

## **Article I: General Provisions**

### **§ 25-1. Purpose. (Revised B-200)<sup>1</sup>**

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.

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<sup>1</sup> 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. <><sup>2</sup>, 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](#).

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<sup>2</sup> 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)<sup>3</sup>**

- (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.

<sup>3</sup> 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.