specify otherwise.
- (f) Technical Words**
Technical words and phrases not otherwise defined in this code that may have acquired a peculiar and appropriate meaning in law shall be construed and understood according to such meaning.
- (g) Mandatory and Discretionary Terms**
The word "shall" is always mandatory, and the words "may" or "should" are always permissive.
- (h) Conjunctions**
Unless the context clearly suggests the contrary, conjunctions shall be interpreted as follows:

 - (1)** "And" indicates that all connected items, conditions, provisions, or events shall apply.
 - (2)** "Or" indicates that one or more of the connected items, conditions, provisions, or events shall apply.
- (i) Tense and Usage**
Words used in one tense (past, present, or future) include all other tenses, unless the context clearly indicates the contrary. The singular shall include the plural, and the plural shall include the singular.
- (j) Gender**
The masculine shall include the feminine, and vice versa.

(k) Meaning

For the purpose of this code, words and phrases shall have the meanings set forth in this chapter.

(l) Other Terms Not Defined

Words and phrases not otherwise defined in this code shall be construed according to the common and approved usage of American English. For the interpretation of uses, the Director of Public Services may utilize outside sources as specified in Section <> or as defined in Merriam-Webster's or other commonly accepted dictionaries.

§ 25-30. General Definitions