

# **ORDINANCE NO. 2003 - 3**

## **ZONING ORDINANCE**

### **CITY OF HAMBURG, ARKANSAS**

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## CHAPTER 1 - AUTHORITY - PURPOSE

### Section 1 - Authority

- A. Act 186 of 1957 of the General Assembly of the State of Arkansas, as amended, empowers the City to enact a zoning ordinance and to provide for its administration, enforcement and amendment.
- B. The City has previously, by Resolution, established a Planning Commission which prepared regulations for zoning the City. Those regulations were adopted as Ordinance 1965-5 and became the City's Zoning Ordinance. That ordinance, as amended, is the City's current zoning ordinance, Ordinance 1965-5.

### Section 2 - Purpose and Findings

- A. The City Council of Hamburg, Arkansas now deems it necessary for the purpose of promoting the health, safety, morals, and general welfare of the City, to enact a new zoning ordinance.
- B. The City Council, pursuant to the provisions of Act 186 of 1957 of the General Assembly, as amended, hereby re-creates and re-establishes the planning Commission, which planning Commission shall consist of five (5) members.
- C. The existing Planning Commission, with the aid of Urban Planning Associates, Inc., a professional planning firm retained by the City to assist in drafting an amendment to the current zoning scheme, has divided the city into districts and, according to the procedures mandated by state law, has prepared a new ordinance pertaining to such districts in accordance with the Comprehensive Development Plan which it has on file at the City Hall.
- D. The provisions of the new ordinance are designed: to lessen congestion in the streets; to secure safety from fire and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; and to facilitate the adequate provisions of transportation, water, sewerage, schools, parks, and other public requirements; to stabilize property values; and to insure orderly development of the community for the general welfare of the citizens.
- E. The provisions of the new ordinance provide for zoning districts of suitable and harmonious uses with the purpose of conserving the value of buildings and encouraging the most appropriate use of land in the city.

## Section 3 - Conformance with plans

The City Planning Commission of Hamburg, Arkansas, having made a comprehensive study of present and future growth of the city and prepared and adopted a land use plan (Comprehensive Development Plan), hereby finds that the provisions of the new zoning ordinance will carry out or protect provisions of that land use plan.

## CHAPTER 2 - DEFINITIONS

- A. For the purposes of this ordinance, certain terms or words used herein shall be interpreted as follows:
- 1) The word shall is mandatory, the word may is permissive.
  - 2) The words used or occupied include the words, intended, designed, or arranged to be used or occupied.
  - 3) The word lot includes the words plot or parcel.
  - 4) The present tense includes the future tense, the singular number includes the plural, and the plural number includes the singular.
- B. For the purposes of this ordinance, the following terms or words are defined as follows:

Accessory Structure. A subordinate structure located on the lot with the principal structure. Where an accessory structure is attached to the principal structure in a substantial manner, as by a roof, such accessory structure shall be considered as a part of the principal structure. An example of an accessory structure for a nonresidential structure would be the education buildings of a church, with the sanctuary being the principal structure.

Accessory Use. A use which is customarily incidental to the principal use, as a garage for the storage of an automobile by an occupant or resident. In buildings restricted to residential use, the office of a professional person or customary family workshops not conducted for compensation shall be deemed an accessory use.

Advertising Sign or Structure. Any cloth, card, paper, metal, glass, wooden, plastic, plaster, stone or other sign, device or structure of any character whatsoever, including a statuary placed for outdoor advertising purposes on the ground or on any tree, wall or bush, rock, post, fence, building or structure. For purposes of this definition, the term "place" shall include erecting, constructing, posting, painting, printing, tacking, mailing, gluing, sticking, carving, or otherwise fastening, affixing, or making visible in any manner whatsoever. Neither directional, warning nor other signs posted by public officials in the course of their public duties nor merchandise or materials being offered for sale shall be construed as

advertising signs for the purpose of this ordinance.

Alley. A narrow public way not in excess of 20 feet which affords a secondary means of access to abutting properties and not intended for general traffic circulation, and which may be used for public utility purposes.

Apartment House. See Dwelling, multiple family

Area. This term refers to the amount of land surface in a lot or parcel.

Area Requirements. The yard, lot area, width of lot, and parking requirements as set forth in a specific district.

Building. See Structure.

Child Care Center. Any place, home, or institution which receives three or more children under the age of 16 years, and not of common parentage, for care apart from their natural parents, legal guardians, or custodians, when received for regular periods of time for compensation. This definition shall not include:

- a. Public and private schools organized, operated, or approved under the laws of this state.
- b. Custody of children fixed by a court of competent jurisdiction.
- c. Children related by blood or marriage within the third degree to the custodial care giver.
- d. Churches or other religious or public institutions caring for children within the institutional building while their parents or legal guardians are attending services or meetings or classes or other church activities.

Commercial Manufactured Home Park. A commercial operation where space is provided by the day, week, or longer periods of time which is used or intended to be used or rented solely for occupancy by manufactured homes.

Convenience Store. Any retail establishment offering for sale prepackaged or prepared foods products, household items, gasoline and other goods commonly associated with the same and having a gross floor area of less than 5,000 square feet.

Coverage. The lot area covered by all buildings located thereon, including the area covered by all overhanging roofs.

Dwelling. Any building or portion thereof, which is designed or used as living quarters for one or more families.

Dwelling, Single-Family. See structure, single family. A detached dwelling designed to be occupied by one family only.

Dwelling, Two-Family. See structure, Two Family. A detached dwelling designed to be occupied by 2 families living independently of each other.

Dwelling, Multiple. See structure, Multi-Family. A detached dwelling designed to be occupied by 3 or more families living independently of each other, exclusive of hotels or motels.

Existing. The established fact of the use of land or structure at time of effect date of this ordinance.

Family. One or more persons occupying premises and living as a single, non-profit housekeeping unit, provided that, unless all members are related by blood or marriage, the number of persons shall not exceed five.

Gasoline Service Station. Any area of land, including structures thereon, that is used for the retail sales of gasoline or oil fuel, or other automobile accessories, and incidental services including facilities for lubricating, hand washing and cleaning, or otherwise servicing automobiles, but not including painting, major repair, or automatic automobile washing or the sale of butane or propane fuels.

Home Occupation. Any occupation carried on solely by the inhabitants of a dwelling which is clearly incidental and secondary to the use of the dwelling for dwelling purposes, which does not change the character thereof, and which is conducted entirely within the main or accessory buildings; provided that no trading in merchandise is carried on and in connection with which there is no display of merchandise or advertising signs other than one non-illuminated name plate not more than 2 square feet in area attached to the main or accessory building. Home occupations shall include repair and service facilities where no noise, glare, smoke, or fumes are produced which would interfere with the quiet use of nearby residential properties.

Livestock. Cloven hoofed animals and equine, excluding hogs and pigs.<sup>1-</sup>

Lot. A portion or parcel of land considered and taxed as one unit, devoted to a certain use or occupied by a building or a group of buildings that are united by a common interest or use, and the customary accessories and open spaces belonging to same.

Lot Area. The total horizontal area included within lot lines.

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<sup>1</sup> The definition of "Livestock" was added by Ordinance 2007-4, enacted April 23, 2007.

Lot, Corner. A lot at the junction of and fronting on two or more intersecting streets.

Lot Coverage. The percentage of the Lot Area that is occupied by the Area of the Structure.

Lot, Depth of. The mean distance between the front lot line and the rear lot line. The greater frontage of a corner lot is its depth and the lesser frontages is its width.

Lot, Interior. Any lot other than a corner lot.

Lot Line. Any boundary of a lot. Any lot line not a rear lot line nor a front line shall be deemed a side lot line.

Lot Line, Front. The street line at the front of a lot. On a corner lot, the owner may specify the front lot line on the plat plan.

Lot Line, Rear. The lot line opposite to the front lot line.

Lot of Record. A lot which is a part of a subdivision recorded in the office of the county recorder or a lot or parcel described by metes and bounds, the description of which has been so recorded.

Lot, Through. A lot extending from one street to another.

Lot, Width of. The mean dimension measured at substantially right angles to the depth of lot.

Manufactured Home. A residential dwelling built in accordance with the Federal Manufactured Home Construction and Safety Standards. Manufactured homes are further classified as either (1) single section, or (2) multi-section.

Manufactured Home Park. Land or property containing a minimum of 3 acres which is used or intended to be used or rented solely for occupancy by owners of manufactured homes.

Manufactured Home Subdivision. A subdivision in which lots are platted to be served by public rights-of-way, designed and intended for sale to individuals who will place manufactured homes on said lots.

Modular Home. A residential dwelling, constructed in a factory to a residential construction code other than the Federal Manufactured Home Construction Safety Standards, which is shown to comply in all respects as to construction and installation with design specifications that are shown to be in compliance with the residential



construction and fire prevention code in effect in the State of Arkansas at the time of construction.

Mobile Home. A residential dwelling that was fabricated in an off-site manufacturing facility, designed to be a permanent residence, and which is not built-in accordance with Federal Manufactured Home Construction and Safety Standards.

Non-conforming. A use or structure or both that existed prior to the adoption of this ordinance but which does not meet the requirements of this ordinance.

Open Space. Any unoccupied space on a lot that is open and unobstructed to the sky and occupied by no structures or portion of structures whatever.

Parking Space. An on-lot space available for the parking of one motor vehicle.

Principal Use. The chief or main recognized use of a structure, of a lot, or of land.

Property Line. The line bounding a lot as defined herein.

Setback. The required minimum horizontal distance between the structure line and the related front, side, or rear property line.

Story. That portion of a structure, other than a basement, included between the surface of any floor and the surface of the floor next above it or, if there is no floor above it, the space between the floor and ceiling next above it.

Story, Half. A partial story under a gable, hip, or gambrel roof, the wall plates of which or at least two opposite exterior walls are not more than four feet above the floor of each story.

Streets. A public way which affords the principal means of access to abutting properties.

Street, Arterial. An interregional road conveying traffic between towns, cities and other urban centers. Efficient movement of traffic is the primary function of arterial roads, hence, private access and frontage should be controlled and limited to high-volume generators of vehicle trips.

Street, Collector. Streets that conduct and distribute traffic between residential streets. Residential frontage along collector streets should be prohibited or severely restricted in new subdivisions.

Structure. Anything constructed or erected with a fixed location on the ground, or attached to something having a fixed location on the ground. Among other things, structures include buildings, fences, billboards, and poster panels, but do not include walks and drives.

Structure, Single Family. A detached residence designed for occupancy by one family only, and having a minimum of 500 square feet of living space.

Structure, Two Family. A detached residence designed for occupancy by only two families living independently of each other, with separate housekeeping and cooking facilities for each.

Structure, Multi-Family. A residence designed for occupancy by three or more families, with separate housekeeping and cooking facilities for each.

Use of Land. The portion of a lot not occupied by a structure shall be considered to be in the same use as is the principal structure located on the lot unless such land is utilized for open storage or agriculture outside of the structure; then the use of land shall be classified according to the nature of its use.

Use Permitted on Review. A use that, owing to some special characteristics attendant to its operation or installation is permitted in a district subject to approval by the Planning Commission, and subject to special requirements, different from those requirements for the district in which the conditional use may be located.

Warehousing. The process of storing in structures merchandise, household goods and/or agricultural products.

Wholesaling. Those operations that are engaged in the business of selling to retailers or jobbers rather than consumers.

Yard. A horizontal distance from a lot line to a parallel designated line. A yard is an open space extending the full distance of the lot.

## CHAPTER 3 - PLANNING COMMISSION

### Section 1. Planning commission created.

(A) The city council hereby re-creates and re-establishes a planning commission of five (5) members, of whom at least two-thirds (2/3) shall not hold any other municipal office or appointment except membership in the board of adjustment or a joint planning agency.

(B) The planning commission is hereby granted the powers necessary to carry out the comprehensive development plan adopted by the city.

### Section 2. Officers of planning commission.

(A) The planning commission shall designate one (1) of its members as chairman and select a vice chairman and such other officers as it may require.

(B) The terms of office of the chairman and other officers of the commission shall be as provided by the rules of the planning commission.

### Section 3. Meetings of Commission.

(A) Regular meeting dates shall be established providing for at least one (1) regular meeting to be held in each quarter of each calendar year.

(B) The commission shall keep a public record of all business, resolutions, transactions, findings, and determinations.

### Section 4. Rules and regulations.

(A) The planning commission shall adopt rules and regulations for the discharge of its duties and the transaction of business.

### Section 5. Compensation of members.

(A) The members of the planning commissions established pursuant to the provisions of this subchapter shall be entitled to receive such compensation, if any, for attendance at commission meetings as may be authorized by an ordinance duly adopted by the governing body of the city.

### Section 6. Appropriations.

(A) In the annual budget, or from time to time as amendments to the budget, the city council may appropriate funds to the planning commission to be used in carrying out its functions.

### Section 7. Purpose of commission.

(A) The general purpose of the planning commission is to:

- (1) Prepare, or have prepared, a plan of the city;
- (2) Receive and make recommendations on public and private proposals for development;
- (3) Prepare and administer planning regulations;
- (4) Prepare and transmit to the city council recommended ordinances implementing plans; and
- (5) Advise and counsel the city council and other public bodies.

### Section 8. Powers and duties of commission.

(A) Generally. The planning commission shall have the duty and function of promoting public interest in, and understanding of, the long-term coordinated municipal planning.

(B) Comprehensive Studies. The commission shall prepare a work program and make comprehensive studies of the present conditions and the probable future growth of the municipality and its neighboring territory.

(C) Planning Area Map. The commission shall prepare and maintain a map showing the general location of streets, public ways, and public property and the boundaries of the area within the territorial jurisdiction for which it will prepare plans, ordinances, and regulations. The map shall be known as the planning area map.

(D) Plans of Area. Following preparation of the planning area map, the planning commission may prepare plans for all, or any portion of, the area encompassed by the map, which may consist of maps, plats, charts, diagrams, and necessary documents and descriptive matter. The plans may include, but shall not be limited to:

- (1) A master street plan;
- (2) A land use plan; and
- (3) A community facilities plan.

(E) Implementation of Plans. In order to promote, regulate, and control development, and to protect the various elements of the plans, the commission, after adoption of appropriate plans as provided, may prepare and transmit to the legislative body such ordinances and regulations as are deemed necessary to carry out the intent of the plans, or of parts thereof.

(F)(1) Referral to Planning Commission. After adoption and filing as provided of a plan, no public way, ground, or open space; public building or structure; publicly or privately owned public utility line or terminal or transportation line or terminal; or public development or redevelopment or renewal project shall be acquired, constructed, or authorized unless such a project, proposal, or development has been submitted to the commission for review, recommendation, and approval as to its conformity with the plan.

(2) The commission's disapproval of a proposal submitted to it may be overruled only by a recorded vote of two-thirds (2/3) of the full membership of the city council.

(3) Failure of the commission to act within sixty (60) days of the submission of the proposal shall be deemed approval unless further time is allowed by the submitting public board, commission, or body.

(G) Referral to Bodies Responsible for Land Acquisition. After adoption and filing as provided of a community facilities plan or a master street plan, no parcel of land indicated by the plan which lies within the bounds of a proposed public use facility or mapped street shall be privately developed until the public board, commission, or body having jurisdiction or financial responsibility for the reserved area shall have refused to execute a written option or to file suit for condemnation to acquire the area. This refusal shall be given by the public board, commission, or body within one (1) year of the date the action is requested by the property owner. This procedure may be enforced for the specified one (1) year period by the refusal to issue building permits or by other methods. However, it may be enforced only in cases where regulations governing the development and subdivision of land do not apply.

(H) Public Improvement Program. The commission may prepare, annually, a program for an appropriate period, recommending a coordinated program of capital expenditures for

public improvements. For the purpose of preparing this program, the commission may request and receive information concerning public improvements from all public officials and public bodies.

(I) Recommendations and Reports. The commission may make recommendations and reports to the public and to public and private agencies.

(J) Surveys. The commission may enter upon land to make examinations and surveys and to maintain necessary monuments and markers thereon.

(K) Funds and Personnel. The commission may receive and spend funds from federal, state, county, municipal, and other public and private sources, may contract with respect thereto, and may hire a staff and contract for consultant services with said funds.

## Section 9. Territorial jurisdiction.

(A)(1)(a) The territorial jurisdiction of the city council, for the purpose of this ordinance, shall be exclusive and shall include all land lying within five (5) miles of the corporate limits.

(B)(1) The planning commission shall designate the area within the territorial jurisdiction for which it will prepare plans, ordinances, and regulations.

(2) A description of the boundaries of the area shall be filed with the city clerk and with the county recorder.

## Section 10. Preparation of plans.

(A) Studies. The planning commission shall undertake suitable studies related to the plans to be prepared. The studies shall be conducted after the completion of the planning area map and prior to the preparation of the plans.

(B)(1) Land Use Plan. The commission may prepare and adopt a land use plan which may include, but shall not be limited to:

(a) The reservation of open spaces;

(b) The preservation of natural and historical features, sites, and monuments;

(c) The existing uses to be retained without change;

(d) The existing uses proposed for change; and

(e) The areas proposed for new development.

(2) The plan may include areas proposed for redevelopment, rehabilitation, renewal, and similar programs.

(C)(1) Community Facilities Plan. The commission may prepare and adopt a community facilities plan indicating the general location and extent of the service areas of, and the future requirements of:

(a) Community facilities such as schools, playgrounds, recreational areas, hospitals, special education facilities, and cultural facilities;

(b) Governmental buildings and areas;

(c) Public and private utility terminals and lines; and

(d) Transportation terminals and lines.

(2) The plan may indicate areas to be reserved for future public acquisition as provided in this subchapter.

(D)(1) Master Street Plan. The commission may prepare and adopt a master street plan which shall designate the general location, characteristics, and functions of streets and highways.

(2)(a) The plan shall include the general locations of streets and highways to be reserved for future public acquisition.

(b) The plan may provide for the removal, relocation, widening, narrowing, vacating, abandonment, and change of use or extension of any public ways.

(E) Other Plans. The commission may prepare and adopt such other plans as are significant to the health, safety, and general welfare of the municipality and its environs.

## Section 11. Plan recommendations.

(A) Following the adoption and filing of any plan, the planning commission may transmit to the city council, for enactment, recommended ordinances and regulations which will carry out or protect the various elements of the plan.

## Section 12. Zoning ordinance.

(A)(1) Following adoption and filing of the land use plan, the commission may prepare for submission to the city council a recommended zoning ordinance for the entire area of the city.

(2) The ordinance shall consist of both a map and a text.

(3) (a) The ordinance may regulate the location, height, bulk, number of stories, and size of buildings; open space; lot coverage; density and distribution of population; and the uses of land, buildings, and structures.

(b) The ordinance may require off-street parking and loading.

(c) The ordinance may provide for districts, of compatible uses, for large scale unified development, for elimination of uses not in conformance with provisions of the ordinance, and for such other matters as are necessary to the health, safety, and general welfare of the municipality.

(d) The ordinance shall include provisions for administration and enforcement.

(e)(i) The ordinance shall designate districts or zones of such shape, size, or characteristics as deemed advisable.

(ii) The regulations imposed within each district or zone shall be uniform throughout the district or zone.

(B)(1) The ordinance shall provide for a board of zoning adjustment, which shall be composed of three (3) members.

(2) The board of zoning adjustment shall have the following functions:

(a) Hear appeals from the decision of the administrative officers in respect to the enforcement and application of the ordinance, and may affirm or reverse, in whole or in part, the decision of the administrative officer;

(b) (i) Hear requests for variances from the literal provisions of the zoning ordinance in instances where strict enforcement of the ordinance would cause undue hardship due to

circumstances unique to the individual property under consideration, and grant such variances only when it is demonstrated that such action will be in keeping with the spirit and intent of the provisions of the ordinance.

(ii) The board shall not permit, as a variance, any use in a zone that is not permitted under the ordinance.

(iii) The board may impose conditions in the granting of a variance to ensure compliance and to protect adjacent property.

(iv) Decisions of the board in respect to the above shall be subject to appeal only to a court of record having jurisdiction.

(3)(a) The board of zoning adjustment shall establish regular meeting dates, adopt rules for the conduct of its business, establish a quorum and procedure, and keep a public record of all findings and decisions.

(b) Each session of the board shall be a public meeting with public notice of the meeting and business to be carried on published in a newspaper of general circulation in the city, at least one (1) time seven (7) days prior to the meeting.

(C) The ordinance shall be observed through denial of the issuance of building permits and use permits.

### Section 13. Regulations to control development of land.

(A)(1) Following adoption and filing of a master street plan, the commission may prepare and shall administer, after approval of the city council, regulations controlling the development of land.

(2) The development of land includes, but is not limited to:

(a) The provision of access to lots and parcels;

(b) The extension or provision of utilities;

(c) The subdividing of land into lots and blocks; and

(d) The parceling of land resulting in the need for access and utilities.

(B)(1) The regulations controlling the development of land may establish or provide for the minimum requirements as to:

(a) Information to be included on the plat filed for record;

(b) The design and layout of the subdivision, including standards for lots and blocks, street rights-of-way, street and utility grades, and other similar items; and

(c) The standards for improvements to be installed by the developer at his own expense such as street grading and paving; curbs, gutters, and sidewalks; water, storm and, sewer mains; street lighting; and other amenities.

(2) (a) The regulations may permit the developer to post a performance bond in lieu of actual installation of required improvements before plat approval.

(b) They may provide for the dedication of all rights-of-way to the public.

(3) (a) The regulations may govern lot or parcel splits, which is the dividing of an existing lot or parcel into two (2) or more lots or parcels.

(b) No deed or other instrument of transfer shall be accepted by the county recorder for record unless the deed or other instrument of transfer is to a lot or parcel platted and on file or accompanied with a plat approved by the commission.

(4) The regulations shall establish the procedure to be followed to secure plat approval by the commission.

(5)(a) The regulations shall require the developer to conform to the plan currently in effect.

(b)(i) The regulations may require the reservation, for future public acquisition of land for community or public facilities indicated in the plan.

(ii) This reservation may extend over a period of not more than one (1) year from the time the public body responsible for the acquisition of reserved land is notified of the developer's intent.

(6) When a proposed subdivision does not provide areas for a community or public facility based on the plans in effect, the regulations may provide for reasonable dedication of land for such public or community facilities, or for a reasonable equivalent contribution in lieu of dedication of land, such contribution to be used for the acquisition of facilities that serve the subdivision.

(C) Within the area within which the city intends to exercise its territorial jurisdiction as indicated on the planning area map, the county recorder shall not accept any plat for record without the approval of the planning commission.

#### Section 14. Setback ordinance.

(A) When a master street plan has been adopted and filed as provided, the city council, upon recommendation of the commission, may enact ordinances establishing setback lines on such streets and highways as are designated by the plan and may prohibit the establishment of any new structure or other improvements within the setback lines.

#### Section 15. Control of road entry.

(A) Following the adoption and filing of a master street plan as provided, the city council, upon recommendation of the commission, may enact ordinances providing for the control of entry into any of the major streets and highways shown in the plan.

#### Section 16. Adoption and amendment procedures.

(A) Any of the recommended ordinances and regulations that may be prepared by the commission shall be adopted or amended only in conformance with procedures specified in Arkansas Code Annotated § 14-56-422, as amended from time to time.

#### Section 17. Enforcement of ordinances and regulations.

(A)(1) Violations of any provision of ordinances and regulations adopted to carry out the intent of plans shall be considered a misdemeanor.

(2) Each day's violation shall be considered a separate offense.



(B)(1) The city council may enjoin any individual or property owner who is in violation of a planning ordinance to prevent or correct the violation.

(2) Any individual aggrieved by a violation of the ordinance may request an injunction against any individual or property owner in violation of the ordinance, or may mandamus any official to enforce the provisions of the ordinance.

## Section 18. Adoption of plans, ordinances, and regulations.

(A) All plans, recommended ordinances, and regulations shall be adopted through the following procedure:

(1)(a) The planning commission shall hold a public hearing on the plans, ordinances, and regulations proposed under this subchapter.

(b) Notice of public hearing shall be published in a newspaper of general circulation in the city, at least one (1) time fifteen (15) days prior to the hearing.

(2) Following the public hearing, proposed plans may be adopted and proposed ordinances and regulations may be recommended as presented, or in modified form, by a majority vote of the entire commission.

(3) Following its adoption of plans and recommendation of ordinances and regulations, the commission shall certify adopted plans or recommended ordinances and regulations to the city council for its adoption.

(4) The city council may return the plans and recommended ordinances and regulations to the commission for further study or recertification or, by a majority vote of the entire membership, may, by ordinance or resolution, adopt the plans and recommended ordinances or regulations submitted by the commission. However, nothing in this subchapter shall be construed to limit the city council's authority to recall the ordinances and resolutions by a vote of a majority of the council.

(5) Following adoption by the city council, the adopted plans, ordinances, and regulations shall be filed in the office of the city clerk. The city clerk shall file, with the county recorder of the counties in which territorial jurisdiction is being exercised such plans, ordinances, and regulations as pertain to the territory beyond the corporate limits.

## Section 19. Change in plans, etc.

(A) After adoption of plans, ordinances, and regulations and proper filing in the offices of city clerk and county recorder, no alteration, amendment, extension, abridgement, or discontinuance of the plans, ordinances, or regulations may be made except in conformance with the procedure prescribed in Arkansas Code Annotated § 14-56-422, as amended from time to time, or by a majority vote of the city council.

## Section 20. Appeals to circuit court.

(A) In addition to any remedy provided by law, appeals from final action taken by the administrative and quasi-judicial agencies concerned in the administration of this Ordinance may be taken to the circuit court of this county where they shall be tried de novo according

to the same procedure which applies to appeals in civil actions from decisions of inferior courts, including the right of trial by jury.

## CHAPTER 4 - ZONING DISTRICTS

### Section 1 - Zoning Map

A. Zoning Map (1) The City is hereby divided into zoning districts as shown on the Official Zoning Map which, together with explanatory information thereon, is hereby adopted by reference and declared to be a part of this Ordinance.

(2) The Official Zoning Map shall be identified by the signature of the Mayor attested by the City Clerk, and bearing the seal of the City under the following words: "This is to certify that this is the Official Zoning Map referred to in Chapter 4 of Ordinance Number 2003-3 of the City of Hamburg, Arkansas" together with the date of adoption of the Ordinance.

(3) The Official Zoning Map shall be maintained in the office of the City Clerk of the City of Hamburg, Arkansas.

### Section 2 - R-1 Single Family Residential

A. General Description This is the most restrictive residential district. The principle use of land is for single-family dwellings and related recreational, religious, and educational facilities normally required to provide an orderly and attractive residential area. These residential areas are intended to be defined and protected from encroachment or uses which are not appropriate to residential environment. Stability of property value, attractiveness, order, and efficiency are encouraged by providing adequate light, air, and open space for dwellings and related facilities and through consideration of the proper functional relationship of the different uses.

(B) Uses Permitted Land and buildings in a R-1, Single-family Residential Zone, shall be used only for the following purposes:

(1) One single-family dwelling per lot.

(2) Public park or playground.

(3) Home occupation, as defined.

(4) Transportation and utility easements, alleys, and rights-of-way.

(5) Accessory buildings which are not a part of the main building, including one private garage; or accessory buildings which are a part of the main building, including one private garage.

(6) A temporary bulletin board or sign, not exceeding 12 sq. ft. in area and pertaining to the lease, hire, or sale of a building or premises, which board or sign shall be removed as soon as the premises are leased, hired, or sold.

(7) Temporary building of the construction industry which is incidental to the erection of buildings permitted in this district, and which shall be removed when construction work is completed.

(8) Parking lot provided to serve the uses permitted in this district, in conformity with the provisions of Chapter 5, Section 6.

C. Use Permitted on Review The following uses may be permitted on review by the Planning Commission in accordance with provisions contained in Chapter 5, Section 8.

- (1) Municipal use, public building, and public utility.
- (2) Plant nursery in which no building or structure is maintained in connection therewith.
- (3) Golf course or country club.
- (4) Churches, but not including missions or revival tents or arbors.
- (5) Public school or school offering general education courses the same as ordinarily given in public schools and having no room regularly used for housing and sleeping.
- (6) A church bulletin board or sign, not exceeding 15 sq. ft. in area, attached to the main building or located behind the front building line on the same lot with a church building.

D. Area Regulations All buildings shall be set back from the street right-of-way and lot lines to comply with the following yard requirements:

- (1) Front yard - 25 feet from property line.
- (2) Side- yard - minimum 10 feet from each property line, except that an open attached carport may be constructed to within 5 feet of one side yard boundary. Unattached buildings of accessory use shall be a minimum of 5 feet from the side lot line.
- (3) Side yard street - 25 feet from all street right-of-way property lines.
- (4) Rear yard - the main building shall be a minimum of 20 feet from property line or center of alley where one exists. Unattached buildings of accessory use may be located in the rear yard of a main building; provided, however, that no accessory building shall be located closer than 10 feet to the rear lot line where no alley exists, and not closer than 3 feet to the rear lot line where an alley exists.
- (5) Lot width - the minimum width of a lot at the front building line shall be 60 feet for single-family dwelling.
- (6) Lot area - a minimum of 7,500 sq. ft. shall be provided for each single-family dwelling unit.
- (7) Any dwelling shall be located on a lot that fronts on a public street.
- (8) Off-street parking space - refer to Chapter 5, Section 6.

F. Height Regulations When the maximum height of a structure exceeds 2 ½ stories or 36 feet, it shall be approved by the Board of Zoning Adjustment pursuant to provisions of Chapter 5 to insure a safe and healthful environment.

### Section 3 - R-2 Single Family Residential

A. General Description This is a residential district designed to provide for medium density development. The principal use of land may range from single family to four-plexes Multi-Family Structures not to exceed four dwellings per lot. Recreational, religious and educational facilities normally required to provide orderly and attractive residential areas are permitted. Stability of the property value, attractiveness, order and efficiency are key objectives in this district.

B. Permitted Uses

- (1) Single Family dwellings.
- (2) Two-Family dwellings.
- (3) Multi-Family dwellings not to exceed four dwellings per lot.
- (4) Churches.

- (5) Parks and playgrounds.
- (6) Public elementary and secondary schools.
- (7) Kindergartens (public or private).
- (8) Hospitals, nursing homes, doctor and dental clinic, or other similar medical facilities.
- (9) Accessory structures not larger than 24 feet by 40 feet and subordinate to the principal land use.

C. Uses Permitted On Review The following uses may be allowed upon review by the Planning Commission in accordance with provisions contained in Chapter 5, Section 7.

(1) Manufactured homes units may be placed in an R-2 District subject to additional requirements as hereinafter set forth.

(a) Manufactured homes shall be connected with the Hamburg sewer system in accordance with existing Ordinances.

(b) Manufactured homes shall be oriented in a manner so as to be consistent with the prevalent orientation in the immediate area.

(c) Roofs shall be sloped.<sup>2</sup>

(d) Manufactured homes shall be set up and anchored in accordance with regulations set forth by the Arkansas Manufactured Home Commission.

(e) Manufactured homes shall have a continuous underpinning with a material approved by the City.

(f) The manufactured home will be the principal structure on the lot.

(g) The manufactured home shall be owned by the occupant and taxed as real property when placed on the owner's property.

(2) Accessory structures larger than 24 feet by 40 feet.

(3) Child Care Centers

(4) Modular homes, as defined in Chapter 2, may be placed in an R-2 District, provided same are installed in compliance with the design specifications for installation, and provided that the number of occupants of any modular home having less than 700 square feet of living space, exclusive of porches and garages, shall be limited to two persons.

D. Lot Area

(1) Single family dwellings: minimum, 7,200 square feet.

(2) Two-family dwellings: minimum 9,000 square feet.

(3) Multi-family dwellings: 9,000 square feet for the first two-family unit, plus 2,000 square feet for each additional dwelling.

E. Yard Requirements

(1) Front yard: 25 feet from property line or 50 feet from center line of existing right-of-way, whichever is greater.

(2) Side yard: minimum 5 feet from each property line.

(3) Side yard street: same as front yard if residence or structure faces side street -- otherwise 15 feet.

(4) Rear yard: minimum of 7 -- feet from property line or center of alley where one exists.

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<sup>2</sup> Ordinance 2003-6, adopted August 25, 2003 amended this section to remove the requirement that roofs be shingled.

F. Width and Depth of Lot

- (1) Minimum width of a lot at the front yard line or building line shall be 60 feet for single family structure and 75 feet for two-family structure. For each additional unit over two, an additional 10 feet shall be added to minimum width requirement for two-family structures.
- (2) Minimum depth of a lot shall be 120 feet.

G. Height When the maximum height of a structure exceeds 2 ½ stories or 36 feet, it shall be approved by the Board of Zoning Adjustment to insure a safe and healthful environment.

H. On-lot Parking Space

- (1) Single family and two-family: in conformity with the provisions of Chapter 5, Section 6.
- (2) Multi-family: in conformity with the provisions of Chapter 5, Section 6 .

I. Places of Public Assembly

- (1) Height Maximum height shall be two stories and not to exceed 36 feet for that portion of the structure utilized for assembly or offices.
- (2) Yard requirements Minimum of 25 feet from all property lines. On property abutting a street, 25 feet from property line or 50 feet from center of street, whichever is greater.
- (3) On-lot parking Places of public assembly shall provide one on-lot parking/space in conformity with the provisions of Chapter 5, Section 6.

J. Manufactured Home Subdivisions

- (1) A manufactured home subdivision may be permitted in a Residential District when it is found by the Planning Commission that said subdivision would constitute appropriate development of the specific site taking into consideration adjacent development and uses.
- (2) The manufactured home subdivision shall be reviewed and approved according to the Subdivision Regulations of the City of Hamburg.

K. Minimum Dwelling Size The minimum size of any dwelling permitted in a Residential District shall be 500 square feet of interior living space.

## Section 4 - R-3 Multi-Family District

A. General Description This district is established in order to provide high density residential development at a density not to exceed a maximum of twenty-four (24) units per acre. No R-3 district shall be less than one acre in area. It is the intent of this section that this district be utilized in both the developed and undeveloped portions of the city. The district shall be restricted to sites abutting collector streets or arterial street where public utilities exist or shall be provided in conjunction with the development. The R-3 District may also act as a buffer between low density residential areas and non-residential development.

B. Permitted Uses

- (1) Multi-family residential structures, including elderly housing, at a density not exceeding twenty-four (24) units per acre.
- (2) Two-family dwellings.
- (3) Bed and Breakfasts.
- (4) Accessory uses, including laundry facilities, normally associated with medium to high density multi-family residential development.

C. Uses Permitted on Review

- (1) Nursing Homes

C. Uses Permitted On Review The following uses may be allowed upon review by the Planning Commission in accordance with provisions contained in Chapter 5, Section 7.

(1) Nursing Homes

(2) Manufactured homes units may be placed in an R-3 District subject to additional requirements as hereinafter set forth.

(a) Manufactured homes shall be connected with the Hamburg sewer system in accordance with existing Ordinances.

(b) Manufactured homes shall be oriented in a manner so as to be consistent with the prevalent orientation in the immediate area.

(c) Roofs shall be sloped.

(d) Manufactured homes shall be set up and anchored in accordance with regulations set forth by the Arkansas Manufactured Home Commission.

(e) Manufactured homes shall have a continuous underpinning with a material approved by the City.

(f) The manufactured home will be the principal structure on the lot.

(g) The manufactured home shall be owned by the occupant and taxed as real property when placed on the owner's property.<sup>1</sup>

(3) Modular homes, as defined in Chapter 2, may be placed in an R-3 District, provided same are installed in compliance with the design specifications for installation, and provided that the number of occupants of any modular home having less than 700 square feet of living space, exclusive of porches and garages, shall be limited to two persons.

D. Height Regulations No building erected in an R-3 District shall exceed a height of thirty-six (36) feet without approval by the Planning Commission.

E. Dimensions

(1) Exterior Yards: All exterior yards or yards which abut dedicated public streets shall have a depth of not less than twenty-five (25) feet.

(2) Interior Yards: All interior yards or yards which abut interior property lines or any lot of record shall have a depth equal to the height of any proposed building or structure.

(3) Detached Building Separation: All detached buildings shall be separated by a distance of not less than ten (10) feet.

(4) Lot Area Per Family: Any multi-family development constructed in an R-3 District shall provide a minimum lot area per family of two thousand four hundred (2,400) square feet if the density is below eighteen (18) units per acre and one thousand eight hundred (1,800) square feet if the density is above eighteen (18) units per acre.

F. Procedure for Approval Any development proposed in an R-3, multi-family district and any request to exceed the height requirements of subsection D above shall be reviewed and approved in the following manner.

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<sup>3</sup> Ordinance 2003-5, adopted August 25, 2003, added subsection(2), allowing manufactured homes in an R-3 district as a use permitted on review.

- (1) If a subdivision of land has occurred as defined in any Subdivision Regulations adopted by the City of Hamburg, a preliminary and final plat shall be filed with the city in accordance with the procedures set forth in the Subdivision Regulations.
- (2) A site plan for the development shall be submitted to the Hamburg Planning Commission for review. The site plan shall contain, at a minimum, the following:
  - (a) Name of the development.
  - (b) Name and address of the owner(s).
  - (c) The boundary of the property including bearings and distance.
  - (d) Street names, class per Master Street Plan, rights-of-way, center lines and easements bordering or transversing the property.
  - (e) Building footprints, sidewalks, curbs, drives, parking, and striping.
  - (f) Exterior lighting quantity, direction and pattern.
  - (g) Proposed curb cuts.
  - (h) Adjoining property owners.
  - (i) Drainage improvements and drainage runoff quantities (in feet per second) with points of entry and exit for the development.
  - (j) Any flood hazard areas on or adjacent to the property.
  - (k) Utility plan and Health Department approval.
  - (l) Green spaces and landscaping.

## Section 5 - C-1 Central Business District - CBD

### A. Permitted Uses

- (1) Retail establishments providing goods and services.
  - (2) Office and bank buildings and uses.
  - (3) Wholesaling and warehousing.
  - (4) Bulk storage of non-combustible materials.
  - (5) Automotive service, repair and storage.
- B. Height Maximum height of a structure shall be three stories and not to exceed 48 feet.
- C. Rear Yard No rear yard is required except on a lot abutting a lot in a Residential District, in which case a rear yard of 25 feet shall be provided.
- D. Loading and Unloading Loading and unloading facilities shall be provided so as not to block any public way.
- E. Places of Public Assembly Places of public assembly shall meet the requirements for places of public assembly in Chapter 3, Section 2.

## Section 6 - C-2 Commercial District

### A. Permitted Uses

- (1) Retail establishments providing goods or services.
- (2) Office buildings.
- (3) Gasoline service stations, including repair and storage.
- (4) Motels.
- (5) Convenience Stores.
- (6) Restaurants and fast-food facilities.

(7) Commercial manufactured home parks.

(8) Child Care Centers<sup>2</sup>

B. Street Yard Requirements Minimum of 25 feet from all street property lines or 50 feet from center line of existing right-of-way, whichever is greater.

C. Height Maximum height of a structure shall be one story and not to exceed 20 feet.

D. On-lot Parking Space

(1) On-lot parking facilities shall be provided all employees.

(2) Provisions shall be made for on-lot and customer parking to handle normal anticipated demand.

(3) Motels, and commercial manufactured home parks shall provide one on-lot parking space for each sleeping unit or manufactured home space.

E. Loading and Unloading Loading and unloading facilities shall be provided so as not to block any public way.

F. Commercial Manufactured Home Park The manufactured home park shall conform to the following requirements:

(1) The park shall be located on a well-drained site, properly graded to insure rapid drainage and freedom from stagnant pools of water.

(2) Manufactured home spaces shall be provided consisting of a minimum of 4,800 square feet for each space which shall be at least 40 feet wide and clearly defined.

(3) Manufactured homes shall be so harbored on each space that there shall be at least a 15-foot clearance between manufactured homes.

(4) All manufactured home spaces shall abut a paved driveway of not less than 27 feet in width, which shall have unobstructed access to a public street.

(5) Each manufactured home space shall be provided water, sewer, and electric service.

(6) All manufactured homes shall be set up and anchored in accordance with the manufacturer's instructions as approved by the Arkansas Manufactured Home Commission.

(7) Mobile homes as herein defined are not permitted to be located within the City of Hamburg.

## Section 7 - C-3 Neighborhood Commercial

A. General Description This district is designed to accommodate limited retail developments within or adjacent to neighborhood areas for the purpose of supplying daily household needs of the residents for food, pharmaceutical supplies, and personal services. Commercial uses within this district should not depend on market areas larger than the neighborhood served. The district may also be used in conjunction with existing commercial developments as an extension of such established commercial district. The C-3 District shall generally be located at arterial or collector street intersections and within walking distance of residential areas. Such developments shall be designed to accommodate between one to five stores on a site not more than one acre in size. Unless

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<sup>4</sup> Ordinance No. 2005-\_\_\_\_\_, adopted June 27, 2005 added subsection (8).



otherwise specifically provided in this section, the following development criteria shall apply to this district:

- (1) Outdoor display is prohibited in any yard.
- (2) There shall be a maximum gross leasable area of 5,000 square feet per establishment, except that a single establishment may have more than 5,000 but not more than 10,000 square feet.
- (3) Off-premise outdoor advertising is prohibited.
- (4) No use shall be a twenty-four hour per day operation.

B. Uses Permitted Property and buildings in the C-3 Neighborhood Commercial District shall be limited to uses similar in nature to the following:

- (1) Grocery store
- (2) Café or restaurant
- (3) Repair shop, provided no noise is emitted that can be heard beyond the property line of the parcel on which the shop is located; no exterior lighting exists which would detract from the neighborhood character of surrounding properties and no cars, machinery, building materials or raw materials are stored on the outside of the premises.
- (4) Offices
- (5) Craft shops
- (6) Buildings, structures, and accessory uses customarily incidental to any of the above uses, provided that there shall be no manufacturing of products other than such as are customarily incidental to retail establishments.
- (7) Any other store or shop for retail trade or for rendering personal, professional, or business service which does not produce more noise, odor, dust, vibration, or traffic than those uses listed above.

C. Area Regulations There shall be a minimum distance of 25 feet from all street property lines, except that islands for gasoline and diesel fuel pumps when situated on a state or federal highway, may be set to within 15 feet from street property line, as provided for and in conformance with Arkansas State law.

D. Height Regulations Any structure that is designed to have a maximum height of greater than 3 stories or 36 feet shall be approved by the Board of Zoning Adjustment.

E. Off-street Parking See Chapter 6. In all cases the forwardmost 25 feet of the front yard shall be maintained as unobstructed open space, and shall not be used for parking unless property control is provided through curb lines, entrances and exits; and in no case will parking be permitted in a manner so as to result in automobiles backing into any street or otherwise interfering with moving traffic.

F. Loading and Unloading Loading and unloading facilities shall be provided so as to prevent obstruction of any public way.

## Section 8 - I -Industrial District

### A. Permitted Uses

- (1) The manufacturing, compounding, processing, packaging, or assembling of such products as prohibited in the Retail-Commercial Use District, when it is found by the Planning Commission that the specific location and the safeguards provided will so reduce

the noise, dust, odor, or vibration as not to be detrimental or dangerous to the health, safety, or general welfare of the people.

(2) Storage of bulk materials as is prohibited in the Retail-Commercial Use District, when it is found by the Planning Commission that the specific location and the safeguards provided will so reduce the danger of fire or explosion as not to be dangerous to the health, safety, or general welfare of the people.

B. Residential Use Prohibited No structure may be constructed or altered for residential use.

C. Area Lot Coverage: No structure may cover more than fifty (50) per cent of the lot area of areas zoned industrial annexed to the city after the effective date of these regulations.

D. Yards

(1) All structures shall be built at least 10 feet from all street property lines.

(2) Where property abuts a railroad where siding facilities are utilized, structures may be built up to the railroad property line.

(3) All structures shall be built at least 25 feet from all property lines of areas zoned industrial annexed to the city after the effective date of these regulations.

E. Height

(1) Maximum height of a structure shall be two stories and not to exceed 30 feet.

(2) The Board of Adjustment may waive the height requirements when it is demonstrated that the equipment and the structure to house the operation require greater height.

F. On-lot Parking Adequate on-lot parking space shall be provided for employees

G. On-lot Loading and Unloading Facilities Each structure or use shall provide on-lot loading and unloading facilities which will not block a street, alley, or other public way.

## CHAPTER 5 - GENERAL REGULATIONS

### Section 1 - Completion of Existing Buildings

A. Nothing herein contained shall require any change in the plans, construction, or designated use of a building actually under construction at the time of the adoption of this ordinance.

B. Nothing herein contained shall require any change in plans, construction or designated use of a building for which a building permit has been issued within 30 days prior to the adoption of these regulations, provided construction is started on said building within 120 days after adoption of this ordinance.

### Section 2 - Annexed Area

A. Territory annexed to the City of Hamburg after adoption of this ordinance shall be given district designations within 90 days after the effective date of annexation in accordance with the amendment procedures of this ordinance.

B. Before official district designation is made after annexation, all requests for building permits shall be referred to the City Planning Commission or a committee thereof. The Planning Commission or its designated committee may recommend issuance of the permit

if said use conforms to the land use plan and the structure meets the requirements of the zone in which it is to be located.

### Section 3 - Lots of Record

Where lots of record exist at the time of the passage of this ordinance the Board of Zoning Adjustment shall make a determination as to the proposed use or development of said lots.

### Section 4 - Areas not to be Diminished

A. No part of a yard, or other open space, or off-street parking or loading space required about or in connection with any building or use for the purpose of complying with this ordinance, shall be included as a part of a yard, open space, or off-street parking or loading space similarly required for any other building or use.

B. No yard or lot existing at the time of passage of this ordinance shall be reduced in dimension or area below the minimum requirements set forth herein. Yards or lots created after the effective date of these regulations shall meet at least the minimum requirements established by this ordinance.

### Section 5 - Home Occupations

A. An occupation may be carried on in a residential structure in any of the residential districts only if the following are complied with:

(1) It does not involve the use of commercial vehicles operating from the residence.

(2) It does not require the use of more than two rooms otherwise normally considered as living space.

(3) It does not require the use of any accessory building or of yard space or an activity outside the main structure not normally associated with residential uses.

(4) It does not have a sign in excess of two square feet to denote the business, occupation or profession, and such sign must be attached to the structure.

(5) It does not involve the external display of goods and services.

(6) The occupation must be carried on only by a member of the family residing in the dwelling unit.

(7) The occupation must be of a nature that does not cater to the day to day needs of the general public, i.e. the merchandising of convenience goods, such as groceries, sundries.

(8) The occupation must comply with all other regulations, ordinances, or statutes in effect.

B. Existing occupations carried on in a residential structure or accessory building in a residential district at the time of the adoption of this ordinance must comply with Section 5A of this Chapter within two years of the date of adoption of this ordinance or said business, occupations, or profession shall be deemed in violation of this ordinance.

### Section 6 - Non-conforming uses

A. Intent

(1) Within the districts established by this ordinance or amendments that may be later adopted, there exist lots, structures, and uses of land and structures which were lawful before this ordinance was passed, but which would be prohibited, regulated, or restricted under the terms of this ordinance.

(2) Such uses are declared to be incompatible with permitted uses in the districts involved.

#### B. Non-conforming Use of Land

(1) Where, at the effective date of this ordinance, a lawful use of land exists that is no longer permissible after the enactment of this ordinance, such use may be continued, so long as it remains otherwise lawful, subject to the following provisions of this Section.

(2) If any such non-conforming use of land ceases for any reason for a period of more than 30 days, any subsequent use of such land shall conform to the regulations for the district in which such land is located.

(3) Any change in use must be to a conforming use.

(4) Where the non-conforming use of land is the keeping of livestock and said livestock is kept temporarily outside the city limits for periods in excess of 30 days and the owner thereof, prior to the expiration of the 30-day period, certifies in a writing delivered to the enforcement officer the owner's intention to return the livestock to the property, the nonconforming use shall not be considered to have ceased.<sup>3</sup>

#### C. Non-conforming Structures

(1) When a lawful structure exists at the effective date of this ordinance that could not be built under the requirements of these regulations by reason of restrictions on area, lot coverage, or other characteristics of the structure or its location on the lot, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions of this Section.

(2) No such structure may be enlarged or altered in a way which increases its non-conformity.

(3) Any structure or portion of a structure declared unsafe by a proper authority may be restored to a safe condition provided only that a non-conforming structure which has been destroyed, by any means, to the extent of more than sixty-six and two-thirds (66 2/3rds) per cent of its replacement value may not be restored in such a manner that would continue its nonconforming status.

#### D. Non-conforming Uses of Structures

(1) If a lawful use of a structure, or of structures and land in combinations, exists at the effective date of this ordinance, that would not be allowed in the district under the requirements of this ordinance, the lawful use may be continued so long as it remains otherwise lawful, subject to the following provisions of this Section.

(2) Any non-conforming use may be extended throughout any parts of a structure which were manifestly arranged or designed for such use at the time of adoption of this ordinance.

(3) If no structural alterations are made, a non-conforming use of a structure, or structure and land, may be changed to another non-conforming use provided that the planning

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<sup>5</sup> Subdivision (4) was added by Ordinance 2007-4, enacted April 23, 2007.

Commission, either by general rule or by making findings in the specific case, shall find that the proposed use is equally appropriate or more appropriate to the district than the existing non-conforming use.

(4) Once changed to a conforming use, the non-conforming use may not thereafter be resumed.

(5) Should a structure containing a non-conforming use be destroyed by any means to an extent of more than 66 2/3 percent of its replacement cost at time of destruction, the owner may request permission of the Board of Adjustment to reconstruct the structure and to continue the non-conforming use. The Board of Adjustment may grant or deny a request to reconstruct such a structure. In granting a request to reconstruct the structure, the Board may require conformance to yard requirements, on-lot parking space, adequate screening from adjacent uses and such other items deemed appropriate to the district in which located.

(6) When a non-conforming use of a structure is discontinued for 12 consecutive months, the structure shall not thereafter be used except in conformance with the regulations of the district in which it is located.

#### E. Repairs and Maintenance

(1) Any building devoted in whole or in part to any non-conforming use may have ordinary repairs, or repair and replacement of non-bearing walls, fixtures, wiring or plumbing, to an extent not to exceed 1- percent of the replacement value of the building in any twelve-month period, provided that the size of the building is not increased.

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

## Section 7 - Off-street Parking and Loading

A. General Intent and Application It is the intent of these requirements that adequate parking and loading facilities be provided off the street easement for each use of land within the City of Hamburg. The requirements are intended to be based on the demand created by each use. These requirements shall apply to all uses in all districts.

B. Location The off-street parking lot shall be located within 200 feet, exclusive of street and alley widths, of the principal use, and shall have direct access to a street or alley.

C. Joint Parking Facilities Whenever two or more uses are located together in a common building, shopping center, or other integrated building complex, the parking requirements may be complied with by providing a permanent parking facility, cooperatively, established and operated, which contains the requisite number of spaces for each use. The total number of spaces provided shall not be less than the sum of the individual requirements.

D. Size of Off-Street Parking Space The size of a parking space for one vehicle shall consist of a rectangular area having dimensions of not less than 9'x 20', plus adequate area for ingress and egress.

E. Amount of Off-street Parking and Loading Required Off-street parking and loading facilities shall be provided in all districts in accordance with the following schedule:

(1) Dwelling, Single-family or Duplex: Two parking spaces for each separate dwelling unit within the structure.

- (2) Dwelling., Multiple-family: The number of spaces provided shall not be less than one and one-half (1 ½) times the number of units in the dwelling.
  - (3) Boarding or Rooming House or Hotel: One (1) parking space for each two (2) guests provided overnight accommodations.
  - (4) Hospitals: One (1) space for each four patient beds, exclusive of bassinets, plus one (1) space for each staff or visiting doctor, plus one (1) space for each three (3) employees including nurses, plus adequate area for the parking of emergency vehicles.
  - (5) Medical or Dental Clinics or Offices: Six (6) spaces per doctor plus one (1) space for each two (2) employees.
  - (6) Sanatoriums, Convalescent or Nursing Homes. One (1) space for each six (6) patient beds plus one (1) space for each staff or visiting doctor plus one (1) space for each two (2) employees including nurses.
  - (7) Community Center, Theater, Auditorium, Church Sanctuary: One (1) parking space for each four (4) seats, based on maximum seating capacity.
  - (8) Convention Hall, Lodge, Club, Library, Museum, Place of Amusement or Recreation: One (1) parking space for each fifty (50) square feet of floor area used for assembly or recreation in the building.
  - (9) Office Building: One (1) parking space for each three hundred (300) square feet of gross floor area in the building, exclusive of the area used for storage, utilities, and building service.
  - (10) Commercial Establishments: One (1) parking space for each one hundred fifty (150) square feet of floor space used for retail trade in the building and including all areas used by the public.
  - (11) Industrial Establishments: Adequate area to park all employees and customers vehicles at all times and adequate space for loading, unloading and storing all vehicles used incidental to or as a part of the primary operation of the establishment.
- For all uses not covered in 1 through 11 above, the Planning Commission shall make a determination of the parking demand to be created by the proposed use, and the amount of parking thus determined shall be the off-street parking requirement for the permitted use.
- F. Paved Surface Required All parking spaces shall be paved with a sealed surface pavement and maintained in such a manner that no dust will result from the continued use.

## Section 8 - Uses Permitted on Review

A. Description Certain uses may or may not be appropriately located within various districts throughout the City of Hamburg due to their unusual or unique characteristics of operation and external effects. Given their unusual character, special consideration must be given each application so as to provide for such reasonable conditions and protective restrictions as are deemed necessary to protect the character and integrity of the area in which uses are proposed to be located. The uses listed under the various districts herein as "Uses Permitted on Review" are so classified because they more intensely dominate the area in which they are located than do other uses permitted in the district; however, the nature of such uses makes it desirable that they be permitted to locate therein.

B. Uses Restricted to Specific Districts Uses which are listed in various districts as “Uses Permitted on Review” may be located only in the district or districts so designated and in accordance with the procedure described in this section.

C. Uses Permitted in Any District The following special uses may be authorized in accordance with the procedure described in this section:

- (1) Cemetery or mausoleum
- (2) Greenhouse or nursery
- (3) Hospital or sanatorium
- (4) Landing field or strip for aircraft
- (5) Radio tower or broadcasting station
- (6) Removal of gravel, topsoil or similar natural material
- (7) Public utility structure
- (8) Keeping of livestock, other than pigs, provided:
  - A. No such livestock shall be kept within ten feet of the property line, except that said animal may be kept within ten feet of property occupied by the owner of the animal;
  - B. All horses shall have a current negative Coggins test and the certificate thereof shall be made available to the enforcement officer within 24 hours of a request therefor;
  - C. All livestock shall be kept under fence suitable and so maintained as to prevent escape;
  - D. The pen must have adequate shelter for animals to enter into and get away from the elements;
  - E. The pen must be kept clean of all unwholesome matter, i.e., feces, and other forms of discharge;
  - F. The pen must be kept sanitized on a regular basis to keep down germs, bacteria, and flies; and,
  - G. Upon the enforcement officer finding that any of conditions (a) through (f) are not met, the issuance of a permit previously notwithstanding, the permit for keeping of livestock shall be revoked and the penalties for violation of this ordinance shall apply from and after ten days after the date written notice of revocation is mailed to the permittee at the address shown on the permit application.”<sup>4</sup>

D. Procedure for Authorization The following procedure is established to integrate the special permit uses with other land uses located in the various zoning districts. These uses shall be reviewed and authorized or rejected under the following procedure:

- (1) A written application shall be filed with the City Planning commission for review. However, before the application can be considered and acted upon, (a) there must be attached to the application or filed separately in support of the application, a survey prepared by a registered land surveyor or a drawing drawn to scale, which survey or scale

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<sup>6</sup> Subdivision (8) was added by Ordinance 2007-4, enacted April 23, 2007.

drawing, at a minimum, clearly reflect the location and intended use of the site and existing land uses within 200 feet and any other material or information pertinent to the request which the Planning Commission may require and (b) the applicant must have tendered the requisite publication fee as set forth in Chapter 5, Section 7, subchapter E.

(2) The City Planning Commission shall hold a public hearing on the application. Before conducting the public hearing, the planning commission shall cause a notice of the public hearing to be published in a legal newspaper having a general circulation in the City of Hamburg, which notice shall appear in the legal newspaper at least fifteen (15) days prior to the date of the hearing. The notice shall at a minimum contain the date, time and place of such hearing and shall state generally the purpose for the hearing in such a manner that the general public is placed on fair notice of the subject matter of the hearing. The notice shall also give the particular location of the property, the current zoning and use of the particular location for which the change is sought and the type of use for which the permit is requested. Additionally, the petitioner shall post on the property in a conspicuous location a sign provided by the Enforcement officer which shall notify the general public of the proposed use and the public hearing date, time and place.

(3) In considering an application for a Use Permitted on Review Permit, the Planning Commission shall give due regard to the nature and condition of all adjacent uses and structures. The Planning Commission may deny an application for a Use Permitted on Review Permit, or, in granting such a permit, may impose such requirements and conditions with respect to location, construction, maintenance and operations as it may deem necessary for the protection of adjacent properties and the public interest.

(4) The written decision of the Planning Commission giving the reasons for the approval or disapproval of the application shall be filed with the City Clerk within fifteen (15) days from the date of the hearing on the application and, in addition, the City Clerk shall also mail a copy of the decision to the applicant and to any other person or entity who, within that fifteen (15) day time period, has filed with the Clerk a written request for a copy of the commission's decision.

(5) The determination of the Planning Commission, whether favorable to the applicant or not, may be appealed to the City Council by the applicant or any citizen of the City of Hamburg who may be aggrieved by the Commission's decision. The appeal shall be made only by filing with the City Clerk, within fifteen (15) days from the date the commission's decision was filed with the City Clerk, a written statement which, at a minimum, provides (a) the name and address of the person or entity making the appeal; (b) the fact that an appeal is being made and that the appellant disagrees with the commission's decision and (c) the specific reasons why the appellant considers the commission's decision to be in error. The Commission's approval or disapproval of the application may be sustained or overturned by a recorded vote of two-thirds (2/3rds) of the full membership of the city council.

E. Fees Before any action shall be taken on an application filed as provided in this section, the petitioner shall deposit with the City Clerk the sum of one hundred (\$100.00) to cover the approximate cost of the publication of the requisite notice. This fee is non-refundable regardless of the outcome of the action.



## Section 9 - Visibility

On a lot in any district, nothing shall be erected, placed, parked for longer than necessary for loading and unloading, parked for longer than necessary for refueling, parked for longer than necessary for the occupants thereof to patronize a business on the lot, or allowed to grow in a way that prevents vision of the roadway between a height of two feet and ten feet within 40 feet of the centerline of a four-lane street abutting the lot.<sup>5</sup>

## CHAPTER 6 - BOARD OF ZONING ADJUSTMENT

### Section 1 - Organization

- A. A Board of Zoning Adjustment is hereby established to consist of the Planning Commission as a whole.
- B. Three members of the Board must be present in order to take formal action on any application submitted to it.<sup>6</sup>

### Section 2 - Meetings

Meetings of the Board shall be held at such time and at such place within the City of Hamburg as the Board may designate, and may meet at any time on call of the chairman or on request of two members. The Board shall keep minutes of its proceedings. The minutes of the meeting shall be filed by the secretary of the Board in the office of the city clerk and shall be public record.

### Section 3 - Appeals from Decisions of Enforcement Officer

The Board shall hear appeals from an administrative decision of the enforcement officer, such appeals to be concerned with the interpretation of these regulations, and to determine whether such interpretation of the enforcement officer was in error or not.

### Section 4 - Variance

- A. The Board shall hear requests for variances from the stated provisions of this ordinance in instances where strict compliance with the provisions would cause undue hardship, due to the circumstances unique to the individual property under consideration.

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<sup>7</sup> Section 9 pertaining to Visibility was added by Ordinance 2014-5, adopted April 28, 2014.

<sup>8</sup> Ordinance 2005-5, adopted November 28, 2005 established the Planning Commission as a whole to sit as Board of Zoning Adjustment.

B. The Board may grant variances only when it is demonstrated that such action will be in keeping with the spirit and intent of this ordinance.

C. The Board shall not permit as a variance any use in a zoning district that is not permitted under the provisions of this ordinance and in conformance with *Arkansas Code Annotated* §14-56-416, as amended.

D. The Board may impose conditions in the granting of the variance to ensure compliance and to protect adjacent property.

## Section 5 - Other Functions of Board

The Board may hear applications and take such action as permitted on matters specifically referred to it under other sections of this ordinance.

## Section 6 - Appeals from Decisions of the Board

Appeal from the decision of the Board shall be to a court of competent jurisdiction within 30 days from the decision of the Board in accordance with *Arkansas Code Annotated* §14-56-416, as amended.

## Section 7 - Notice of Public Hearing

A. Whenever an appeal, application for a variance or any application is made to the Board, the Board shall cause to have published at the expense of the appellant or applicant a notice of the time and place of the public hearing upon such appeal or application, which notice shall be published at least once not less than seven (7) days preceding the date of such hearing in an official paper or a paper of general circulation in Hamburg, said notice to designate the particular location with which the appeal or application is concerned, and a brief statement as to what the appeal or application consists of. The Board shall also give or cause to be given such additional notice of such hearing to interested persons and organizations as it shall deem feasible and practicable.

B. The appellant or applicant shall be required to pay to the City Clerk a non-refundable filing fee of one hundred dollars (\$100.00) to cover such costs as may be incurred in connection with such appeal or application.

# CHAPTER 7 - AMENDMENTS TO ZONING REGULATIONS

## Section 1 - Amendment to Text

A. The City Council may recommend to the Planning Commission amendments to the text of this ordinance, or the Planning Commission may on its own motion initiate amendments.

B. Proposed amendments to the text shall be advertised in a paper of general circulation at least fifteen (15) days in advance of a public hearing to be conducted by the Planning Commission. After the public hearing, the Planning Commission shall make a report and recommendation to the City Council pertaining to the proposed amendment. The City

Council's action on the report and recommendation shall be final.

## Section 2 - Change in Zone Classification

A. Any other person or entity, other than the City Council or Planning Commission, who desires a change in zoning classification shall follow the procedures outlined in this Section.

(1) A written application, giving the legal description of the property involved and clearly explaining the proposed changes and the new zoning classification requested for the property, shall be filed with the City Planning commission for review. However, before the application can be considered and acted upon, (a) there must be attached to the application or filed separately in support of the application, a survey prepared by a registered land surveyor or a drawing drawn to scale, which survey or scale drawing, at a minimum, clearly reflect the location and intended use of the site and existing land uses within 200 feet and any other material or information pertinent to the request which the Planning Commission may require and (b) the applicant must have tendered the requisite publication fee as set forth in Chapter 7, Section 2, subchapter C.

B. Upon receipt of the petition for a change in zoning classification, the Planning Commission, in accordance with *Arkansas Code Annotated* § 14-56-416 as subsequently amended, shall proceed as follows:

(1) The City Planning Commission shall hold a public hearing on the application. Before conducting the public hearing, the planning commission shall cause a notice of the public hearing to be published in a legal newspaper having a general circulation in the City of Hamburg, which notice shall appear in the legal newspaper at least fifteen (15) days prior to the date of the hearing. The notice shall at a minimum contain the date, time and place of such hearing and shall state generally the purpose for the hearing in such a manner that the general public is placed on fair notice of the subject matter of the hearing. The notice shall also give the particular location of the property, the current zoning and use of the particular location for which the change is sought and the zoning classification change requested and the type of use for which the application is requested. Additionally, the petitioner shall post on the property in a conspicuous location a sign provided by the Enforcement officer which shall notify the general public of the proposed change in zoning classification, the use to be made of the property if the change in zoning classification is allowed and the date, time and place of the public hearing on the application.

(2) In considering an application for a change in zoning classification, the Planning Commission shall give due regard to the nature and condition of all adjacent zones, uses and structures.

(3) Following the public hearing, the proposed change in zoning classification may be approved as presented or in modified form by a majority vote of the entire planning commission and recommended for adoption by the City Council, with the reasons for such recommendation stated in writing. The written decision of the Planning Commission giving the reasons for the approval or disapproval of the application and shall be filed with the City Clerk within fifteen (15) days from the date of the hearing on the application and, in addition, the City Clerk shall also mail a copy of the decision to the applicant and to any other person or entity who, within that fifteen (15) day time period, has filed with the Clerk a written request for a copy of the commission's decision.

(4) The determination of the Planning Commission, whether favorable to the applicant or not, may be appealed to the City Council by the applicant or any citizen of the City of Hamburg who may be aggrieved by the Commission's decision. The appeal shall be made only by filing with the City Clerk, within fifteen (15) days from the date the commission's decision was filed with the City Clerk, a written statement which, at a minimum, provides (a) the name and address of the person or entity making the appeal; (b) the fact that an appeal is being made and that the appellant disagrees with the commission's decision and (c) the specific reasons why the appellant considers the commission's decision to be in error.

(5) The City Council, by majority vote of the entire Council, may by ordinance adopt the recommended amendment submitted by the Planning Commission or may return the proposed change in zoning classification to the Planning Commission for further study and recommendation or may decline to follow the recommendation of the planning commission. If the City Council does not concur with the recommendation of the Planning Commission, either as first submitted or as submitted after re-study, the City Council may, by a majority vote, amend these regulations by granting the request for the proposed change in zoning classification in full or in modified form or may decline to make the proposed change.

C. Fees Before any action shall be taken on an application filed as provided in this section, the petitioner shall deposit with the City Clerk the sum of one hundred (\$100.00) to cover the approximate cost of the publication of the requisite notice. This fee is non-refundable regardless of the outcome of the action.

## CHAPTER 8 - DESIGNATION OF ENFORCEMENT OFFICER - - BUILDING PERMITS - -PENALTY FOR VIOLATION

### Section 1 - Enforcement

A. The provisions of this ordinance shall be administered by an enforcement officer as designated herein by the City Council.

B. The person holding the position of Public Works Director is hereby designated as the enforcement officer and shall assume the duties of enforcement of the provisions of this ordinance.

C. In the event the position of Public Works Director is vacant so that there is no person to act as enforcement officer under Section 1 B. of this subchapter, then during all such times as the position of Public Works Director is vacant the Mayor is designated as the enforcement officer and shall enforce the terms of this ordinance.

### Section 2 - Building Permits

A building permit will be issued only when the application has been approved by the enforcement officer as meeting requirements of these regulations. All applications for building permits shall be accompanied by a plan in duplicate, drawn to scale, showing the actual dimensions of the lot to be built upon, the size of the building to be erected, and its location on the lot, and such other information as may be necessary to provide for the

enforcement of these regulations. A record of such application and plats shall be kept in the office of the City Clerk and submitted to the Planning Commission at the next regular meeting for review.

### Section 3 - Penalty for Violation

Any person or corporation who shall violate any of these regulations or fail to comply therewith or with any of the requirements thereof, or who shall build or alter any building in violation of any detailed statement or plan submitted and approved hereunder, shall be guilty of a misdemeanor and shall be liable to a fine of not more than one hundred dollars (\$100.00). Each day such violation is permitted to exist shall constitute a separate offense. The owner or owners of any building or premises or part thereof where anything in violation of these regulations shall be placed, or shall exist, and any architect, builder, contractor, agent, person, or corporation employed in connection therewith and who may have assisted in the Commission of any such violation, shall be guilty of a separate offense and upon conviction thereof shall be fined as hereinbefore provided.

## CHAPTER 9 - EMERGENCY CLAUSE

It is hereby found by the City Council of the City of Hamburg, Arkansas, that due to the problems previously involved with the interpretation and enforcement of the existing zoning ordinance, an emergency is declared to exist and this Ordinance being necessary for the preservation of the public peace, health and safety, this Ordinance shall be in full force and effect immediately after its passage.

Adopted this 24th day of March, 2003.  
Amended August 25, 2003.  
Amended October 27, 2003  
Amended June 27, 2005  
Amended November 28, 2005  
Amended April 23, 2007  
Amended September 27, 2010  
Amended April 28, 2014

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GORDON HENNINGTON- MAYOR

ATTEST:

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PEGGY AKERS - CITY CLERK