

**TOWN OF KIRKWOOD
ZONING LOCAL LAW**

**ARTICLE V
SUPPLEMENTARY STANDARDS**

SECTION 501 Performance Standards

- A. Land uses in all districts shall operate within the limits specified as follows as safe guards and conditions for the protection of the community welfare.
- B. Standard methods of collection, measure and chemical analysis, or any method approved by the United States Bureau of Standards, shall be used in the application of these standards.

SECTION 501.1 Noise

A. Measurement of Noise

- 1. The measurement of noise or sound shall be made by the town enforcement officer or his designee with a sound level meter meeting the standards prescribed by the American National Standards Institute S1.4.
- 2. Except where otherwise prescribed, the slow meter response of the sound level meter shall be used in order to determine that the average of three readings taken over a 15-minute period does not exceed the limiting sound levels set forth in this section.
- 3. Measurement of noise levels shall be made at the prescribed locations and shall be taken at least four (4) feet from ground level.
- 4. Compliance with noise limits is to be maintained at all elevations at the boundary of the property.
- 5. For any source of sound which emits a pure tone or impulsive sound, the maximum sound level limits set forth in subparagraph B shall be reduced by five dBA.

B. Maximum Permissible Sound Levels by Receiving Land Use

No person shall operate or cause to be operated on private property any source of sound in such a manner as to create a sound level which exceeds the limits set forth for the receiving land use category below when measured at or within the property boundary of the receiving land use.

Receiving Land Use District	Time of Day	Sound Level Limit, dBA
Agricultural/Rural Residence (A/R-R) Residence (R) Residence (R-1) Residence Multi (R-M) Planned Mobile Home Planned Development – Residential	{ 7:00a.m. -9:00p.m. 9:00p.m. -7:00a.m.	60 50
Business One (B-1) Business Two (B-2) Planned Development - Business and Commercial Industrial Development Planned Development - Industrial	} All hours	60

C. Exemptions

The provisions of subparagraph B shall not apply to:

- 1. The use of bells, chimes or sound amplifiers by churches engaged in church activities.

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2. Activities of the Town or Volunteer Fire Companies in the performance of their duties, drills or public demonstrations.
3. Activities in public parks, playgrounds or public buildings under permission or authority of the Town.
4. Motor vehicles and motorcycles operating off public rights-of-way pursuant to permission or authority of the Town.
5. Refuse collecting vehicles as regulated pursuant to subparagraph D5.
6. Recreational motorized vehicles operating off public rights-of-way as regulated pursuant -to subparagraph D4.
7. The use of snow blowers, lawn mowers and domestic power tools.
8. Electrical distribution transformers.

D. Specific Prohibition

Without limiting the general applicability of subparagraph B, the following acts are further regulated as herein provided:

1. Sound Trucks

- a. A sound truck as referred to herein shall mean a motor vehicle or trailer containing sound amplification equipment capable of generating a sound level reading of 65 dBA or more measured at a distance of 50 feet from the source.
- b. Sound trucks may be operated in accordance with the following regulations upon the issuance of a permit by the Town Zoning Board of Appeals for each occasion and each location:
 - i. Sound trucks shall not be operated in the Town before 9:00 a.m. and after 9:00 p.m.
 - ii. Moving sound trucks shall keep to the extreme right hand side of the road and shall proceed at a speed of not less than ten miles per hour.
 - iii. Stationary sound trucks are prohibited in all R, RI, R-R, R-M, Planned Mobile Home and Planned Development-Residential Districts in the Town, but may be operated in all other zoning districts during the hours referred to above.

2. Noise Sensitive Zones: Schools, Courts, Churches, Hospitals, Nursing Homes, etc.

The creation of excessive noise on a street adjacent to a school, institution of learning, church or court while in use or adjacent to a hospital or nursing home, which unreasonably interferes with the working of the institution or which disturbs or unduly annoys patients in the hospital or nursing home, is prohibited provided that conspicuous signs are displayed in such a street indicating that it is a school, hospital, church or court street.

3. Motor Vehicles and Motorcycles Operating Off Public Rights-of-Way

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No person shall operate or cause to be operated a motor vehicle or motorcycle off a public right-of-way at any time and in such a manner that the sound level emitted by the motor vehicle or motorcycle exceeds the following levels measured at 50 feet or 15 meters:

Maximum Sound Level in dBA

Vehicle Class	Speed Limit 35 MPH or less	Speed Limit Over 35 MPH	Stationary Runup
Motor Carrier Vehicle engaged in interstate commerce of GVWR or GCWR of 10,000 lbs. or more	86	90	88
All other motor vehicles of GVWR or GCWR of 10,000 lbs. or more	82	86	
Any motorcycle	82	86	
Any other motor vehicle or any combination of vehicles towed by any motor vehicle	76	80	

4. Recreational Motorized Vehicles Operating Off Public Rights-of-Way

- a. Except as permitted in subsection D4c below, no person shall operate or cause to be operated any recreational motorized vehicle off a public right-of-way in such a manner that the sound level emitted therefrom exceeds the following limits at a distance of 50 feet (15 meters) or more from the path of said vehicle.
- b. This section shall apply to all recreational motorized vehicles, whether or not duly licensed and registered, including, but not limited to, commercial or non-commercial racing vehicles, go-carts, snowmobiles, amphibious craft, campers and dune buggies, but not including motorboats.
- c. Permits for motor vehicle racing events may be obtained from the Town according to appropriate procedures.

Vehicle Type	Sound Level, dBA
Snowmobile	75
Any Other Vehicle	82

5. Refuse Collection Vehicles

No person shall:

- a Operate or permit the operation of the compacting mechanism of any motor vehicle which compacts refuse and which creates, during the compacting cycle, a sound level in excess of 80 dBA when measured at 23 feet (7 meters) from any point on the vehicle; or

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b. Collect refuse with a refuse collection vehicle between the hours of 9:00 p.m. and 6:00 am. the following day in an R, R-1, R-R, R-M, Planned Mobile Home and Planned Development-Residential Districts or noise sensitive zone as defined in subparagraph 2 of this subparagraph D.

6. Standing Motor Vehicles

No person shall operate or permit the operation of any motor vehicle with a gross vehicle weight rating (GVWR) in excess of ten thousand (10,000) pounds, or any auxiliary equipment attached or intended to be attached to such a vehicle, while the vehicle is stationary, for reasons other than traffic congestion or emergency, loading or unloading in R, R-1, A/R-R, R-M, B-1, B-2, Planned Mobile Home and Planned Development - Residential Districts or noise sensitive zone as defined in subparagraph 2 of this subparagraph D, or within 150 feet (46 meters) of such districts or noise sensitive zone, except farm machinery being operated in a A/R-R District or at a truck stop facility in a B-2 District after site plan review.

7. Tampering

The moving or rendering inaccurate or inoperative of any sound monitoring instrument or device positioned by the Town or its designated employee or agent is prohibited, provided such device or the immediate area is clearly labeled to warn of the potential illegality of such tampering.

SECTION 501.2 Odor

It shall be unlawful for any person to permit the emission of any odor that is unreasonably offensive as measured at the individual property lines. Nothing in this section shall be construed to prevent ordinarily accepted farm practices in a A/R-R District.

SECTION 501.3 Dust and Dirt

It shall be unlawful for any person to permit or cause the escape of such quantities of soot, cinders or fly ash as to exceed 0.3 grains per cubic foot of flue gasses at a stack temperature of 500 degrees F. when measured at the top of the stack. Other kinds of dust, dirt and other particulate matter shall not be in excess of 0.3 grains per cubic foot of air as measured at the top of the stack and corrected to standard conditions, provided that if the top of the stack is 100 feet or more above the finished grade, the amount of particles of not more than 10 microns in size, if any, may be increased to an amount not in excess of 0.03 (H/1002) grains per cubic foot, corrected to standard conditions, where H is the height of the top of the stack above the finished grade.

SECTION 501.4 Parking

Each land user must provide sufficient suitable on site parking spaces to prevent any necessity for off site parking as required by this Local Law.

SECTION 501.5 Vibration

It shall be unlawful to cause any vibration which is discernable without instruments on any adjoining lot or property. Nothing in this section shall be construed to prevent ordinary construction practices.

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SECTION 501.6 Toxic Emissions

A. No business or industry shall emit toxic gases or vapors. Toxic substances shall be:

1. Those defined as those named in Documentation of Threshold Limit Values by the American Conference of Government Industrial Hygienists and the latest printed edition of the "Registry of Toxic Effects of Chemical Substances" issued by the National Institute of Occupational Safety and Health and as may be hereinafter amended, and
2. All chlorinated or brominated dibenzo-para-dioxins, dibenzofurans, biphenyls, and all polycyclic aromatic hydrocarbons.

B. Any state or municipal law enforcement officer or the town clerk or any member of the town board or any of its duly authorized representatives shall be granted access to the area of the activity or business or industry at all reasonable hours to inspect the same for compliance herewith.

SECTION 501.7 Glare

It shall be unlawful to produce intense glare or flashing of lights **except** within a completely enclosed building in such manner that no discomfort glare shall be disseminated beyond the building. No sky reflected or indirect glare shall be permitted, if any operation is to be conducted in any area outside of a building except where required for safety purposes.

SECTION 501 .8 Radio-Active Materials

It shall be unlawful for any person to permit the emission of such quantities of radio-active materials, in any nature whatsoever, as to be unsafe under standards established by the United States Bureau of Standards.

SECTION 501 .9 Fire and Safety Hazards

All buildings, operations, storage, waste disposal, etc., shall be in accordance with applicable provisions of the latest published edition of the Uniform Fire Prevention & Building Code of New York State.

SECTION 501.10 Open Storage

It shall be unlawful for any persons to permit the open storage of any material, scrap or waste without screening, such as a fence, hedge, or other barrier at least eight (8) feet high in accordance with the Uniform Fire Prevention & Building Code of New York State, that makes the open storage invisible to neighboring property owners and persons passing in a normal manner any property line facing the public right of way. Location of said screening shall be subject to the front, side and rear yard restrictions provided, however, that protective fencing, decorative planting etc., shall not be subject to these restrictions.

SECTION 501 .11 Smoke

It shall be unlawful for any person to permit the emission of any smoke from any source whatever, as measured at the individual property line, of a density greater than, or equal to that density described as No. 2 on the Ringelmann Chart as published by the United States Bureau of Mines provided, however, that the emission of smoke shall be unlawful if it is unreasonable offensive in terms of odor or noxious gases despite its apparent lack of density when measured by the Ringelmann Chart published by the U.S. Bureau of Mines, Information Circular #'s 7588 or 8333.

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SECTION 501 .12 Pollution of Water

It shall be unlawful for any person to permit the pollution of surface water drainage or of ground water in any manner that renders it less usable in quality and quantity for irrigation, swimming, drinking, visual attractiveness or whatever lawful uses made of water resources to persons downstream that such water's usefulness as it enters said person's property or area of operation.

SECTION 501 .13 Visibility at Intersections

On corner lots clear vision shall be maintained within the triangular area formed by the intersecting Street lines and a straight line joining said street lines at points which are twenty (20) feet distant from the point of intersection, measured along said street lines. In such area no shrubbery, fence or other obstruction shall be permitted higher than three (3) feet from the accepted street grade, nor shall branches or foliage of trees be permitted less than ten (10) feet from the ground.

SECTION 501.14 Dwelling Units Below Grade

A. It shall be unlawful to occupy any dwelling unit below grade prior to such unit having the roof on and upper stories fully enclosed and sided and all utilities and services being connected and a temporary certificate of occupancy having been issued by the Enforcement Officer of the Town of Kirkwood -

B. It shall be lawful to occupy or use for sleeping quarters all or any portion of a cellar of a completed dwelling unit providing the same is adequately lighted, heated and ventilated and can be occupied safely without endangering life or the public welfare and meeting the New York State Uniform Fire Prevention & Building Code for egress.

SECTION 501.15 Underground Dwelling Units

A. An Underground Dwelling Unit shall only be located in areas where the seasonal high water table is more than fifteen (15) feet below the ground surface level.

B. An Underground Dwelling Unit shall be subject to a Site Plan Review by the Planning Board pursuant to Sections 502.1 and 502.2 prior to the issuance of a building permit.

SECTION 501.16 Incineration

No person shall operate or use any article, machine, equipment, or other contrivance for the incineration of animal or vegetable matter, garbage, trash, or waste unless all gases, vapors, and gas entrained effluents from such an article, machine, equipment, or other contrivance or incinerated at temperatures of not less than 2200 degrees F. (1200 degrees C.) flame temperature with a dwell time of not less than 1.0 second. Standard residential & commercial/ industrial fossil fuel heating systems and the personal smoking of tobacco products shall be exempt from the provisions of this Section.

SECTION 501.16 Garage Sales
(SECTION 501.17) (Added December 3, 2002 by LL No. 6-2002. Local Law passed as additional Section 501.16. Should be Section 501.17.)

A. For purposes of this section, the following terms, phrases and words and their derivations shall have the meanings given herein:

1. **GARAGE SALE:** Includes all general sales, open to the public, conducted from or on residential premises or in any residential zone, as defined in the Zoning Local Law, for the purposes of disposing of personal property, including but not limited to all sales entitled "garage", "lawn", "estate", "yard", "tag", "porch", "attic", "basement", "rummage", "flea market" or any similar casual sale.

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2. **PERSONAL PROPERTY:** Property which is owned, utilized and maintained by an individual or members of his or her residence and acquired in the normal course of living in or maintaining a residence. It does not include merchandise which was purchased for resale or obtained on consignment.

B. Sale of other than personal property prohibited.

It shall be unlawful for any individual to sell or offer for sale under authority granted by this section, property other than personal property.

C. Prohibited conduct.

1. No garage sale shall be longer than three (3) days in duration.
2. A garage sale may be held during daylight hours only.
3. No signs advertising such sale shall be larger than six (6) square feet (ie, 2 feet by 3 feet).
4. All signs must be removed by the end of the final day of the sale.

D. Exemptions.

This section shall not apply to:

1. Persons selling goods pursuant to an order of process or an order of a court of competent jurisdiction.
2. Persons acting in accordance with their powers and duties as public officials.
3. Any public auction conducted by an auctioneer licensed by the State of New York.
4. Any sale conducted by any lawful and legitimate business or commercial or industrial establishment or any sale conducted by any other vendor or dealer in a time, place and manner not otherwise prohibited by state or local laws.
5. Personal property offered for sale but not constituting a garage sale as defined in this section and displayed within a residence.
6. Noncommercial and occasional sales of goods by churches, schools and other governmental or non-for-profit organizations.

SECTION 502 Site Plan Review

Building permits shall be issued pursuant to Rules for Building in the Town of Kirkwood for any building on any lot or tract of land in a "R-M," "B-1," "B-2," "B-2-E," "B-3" "I-D," "ID-R," "ID-PPF", "PUD", "AP", "M", "C" or "CE" District, for non-residential uses in an "R", "R-1", and "A/R-R" Districts and for any underground dwelling unit only in compliance with a site plan for such lot or plot duly approved by the Planning Board in accordance with the following procedure. However, site plan review shall not be required for the first single-family residence constructed in an R-M District.

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Whether or not a site plan review is needed, site plan review shall be required prior to:

A. Any new business commencing operation within the Town unless in the judgment of the Building Inspector or the Town Code Enforcement Officer the new business is substantially the same as the prior business being operated at that location and the existing business is in full compliance with Town Local Laws and local laws, or

B. Any excavating, cutting, filling, or grading of land within the Town. However, no such site plan review shall be required:

1. On properties within a "R", "R-1" or "A/R-R" District where:

a. the area so affected is less than one acre, or

b. the area so affected is more than one acre and:

(i) only brush hogging is to be performed, or

(ii) agricultural best management practices are being performed which do not require a SPDES General Permit for Storm Water Discharges from Construction Activity set forth in a Memorandum of Understanding between NYS Department of Environmental Conservation, New York State Department of Agriculture and Markets and NYS Soil and Water Conservation Committee for Implementation of Agricultural Best Management Practices in Conformance with the SPDES General Permit for Storm Water Discharges from Construction Activity, GP-02-01, dated September, 2003.

2. Before the area is disturbed, it must be protected so that soil or other debris cannot leave the property through erosion. Best Management Practices as set forth in the New York State Storm Water Design Manual shall be utilized. The property owner must reclaim the area affected by seeding, planting, rip-rap or other means to prevent soil erosion within 60 days from the start of the disturbance. If the project is to last more than 60 days, it should be completed in stages to allow for the timely reclamation.

SECTION 502.1 Submission of Site Plan

Prior to the issuance of a building permit, a site plan for such lot or tract at a scale of 1"= 50' or a scale less to the inch, prepared by an architect, landscape architect, civil engineer, surveyor, land planner or other competent person, (unless, in view of the specific nature of that application, preparation by such a professional is expressly waived by the Chairperson of the Planning Board) including thereon the following information shall be submitted to the Town Planning Board for approval:

A. Preliminary architectural or engineering plans including elevations showing the use, location and dimensions of proposed building and open spaces.

B. A site plan showing the location of buildings, location and dimensions of driveways, driveway intersections with streets, parking areas and maneuvering areas. The site plan shall also include the adjacent property lines, names of the adjacent property owners, and the adjacent land uses.

C. A storm drainage and grading plan for analysis of proposed handling of surface water runoff and erosion control.

D. A plan showing utilities and utility easements including method of sewage disposal in detail. If a private disposal system is used, plans for the system shall bear the stamped approval of the Broome County Health Department.

E. Plans for all signs to be erected including dimensions, elevations and sign locations.

F. A landscape plan, prepared by a professional landscape architect or other competent person employed by a commercial garden center, showing landscaping to be installed and maintained in front, side and rear yards as developed,

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including shade trees, deciduous shrubs, evergreens, defined areas of well-kept grassed areas and ground cover. All such landscaping, grassed areas and ground cover areas shall be maintained in a healthy growing condition at all times.

G. Plan of lighting of any interior roadway, driveway, parking area, and off-street loading area.

H. In all cases where the Planning Board shall deem it advisable to determine whether or not the facility will be in conformation with the applicable performance standards or other provisions of this Local Law, the Planning Board shall require adequate testing procedures and shall utilize expert assistance at the expense of the applicant.

I. **Rescinded 7-7-09.** (Relating to oil separators to be installed and maintained if more than 10 parking spaces are provided in a site plan submitted to the Town Planning Board for approval.)

J. Grading drainage plan, pertinent soil characteristics and watercourses, or, if applicable, a Stormwater Pollution Prevention Plan consistent with the requirements of Articles 1 and 2 of the Town of Kirkwood Stormwater Management and Erosion & Sediment Control Local Law (Local Law No. 7 of 2007). The approved site plan shall be consistent with the requirements of Articles 1 and 2 of the Town of Kirkwood Stormwater Management and Erosion & Sediment Control Local Law (Local Law No. 7 of 2007).

K. A detailed environmental assessment form pursuant to Article 8 of the Environmental Conservation Law of the State of New York which shall include a description and evaluation of the nature of the probable environmental impact including specification of the predictable adverse impacts on the natural environment and an evaluation of measures to mitigate adverse effects. Any Environmental Impact Statement required shall be submitted on electronic media in Microsoft Word format.

SECTION 502.2 Site Plan Action

A. The Town Planning Board shall review said site plan and additional information and shall approve, approve with modifications or disapprove said site plan with regard to achieving without limitations there to the following objectives:

1. A harmonious relationship between such uses and uses located in adjacent districts as reflected in the Comprehensive Plan.
2. The maximum safety of vehicular access and egress from the site to existing and prospective streets and highways.
3. The maximum adequacy of interior circulation and parking facilities with particular attention to vehicular and pedestrian safety.
4. The adequacy of transitional landscaping and setbacks in regards to achieving maximum compatibility and protection to adjacent property.

B. Any approval of site plan review by the Planning Board pursuant to this article shall be valid only for so long as the premises which are the subject of site plan approval are used for the specific use and purposes stated in that application; therefore, if at any future time the applicant or a successor in interest, assignee or lessee shall wish to dedicate the premises to any other use, he shall make a new application for site plan review in accordance with the provisions of this section. Should any previously approved site plan activity be discontinued for a period of more than 180 consecutive days (except for businesses that typically close on a seasonal basis), such prior site plan approval shall lapse, and an application shall be made for re-issuance of said approval prior to the reopening of said activity.

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SECTION 502.3 Building Permit

Applicable building permits shall be issued by the Enforcement Officer after receipt of approval from the Planning Board. The Planning Board shall transmit the application with its written findings to the Enforcement Officer within 75 days. A failure to act within 75 days of the receipt of the application will permit the Enforcement Officer to act without the Planning Board's recommendation.

A. Changes - An applicant wishing to make any changes in a duly reviewed site plan shall make application for a new building permit.

B. In the event that an applicant fails to obtain a building permit within one year of site plan approval, the site plan approval of the Planning Board shall be null and void.

SECTION 502.4 Standards

The Town Planning Board shall apply the standards listed for each applicable District and objectives of Section 502.2 to determine that the requirements of this section are met.

SECTION 503 Special Permits
(Amended December 3, 2002 by LL No. 6-2002. Original section deleted in its entirety and new language substituted.) (Amended May 4, 2004 by LL No. 11-2004. Originally Section 504.17)

A. The Zoning Board of Appeals is empowered by the Town Board to issue special use permits for allowed uses as set forth in this Local Law or the regulations thereunder. After due notice and a public hearing, the Zoning Board of Appeals may issue a special use permit for uses which meet the following criteria:

1. The applicable provisions prescribed for each special use permit use have been met.
2. The land use or activity conforms with all applicable regulations governing the zoning district where it is to be located, and all other applicable provisions for the district for which the said use is permitted have been met.
3. The land use or activity is designed, located and operated so as to protect the public health, safety and welfare.
4. The land use or activity will encourage and promote a suitable and safe environment for the surrounding neighborhood and will not cause substantial injury to the value of other property in the neighborhood.
5. The land use or activity will be compatible with existing adjoining development and will not adversely change the established character or appearance of the neighborhood.

B. If site plan review is not required by the Planning Board, the Zoning Board of Appeals shall also determine that:

1. Effective landscaping and buffering is provided.
2. Adequate off-street parking and loading are provided.
3. Ingress and egress to parking and loading areas are so designed as to minimize the number of curb cuts and not unduly interfere with traffic or abutting streets.

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4. Site development shall be such as to minimize erosion and not produce increased surface water runoff onto abutting properties.
5. Existing streets and utilities servicing the project are adequate.
6. Significant existing vegetation is preserved to the extent practicable.
7. Adequate lighting of the site and parking areas is provided and exterior lighting sources are designed and located so as to produce minimal glare on adjacent streets and properties.
8. Grading drainage plan, pertinent soil characteristics and watercourses, or, if applicable, a Stormwater Pollution Prevention Plan consistent with the requirement of Articles 1 and 2 of the Town of Kirkwood Stormwater Management and Erosion & Sediment Control Local Law (Local Law No. 7 of 2007). The approved site plan shall be consistent with the requirements of Articles 1 and 2 of the Town of Kirkwood Stormwater Management and Erosion & Sediment Control Local Law (Local Law no. 7 of 2007).

C. The Zoning Board of Appeals shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed special use permit use.

SECTION 503.1 Professional Offices

A Professional Office may be permitted in Residential Districts provided:

- A. The Professional Office staff consists of no more than three (3) people in addition to the professional. Staff may include employees or associates.
- B. One vehicle parking space, with a minimum dimension of 9'6" x 19' with necessary ingress and egress to said parking space and not on any public right-of-way shall be provided for each one hundred (100) square feet of gross floor area of the professional office.
- C. The Professional office shall be an integral part of the full time residence of the Professional and shall contain no more than 33 percent of the combined living-office floor space.
- D. Appropriate landscaping shall be provided in conformity with the district in which such office is located.
- E. The Zoning Board of Appeals shall review the site and make a determination that the use will not constitute a traffic hazard. The Zoning Board of Appeals may place conditions on use to alleviate such hazard.
- F. A Professional, within the meaning of this section, shall include the following:
Accountant, Architect, Dentist, Doctor, Engineer, Insurance Broker, Lawyer, Real Estate Broker, Surveyor, Photographer, Artist, and others as determined by the Zoning Board of Appeals..

SECTION 503.2 Electrical Distribution Substations and Other Public Utility Structures

Electrical Distribution Substations and other public utility structures may be permitted in any district provided.

- A. A facility, when not housed in a completely enclosed structure, shall be enclosed with a fence set back from property lines in accordance with the yard requirements as set forth for principal structures for the district in which said facility is located.

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- B. Appropriate landscaping shall be provided, in conformity with the district in which such facility is located.
- C. The facility shall not involve business offices, storage areas, or structures requiring trucking or traffic movements.
- D. At no point at the boundary of said public utility site shall the sound pressure levels exceed tolerable levels in accordance with accepted standards as determined by the County Health authorities.

SECTION 503.3 Nursing, Rest or Convalescent Homes, Hospitals or Medical Arts Buildings

Nursing, Rest or Convalescent Homes, Hospital or Medical Arts Buildings not including homes for persons with mental disorders may be permitted in "RM" Residence Districts provided:

- A. No principal building shall be located closer than fifty (50) feet to any lot line which is not a street line.
- B. The location shall be such as to offer reasonable protection to the neighborhood against possible detrimental effects, taking into consideration the physical relationships to surrounding properties and access to the site over any nearby residential streets. The Zoning Board of Appeals shall determine appropriate safeguards after review of the site plans.
- C. Off-street parking shall be provided in the following ratio: Two (2) parking spaces for each one (1) bed unit.

SECTION 503.4 Signs

A Special Permit to exceed the requirements as set forth for permitted signs may be granted if the use for which such permits is sought will meet the requirements of Section 503.

SECTION 503.5 Family.

A family as defined in Article II, Section 201, paragraph A17, subparagraph c may be permitted by the Zoning Board of Appeals provided said Board finds the occupants constitute a "Functional Family Unit" which means a group of three (3) or more individuals living together in a single dwelling unit and functioning as a family with respect to those characteristics that are consistent with the purposes of zoning restrictions in residential neighborhoods. In determining whether or not a group of unrelated individuals is a functional family unit under the definition set forth above, the Zoning Board of Appeals may consider, among other things, the following factors:

- A. Whether occupants share the entire dwelling unit as contrasted with a situation where the various occupants act as separate roomers.
- B. Whether the household has stability with respect to the purpose of the zoning Local Law. Evidence of such stability may include, among other things, the following:
 - 1. The presence of minor, dependent children regularly residing in the household;
 - 2. Enrollment of dependent children in local schools;
 - 3. Proof of the sharing of expenses for rent or ownership costs, utilities and other household expense;
 - 4. Whether the household has been living together as a unit for a year or more; either in the current dwelling unit or other location.

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- C. Whether the household appears to preserve and maintain the harmonious character of the residential district in which the household is located.
- D. Whether the rooms providing living, cooking, sanitary and sleeping facilities meet the minimum dwelling space requirements of the New York State Building Code.
- E. Whether the household is a temporary living arrangement or a framework for transient living, such as a boarding house, a temporary residential home or a fraternity or sorority house.
- F. Whether adequate provision has been provided for off-street parking, and related problems which are consistent with the regulations of the zoning district in which the household resides.
- G. Any other factor reasonably related to whether or not the group of persons is the functional equivalent of a family.

SECTION 503.6 Home Occupations

A home occupation, as defined in this section, may be permitted in a Residence (R) District, Residence (R-1) District, Agricultural/Rural Residence (A/R-R) District, a Residential-Multi (R-M) District, or a single-family residence in an R-M District subject to site plan approval by the Planning Board. Such use shall conform to the following standards:

- A. No more than one (1) occupation shall be allowed per dwelling unit.
- B. The home occupation must be performed by either an owner-occupant or tenant-occupant of the property and a maximum of one non-resident employee.
- C. No more than fifteen percent (15%) of the gross living area of the dwelling unit may be used for such use. Any variance from this requirement must be obtained from the New York State Department of State. The aforementioned 15% or five hundred (500) square feet, whichever is the least, is the maximum that may be used for home occupations.
- D. The use shall be carried on wholly within the enclosed walls of the dwelling unit or an accessory building.
- E. External structural alterations which are not customary to a residential building shall not be allowed.
- F. There shall be no external evidence of such use except for one (1) sign not exceeding two (2) square feet in area mounted flush with and on the front facade of the dwelling unit.
- G. Stock, merchandise, equipment or displays of any kind shall not be visible outside the dwelling unit or accessory building.
- H. The use shall not result in or cause vehicular traffic that will create a nuisance to abutting properties or be detrimental to the residential character of the neighborhood.
- I. Two (2) off-street parking spaces in the driveway, side yard or rear yard of the dwelling unit shall be provided for the home occupation. Two (2) additional off-street parking spaces are required for the dwelling unit occupants (See 505A6).
- J. Such uses shall also be subject to any other conditions the Planning Board deems necessary on site plan review to meet the intent of these requirements.
- K. The following uses and other uses similar in character do not meet the intent of this section:
 - 1. Vehicle or boat engine repair.
 - 2. Vehicle or boat body work or painting.

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3. Construction equipment or materials storage.
4. Veterinary hospital.
5. Kennel.
6. Bar and/or restaurant.
7. Equipment or vehicle rental.
8. Furniture sales.
9. Funeral director, mortuary, or undertaker.
10. Glazier's or painter's shop.
11. Medical or dental clinic.
12. Any use that is not permitted in a Type 5 (wood frame) building construction under the New York State Uniform Fire Prevention and Building Code 208-205, General Requirements, Restrictions.

SECTION 503.7 Special Permit Requirements for Temporary Storage of New In-Transit Modular Homes and Mobile Homes (collectively hereafter the "Homes") in a B-2 District.

- A. Such Homes may not be occupied.
- B. Such Homes may not be sold from the premises on which they are being temporarily stored.
- C. Site Plan Review by the Town Planning Board is required prior to commencing such use.
- D. The number of Homes being stored at any one time shall not exceed the number so established by the Site Plan Review of the Town Planning Board.
- E. Homes shall be parked neatly in such a manner as to allow fire lanes running from the front to the rear of the property of at least 12 feet in width and not more than 100 feet apart, and which must be kept open at all times.
- F. No such Home shall be stored closer than 25 feet to the highway right-of-way.
- G. No such Home shall be stored on the same premises for more than thirty (30) days.

SECTION 503.8 Machine Shop

Machine shops, as defined in Section 201 of this Local Law, may be permitted in a Business-Two (B-2) District subject to site plan approval by the Planning Board. Such use shall conform to the following standards:

- A. At no point on the boundary of the property shall levels of noise, odor, dust and dirt, vibration, toxic emissions, glare, emission of radio-active materials, open storage, smoke, pollution of water, or incineration exceed those set forth in Article V (Supplementary Standards) of this Local Law.
- B. Appropriate landscaping shall be provided.
- C. Ingress and egress shall be provided that will not constitute a traffic hazard.
- D. There are adequate municipal services to supply the proposed use.
- E. Such use will not be prejudicial to adjoining and neighboring properties already developed, including among other things diminution of values in the surrounding neighborhood.
- F. All other applicable provisions of the B-2 District unless such provisions are waived by the Zoning Board of Appeals.

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SECTION 503.9 Special Permit Requirements For Indoor Flea Markets (hereafter the “Flea Markets”)

A. Flea Markets may be allowed in an I-D district only after obtaining a special use permit from the Zoning Board of Appeals, which permit shall be valid for a two (2) year period and must be renewed.

B. All other applicable provisions of the I-D District shall be complied with except that:

1. One off street parking space shall be provided for each 100 square feet of the premises being devoted to Flea Market use.
2. No accessory buildings and uses shall be allowed.

SECTION 503.10 Wind Turbines – Special Permit. (Added 9-1-09 by LL #6-2009)

Wind turbines, as defined in section 201 of this local law, may be permitted in a Residence (R), Residence (R-1), or Agricultural/Rural Residence (A/R-R) District subject to a special use permit and site plan approval by the Planning Board. The provisions of the Town of Kirkwood governing special use permits and site plan approval shall apply. Such use shall conform to the following standards:

A. Number Allowed. Only one wind turbine will be allowed per tax map parcel.

B. Maximum Height. Wind turbines shall have a maximum height of thirty (30) feet measured from the ground to the top of the highest blade or to the tallest point on the structure.

C. Noise. Individual wind turbine towers shall be located with relation to property lines so that the level of noise produced during wind turbine operation shall not exceed 50 dbA, measured at the boundaries of all of the closest parcels that are owned by non-site owners and that abut either the site parcel(s) or any other parcels adjacent to the site parcel held in common by the owner of the site parcel as those boundaries exist at the time of special use permit applications.

D. Setbacks and location.

1. A wind turbine shall be located in rear yards of residences and to the rear of farm structures.
2. The minimum distance between any wind turbine tower and any structure shall be calculated at 1 ½ times the height of the tower including the rotor blades. The side and rear property line setbacks shall be calculated at 1 ½ times the height of the tower including the rotor blades.
3. Safety.
 - i. The site plan shall detail the means of access and all security and safety fencing proposed.
 - ii. Wind turbine towers shall not have any climbing pegs lower than fifteen (15) feet above the ground.
 - iii. All access doors to wind turbine towers and electrical equipment shall have locks.
 - iv. Warning signage as approved by the Town Code Enforcement Officer shall be placed on wind turbine towers and electrical equipment.
 - v. The minimum distance between the ground and any part of the rotor blade system shall be at least fourteen (14) feet.
 - vi. The turbine must be in compliance with the specifications provided by the manufacturer and, if suggested by the manufacturer specifications, must be equipped with an automatic braking system to prevent over-speeding of the blades during periods of high wind speeds.
 - vii. Guy wires and/or anchors shall be marked with high visibility orange or yellow sleeves.

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E. Town Engineer. All plans and specifications for any wind turbines must be approved by the Town Engineer and all permits issued in accordance with this local law shall contain conditions that the applicant comply with and adhere to any recommendations or requirements suggested by the Town Engineer, as the same may change from time to time.

F. Telecommunications Prohibited. No radio, television or other communication device or antenna may be affixed or otherwise made a part of a wind turbine without the issuance of a separate special use permit as allowed or pursuant to Article 9 of the Zoning Local Law.

G. Abandonment. Any wind energy turbine which is not operational for twelve (12) successive months shall be deemed abandoned. Such abandoned turbine shall be kept structurally sound, shall be tied up and contain no moving parts. In the event that it is determined by the Town of Kirkwood Code Enforcement Officer that the turbine is in disrepair, is unsafe, has been improperly maintained or poses a hazard, the turbine shall be dismantled and removed from the property at the expense of the property owner. Failure to abide by and faithfully comply with this section or with any and all conditions that may be attached to the granting of a special use permit hereunder shall constitute grounds for the revocation of the permit by the Town.

H. Maintenance. Wind turbine structures must be maintained to the same standards as required by the Property Maintenance Code of the New York State Uniform Building Code, which is incorporated herein by reference.

SECTION 503.11 Temporary Portable Storage Containers
(Added Sept. 7, 2010 by LL #14-2010)

A. Temporary portable storage containers shall be permitted upon the issuance of a special permit by the Enforcement Officer for a period of up to twelve months or so long as there is a valid building permit in effect. No fee shall be charged for the issuance of said special permit. Where a special permit has expired, all such containers must be immediately removed. The yard or lot must thereafter remain free of any temporary portable storage containers for a continuous period of at least 60 days. However, in cases where a dwelling unit has been damaged by casualty, a temporary portable storage container may be allowed for longer time periods than indicated above upon the issuance of a special permit by the Enforcement Officer as set forth in paragraph F hereafter.

B. Temporary portable storage container(s) shall not exceed a cumulative gross floor area of 400 square feet.

C. Temporary portable storage container(s) shall not exceed eight and one-half (8 ½) feet in height.

D. Temporary portable storage containers shall not be located in any required open space, landscaped area, on any street, sidewalk or trail, or in any location that blocks or interferes with any vehicular and/or pedestrian circulation, and shall be located in accordance with all applicable building and fire code regulations for the purpose of ensuring safe ingress and egress to dwellings, access to utility shut-off valves, and for fire protection.

E. Signs on temporary portable storage containers shall provide contact information and shall not include the advertisement of any other product or service.

F. A temporary special permit may be issued by the Enforcement Officer for a period longer than set forth in paragraph A but only where a dwelling has been destroyed or damaged by casualty when such dwelling is to be rebuilt or repaired. All of the conditions set forth in paragraphs B through E shall be required for such temporary special permit.

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SECTION 504 Sign Standards

SECTION 504.1 Purposes

The purpose of the sign standards stated is to regulate the potentially objectionable aspects of sign uses by stating specific standards consistent with the promotion of public health, safety, morals, and the general welfare of the Town.

SECTION 504.2 Residential Standards

Any sign permitted in any Residential District shall conform to the following specifications:

- A. No sign shall be located closer than eight (8) feet to any lot line.
- B. No ground sign shall be constructed to a height greater than eight (8) feet.
- C. Roof signs shall not be permitted in any Residential District.

1. The following business signs shall be permitted in Residential Districts as hereinafter provided:

- a. One (1) announcement or professional sign not to exceed two (2) square feet in area may be erected in conjunction with a customary home occupation.
- b. One (1) sign, not to exceed six (6) square feet, to announce for sale or rent real property or any part thereof upon which said sign is located.
- c. One (1) sign, not to exceed six (6) square feet for each tourist home.
- d. One (1) sign or announcement for each church, institutional, recreational or other public use, provided said sign shall not exceed sixteen (16) square feet in area.
- e. One (1) temporary real estate development sign, not to exceed thirty-six (36) square feet, directing attention to the opening of a new subdivision. Such sign shall require a permit issued by the Enforcement Officer. Said permit shall be issued for a period of twelve (12) months and may be renewed upon application.

2. Advertising signs shall not be permitted in any Residential District.

3. Directional or informational signs shall be permitted in any Residential District. Such signs shall not exceed two (2) square feet in area and shall not be illuminated. Said signs may be used for the purpose of stating the name or location of a town, hospital, community center, church, school or the name or place of meeting of an official or civic body, such as i.e., "Lions Club." No advertising matter shall be contained on signs of this type.

D. Garage sale signs shall conform to the requirements of section 501.16.

SECTION 504.3 Business (B1), (B2), (B-2-E) - Industrial Development Standards

Any sign permitted in these Business and Industrial Development Districts shall conform to the following:

A. Business Signs: Lots with street frontage sixty (60) feet or less each use conducted within any building or upon any lot may have a business sign or signs provided, the area of such sign and/or signs shall not exceed a total of one hundred fifty (150) square feet. Lots with street frontage greater than sixty (60) feet may increase the permitted sign area two and one-half (2 1/2) square feet for each linear foot by which said street frontage exceeds sixty (60) feet. In no case shall the area of any sign exceed a total of two hundred (200) square feet.

B. Directional or Informational Signs: Shall be permitted in these Business and Industrial Development Districts. Such signs shall not exceed two (2) square feet in area and shall not be illuminated. Said Signs may be used for the purpose of stating the

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name or location of a town, hospital, community center, church, school or the name or place of meeting of an official or civic body, such as Rotary or Kiwanis Club. No advertising matter shall be contained on signs of this type.

C. Advertising signs: Shall be permitted in Business Two (B-2) and Business Two Entertainment (B-2-E) Districts. Such signs shall comply with the following standards:

1. Said signs are ground signs and shall comply with standards for ground signs;
2. No more than one (1) advertising ground sign is permitted on a lot. If a business or directional ground sign is erected, the advertising sign shall be removed;
3. Where a lot is in excess of three hundred (300) feet frontage, one (1) additional advertising ground sign may be permitted for each three hundred (300) feet of street (road) frontage;
4. The size of such sign shall not exceed three hundred (300) square feet;
5. Double faced, back-to-back or V-type advertising signs shall not be permitted;
6. Advertising signs shall be located on vacant lots, on lots where the use is a parking lot, advertising signs shall not be permitted; and,
7. No sign shall be permitted on primary road on-off ramps for a distance of three hundred (300) feet in either direction measured from the intersection.

SECTION 504.4 General Regulations Applying to All Districts

The following regulations shall be applicable to all signs in all districts, except as otherwise provided by law:

A. General

1. All signs shall be constructed, erected and maintained so as not to present a hazard to persons or property.
2. No sign shall be erected near a street or highway in such a manner as to obstruct free and clear vision along such highway or street.
3. No sign shall be erected which for any reason may obstruct the view of, be confused with or mistaken for, any authorized traffic sign, signal or device.
4. The illumination of any sign shall be non-flashing and indirect or diffused. Illuminated signs shall be constructed so that they do not shine or reflect light directly into adjacent residential districts.

B. Ground Signs

1. All ground signs shall maintain the following setback lines. No business sign shall be located closer than eight (8) feet to any lot line. All advertising ground signs shall be no closer than twenty (20) feet from any lot line. Set back may be varied upon application to the Town Zoning Board of Appeals. (See Section 504.17).
2. No ground sign shall be erected to exceed a height of thirty (30) feet above the level of ground upon which its support rests.
3. All ground signs shall be a single panel.

C. Maintenance

1. All signs shall be maintained in a safe, presentable and good structural condition by either replacement of defective parts, painting or replacement of deteriorated membranes or any other action deemed necessary for proper maintenance of the sign.
2. Any sign which becomes vacant for a period of six (6) months shall be removed by the owner of the premises upon which the sign is located.

SECTION 504.5 Computation of Permissible Sign Area

A. When determining total permissible sign area for any lot, the area of any existing sign and/or signs shall be included in the computation. The total area of existing and/or new signs shall not exceed that requirement as set forth in this Local Law.

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B. When determining the total permissible display area for Double-Faced or V-Type signs only the dimension of one face or surface shall be used for said purpose.

SECTION 504.6 Obstruction

No sign shall be erected, relocated or maintained so as to prevent free ingress to or egress from any door, window or fire escape. No sign shall be attached to a fire escape.

SECTION 504.7 Traffic Hazard

No sign shall be erected at the intersection of any street or road in such a manner as to obstruct free and clear vision; or at any location where, by reason of the position, shape or color, it may interfere with, obstruct the view of, or be confused with any authorized traffic sign, signal or device, by making use of the word "STOP," "LOOK," "DANGER" or any other word, phrase, symbol, or character, or Red, Green or Amber illumination or reflection, in such manner as to interfere with, mislead or confuse traffic.

SECTION 504.8 Wind Pressure and Load Requirements

All signs and other advertising structures shall be designed and constructed to withstand a wind pressure of not less than thirty (30) pounds per square feet.

SECTION 504.9 Location

Any sign located in Business-Two-Entertainment (B-2-E) or Industrial Development Districts except temporary political or "for sale" signs pursuant to section 504.18 shall be located at least two hundred (200) feet from an abutting residential district. Measurement of distance shall be from the residence district boundary line to the erected sign.

SECTION 504.10 V-Type Signs

All signs may be single-faced or double-faced. On double-faced and/or V-Type signs the angle at the vertex of the signs shall not exceed five (5) degrees.

SECTION 504.11 Free Standing Letters or Numerals

Signs consisting of free standing letters, numerals, or other representation shall be considered wall or roof signs whichever being applicable. Sign area shall include the area on the free standing letters, numerals or other representation and any intervening spaces.

SECTION 504.12 Illumination

The illumination of any sign shall be non-flashing, indirect, or diffused and shall be arranged so that direct rays of light do not shine or reflect into adjacent residential districts. All signs shall be located so as not to be in the line of vision of traffic control signals.

SECTION 504.13 Issuance of a Sign Permit

No sign in any district shall be erected or altered in physical structure until a sign permit has been issued by the Enforcement Officer. All applicants for sign permits shall submit the following:

A. Name, address and telephone number of the applicant.

B. Location of building, structure or lot to which or upon which the sign is to be attached or erected.

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- C. The type, size and location of the sign.
- D. Two (2) blueprints or ink drawings of the plans and specifications and method of construction and attachment to the building or in the ground.
- E. Copy of stress sheets and calculations showing that the structure is designed for dead load and wind pressure in any direction in the amount required by this and/or any Local Law of the Town of Kirkwood for signs one hundred fifty (150) square feet or more.
- F. Name of person, firm, corporation or association erecting structure.
- G Any electrical permit required and issued for said sign.
- H. If illuminated, the type of illumination and the lumens.
- I. A copy(s) of the lease with the landowner including owner name(s), address(es) and lease dates are required.
- J. A permit identification attachment shall be affixed to the sign that is clearly visible from the highway. This attachment shall be 4" x 10" black letters on a white background (i.e. KWD-# 0001)
- K. Such other information as the Enforcement Officer shall require to show full compliance with this or any other Local Law of the Town of Kirkwood.

Exception: No erection permit shall be required for these signs listed in the "R-1", "R", "RR" District.

SECTION 504.14 Fees for Permits

A fee of Fifty Dollars (\$50.00) shall be charged for every erection permit issued. An additional fee of Fifty Dollars (\$50.00) shall be charged for every special permit issued.

SECTION 504.15 Violations

If the Enforcement Officer or other designated official shall find that any sign is unsafe or insecure, or constitutes a menace to the public or has been constructed or erected or is being maintained in violation of this or other applicable Local Laws of the Town of Kirkwood, he shall have the owner of said sign cited in violation by written notice. From the date of such written notice, or from such date as may be designated said person in violation shall have thirty (30) days to comply with this or any other Local Law of the Town of Kirkwood

SECTION 504.16 Non-Conforming Signs

Every sign existing at the time of the adoption of this Local Law may continue although not in conformity with the provisions herein. However, when a non-conforming sign is removed or destroyed, it shall be replaced only in conformity with the provisions of this Local Law.

SECTION 504.17 Special Permits (Amended May 4, 2004 by LL No. 11-2004. Renumbered as Section 503.)

SECTION 504.18 Temporary Signs

A. Any candidate for public or private office may be granted a temporary permit to erect political posters, banners, promotional devices or signs for a period not to exceed one hundred twenty (120) days. Such signs may not be attached to fences, trees, utility poles or the like without permission of the owner and may not be placed in a position that will obstruct or impair vision or traffic in any manner create a hazard or disturbance to the health and welfare of the general public. A fee of

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twenty-five dollars (\$25.00) shall be paid upon the issuance of such permit and a deposit of twenty-five dollars (\$25.00) shall be deposited with the Town Clerk to insure removal of such signs at the expiration of the permit. The Enforcement Officer, upon the failure of the permit holder to remove such signs after twenty (20) days written notice to do so, addressed to the address shown on the application for said signs, shall cause said signs to be removed and the deposit shall be forfeited to help defray the cost of removal by the Town.

B. In all districts other than Residential Districts, not more than two (2) signs, each having a maximum length of 96” and a maximum depth of 48” may be erected at least 200 lineal feet apart announcing that the property or any part thereof on which said sign(s) are erected is for sale or rent. If the property is a corner lot, such lineal feet distance requirement shall not be applicable so long as such signs are placed facing each street comprising such corner. No permit fee shall be required.

SECTION 505 Off-Street Parking and Loading Requirements

A. Off-Street Parking Requirements

For every building hereafter erected, altered, extended or changed in use, there shall be provided off-street parking spaces according to the design criteria set forth below.

1. A required parking space shall be at least 9’6” wide by 19’ long and shall be reached by an access driveway at least 20’ clear in width.

2. Any parking lot or parking area that will contain more than 100 cars shall be effectively divided by planted divider strips or curbing fixed in place so as to effectively divide each parking area of 100 cars

from other driveways and parking areas for the purpose of insuring safety of vehicles moving within the entire parking area and to control speed.

3. Points ingress and egress to parking areas in commercial and industrial developments shall be no closer to one another than 150 feet along street and access to individual uses and parking area shall be from a service road.

4. Lighting of any interior roadway or driveway shall conform to “American Standard Practice for Roadway Lighting,” ASAD 12.1-1963 sponsored by the Illuminating Engineering Society and published by the United States American Standards Institute. Lighting of any parking area or of any loading and unloading area shall conform to the strictest standards described in “Recommended Practice for Outdoor Parking Area Lighting” published by the Illuminating Engineering Society, with spacing and type of luminaire such that spill light shall be kept at a minimum objectionable glare to any point beyond the lot line. Parking and loading and unloading areas that are in use after dark shall be so situated as to provide maximum shielding and concealment of lighting from adjoining properties.

5. Unless otherwise specified, one (1) vehicle parking space shall be provided for:

- a. Each rental room in a hotel, motel, boarding house, rooming house or tourist home.
- b. Each two (2) employees in a school.
- c. Each three (3) seats in a church or place of worship
- d. Each one hundred (100) square feet of gross floor area in a professional office.
- e. Each one hundred (100) square feet of gross floor area in a funeral home.
- f. Each one hundred (100) square feet of gross floor area in retail or service establishments.
- g. Each one hundred (100) square feet of gross floor area in a restaurant, lunch counter, bar, lodge, fraternal organization
- h. Each two hundred (200) square feet of gross floor area in a public building.
- i. Each two hundred (200) square feet of gross floor area in a bank, office, clinic,

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laboratory.

- j. Each two hundred and fifty (250) square feet of gross floor area in manufacturing, processing, fabricating, and repair establishments.
- k. Each five thousand (5,000) square feet of gross floor area, plus one (1) space for every (2) employees working at the premises on the maximum work shift plus one (1) space for every motor vehicle used directly in the business in a wholesale or warehouse establishment. (Amended 4-5-11)

6. Unless otherwise specified, two (2) vehicle parking spaces shall be provided for:

- a. Each bed in a hospital or nursing home.
- b. Each dwelling unit.
- c. Customers patronizing a home occupation.

B. Off-Street Loading Space Requirements

- 1. For every building hereafter erected, altered, extended or changed in use for the purpose of business trade or industry there shall be provided reasonable off-street space for loading and unloading of vehicles, as determined by the Planning Board on site plan review.
- 2. Off-Street loading space (or spaces) located within 50' of a residential property shall be shielded by wall, fencing, or other suitable material which shall serve to screen noise and fumes that originate in said loading zone.

SECTION 506 Repealed April 7, 1987 by LL No. 2-1987.
 (See Flood Damage Prevention Local Law – Page 2301)

**BUSINESS TWO – ENTERTAINMENT
(B-2-E)
(Adopted October 4, 1983 by LL No. 6-1983)**

SECTION 507 BUSINESS TWO—ENTERTAINMENT (B2-E)

SECTION 507.1 Preamble and Purpose

Whereas, the Town of Kirkwood desires to promote commerce as well as the free and open exchange of speech, thought and ideas within the setting of its predominantly rural residential community, and

Whereas, by effective zoning and land use regulation it is the desire of the Town Board of the Town of Kirkwood to promote harmony between commercial enterprise and the quality of residential life within the Town, and

Whereas, the Town of Kirkwood by zoning regulation regularly enacts land use regulations and restrictions to effectively promote this harmonious balance and control the increasing encroachment of commerce and urbanization upon the quality of life enjoyed by its residents, and

Whereas, the unrestricted presence of adult entertainment establishments in the Town of Kirkwood would tend to attract an undesirable quantity and quality of transients, increase traffic congestion, adversely affect property values, cause an increase in crime, (especially prostitution), encourage residents and businesses to move elsewhere and will lead to a blighting deterioration of the character, peace, and well being of the community as a whole, and

Whereas, the Town Board of the Town of Kirkwood does not intend herein to impose any limitation upon the content or availability of adult entertainment nor does it intend to restrict in any significant way the viewing of adult entertainment by those who so desire,

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Now, therefore, this provision is adopted:

- A. To prevent deteriorating property values, higher crime rates, traffic congestion, and depressed neighborhood conditions in the Town of Kirkwood,
- B. To promote the health, safety, general welfare, and good order of the community by setting forth a community standard regulating the concentration of adult uses in the Town of Kirkwood; and
- C. To restrict adult uses in the Town to the Business-Two Entertainment (B-2-E) District exclusively subject to the additional restrictions and regulations contained herein.

SECTION 507.2 Definitions

For the purposes of this Section 507 only, the following terms or words shall be interpreted or defined as follows:

- A. **ADULT USES:** A business or commercial establishment having as its predominant commercial purpose the operation of an adult bookstore, an adult mini-motion-picture theater, an adult motion-picture theater, an adult entertainment cabaret, or any combination of the above.
- B. **ADULT BOOKSTORE:** An establishment having as a substantial portion of its stock-in-trade sexual devices, books, magazines, films for sale or viewing on the premises, by use of motion-picture devices or any other coin-operated means, and other periodicals which are distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas, or an establishment with a section devoted to the sale or display of such material, which excludes minors by virtue of age.
- C. **ADULT MINI-MOTION-PICTURE THEATER:** An enclosed building with a capacity of less than fifty (50) persons used for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas for observation by patrons therein, when such establishment is customarily not open to the public generally, but only to one (1) or more classes of the public, excluding, any minor by reason of age.
- D. **ADULT MOTION-PICTURE THEATER:** An enclosed building with a capacity of fifty (50) or more persons used regularly and routinely for presenting films or material having as a dominant theme, material distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas for observation by patrons therein, when such establishment excludes any minor by reason of age.
- E. **ADULT ENTERTAINMENT CABARET:** A public or private establishment which is licensed to serve food and/or alcoholic beverages, which features topless dances and/or bottomless dances, strippers, male or female impersonators or similar entertainers, or employees appearing in a bottomless and/or topless manner of dress.
- F. **MASSAGE ESTABLISHMENT:** Any establishment having a fixed place of business where any person, firm, association, or corporation, engages in, carries on, or permits to be engaged in or carried on, any of the activities referred to in subparagraph (i) below.
 - 1. The activities referred to herein are any method of pressure on or friction against or stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulating of the external soft parts of the body with the hands or with the aid of any mechanical or electrical apparatus or appliance, with or without such supplementary aids as rubbing alcohol, liniments, antiseptics, oils, powder, creams, lotions, ointments, or other similar preparations commonly used in the practice of massage.

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2. This Section 507 shall not apply to licensed hospitals, licensed nursing homes, or clinics or persons holding an unrevoked certificate to practice any of the healing arts under the law of the State of New York, or persons working under the direct supervision and in the presence of any such persons or in any such establishments nor shall this Article apply to barbers or cosmetologists lawfully carrying out their particular profession of business and holding a valid unrevoked license or certificate of registration issued by the State of New York.

G. PERSON: Any person, firm, partnership, corporation, association or legal representative, acting individually or jointly.

H. SPECIFIED ANATOMICAL AREAS:

1. Less than completely covered human genitals, pubic region, buttock, and female breast below a point immediately above the top of the areola; and
2. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

I. SPECIFIED SEXUAL ACTIVITIES:

1. Human genitals in a state of sexual stimulation or arousal;
2. Acts of human masturbation, sexual intercourse or sodomy; and
3. Fondling or other erotic touching of human genitals, pubic region, buttock or female breast.

SECTION 507.3 Restrictions

A. LOCATION RESTRICTIONS - Adult uses, including but not limited to adult motion-picture theaters, adult mini-motion-picture theaters and adult bookstores shall be permitted in a Business-Two Entertainment (B-2-E) District, subject to the requirements of the Zoning Local Law of the Town of Kirkwood and subject to the following restrictions and regulations:

1. No such adult use shall be located in any zoning district except a Business-Two Entertainment (B-2-E) District, and, in addition to the restrictions and regulations contained herein, shall be subject to all zoning requirements of B-2 zoning districts.

B. The creation, operation, establishment, causing the establishment or permitting the establishment of an adult entertainment business shall include the opening of such business as a new business, the relocation of such business, or the conversion of an existing business location to any of the uses described in Section 507.2 hereof.

C. REGULATIONS.

1. There shall be no exposure of the interior of any adult use establishment to the outside and no outside displays of products, wares, books, magazines or any stock in trade of any adult use establishment.
2. The legal age for admittance to any adult use establishment is eighteen (18) years of age.

SECTION 507.4 Registration

A. The owner of a building or premises, his agent for the purpose of managing or controlling or collecting rents or any other person managing or controlling a building or premises, any part of which contains an adult use, shall register the following information with the Town Clerk of the Town of Kirkwood:

1. The address of the premises.

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2. The name and address of the owner(s) of the premises and the names and addresses of the beneficial owners if the property is in a land trust.
3. The name of the business or the establishment subject to the provisions of this Section 507.
4. The name(s) and addresses of the owner, beneficial owner of the major stockholder(s) of the business or the establishment subject to the provisions of this Section 507.
5. The date of initiation of the adult use.
6. The nature of the adult use.
7. If the premises or building is leased, a copy of said lease.

B. DISPLAY OF REGISTRATION: The owner, manager or agent of a registered adult use shall display in a conspicuous place in the premises of the adult use a copy of the registration filed with the Town Clerk.

C. VIOLATION: It is a violation of this Section 507 for the owner or person in control of any property to establish or operate thereon or to permit any person to establish or operate thereon an adult use without having properly registered said adult use with the Town Clerk.

SECTION 507.5 Special Registration Use Permit

A. No use as described in this Section 507 shall be established until the issuance of a special registration use permit by the Zoning Board of Appeals of the Town of Kirkwood.

1. Application for such special registration use permit shall be in writing to the Planning Board and shall consist of a description of the premises for which the permit is sought, a plain and concise statement of the use which is proposed, the full information required for Registration in Section IV, subparagraph A herein, and such additional information as shall be required by the Planning Board in order to hold a site plan review. Upon receipt of said application the Planning Board, upon notice to the applicant, shall hold a site plan review and within 30 days of said review shall transmit its findings and recommendations to the Zoning Board of Appeals.

2. Upon receipt of the findings and recommendations of the Planning Board, the Zoning Board of Appeals shall call and conduct a public hearing pursuant to the provisions of Town Law Section 267 (5) and as the same may be amended from time to time for the purpose of considering the request for a special registration use permit.

B. A special registration use permit issued under the provisions of this section shall not be transferable.

C. Upon the issuance of such special registration use permit, a fee in the sum of Twenty-five (\$25 .00) Dollars shall be paid by the licensee to defray the administrative costs thereof and the cost of inspecting the premises during the term of such permit to insure compliance with this section.

D. Approval by the Zoning Board of Appeals and registration by the Town Clerk shall be permitted only upon full compliance with the provisions of this section.

SECTION 507.6 Renewal/Revocation of Special Registration Use Permit

A. Such special registration use permit shall be effective from the date of its issuance until the 31st day of December of the year of such issuance. Applications for renewal permits shall be submitted in the December preceding the year for which such renewal permit is sought and may be issued, either upon the applicant's reaffirmation of his original application and a

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statement showing any variations therein, or upon a new application as described in Section 507.5. Said application for renewal shall be accompanied with a fee of Twenty-five (\$25.00) Dollars to be paid by the applicant to defray the administrative cost of said application.

B. Such special registration use permit may be revoked, or renewal thereof denied, by the Town Board after a public hearing thereon at which the holder of said permit shall have an opportunity to be heard.

C. Said special registration use permit shall be revoked, or renewal thereof denied, based upon:

1. Conviction of the holder of said permit for violation of any section of Article 230 and Article 235 of the Penal Law of the State of New York.

2. Any violation of this Section 507

SECTION 507.7 Penalty

Failure to register said adult use with the Town Clerk as hereinbefore directed is an offense in violation of this section and upon conviction thereof, is punishable by a fine not to exceed Five Hundred (\$500.00) Dollars. Continuation of such violation for each subsequent period of one week shall be a separate offense punishable by an additional fine not to exceed Five Hundred (\$500.00) Dollars.

SECTION 508 Use of Motor Vehicles and Trailers for Storage

The following regulations shall apply on properties within a “R”, “R-1” or “A/R-R” District and in Business 1 (B-1) and Business 2 (B-2) Districts where there are presently residential non-conforming uses

A. Items whose original purpose is not intended for storage, including but not limited to motor vehicles, mobile homes, travel trailers and trailers shall not be used as storage facilities. However, licensed trailers located on the site of a work project used for the temporary storage of construction materials in connection with the work project shall be allowed during the period that construction is taking place in any zoning district of the Town pursuant to a building permit in full force and effect issued by the Town Code Enforcement Officer pursuant to A Local Law Providing for the Administration and Enforcement of the New York State Uniform Fire Prevention and Building Code (Local Law 13-2006). (Amended 6-1-10 by LL #11-2010).