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Town of Kearny, NJ / Municipal Code

Chapter 38

Zoning

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**§ 38-1 TITLE AND PURPOSE.**

**§ 38-1.1 Title. [Ord. No. 10-14-87] An ordinance limiting and restricting to specific districts** and regulating therein buildings and structures according to their construction and the nature and extent of their use and the nature and extent of the uses of land; regulating and restricting the height, number of stories and sizes of buildings and other structures; the size of yards, courts, and other open spaces, the density of population and the location, use and extent of buildings and structures for trade, industry, residence, or other purposes; providing for the administration and enforcement of the provisions herein; all for the purpose of promoting the health, safety, morals and general welfare of the Town of Kearny and its people.

**§ 38-1.2 Short Title. [Ord. No. 10-14-87 § 138-1.200] This chapter shall be known and cited as** the "Zoning Ordinance of the Town of Kearny."

**§ 38-1.3 General Intent. [Ord. No. 10-14-87 § 138-1.300; Ord. No. 2002-O-78; Ord. No. 2003-(O)-23]** The intent of this chapter is to establish a precise and detailed plan for the use of land and buildings in the Town of Kearny, enacted in order to promote and to protect the public health, safety, morals, comfort, convenience and the general welfare of the people. The Zoning Ordinance for the Town of Kearny shall be viewed as a permissive ordinance. In no instance after the adoption of this chapter shall any use be permitted in the Town of Kearny which is not listed as a permitted or accessory use as specified in the Use Schedule of Regulations in this chapter. The intent of the subchapter pertaining to Wireless Telecommunications Equipment is to enable the location within the Town of those antennas which are necessary to provide adequate wireless telecommunications services while, at the same time, limiting the number of supporting towers to the fewest possible and minimizing the impact of the antennas, accessory equipment, and supporting structures on residences, streetscapes, and vistas throughout the municipality.



**§ 38-1.4 Purpose. [Ord. No. 10-14-87 § 138-1.400; Ord. No. 2002-O-78; Ord. No. 2003-(O)-23]**

Such regulations are deemed necessary to achieve the following purposes:

**a. Promote Orderly Development. To protect the character and maintain the stability of all areas** within the Town, and to promote the orderly and beneficial development of such areas.

**b. Regulate Intensity of Use. To regulate the intensity of use of zoning lots, and to determine the** area of open spaces surrounding buildings necessary to provide adequate light and air, privacy and convenience of access to property and to protect the public health, safety and welfare.

**c. Regulate Location of Buildings and Establish Standards of Development. To establish building** lines and the location of buildings designed for residential, commercial, industrial, office, or other uses within such lines and to fix reasonable standards to which buildings or structures shall conform.

**d. Prohibit Incompatible Uses. To prohibit uses, buildings or structures which are incompatible** with the character of development or the permitted uses within specified zoning districts.

**e. Regulate Alterations of Existing Buildings. To prevent such additions to, and alterations or** remodeling of, existing buildings or structures as would not comply with the restrictions and limitations imposed hereunder.

**f. Limit Congestion in Streets. To limit congestion in the public streets and so protect the public** health, safety, conveniences, and the general welfare by providing for off-street parking of motor vehicles and for the loading and unloading of commercial vehicles.

**g. Protect Against Hazards.** To provide protection against fire, explosion, noxious fumes, and other hazards in the interest of the public health, safety, comfort, and the general welfare.

**h. Conserve Taxable Value of Land.** To conserve the taxable value of land and buildings throughout the Town.

**i. Consistent with Municipal Land Use Law.** To be consistent with the purposes of the Municipal Land Use Law C 40:55D-1 et seq.

**j. Regulate the Placement of Wireless Telecommunications Antennas and Related Equipment.**

**1. To encourage the location of antennas upon, or within, existing structures, including** existing buildings, existing wireless telecommunications towers, existing water towers, and existing telephone and electric towers, especially those existing structures situated in nonresidential districts;

**2. To encourage the configuration of telecommunications facilities in a manner that minimizes** and mitigates any adverse impact upon affected properties, streetscapes, and vistas through careful design, siting, screening, landscaping, and innovative camouflaging techniques;

**3. To encourage the co-location of as many antennas as possible, of as many wireless** telecommunications carriers as possible, on existing towers and other structures in nonresidential districts;

**4. To discourage the construction of new towers which do not have the likelihood of being used** by a number of wireless telecommunications carriers;

**5. To minimize the total number of wireless telecommunications towers within the Town;**

**6. To discourage adverse impacts on community aesthetics;**

**7. To formulate and maintain, for land use planning purposes, a complete inventory of all** wireless telecommunications antenna towers, and related facilities within the Town, and others in the vicinity of the Town, which are capable of providing service within the municipality;

**8. To enhance the ability of the carriers of wireless telecommunications services who adhere to** the specific requirements and intent of the ordinance provisions to provide such service quickly, effectively, and efficiently; and

**9. To comply with the mandate of the Federal Telecommunications Act of 1996, 47 U.S.C.** Section 332(c)(7), which preserves local government authority to enforce zoning requirements which protect public safety, public and private property, and community aesthetics.

## **§ 38-2 DEFINITIONS.**

**§ 38-2.1 General. [Ord. No. 10-14-87 § 138-2.100] Unless the context otherwise indicates,** the following definitions shall be used in the interpretation and construction of the chapter. Words used in the present tense include the future; the singular number shall include the plural, and the plural the singular; the word "building" shall include the word "structure;" the word "person" includes a corporation as well as an individual; the word "lot" includes the word "plot," the word "occupied" includes the words "designed or intended to be occupied," the word "used" shall include the words "arranged, designed, constructed, altered, converted, rented, leased, or intended to be used;" the word "shall" is mandatory and not optional, and the word "may" is permissive.



**§ 38-2.2 Definitions.** [Ord. No. 10-14-87 § 138-2.200; Ord. No. 11-8-89; Ord. No. 6-27-90; Ord. No. 12-12-90; Ord. No. 1999-O-2 § 1; Ord. No. 2000-0-27 § 1; Ord. No. 2002-O-78; Ord. No. 2003-(O)-23; Ord. No. 2003-(O)-31 § 1; Ord. No. 2004-(O)-12; Ord. No. 2004-(O)-64; Ord. No. 2004-(O)-70 § 1; Ord. No. 2006-(O)-06 § 1; Ord. No. 2006-(O)-09 § 1; Ord. No. 2006-(O)-20 §§ 1 — 3; Ord. No. 2006-(O)-29; Ord. No. 2006-(O)-30 §§ 1 — 3; Ord. No. 2010-24 § 1] As used in this chapter: ACCESSORY USE OR STRUCTURE Shall mean a use or structure subordinate to the principal use of a building or structure on the same zone lot and serving a purpose customarily incidental to the principal use of the principal building. ADDITION Shall mean an extension or increase in floor area or height of a building or structure. ALLEYWAY Shall mean a private driveway in Planned Residential Developments for providing direct vehicular access to residential units, not required for general circulation and not exceeding 600 feet in length with dual access, nor 300 feet in length with single access to a public or private roadway. ALTERATION Shall mean a change or rearrangement in the structural parts or in means of egress; or an enlargement, whether by extending on a side or by increasing in height; or the moving from one location or position to another. ANIMAL HOSPITAL Shall mean a place where animals or pets are given medical or surgical treatment. Use as a kennel shall be limited to hospital use and treatment. ANIMAL KENNEL Shall mean any building, structure or premises in which animals are kept, boarded or trained for commercial gain. ANTENNA Shall mean any device specifically designed for the reception or transmission or both, of radio frequency signals. APARTMENT Shall mean a portion of a building consisting of a group of rooms used as a dwelling for a family and set apart as a separate unit from other units or portions of the building. APPLICANT Shall mean a developer submitting an application for development. APPLICATION FOR DEVELOPMENT Shall mean the application form and all accompanying documents required by ordinance for approval of a subdivision plat, site plan, planned development, conditional use, zoning variance or direction of issuance of a permit pursuant to law. APPROVING AUTHORITY Shall mean the Planning Board of the Town of Kearny unless a different agency is designated by ordinance. AUTOMOBILE SERVICE STATIONS OR GASOLINE STATION Shall mean a public building or place of business where gasoline, fuel, oil and grease and/or batteries, tires and automobile accessories are supplied and dispensed directly to the motor vehicle trade and where minor repair service is rendered. BASEMENT Shall mean a story partly above grade level having more than 1/2 of its floor-to-ceiling height above the average level of the adjoining ground. A basement shall be counted as a story if used for business or dwelling purposes. BATHROOM FACILITIES Shall mean a room equipped with a bathtub or shower, sink and a toilet. BAY WINDOW Shall mean a window projecting beyond the wall line of the building and extending down to the foundations. BEDROOM Shall mean a room in a dwelling in which one or more persons normally sleep. BILLBOARD Shall mean a sign which directs attention to a business, commodity, service, or entertainment conducted, sold, or offered at a location other than the premises on which the sign is located. BOARD Shall mean





**a. COURT, DEPTH OF AN OUTER** The horizontal dimensions between its open end and the end opposite.

**b. COURT, HEIGHT OF** The vertical distance from the lowest level it is required to serve to the top of the highest wall which bounds it within the same lot.

**c. COURT, INNER** A court entirely enclosed by walls or opening on a side lot line.

**d. COURT, OUTER** A court opening for its full width on a street, a front yard, a rear yard, or a side yard.

**e. COURT, WIDTH OF AN INNER** Its lesser horizontal dimension.



**f. COURT, WIDTH OF AN OUTER** Its horizontal dimension parallel with its principal open

end. CROSS DOCKING Shall mean loading docks situated along parallel walls. CUMMA The New Jersey Compassionate Use Medical Marijuana Act, P.L. 2009, c. 307 (approved January 18, 2010, codified at N.J.S.A. 24:61-1 et seq.), as amended and supplemented through the date hereof to include its renaming as the Jake Honig Compassionate Use Medical Cannabis Act. [Added 6-23-2020 by Ord. No. 2020-12] CURB LEVEL Shall mean the mean level of the curb at that street frontage of the building where the average curb level is highest. Where the lot level is higher than the curb level, the average level of the former along the wall in question may be taken as the base for measuring the height of a wall adjacent to a yard or court. DAY NURSERY Shall mean a facility providing a program less than 24 hours per day per child for the care of more than five children not more than 2 1/2 years old. DENSITY, GROSS Shall mean a number expressing dwelling units per gross acre of land within a parcel of property. DEVELOPER Shall mean the legal or beneficial owner or owners of a lot or of any land proposed to be included in a proposed development including the holder of an option or contract to purchase, or other person having an enforceable proprietary interest in such land. DEVELOPMENT Shall mean the division of a parcel of land into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation or enlargement of any building or other structure, or of any mining, excavation or landfill, and any use or change in the use of any building or other structure, or land or extension of use of land, for which permission may be required. DEVELOPMENT GROUP Shall mean the development of land and more than one principal building or structure on a zone lot designated to be maintained and operated by one or more persons, planned as an entity and therefore susceptible to development and regulation and a complex land use unit, rather than an aggregate of individual buildings or structures located on separate unrelated lots or parcels. DISTRICT Shall mean a district or a zone shall be any portion of the territory of the Town of Kearny within which certain uniform regulations and requirements or various combinations thereof apply under the provisions of this chapter. DORMITORY Shall mean a space in a building where group sleeping accommodations are provided for persons not members of the same family group, in one room, or in a series of closely associated rooms. DRIVEWAY Shall mean a private driveway, alleyway, road, or other avenue of vehicular travel that runs through any part of a private parcel of land that connects to a public roadway. DRIVEWAY IMPROVEMENT Shall mean the upgrading or reconstruction of preexisting driveway such as adding or replacing permanent surface, i.e., concrete or asphalt. DUPLEX TOWNHOUSE Shall mean a dwelling unit designed for and occupied by no more than one family or household. Each such dwelling unit is comprised of more than one level and has direct access to the outdoors. Such unit may be situated partially or wholly above or below another similar unit; provided, however, that no more than two

**a. Bathroom facilities not shared by occupants of any other dwelling unit,**

**b. Kitchen facilities, and**



**c. A separate means of egress not requiring access or passage through a private portion of**

another dwelling unit. DWELLING, MULTIPLE FAMILY Shall mean a structure containing more than two dwelling units with direct access from the outside for each dwelling unit or through a common hall. DWELLING, ONE FAMILY Shall mean a detached building on a single lot containing one dwelling unit. A one family dwelling unit is also referred to as a "single family dwelling." DWELLING, TWO FAMILY Shall mean a structure on a single lot containing two dwelling units, each of which is totally separated from the other by an unpierced wall extending from ground to roof or unpierced ceiling and floor extending from exterior wall to exterior wall, except for a common stairwell exterior to both dwelling units or any structure containing two dwelling units, regardless of the building's configuration. ESSENTIAL SERVICE Shall mean the erection, construction, alteration, or maintenance by public utilities or municipal or other governmental agencies of underground, surface or overhead gas, electrical, steam or water transmission systems, including poles, wires, mains, drains, sewers, pipes, conduits, cables, fire alarm boxes, police call boxes, traffic signals, light stations, telephone lines and accessories herewith, reasonably necessary for the furnishing of adequate service by such public utilities or municipal or other governmental agencies or for the public health, safety, or general welfare. FAA APPLICATION Shall mean any application, or other request, to the Federal Aviation Administration for a license, certificate, waiver, special temporary authorization, or any other instrument of authorization issued by the Federal Aviation Administration regarding an applicant's telecommunications structures, antennas, and equipment. FAA FILINGS Shall mean any application with all attachments, exhibits, appendices, memoranda, amendments, supplements, and comments; all correspondence addressed to the Federal Aviation Administration; individual comments or objections of other parties, including but not limited to, informal objections, petitions to deny, proposed findings of fact, conclusions of law, and briefs on appeal; the initial decision of Federal Aviation Administration; notices of appeal; all briefs and other documents on appeal; and all other related matters. FAMILY Shall mean any number of persons related by blood, marriage or adoption living together as a single housekeeping unit and using certain rooms and housekeeping facilities in common. A family shall also include foster children placed with a family in such dwelling by the Division of Youth and Family Services in the Department of Institutions and Agencies or a duly incorporated child care agency and children placed pursuant to law in single-family dwellings known as group homes. FCC APPLICATION Shall mean any application, or other request, to the Federal Communications Commission for a license, certificate, waiver, special temporary authorization, or any other instrument of authorization issued by the Federal Communications Commission under the Telecommunications Act of 1934, or the Telecommunications Act of 1996. FCC FILING Shall mean any application with all attachments, exhibits, appendices, memoranda, amendments, supplements, and comments; all correspondence addressed to the Federal Communications Commission; individual comments or objections of other parties, including but not limited to



**a. Height of an antenna, if required to be measured from ground level shall mean the** measurement which is made from the mean grade of the surrounding terrain to a radius of 50 feet and up to and including the highest point of the antenna or antenna support, whichever is higher. Height from ground level shall be measured from mean surface grade ground level regardless of whether or not the antenna support is mounted on an existing structure or extends to ground level.

**b. Height of an antenna, if required to be measured from the roof line, shall mean the** measurement which is made from the exterior surface of the roof covering the top floor of the building, but shall not include any penthouse, structure, or enclosure used solely to house heating, ventilating, air-conditioning, elevator, or other utility facilities. **HISTORIC SITE** Shall mean any building, structure, area or property that is significant in the history, architecture, archeology or culture of this State, its communities or the Nation and has been so designated. **HOME OCCUPATION** Shall mean any activity carried out for gain by a resident conducted as an accessory use in the residence dwelling unit. **HOTEL** Shall mean any building containing six or more guest rooms intended or designed to be used, or which are used, rented or hired out to be occupied or which are occupied for sleeping purposes by guests. **HOUSEHOLD** Shall mean a family or a group of not more than three persons who are not so related living together as a single housekeeping unit. **IMPROVED LOT COVERAGE** Shall mean the percentage of lot area which is improved with principal and accessory buildings and structures, exclusive of decks, uncovered porches, outdoor residential swimming pools and pool decks, but including driveways, parking lots, pedestrian walkways, signs, and other manmade improvements on the ground surface. **INDIGENOUS LIMITED INCOME HOUSEHOLD** Shall mean a low income or moderate income household which includes at least one resident of the Town of Kearny or at least one salaried employee of the Town of Kearny, or at least one salaried employee of the Board of Education of the Town of Kearny. **INTERMODAL FACILITY** Shall mean a facility principally used for the transfer of cargo from one mode of transportation to another. The cargo is primarily containerized and is not broken down or consolidated on site. Intermodal facilities may include trailer parking areas and interior areas for the repair and servicing of trailers, containers, and trucks utilized on site. **JOINT DRIVEWAY** See definition of "Common driveway" above. **JUNKYARD** Shall mean the use of any area, lot, parcel, building or structure for the storage, sale, processing, or abandonment of junk including scrap metal and other materials, or for the dismantling, demolition or abandonment of any inoperable mechanical equipment, machinery, or vehicles or parts thereof. A "junkyard" shall not include the storage of materials for processing of discarded or salvaged materials as part of a permitted industrial or recycling operation on the same premises. **KITCHEN FACILITIES** Shall mean an area with a stove or an oven where food is cooked or prepared. **LIMITED INCOME HOUSING (LIH)** Shall mean dwelling accommodations made available to indigenous or non-indigenous low and moderate income households at costs not exceeding the limits provided in subsection 38-6.10d. **LOT** Shall mean a designated parcel, tract or area of land established by a plat or otherwise as permitted by law and to be used, developed or built upon as a unit. (Also known as a zone lot.)

**a. LOT, CORNER** A parcel of land at the junction of and abutting on two or more intersecting streets. The owner of a "corner lot" in any district may, at the time application is made for a building permit designate either street frontage as the front of the lot. The principal structure must face on the frontage selected.

**b. LOT, INTERIOR** A parcel of land other than a corner lot.



**c. LOT, THROUGH A parcel of land which extends through from one street to another.**

LOT AREA Shall mean the computed area contained within the lot lines. LOT DEPTH Shall mean a mean horizontal distance between the front lot line and the rear lot line, measured perpendicular or radial to the front lot line to the furthest distance thereof. LOT FRONTAGE Shall mean the length of the front lot line. LOT LINES Shall mean a line of record bounding the lot.

**a. LOT LINE, FRONT** The lot line separating the lot from the street right-of-way. Also referred to as a "street line."

**b. LOT LINE, REAR** The lot line opposite and most distant from the front lot line.

**c. LOT LINE, SIDE Any lot line other than a front or rear lot line. A side lot line separating**

a lot from a street is called a side street lot line. LOT WIDTH Shall mean the distance between the side lines measured parallel to the front lot line at the required front yard setback line. LOW INCOME HOUSEHOLD Shall mean a household in which the total income is not more than that specified in subsection 38-6.10d. MALL Shall mean a mall is a roofed over common pedestrian area serving more than one tenant within a covered building. MARIJUANA All parts of the plant Genus Cannabis L., whether growing or not; the seeds thereof; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds, except those containing resin extracted from the plant; but shall not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks, fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination as defined by New Jersey Controlled Dangerous Substances Act, P.L. 1970, c. 226 (N.J.S.A. 24:21-2). [Added 6-23-2020 by Ord. No. 2020-12] MARQUEE SIGN Shall mean a sign attached to or hung from a marquee canopy or other covered structure projecting from and supported by the building and extending beyond the building wall, building line or street lot line. MEDICAL MARIJUANA ALTERNATIVE TREATMENT CENTER or ALTERNATIVE TREATMENT CENTER An organization approved by the Department of Health and Community Wellness to perform activities necessary to provide registered qualifying patients with usable marijuana and related paraphernalia in accordance with the provisions of the CUMMA. This term shall include the organization's officers, directors, board members, and employees. [Added 6-23-2020 by Ord. No. 2020-12] MEDICAL MARIJUANA CULTIVATION FACILITY A commercial entity licensed under the CUMMA that cultivates, dries, trims, or cures marijuana for sale to marijuana product manufacturing facilities, and to other marijuana cultivation facilities, but not to consumers, which holds all required state licenses and permits. [Added 6-23-2020 by Ord. No. 2020-12] MEDICAL MARIJUANA DISPENSARY A retail establishment licensed under the CUMMA to dispense marijuana for the medical use of marijuana to qualifying patients. [Added 6-23-2020 by Ord. No. 2020-12] MEDICAL MARIJUANA FACILITY Any of the following: medical marijuana alternative treatment center; medical marijuana dispensary; medical marijuana cultivation facility; medical marijuana manufacturing facility; medical marijuana safety compliance facility. [Added 6-23-2020 by Ord. No. 2020-12] MEDICAL MARIJUANA MANUFACTURING FACILITY A commercial facility licensed under a commercial entity licensed under the CUMMA that receives marijuana from a licensed cultivation facility and extracts resin from the marijuana or creates a marijuana-infused product for sale and transfer in packaged form to a medical marijuana center, which holds all required state licenses and permits. [Added 6-23-2020 by Ord. No. 2020-12] MEDICAL MARIJUANA







**a. STORY, HALF** That portion of the uppermost story with a floor to ceiling height of five feet or more, not exceeding 50% of legally permitted lower floor. A minimum roof pitch of 5 on 12 is required.

**b. STORY, FIRST** Any above grade floor shall be counted as a story including the garage space. **STREET** Shall mean any street, avenue, boulevard, road, parkway, viaduct, drive or other way; a. which is an existing State, County or municipal roadway; or b. which is shown upon a plat heretofore approved pursuant to law; or c. which is shown on a plat duly filed and recorded in the office of the County Recording Officer prior to the appointment of a planning board and the grant of such board of the power to review plats; and includes the land between the street lines, whether improved or unimproved, and may comprise pavement, shoulders, gutters, curbs, sidewalks, parking areas and other areas within the street lines. **STRUCTURE** Shall mean a combination of materials to form a safe and stable construction for occupancy, use, or ornamentation, whether installed on, above or below the surface of a parcel of land. Structures, or parts thereof, may include and are not limited to buildings, stadiums, reviewing stands, platforms, stagings, observation towers, radio towers, satellite dish antennas, water tanks and towers, trestles, piers, wharves, coal bins, container units, shelters, fences, steps, retaining walls, and display signs. **SWIMMING POOL** Shall mean any structure having a depth greater than two feet and a water surface area in excess of 150 square feet which is used for swimming, bathing or wading purposes. **TELECOMMUNICATIONS** Shall mean the electrical or electronic transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received. **TELECOMMUNICATIONS EQUIPMENT** Shall mean equipment, other than customer premises equipment, used by a carrier to provide telecommunications services, and includes software integral to such equipment (including upgrades). **TELECOMMUNICATIONS SERVICE** Shall mean the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used. **TOPOGRAPHY** Shall mean the surface features of an area of land. **TOWER** Shall mean a freestanding antenna support structure. **TOWNHOUSE** Shall mean a building designed for or occupied by no more than one family or household and attached to other similar buildings or structures by not more than two party walls extending from the foundation to and through the roof. Furthermore, each such dwelling unit shall be provided with cooking, sleeping and sanitary facilities for the use of each family or household of the townhouse. For the purpose of this chapter, a townhouse may include a building or structure in fee simple, condominium, cooperative or leasehold ownership or any combination thereof. **TRAILER** Shall mean (i) a structure on wheels, towed or hauled by another vehicle and used for carrying materials, goods or objects, or (ii) a structure used as a temporary construction office in connection with construction projects. **TRUCK TERMINAL** Shall mean an establishment primarily engaged in furnishing, hauling, or transfer services without long-term product or cargo storage and where trucks load and unload products or cargo for transshipment or reshipment without accessory consolidation, repacking or value added services. A truck terminal may also include accessory areas for the repair, service, maintenance, temporary storage, or parking of trucks. **USE** Shall





**a. YARD, FRONT** Shall mean an open space extending the full width of the lot between a principal building and the front lot line, unoccupied and unobstructed from the ground upward except as may be specified elsewhere in this chapter. The depth of the front yard shall be measured perpendicular to the front lot line.

**b. YARD, REAR** Shall mean an open, unoccupied space across the full width of the lot and lying between the rear line of the lot and the nearest line of the principal or accessory building. The depth of the rear yard shall be measured perpendicular to the rear property line.

**c. YARD, SIDE** Shall mean an open, unoccupied space between the side line of the lot and the nearest line of the principal or accessory building and extending from the front to the rear yard. The width of the side yard shall be measured perpendicular to the side line of the lot. **ZONE LOT** See definition for lot. **ZONING BOARD** Shall mean the Board of Adjustment established under this chapter. **ZONING MAP** Shall mean the Zoning Map of the Town of Kearny, New Jersey, together with all amendments subsequently adopted. **ZONING PERMIT** Shall mean a document defined by N.J.S.A. 40:55D-7 and issued by the Zoning Official, which permits the use or erection, construction, reconstruction, alteration, conversion, or installation of a structure or building, and which acknowledges that such use, structure, or building complies with the provisions of the municipal zoning ordinance or variance duly authorized by a municipal agency pursuant to N.J.S.A. 40:55D-60 or N.J.S.A. 40:55D-70.

## **§ 38-3 ESTABLISHMENT OF DISTRICTS AND ZONING MAP.**

**§ 38-3.1 Districts Designated.** [Ord. No. 10-14-87 § 138-3.100; Ord. No. 6-27-90; Ord. No. 12-12-90; Ord. No. 1999-O-2 § 2; Ord. No. 1999-O-7 § 1; Ord. No. 2004-(O)-11; Ord. No. 2004-(O)-64] For the purpose of this chapter, the Town of Kearny is hereby divided into the following types of zone districts, differentiated according to use, area and bulk regulations and to be designated as follows:

Zone Designation	Zone Description
R-1	One-Family Residential
R-1M	One-Family Residential Manor
R-2	One and Two-Family Residential
R-2B	One and Two-Family Residential/Hospital
R-3	Multi-Family Residential
C-1	Office
C-2	Neighborhood Business
C-3	Community Business
C-4	General Commercial
LI	Limited Industrial
M	Manufacturing
SKI-N	South Kearny Industrial North
SKI-S	South Kearny Industrial South
CEM	Cemetery
PRD	Planned Residential Development
CLH	Conventional and Limited Income Housing

**§ 38-3.2 Zoning Map.** [Ord. No. 10-14-87 § 138-3.200; Ord. No. 6-27-90; Ord. No. 12-12-90; Ord. No. 1999-O-2 § 3; Ord. No. 1999-O-7 § 2; Ord. No. 2004-(O)-11; Ord. No. 2004-(O)-64; Ord. No. 2009-9 § 1; Ord. No. 2011-2] The location and boundaries of said districts are hereby established on the Zoning Map of the Town of Kearny initially dated October 1, 1997, and by any amendments thereto and which map is made a part of this chapter.[1]

**a. Said Zoning Map shall be amended as recommended in the Town of Kearny Master Plan** Re-Examination Report adopted December 2, 1998 to separate the former SKM Zone into SKM-1 and SKM-2 as depicted in Appendix D of the Re-Examination Report.

**b. Said Zoning Map shall be amended as recommended in the Town of Kearny Master Plan** Re-Examination report adopted on May 7, 2003 to delete the former SKM-1 and SKM-2 Zones and replace the SKM-1 Zone with the new SKI-N Zone and the SKM-2 Zone with the new SKI-S Zone. The location and boundaries of said districts are hereby established on the attached map dated October 2004.

**c. The boundaries of said R-1M Zone shall be the Belleville Turnpike to the north, the existing R-1 Zone boundary line between Kearny Avenue and Grand Place to the east, the northerly side of Stewart Avenue to the south and the existing R-1 boundary line along Passaic Avenue to the west.**

**d. The area along Hickory Street and Ivy Street and the area along Locust Avenue and Lafayette Place, specifically described by Tax Block and Lot as follows, Block Lot 79 8-13, 14A, 14B, 15-17 80 1-6, 16, 17 82 6 83 4-15 222 1-6, 42-50 223 1-7, 38-49 224 1A 225 1A 239 2-5, 25, 35-63 240 1-46 241 14-16, 17A-17D, 18.01, 18.029, 19-40, 41A, 41B are hereby rezoned from R-2 Zone to R-I Zone so as to conform with the Master Plan revisions of December 3, 2008. [1] Editor's Note: The Zoning Map referred to herein may be found as an attachment to this chapter.**

### **§ 38-3.3 Interpretation of Boundaries. (Reserved)**

**§ 38-3.4 Designation of Zone Boundaries. [Ord. No. 10-14-87 § 138.3.310]** The zone boundary lines are intended generally to follow the center lines of streets; the center lines of railroad rights-of-way; existing lot lines; the center lines of rivers, streams and other waterways; and municipal boundary lines. When a district boundary line does not follow such a line, its position shall be shown on the Zoning Map by a specific dimension expressing its distance, in feet, from a street line or other boundary line as indicated.

**§ 38-3.5 Determination of Doubtful Lines. [Ord. No. 10-14-87 § 138.3.320]** In cases of uncertainty or disagreement as to the true location of any zone boundary line, the determination thereof shall lie with the Board of Adjustment.

### **§ 38-4 DISTRICT REGULATIONS.**

**§ 38-4.1 Schedule of Regulations.** [Ord. No. 10-14-87 § 138-4.100; Ord. No. 6-27-90; Ord. No. 12-12-90; Ord. No. 1999-O-2 §§ 4 — 15; Ord. No. 1999-O-7 §§ 3 — 5; Ord. No. 2002-O-78; Ord. No. 2003-(O)-23; Ord. No. 2004-(O)-11; Ord. No. 2004-(O)-64; Ord. No. 2005-(O)-09 § 3; Ord. No. 2007-(O)-17 § 1; Ord. No. 2008-(O)-04 § 1; Ord. No. 2010-12 § 1] The restrictions and controls intended to regulate development in each district are set forth in Schedule I, District Use Regulations and Schedule II, Area, Yard and Bulk Requirements[1], which are supplemented by other sections of this chapter. [1] Editor's Note: Schedule I, District Use Regulations and Schedule II, Area, Yard and Bulk Requirements are included as attachments to this chapter.

**§ 38-4.2 Application of Regulations.** [Ord. No. 10-14-87 § 138-4.200] Except as hereinafter otherwise provided.

**a. No building or structure shall be erected and no existing building or structure shall be moved,** altered, added to or enlarged, nor shall any land or building be designed, used or intended to be used for any purpose or in any manner other than as specified among the uses hereinafter listed as permitted in the district in which such building or land is located.

**b. No building or structure shall be erected, reconstructed or structurally altered to exceed in** height the limit hereinafter designated for the district in which such building is located.

**c. No building or structure shall be erected, no existing buildings or structures shall be altered, enlarged or rebuilt, nor shall any open space surrounding any building be encroached upon or reduced in any manner, except in conformity to the yard, lot area and building location regulations hereinafter designated for the district in which such building or open space is located.**

**d. No yard or other open space provided about any building for the purpose of complying with the provisions of this chapter shall be considered as providing a yard or open space for any other building, and no yard or open space on one lot shall be considered as providing a yard or open-space for a building on any other lot.**

**e. No minimum off-street parking area or loading or unloading area shall be considered as providing off-street parking, loading or unloading for a use or structure on any other lot or parcel other than the principal use to which it is ancillary, except as provided herein.**

**§ 38-4.3 General Use Restriction. [Ord. No. 10-14-87 § 138-4.300] Any use which is not specifically designated as a principal permitted use, an accessory use or a conditional use is specifically prohibited from that zone district in the Town of Kearny.**

**§ 38-4.4 Temporary Quarters. [Ord. No. 10-14-87 § 138-4.00; Ord. No. 5-12-82]**

**a. Notwithstanding any other provision of this Zoning Ordinance and specifically use** regulations contained in Schedule I, District Use Regulations, in the event a residential dwelling in a R-1, R-2 or R-3 Zone District is substantially destroyed or damaged by fire or other casualty or an act of God, the owner/occupant of the dwelling upon application to the Construction Officer may be permitted to locate temporary living quarters on his or her property for a period not to exceed 90 days, provided that in the opinion of the Construction Official the premises are repairable and the repairs may be accomplished within a period of 90 days from the date of the damage. Under no circumstances shall any more than one temporary living quarter be located on the property at any one time.

**b. No approval for temporary living quarters shall be granted unless the applicant can display a** valid special reason for the requested relief. The following shall be considered valid special reasons for purposes of this section:

**1. Financial hardship;**

**2. Job residency requirement;**

**3. Enrollment of children in the local school system;**

**4. Protection of personal property remaining in the structure that cannot otherwise be** relocated; or

**5. Relocation would jeopardize the aggrieved person or persons everyday activities.**

**c. Approval for temporary living quarters shall be granted only when the adjoining** property owners to either side and to the rear of the subject property give their written consent to the location of the temporary living quarters.



**d. All temporary living quarters must conform to the requirements of the New Jersey Uniform Construction Code.**

**§ 38-4.5 Trailers and Other Storage Structures. [Ord. No. 10-14-87 § 138-4.500; Ord. No. 2004-(O)-64]**

**a. The storage, parking or use of trucks, tractor, trailers, containers or any similar structure for storage purposes on a permanent basis is hereby prohibited in all districts enumerated in this zoning ordinance except SKI-N where it may be permitted subject to site plan approval. For purposes of this subsection, there shall be a rebuttable presumption that a truck, tractor, trailer, container or any structure is used for storage purposes on a permanent basis if such truck, tractor trailer, container or structure remains on the same or similar location continuously for more than seven days while containing goods, chattels or merchandise of any kind.**

**b. The storage, parking or use of a house trailer, mobile home or office trailer by any person or persons on a permanent basis is hereby prohibited in all districts enumerated in this zoning ordinance. For purposes of this subsection, there shall be a rebuttable presumption that a house trailer, mobile home, or office trailer is used on a permanent basis if such house trailer, mobile home, or office trailer remains in the same or similar location continuously for more than seven days. Provided, however, that house trailers, mobile homes, or office trailers used as offices for construction projects may be permitted on written permit of the Construction Official for the duration of a particular construction project for which the structure is used.**

**§ 38-4.6 Sexually Oriented Businesses Prohibited in Certain Zones. [1] [Ord. No. 2007-(O)-68]**

**a. No sexually oriented business as defined in N.J.S.A. 2C:33-12.2 and N.J.S.A. 2C:34-6** may or shall be located in the land areas contained within the zones presently designated as R-1, R-2, R-2B, R-3, C-1, C-2, C-3, C-4, LI, M, SKI S, CEM, PRD and CLH or in any Redevelopment Area.

**b. In addition to the restrictions imposed by N.J.S.A. 2C:34-7, no sexually oriented business may** or shall be located within 1,000 feet of any location licensed for the retail sale or consumption of alcoholic beverages.

**c. The bulk standards applicable to Restaurants, Eating and Drinking Establishments and Fast-Food Restaurants,** set forth in Section 38-6, Schedule IV[2]j of the Revised General Ordinances shall apply to sexually oriented businesses. [2] Editor's Note: Schedule VI may be found as an attachment to this chapter. [1] Editor's Note: Former subsection 38-4.6, Storage of Containers, previously codified herein and containing portions of Ordinance No. 2004-(O)-64, was repealed in its entirety by Ordinance Nos. 2007-(O)-17 and 2008-(O)-04.

## **§ 38-5 SUPPLEMENTARY LOT, HEIGHT AND YARD REGULATIONS.**

**§ 38-5.1 Lot Regulations.** [Ord. No. 10-14-87 § 138-5.100; Ord. No. 2004-(O)-12; Ord. No. 2005-(O)-09 § 2; Ord. No. 2018-12]

**a. Existing Zone Lots of Record.** In any residential zone, only a one-family dwelling may be erected on a nonconforming zone lot of official record at the effective date of this chapter, as to minimum lot area; provided, however, that no adjacent or adjoining vacant land exists or existed at the time of the effective date of this chapter which would create a conforming lot if all or part of the vacant land were combined with subject lot. No lot or lots in single ownership hereafter shall be reduced so as to create one or more nonconforming lots. The conversion of a dwelling to three or more dwelling units on a lot of nonconforming area shall be considered a variance under N.J.S.A. 40:55D-70d.(5).

**b. Lot Width.** The minimum lot width of any lot shall be measured at the front yard setback line as required for the district in which it is located. In cases of irregularly shaped lots whose sides are not parallel, the street frontage shall not be less than the 75% of the minimum lot width required; provided, however, that the lot width as measured at the front yard setback line shall be no less than the minimum lot width, as specified in the Zoning Schedule, for the district in which the lot is contained.

**c. Corner Lots.** At all street intersections involving Passaic Avenue, Belgrove Drive, Kearny Avenue, Davis Avenue, Schuyler Avenue, Midland Avenue, Bergen Avenue and Belleville Turnpike, no obstruction exceeding 30 inches in height above the established grade of the street at the property line, other than an existing building, post, column, hedge or tree, shall be erected or maintained on any lot within the sight triangle area bounded by the line drawn between points along such street lot lines 25 feet distant from their intersection. The determination of the front yard of a corner lot shall be at the option of the owner or developer and shall be so designed on all maps and official records. On a corner lot involving any one of the above mentioned major streets, each story or part of a building, shall be set back from the side street a minimum of 1/2 the required front setback or 15 feet in an R-1 or R-2 Zone and 10 feet in an R-3 Zone, whichever is greater. The provisions of the sight triangle area, indicated in the preceding paragraph shall prevail where there is a conflict with the provisions of this section. All other corner lots in any R-1 Zone, shall have two front yards. The minimum front yard setback on the shorter street frontage of the property shall be 20 feet, or the prevailing setback of the neighborhood, whichever is greater; and, the minimum front yard setback on the longer street frontage of property shall be a minimum of eight feet, unless otherwise provided in the preceding paragraph in 38-5.1c above. All corner lots in the R-1M Zone shall have two front yards. The minimum front yard setback shall be 20 feet or the prevailing setback of the neighborhood, whichever is greater. The minimum lot frontage for corner lots shall be 60 feet; the minimum lot area shall be 6,000 square feet.

**d. Through Lots.** A through lot shall be considered as having two street frontages, both of which shall be subject to the front yard requirements of the Zoning Schedule of this chapter. For location purposes of accessory uses and projections into the required yards only, such as decks, sheds, patios, pools, and all other accessory uses and projections into the required yards as defined under this Chapter, the yard opposite of the dwelling's main ingress shall be considered the rear yard on residential through lots.

**e. Required Area or Space Cannot Be Reduced.** The area or dimension of any zone lot, yard, parking area, nonconforming use, or other space shall not be reduced to less than the minimum required by this chapter; and if already existing as less than the minimum required by this chapter, the area or dimension may be continued and shall not be further reduced.

**§ 38-5.2 Frontage Upon a Street.** [Ord. No. 10-14-87 § 138-5.100; Ord. No. 1999-O-2 §§ 16-17, 37]

**a. Every principal building shall be built upon a lot with frontage upon an improved and approved street** in accordance with the street standards established by the Town of Kearny.

**b. Any property which contains access to one or more approved and improved streets at its property line but does not contain sufficient street frontage as required herein shall not be construed to be landlocked.** Where such conditions do exist or are created by virtue of a subdivision, no building permit or occupancy permit shall be granted unless and until the property contains the required amount of street frontage as required herein.

**c. (Reserved)**

**d. Lot Located in More Than One Zone.** For any zone lot which is located in more than one zone district, which district differs in character by permitting residential, commercial or industrial uses, all yard, bulk and other requirements shall be measured from the zone boundary line and not the true lot line.

**§ 38-5.3 Yard Regulations.** [Ord. No. 10-14-87 § 138-5.200; Ord. No. 1999-O-2 §§ 18 — 20; Ord. No. 2004-(O)-12; Ord. No. 2005-(O)-09 § 2; Ord. No. 2005-(O)-42 § 6; Ord. No. 2012-11; Ord. No. 2012-19; Ord. No. 2012-37]

**a. General.**

**1. Required courts or yards shall be open to the sky, unobstructed except for the** ordinary projection of parapets, skylights, window sills, doorposts, rainwater leaders and ornamental features, which may project not more than six inches into such yard or court. Roof overhangs may extend into any required yard a distance not to exceed 18 inches, unless the yards are in excess of eight feet, in which case a roof overhang may extend a distance not to exceed three feet.

**2. In residential districts, an open porch, one story in height, may project not more than eight** feet into the required front yard, except as provided in subsection 38-5.1c. In no distance shall an open porch be located closer than 10 feet to a front lot line including any steps thereto and in no case shall it extend further than five feet beyond the majority of houses on the street.

**b. Projection into Required Yards. Certain architectural features may project into required yards** as follows:

**1. A cornice may project into the required front yard to an extent not exceeding three feet or over** a side yard, outer lot line court or a rear yard to an extent not exceeding 1/4 of the width of such yard or court, or to a distance of one foot in any case and to a maximum distance of not over three feet. Wall-mounted roofs over first floor front facade entryways may project into the required front yard but not into the public right-of-way provided such roofs cover no more area than a rectangle extending four feet from the wall and having a width of no more than six feet and provided such roofed entryways remain open and not enclosed by screening or any other type of enclosure.

**2. Ground-story bay windows, oriel windows or balconies may project not more than three feet into any** required side yard which has a width of eight feet or more. No such projecting structure shall have a width of greater than 12 feet. Uncovered steps and/or platforms may be permitted in any side yard, provided they are no more than three feet high and eight feet in length, and do not extend more than three feet from the side wall, providing the remaining side yard is not less than two feet. Chimneys may project not more than three feet into any required side yard; provided, however, that such chimneys in an R-1 District must be at least three feet from the side lot line, and in R-2 and R-3 Districts, said chimneys must be at least two feet from the side lot line. (a) Residential structures. Exterior chimneys or vents must be encased with either brick or other faced material compatible with the existing exterior finish. (b) Commercial structures. Exterior chimneys or vents which face a public right-of-way or are in public view, must be encased with either brick or other faced material compatible with the existing exterior finish.

**3. An open fire escape or balcony to a fire tower may project no more than four feet into a** required yard area.

**4. Patios may be located in any side or rear yard, provided that they are no closer than two feet** to any property line.

**5. Raised platforms including decks, swimming pool decks, and uncovered porch platforms may** be located in any side or rear yard provided that such structure is not closer than three feet to any property line. Such structures are not subject to lot coverage or improved lot coverage requirements. (a) Definitions. BALCONY, EXTERIOR Shall mean an exterior floor projecting from and supported by a structure without additional independent supports. DECK Shall mean all exterior floor supported on at least two opposing sides by an adjacent structure, and/or posts, piers or other independent supports. PORCH Shall mean a roofed open area, which may be screened, usually attached to or part of and with direct access to or from a building. (b) Raised platforms and platforms surrounding aboveground swimming pools may be located in any side or rear yard provided that such structure is not closer than three feet from any property line. Such structures are not subject to lot coverage or imposed lot coverage requirements.

**6. Decks may be allowed subject to the following conditions: (a) Decks shall only be located in** the side or rear yards of a specific property. (b) Decks shall be subject to the bulk yard requirements (side and rear yard) of the zone in which they are located, however, a deck may extend 10 feet into the rear yard setback. (c) The deck structure shall be calculated into the improved lot coverage requirements of the zone in which they are located to the extent that the area of the deck (in addition to any patios) exceeds 100 square feet. (d) Second story decks may be allowed but may not be larger than 100 square feet.



**7. Brick paver patios may be allowed subject to the following conditions: (a) Brick pavers shall**

be defined as blocks made from shale and/or clay, which are kiln fired and manufactured in molds. (b) Brick paver patio shall be subject to the bulk yard requirements (side and rear yard) of the zone in which they are located. (c) The brick paver patio shall be calculated into the improved lot coverage requirements of the zone in which they are located to the extent that the area of the brick paver patio in the aggregate (in addition to any deck structure) exceeds 100 square feet. (d) The 100 square foot exemption listed within paragraph c shall only be applicable if the brick paver patio is constructed atop a stone or gravel base with the stone or gravel base being laid directly atop undisturbed, permeable earth. Brick paver patios which are constructed atop impervious surfaces such as concrete, asphalt or plastic tarps shall not be considered permeable and shall not be subject to the 100 square foot exemption within paragraph b,7(c).

**c. Front Yard Exception.** Every lot in a residential district shall have a front yard as required in Schedule II, Area, Yard and Bulk Requirements[1] except that within the same residential district where the average front setback of existing buildings along the same side of the street, within the same block, and within 200 feet of the subject lot is greater than that in Schedule II, that average setback shall be considered the minimum. The required building setback shall apply to any story or part of any building except that cornices and eaves shall be allowed to protrude up to two feet further than the main building wall. The front yard setback in R-1 Zones shall be the prevailing setback of the neighborhood. If the setback is greater than the minimum twenty-foot front yard setback, the greater setback shall prevail. The front yard setback in the R-1M Zone shall be the prevailing setback of the neighborhood. If the length is greater than the minimum 20 feet front yard setback, the greater setback shall prevail. Where the front yard is not controlled by the preceding paragraph, no principal residential building shall extend within the specified distance from the front lot line indicated in Schedule II, Area, Yard and Bulk Requirements, except that an uncovered porch may extend into a required front yard as indicated herein. [1] Editor's Note: Schedule II, referred to herein, may be found as an attachment to this chapter.

**d. Front Yard Requirements Affected by Official Map or Master Plan.** Where any lot fronts upon a street right-of-way which is proposed to be widened as indicated on the Official Map of the Town of Kearny, or in the adopted Master Plan of the Town of Kearny or by the Hudson County Master Plan or Official Map, as provided by law, the front yard or front side in such district shall be measured from such proposed future right-of-way line.

**e. Rear Yard Exception.** When, at the time of the adoption of this chapter, there is a lot of less than 100 feet depth, the rear yard may be reduced one foot for every two feet of deficiency from the prescribed depth of the rear yard, provided no part of any rear yard shall be less than 20 feet in depth.

**f. Courts.**

**1. In any residential district, where permitted, the minimum width of an inner court at its lowest level shall not be less than eight inches per foot of height of the enclosing walls of such court measured from the sills of the lowest story served by it, and the maximum horizontal dimension of an inner court shall be not less than twice its width; the least width of an outer court between the walls thereof shall be at any given height not less than four inches per foot of such height. The depth of an outer court shall not exceed twice the width.**

**2. In any business or industrial district, where permitted, the minimum width of an inner court at its lowest level shall be not less than four inches per foot of height of the enclosing walls of such court measured from the sills of the lowest story served by it; the least width of an outer court on a lot line shall be at any given height not less than three inches per foot of height above the lowest level of such court. The depth of an outer court shall not exceed twice its width.**

**g. Yard Requirements for Apartments in Commercial Zones.**

**1. Front Yard. For any building in a commercial zone used for residential purposes, in whole or in part, a front yard setback shall be provided which shall be equal to 1/2 the height of the building or a minimum of 10 feet, whichever is greater.**

**2. Side Yard. If a business building is used for dwelling purposes above the first floor, such residential part of the building as may be more than two rooms deep shall be set back not less than four feet from any side lot line.**

**3. Rear Yard. For any building in a commercial zone used for residential purposes, in whole or in part, or for any story of a building containing living or sleeping rooms, a rear yard shall be required with a minimum depth of 20 feet, and its level shall be not higher than the floor of the lowest story containing living quarters.**

**§ 38-5.4 Height Regulations. [Ord. No. 10-14-87 § 138-5.300; Ord. No. 2010-24 § 2]**

**a. General Application.** No building or structure shall have a greater number of stories or greater number of feet than are permitted in the district where such building is located.

**b. Permitted Exceptions.** Height limitations stipulated elsewhere in this chapter shall not apply to church spires, belfries, cupolas and domes, monuments, chimneys, gas holders or water towers, smokestacks, elevator towers and enclosures, flagpoles, fire towers, or water tanks, steeples, (occupying in the aggregate less than 10% of the roof area where they are located) television aerials, or to parapet walls, except that no parapet wall may extend more than four feet above the limiting height of the building. Mechanical appurtenances such as condensers, exhaust fans, elevator housing and other similar equipment are exempt from these height restrictions provided they do not extend more than 15 feet above the maximum height limitation and are suitably screened. A mezzanine story shall also be considered to be a full story.

**c. The maximum permitted height in the R1 Zone for one-family residential use shall be 2.5 stories and 33 feet.** The maximum permitted height in the R2 Zone for one-family residential use shall be 2.5 stories and 33 feet. The maximum permitted height in the R2 Zone for two-family residential use shall be three stories and 33 feet.

**§ 38-5.5 Maximum Lot Coverage. [Ord. No. 10-14-87 § 138-5.400; Ord. No. 2010-23 § 1]** The maximum lot coverage on each zone lot shall not be greater than is permitted in the district where such buildings and structures are located and shall include all porches, chimneys, extensions and accessory buildings. The maximum building coverage on a minimum 5,000 square foot lot or greater than the R-1 and R-2 Zones shall be 30% with accessory structures not counted toward the maximum building coverage. The maximum building coverage on lots greater than 3,500 square feet and less than 5,000 square feet, the following lot coverage including accessory structures within the maximum building coverage calculations shall be as follows: Lot Area Maximum Building Coverage 3,501 to 3,875 square feet 34% 3,876 to 4,250 square feet 33% 4,251 to 4,625 square feet 32% 4,626 to 4,999 square feet 31% The maximum building coverage on lots of 3,500 square feet or less in the R-1 and R-2 Zones shall remain 35% and shall include accessory structures within the maximum building coverage calculations.

**§ 38-5.6 Maximum Improved Lot Coverage. [Ord. 10-14-87 § 138-5.500]** The maximum improved lot coverage shall not exceed the percentage indicated in the Schedule of Area, Yard and Bulk Requirements<sup>[1]</sup> herein for each zone district designated. <sup>[1]</sup> Editor's Note: Schedule II, referred to herein, may be found as an attachment to this chapter.

**§ 38-5.7 Number of Buildings Restricted. [Ord. No. 10-14-87 § 138-5.600; Ord. No. 6-27-90]**

There shall be not more than one principal building on each zone lot in any residential district, except as provided in subsection 38-5.9 paragraphs h., k. and m.

**§ 38-5.8 General Landscaping Requirements. [Ord. No. 10-14-87 § 138-5.700; Ord. No. 2004-(O)-12; Ord. No. 2005-(O)-09 § 2; Ord. No. 2010-26]**

**a. Enclosed Uses. Any enclosed use required by any Town Ordinance to be landscaped shall** provide a fence, or a visual screen as may be required by the approving authority, designed to produce a dense cover consisting of evergreen or evergreen type hedges or shrubs, spaced at intervals of not more than six feet, located and maintained in good condition within 10 feet of the property line.

**b. Unenclosed Uses. Any use which is not conducted within a completely enclosed building** including but not limited to storage yards, lumber and building materials yards, and parking lots, shall be entirely enclosed by a fence as may be required by the approving authority. This section shall not apply to nurseries, or to automobile or trailer sales areas, except when abutting a residential zone.

**c. Maintenance. Any fencing or landscaping installed in accordance with this section shall be** maintained in good order to achieve the objectives of this section. Failure to maintain fencing or to replace dead or diseased landscaping shall be considered a violation of this chapter.

**d. Front Yards in the R-1M Zones.** The front yard areas in the R-1M Zone shall be landscaped with grass and/or other vegetative cover, shrubs and/or trees to a minimum of 70% of the front yard area. The "front yard area" is defined as the area between the front street line and the building line across the full width of the lot. In addition, no trees located on the street frontage shall be removed to provide driveway access.

**e. Front Yards in R-2 Residential Zones.** The front yard areas in R-2 Zones shall be landscaped with grass and/or other vegetative cover, shrubs and/or trees to a minimum of 45% of the front yard area. The "front yard area" is defined for purposes of this section as the area between the front street line and the building line across the full width of the lot. In addition, no trees located on the street frontages shall be removed to provide driveway access.

#### **§ 38-5.9 Grading of Lots. [Ord. No. 2004-(O)-69 §§ 1.1 — 1.10]**

**a. Title.** This subsection shall be known as the Town of Kearny Lot Grading Ordinance.

**b. Purpose.** The purpose of this subsection is to control and regulate the indiscriminate or excessive removal of soil thereby creating drainage issues, stormwater runoff, soil erosion large-scale clear-cutting and destruction of trees and to control, regulate and prevent conditions which cause an increase in stormwater run-off, sedimentation, soil erosion, air or noise pollution, or impair the ambiance or physical appearance of a neighborhood. The regulations contained in this subsection are designed to limit such adverse impact while not interfering with the right of a town property owner to appropriately remove trees in accordance with the regulations as set forth hereinbelow.

**c. Governed Acts.** No person may alter, remove or otherwise disturb land or soil on any lot or property within the Town of Kearny, except in accordance with the terms and conditions of this subsection.

**d. Zoning Grading Permit Required.** No person directly or indirectly shall alter, remove or otherwise disturb land or soil on any lot or property without having obtained a zoning grading permit as follows:

**1. Permit Required Prior to Land Disturbance or Construction.** No land area shall be developed by any person such that: (a) The rate of stormwater runoff occurring at the area is increased over what occurs there under existing conditions. (b) The drainage of adjacent areas is adversely affected. (c) Soil erosion during and after development is increased over what naturally occurs there under existing conditions. (d) Soil absorption and groundwater recharge capacity of the area is decreased below what occurs there under existing conditions. (e) The natural drainage pattern of the area is significantly altered. Unless the Town Engineer has first approved a lot grading and soil erosion and sediment control plan for the proposed activity and the Construction Code Office has issued a zoning grading permit to allow such activity to proceed.



**2. Exemptions from Requirement. (a) Any development which has received site plan or** subdivision approval from the Planning Board or Board of Adjustment shall be exempt from the requirements of paragraph d,1 of this section; provided, however, that individual lots for one or two-family dwellings included within any approved subdivision shall not be exempt by this paragraph d, 2 (a). (b) Provided that there are no environmentally sensitive areas, such as but not limited to, steep slopes, wetlands, streams or bodies of water located in the area to be graded or disturbed and further provided that, in the opinion of the Town Engineer, the proposed land disturbance will not create a soil erosion problem, then the following exemptions may be granted by the Construction Code Enforcement Official: (1) Land disturbance of less than 15% of total lot area. (2) Land disturbance for the purpose of constructing an addition less than 350 square feet to an existing single- or two-family dwelling. Any proposed land disturbance exempted by the provisions of paragraphs d, 2 (a) and/or d, 2 (b) (1) or (2), shall not be required to obtain a zoning grading permit.

**3. Grading Plan Preparation and Contents.** The lot grading and soil erosion control plan shall be prepared by a professional engineer licensed by the State of New Jersey. The plan must detail how the requirements of paragraph d, 1 will be met. If the site currently has a drainage problem as the result of previous development, the plan should propose a method to address the existing conditions. The Town Engineer will review the plan to determine if the improvement is feasible and warranted. Two copies of the plan shall be submitted to the Construction Code Office together with two copies of an application for a zoning grading permit and the fee required by paragraph, 5 of this subsection. The lot grading and soil erosion and sediment control plan shall contain the following information: (a) Date. (b) Layout of proposed buildings and structures. (c) North arrow; scale; block and lot number of the subject property (or properties); name and address of record owner; name address, license number and seal of the person preparing the plan. (d) Complete lot boundary line information based on a current survey prepared by a New Jersey licensed land surveyor. (e) Building setback lines, lines of existing streets, easements affecting the property and any areas dedicated to public use. (f) Location of existing buildings and structures, if any, including walls, fences, culverts and bridges. Spot elevations as to all such structures shall be provided. Structures to be removed shall be indicated by dashed lines. (g) Location of all existing and proposed storm drainage structures. The information shall include proposed methods of controlling on-site stormwater, and may include grading, use of underground leaders to stormwater systems or dry wells, and other similar or related methods. (h) Existing contours at two-foot intervals where slopes are less than 10% and five-foot intervals where slopes are 10% or greater. Existing contours shall be shown by dashed lines. (i) Proposed contours with similar intervals. Proposed contours shall be shown by solid lines. All changes in grade proposed on site or adjacent to the building must be delineated on the Proposed Contour Plan. (j) Location of existing rock outcroppings, high points, watercourses, depressions, ponds, marshes, wooded areas and other significant natural features. (k) Proposed use of land, buildings and other structures, including driveways, roads, curbs, sidewalks and other paved areas. (l) Existing and proposed utility locations. (m) Landscaping plans showing existing vegetation to remain and all areas to be seeded or planted. Size and type of proposed trees and shrubs shall be indicated. All trees eight inches DBH or greater shall be shown. (n) Disturbance fencing shall be provided around the limits of all areas of disturbance. (o) Silt fencing and/or hay bales shall be provided downstream of all areas of all areas of disturbance. (p) Such other information as may be required by the Town Engineer in order to determine that the requirements of this section have been met. (q) Narrative describing the existing conditions and any proposed improvements as a result of the change in grade.



**4. Time for Action.** The Town Engineer shall review and approve, conditionally approve or deny the lot grading permit application within 30 days of the date on which a complete application is submitted. Otherwise, the applications for a grading permit shall be deemed to be approved.

**5. Fee.** Each applicant for a zoning grading permit under this subsection shall submit a review fee payable to the Town of Kearny in the amount of \$200 for the review by the Town Engineer and a \$25 fee for the issuance of the permit.

**e. General Requirements.** Since considerable soil erosion can take place during land disturbance, development plans shall contain proposed soil erosion and sediment control measures. The measures shall be incorporated into the final plan and final construction drawings. Soil erosion and sediment control measures shall conform to the Standards and Specifications for Soil Erosion and Sediment Control. The measures shall apply to all features of the construction site, including street and utility installations as well as to the protection of individual lots. Measures shall also be instituted to prevent or control soil erosion and sedimentation during the various stages of development.

**f. Guaranties.** Improvements or such other measures on an approved lot grading plan that may be required subsequent to the start of construction or site development work may be deferred until such appropriate time as when required. The Town Engineer shall provide for the posting of performance guaranties and maintenance bonds in the same manner as provided in this ordinance. For drainage (i.e., piping) catch basins.

**g. Review and Approval of Plan; Copies of Decision.** If required, the Town Engineer shall refer soil erosion and sediment control portion of the application to the Hudson County Soil Conservation District or such other local, County, State or Federal agency as may be particularly qualified to review said plan, and no approval of the Town Engineer shall be given until after receipt and recommendations thereof. Such review and approval shall be made within a period of 30 days of submission of a complete application unless, by mutual agreement in writing between the municipality and the applicant, this period is extended for an additional 30 days. Failure of the municipality to make a decision within such period of such extension thereof shall constitute certification. The applicant shall be provided with written notice of such decision by the Town Engineer or other authorized municipal agent. A copy of such decision, including name of applicant, site location by street address and block and lot number, and proposed land use shall be sent to the Hudson County Soil Conservation District. The municipality shall also make available such other information as may be required by the District.

**h. Maintenance. Individuals or developers carrying out soil erosion and sediment control** measures under this subsection, and all subsequent owners of property on which such measures have been installed, shall adequately maintain all permanent soil erosion control measures, devices and planting in effective working condition for a period of two years after completion of the approved plan implementation. The Town Engineer shall give the applicant upon request a certificate indicating the date on which the measures called for in the approved plan were completed.

**i. Enforcement. The requirements of this subsection shall be enforced by the Construction Code** Enforcement Department, which shall inspect or require adequate inspection of the work. If the Construction Code Enforcement Department finds any existing conditions not as stated in any application, he may refuse to approve further work, and shall notify the Construction Code Official in writing, of the reasons for refusal, and may additionally require necessary engineering measures to be promptly installed and may seek other penalties as provided in Chapter 1, Section 1-5, plus all applicable assessments, surcharges and court costs.

**j. Maintenance Guaranties.** Pursuant to the provisions of paragraph e of this subsection, the Town may require a maintenance guaranty in favor of the Town of Kearny in an amount not to exceed 15% of the estimated cost of improvements called for by the lot grading plan, as the total cost thereof shall be estimated by the Town Engineer. Said maintenance guaranty shall run for a period of two years and said guaranty shall provide for the proper repair and/or replacement of any such improvements during said period of two years. The said two-year period shall run from the date of the issuance of the first certificate of occupancy for the last home in such development as shown on the preliminary plat, or the date of issuance of the certificate of occupancy for a site plan.

## **§ 38-6 SUPPLEMENTARY USE REGULATIONS.**

**§ 38-6.1 Regulations Governing Certain Permitted Uses.** [Ord. No. 10-14-87 § 138-6.100; Ord. No. 6-27-90; Ord. No. 12-12-90; Ord. No. 4-24-91; Ord. No. 1999-O-2 §§ 22 — 25; Ord. No. 2006-(O)-55A § 1]

**a. Automobile Sales, New and Used.** The open display or storage for sale of used or new motor vehicles shall be screened in accordance with the requirements of subsection 38-5.10. In addition, the uses shall be subject to the requirements of the special ordinance of the Town of Kearny licensing and regulating the businesses.

**b. Carpet and Rug Cleaning Establishments and Dry Cleaning Establishments.** Carpet and rug cleaning establishments and dry cleaning establishments, where permitted, shall meet the following requirements:

**1. Not more than five mechanics or skilled workers are employed on the premises, except as hereinafter specified.**

**2. That no mechanical power exceeding five rated horsepower is utilized.**

**3. That no steam pressure exceeds 80 pounds per square inch gauge pressure, and**

**4. The major portion of the products manufactured or treated is to be sold at retail on the premises or the service is performed primarily for residents of the locality.**

**5. Only the ground floor or an equivalent area shall be used for such purposes.**

**c. Cemeteries.** Any property used as a cemetery shall be provided with an entrance on a street or road which shall have a pavement width of not less than 20 feet, with ingress and egress so designated as to minimize traffic congestion, and a minimum six-foot high fence or evergreen or evergreen-type hedge or shrubs at intervals of not more than six feet, or a minimum of 10 feet of permanently maintained planting strip on all property lines abutting any R District or residential street. No internment shall take place closer than 15 feet to any street right-of-way line. In the event a wider street right-of-way line is designated on the Town Official Map or Master Plan, the requirements shall be measured from the proposed realignment or widened alignment as indicated on the Official Map or Master Plan.

**d. Churches and Other Places of Worship.** Churches, synagogues and other places of worship shall be governed by the following regulations:

**1. Area, bulk and yard requirements:** (a) Minimum Lot Area: 20,000 square feet. (b) Minimum Lot Width: 100 feet. (c) Minimum Front Yard: 20 feet. (d) Minimum Side Yard: 7 feet each. (e) Minimum Rear Yard: 20 feet. (f) Maximum Lot Coverage: 50%. (g) Maximum Improved Lot Coverage: 90%.

**2. Any church facility which maintains a school accredited by the State of New Jersey for elementary or high school grades shall also provide, in addition to the minimum lot area standards for the church, synagogue or other place of worship, a minimum lot area as approved by the New Jersey State Board of Education.**

**e. Community Buildings, Clubs, Social Halls, Lodges, Fraternal Organizations and Similar Uses.**

**1. All buildings shall be located a minimum of 10 feet from a side or rear property line and a minimum of 20 feet for a front yard or the minimum front yard setback in the district in which it is located, whichever is greater.**

**2. In R-Districts, where permitted, there may be included retail sales for members and their guests only.**

**f. Commercial and Public Parking in Commercial and Industrial Uses. Commercial and public parking facilities used for the storage of automobiles by the hour, day, week or month shall be subject to the following criteria and standards:**



**1. Any entrance or exit shall be located at least 50 feet from the intersection of any street lines.**

**2. All interior roadways and parking berths shall be paved with a dust proof surface.**

**3. Landscaping shall be required as provided in the Kearny Town Subdivision and Site Plan Ordinance, to screen the parking lot from abutting or adjacent residential areas and to maintain the character of the neighborhood.**

**4. No public garage or commercial parking lot shall have an entrance or exit connected with a public street at a point closer than 200 feet, measured along the street line on the same or opposite side of the street, to a main entrance of a public or private school, public library, church, theater, hospital, fire station, playground, orphanage or children's home housing children under 16 years of age, or other public gathering place, or to any street entrance to such buildings or public gathering places.**

**5. No part of any vehicle entrance to or exit from any public garage or commercial parking lot shall be closer than 50 feet to the boundary line of any residential district.**

**6. No part of any public garage shall have a gasoline or oil pump, car lift or other service appliance used to serve or supply motor vehicles erected within 25 feet of any boundary line of any residential district.**

**7. No part of any public garage shall be used for auto body repair or painting.**

**g. Extraction or Excavation Operation. The extraction or excavation of soil, sand, gravel, rock, and other surface or sub-surface materials and/or the processing of same shall meet the following requirements:**

**1. Performance Standards. The performance standards of the Town and New Jersey**

Department of Environmental Protection shall apply to the excavation and extraction of natural resources. The application shall also comply with standards of the New Jersey Soil Conservation Service.

**2. Structural Maintenance. All buildings and structures shall be maintained in an adequate and safe condition at all times.**

**3. Protective Fencing. The approving authority shall require protective fencing or other means of protection at the site of an excavation.**

**4. Rehabilitation. All land which has been excavated must be rehabilitated in accordance with** standards set within one year after the termination of operations; at the expense of the operator. It is further provided that where an excavation operation has lasted longer than one year, rehabilitation of land in accordance with standards set must be begun and completed within one year's time. The Town may require a performance bond or some other financial guarantee that the conditions of this chapter shall be satisfied. (a) All excavations must be either made to a water-producing depth, or graded and back filled. (b) Excavations made to a water-producing depth shall be properly sloped to the water line, with banks sodded or surfaced with soil of an equal quality to adjacent land area topsoil; such topsoil required under this section shall be planted with trees, shrubs, legumes, or grasses. (c) Excavations not made to a water-producing depth must be graded or backfilled with non-noxious, nonflammable, noncombustible solid material and in a topographic character which will result in substantial conformity to adjacent lands. Such grading or backfilling shall be designed to minimize erosion and shall be surfaced with a soil equal in quality to that of adjacent land area and planted with trees, shrubs, legumes, or grasses. All buildings and structures used in such operations shall be dismantled and removed by and at the expense of the operator within one year following termination of the operations.

**5. Landscaping.** The provisions of subsection 38-5.10 shall also apply.

**6. Soil Mining Ordinance.** In addition, all requirements of the soil mining ordinance shall be complied with. In the event these subsections are inconsistent with this ordinance, the more restrictive code shall apply.

**h. Garden Apartments and Multiple-Family Dwellings.** In addition to the area, bulk and yard requirements indicated in Schedule II, Area, Yard and Bulk Requirements[1], the following requirements are also applicable for garden apartments and multiple-family dwellings.

**1. Garden Apartments. (a) Density requirements.** The maximum number of dwelling units per acre for garden apartments shall be determined by Schedule III herein.[2] [2] Editor's Note: Schedule III may be found as an attachment to this chapter. (b) Maximum number of dwelling units per grouping. Each garden apartment building shall not contain more than 12 dwelling units, and in attached buildings not more than 36 dwelling units, with no portion of the building below the first story used for dwelling purposes, except that a basement where the floor is not more than three feet below grade may contain living quarters for the building superintendent and his family. The maximum length of any garden apartment building shall not exceed 200 feet. The building design shall not be inaccessible by emergency vehicles. (c) Courts. Where a court is provided, it shall have dimensions the minimum of which shall be 30 feet. (d) Recreation space. There shall be provided on the site such developmental area or areas of not less than 100 square feet of recreation space for each dwelling unit but in no case shall there be less than 2,000 square feet devoted to the joint recreational use of the residents thereof. Such recreation space shall be appropriately located in other than a front yard and shall be required to be developed with passive and/or active recreational facilities.

**2. Multiple-Family Dwelling. (a) Yard requirements. For multiple-family dwellings in an R-3 zone,** each side yard shall have a minimum depth as noted in Schedule II, Area, Yard and Bulk Requirements<sup>[3]</sup>, or a side yard equal to 1/3 the height of the building wall, whichever is greater but in no case shall the side yard be less than 10 feet. <sup>[3]</sup> Editor's Note: Schedule II, referred to herein, may be found as an attachment to this chapter. (b) Density requirements. The maximum number of dwelling units per acre for multiple-family dwellings shall be determined by Schedule IV herein.<sup>[4]</sup> <sup>[4]</sup> Editor's Note: Schedule IV may be found as an attachment to this chapter.

**3. Standards applicable to garden apartments and multiple-family dwellings. (a) Distances** between buildings. The minimum distance between any two buildings on the same lot having heights of 2 1/2 stories or less shall not be less than 35 feet. The minimum distance between any two buildings on the same lot where at least one of the buildings has a height of more than 2 1/2 stories shall not be less than 45 feet. (b) General landscaping. Any unenclosed use or area may be required by the approving authority to be landscaped and provision, when deemed necessary, shall also be made for landscaping in accordance with subsection 38-5.10. <sup>[1]</sup> Editor's Note: Schedule II, referred to herein, may be found as an attachment to this chapter.

**i. Newspaper or Job Printing.** Newspaper or job printing operations shall be permitted in specified commercial zones subject to the same provisions enumerated in paragraph b except not more than 10 skilled workers or 10 rated horsepower shall be permitted.

**j. Restaurants, Eating and Drinking Establishments and Fast-Food Restaurants.**

**1. General.** Any building or structure designed, used or intended for use as a restaurant or an eating or drinking establishment shall prohibit the sale or consumption of food or beverage within any designated parking area or open space outside of the confines of an enclosed structure on the site, except for designated patio or terrace areas.

**2. Fast-Food Restaurants.** Any building or structure designed, used, or intended for use as a fast-food restaurant shall meet the following requirements: (a) Minimum lot area (square feet) 40,000. (b) Minimum lot width (feet) 175. (c) Minimum front yard (feet) 50. (d) Minimum side yard. One (feet) 25. Both (feet) 50. (e) Minimum rear yard (feet) 50. (f) Maximum lot coverage (percent) 15. (g) Maximum improved lot coverage percent 75.

**k. Townhouse Requirements.** The development of townhouses whether in a fee or other form of ownership shall comply with the additional requirements that are herein noted.

**1. No building group shall exceed six dwelling units or 160 feet, whichever is the lesser.**

**2. The front building wall shall be minimally offset by five feet at least for every two dwelling units.**

**3. The side yard setback for an end dwelling unit shall be 10 feet. The side yard space between two townhouse structures shall be no less than 20 feet.**

**4. Each townhouse dwelling shall minimally provide one enclosed parking space.**

**l. (Reserved)**

**m. Planned Residential Developments.**

**1. No Planned Residential Development may be established on a tract of less than seven acres in size.**

**2. Planned Residential Developments may include townhouses, duplex townhouses and apartments,** provided that no more than 10% of the total units shall be apartments. In Planned Residential Developments townhouse units may be attached to apartment units by not more than two party walls extending from the foundation to and through the roof. No back-to-back apartment structures shall be permitted in Planned Residential Development Districts, nor shall more than two apartment units be permitted between party walls.

**3. The gross density of Planned Residential Developments shall not exceed 18.27 units per acre.**

**4. A minimum building setback of 30 feet shall be provided from any public street right-of-way line and a minimum building setback of 20 feet from any other property line.** No portion of any parking area, aisle or driveway shall be permitted within 15 feet of a property line. A landscaped buffer area at least 15 feet in width shall be provided within all tract perimeter setback areas. Along and generally parallel to adjoining public streets such landscaped buffers shall also include a berm not less than five feet in height measured from the unadjusted grade. Any roof overhang or eave not exceeding two feet shall be permitted to encroach into the required perimeter setbacks. Decks or patios may extend into the required perimeter setbacks other than along an adjoining public street, provided the floor elevation is not more than two feet above the finished grade measured at the front edge of the deck or patio, and provided that no portion of such decks or patios are within 15 feet of a property line.

**5. No building within the Planned Residential Development shall exceed a height of 35 feet** measured from the average finished grade around the base of a building to the mean height of the gable or main roof slope.

**6. A minimum of 10 feet shall be provided between a building and the curb of an internal private street.**

**7. A minimum of five feet shall be provided between a building and an off-street parking area except where such space is provided within a driveway or stacked parking space.**

**8. All internal private streets shall be a minimum of 24 feet in width measured from curb to curb.** All alleyways shall be a minimum of 20 feet in width.

**9. No building shall exceed 190 feet in length. A minimum offset of two feet shall be provided in the front facade, for at least every 50 feet in length.**

**10. The following minimum distance between buildings shall be provided.[5] (a) Front to front: 60 feet. (b) Front to rear: 60 feet. (c) Front to side: 35 feet. (d) Rear to rear: 45 feet. (e) Rear to side: 35 feet. (f) Side to side: 25 feet.** In such cases where a pergola, strium or other structure physically connects two buildings and provides a breezeway and private entranceway to the side of a building, such side-to-side distance may be reduced to 15 feet, provided the overall length of the two buildings and the intervening spaces does not exceed 200 feet in length. [5]  
Note: The rear of the building shall be that side from which vehicular access is provided or which contains enclosed garages or which is closest to the parking area or driveway provided for that building.



**11. The following minimum number of parking spaces per dwelling unit shall be provided:**

Apartments Townhouses and Duplex Townhouses 1 bedroom N/A

**1.8 2 bedroom**

**1.8**

**2.1 3 bedroom N/A**

**2.4**

**12. All parking spaces within enclosed garages shall be counted for the purposes of** meeting required parking on-site. All driveway spaces which are a minimum of nine feet wide by 20 feet in length shall also be counted as one space towards meeting the required parking on-site. All other parking spaces other than driveway spaces shall be nine feet wide by 18 feet in length, provided an overhang of two feet is provided, otherwise the required dimension shall be nine feet wide by 20 feet in length. The provisions of subsection 38-7.6e shall not apply to Planned Residential Developments.

**13. A minimum recreation area of 30 square feet per unit shall be set aside for recreation. Such** recreation area or areas shall provide for active recreation such as play equipment or tot lots, and passive recreation such as sitting areas. However, there shall be at least one tot lot provided on-site. Such recreation areas may be provided in one or more areas, provided that each is no less than 1,600 square feet in size.

**14. No sidewalks shall be required. However, walkways which shall not consist of macadam, shall be provided to facilitate pedestrian movement on-site.**

**15. Mountable curbs shall be provided along all internal private streets.**

**16. No concrete block or asphalt shingle shall be permitted as a finish material for any building, except that asphalt shingle may be used for roofs. In Planned Residential Developments, all structures shall have the appearance of attached townhouse units.**

**17. All open spaces not covered by impervious surfaces shall be planted with grass or landscaping material.**

**18. The developer of a Planned Residential Development shall be required to either provide 20% of the total units in the development for families of low and moderate income or to contribute to the Affordable Housing Trust Fund a cash payment of \$12,000 per unit for 20% of the total units in the development, in lieu of not being required to provide units affordable to low and moderate income families on-site. Where a developer chooses to provide low and moderate income units on-site, the units shall be built in accordance with the following schedule: Minimum Percentage of Low and Moderate Income Units Completed Percentage of Market Housing Units Completed**

Minimum Percentage of Low and Moderate Income Units Completed	Percentage of Market Housing Units Completed
0	25
10	25
25	50
50	50
75	75
100	90
90	100

**Where a developer chooses to provide an in-lieu-of-cash payment, 1/3 of the total payment due shall be payable upon the issuance of the first building permit with the balance to be paid pro rata on the issuance of the certificates of occupancy for the remaining units. Payment shall be simultaneous to the issuance of the building permit and certificates of occupancy.**

**n. CLH Conventional and Limited Income Housing. District.** The CLH Zone is designed for and permits conventional residential development in combination with limited income housing (LIH) as well as accessory uses and conditional uses as permitted and regulated in the R-1 One-Family Residential Zone, CLH developments all meet the following criteria.

**1. Minimum Lot Area.** No CLH development shall be established on a lot with an area of less than three acres.

**2. Intensity of Development.** The maximum gross density of any tract inclusive of conventional housing and LIH units shall not exceed 14 dwelling units per acre, provided, that any development in the CLH Zone shall provide for LIH at the rate of 2.8 dwelling units per acre.

**3. Housing Types.** Conventional and limited income housing may consist of townhouses, duplex townhouses and apartments arranged and sited in a fashion approved by the Planning Board.

**4. Required Conditions. The following requirements must be complied with in the CLH** Conventional and Limited Income Housing District. (a) Setbacks. A minimum building setback of 30 feet shall be provided from any street right-of-way or other property line. No portion of any parking area, parking aisle, driveway or internal roadway other than street access ramp shall be permitted within 15 feet of any street right-of-way or other property line. A landscaped buffer area at least 15 feet in width shall be provided within all perimeter setback areas. Such landscaped buffers may, at the discretion of the Planning Board also be required to include a berm not less than five feet in height measured from the unadjusted grade. (b) Building height. No building shall exceed a height of 40 feet measured from the average finished grade around the base of the building to the mean height of the gable or main roof slope. (c) Distances. A minimum distance of 15 feet shall be maintained between any building and the curbline of an internal private roadway. A minimum distance of 10 feet shall be maintained between any building and an off-street parking area other than a driveway accessing an individual enclosed garage. Distances between buildings shall be maintained in the following manner: Front-to-front perimeter wall 60 feet Front-to-rear perimeter wall 60 feet Rear-to-rear perimeter wall 60 feet Front-to-side perimeter wall 40 feet Rear-to-side perimeter wall 40 feet Side-to-side perimeter wall 30 feet (d) Roadways and driveways. All internal private roadways shall have a width of at least 24 feet measured between curbs. Single driveways and double driveways accessing individual garages shall have widths of not less than 11 feet or 22 feet respectively. Internal private roadways parking areas and driveways shall be curbed along their entire lengths. (e) Parking. The minimum number of off-street parking spaces provided shall be according to the following schedule: Unit Size Apartments Townhouses and Duplex Townhouses 1 bedroom

**1.5 spaces**

**1.8 spaces 2 bedroom**

**1.8 spaces**

**2.1 spaces 3 bedroom**

**2.0 spaces**

**2.4 spaces 4 bedroom or larger**

**2.2 spaces**

## **2.6 spaces All parking spaces provided within enclosed garages may be counted for the**

purpose of satisfying off-street parking requirements. Single or double driveways accessing individual garages with lengths of at least 25 feet measured between the curbline of a private internal roadway and an individual garage may also be counted as single or double parking spaces respectively, for the purpose of meeting off-street parking requirements. Each off-street parking space, other than within a driveway, shall be a suitably improved rectangular area of not less than 180 square feet, shall be a minimum of nine feet in width measured perpendicular to the axis of the length, and shall have a minimum depth of 20 feet. Whenever a parking space abuts along its length an obstruction more than six inches high the minimum width of the parking space shall be 12 feet. All parking spaces shall be provided with adequate means of ingress and egress which shall be kept open and unobstructed at all times and which shall be designed to provide surface driveways or aisles to meet the following minimum standards: Parking Plan Aisle Width Parallel parking on 1 side only (1 way) 12 feet Parallel parking on 1 side only (2 way) 24 feet 30° angle parking (aisle one-way) 11 feet 30° angle parking (aisle two-way) 24 feet 45° angle parking (aisle one-way) 13 feet 45° angle parking (aisle two-way) 24 feet 60° angle parking (aisle one-way) 18 feet 60° angle parking (aisle two-way) 24 feet 90° angle parking (aisle one or two-way) 24 feet If approved by the Planning Board, two feet of the 20 feet minimum length requirement may be satisfied by vehicular overhang over a landscaped area which is protected by curbing. (f) Recreation and landscaped areas. Suitably improved recreation areas totaling at least 50 square feet per dwelling unit shall be provided within the site. Such recreation areas may be sited at one or more locations provided that no such area shall encroach into a required perimeter buffer area and that at least one such recreation area measures not less than 2,000 square feet. All open spaces not covered by impervious surfaces shall be planted with lawn and landscape material according to a plan approved by the Planning Board. (g) Rooms and minimum floor areas. Any room other than living room, dining room, kitchen, bathroom, laundry room, utility room, foyer or hallway shall be construed as a bedroom, and every unit shall have at least one bedroom. At least 50% of the residential units shall have more than one bedroom, provided, however, that at least 10% of the residential units shall have more than two bedrooms. Minimum floor areas shall be as follows: one bedroom unit, 540 square feet; two bedroom units, 750 square feet; three bedroom units, 900 square feet. The bedroom mix for the low income and the moderate income household units shall be substantially similar. (h) Facilities. Each residential unit shall contain, as a minimum, a separate living room, a separate bedroom, a separate bath, storage area, utilities, a separate kitchen, which kitchen facility shall be located separate and apart from other rooms in the unit with the exception of the dining room. (i) Architecture and construction. The architecture employed shall be aesthetically



**5. All sales or rentals of LIH units shall be in accordance with the eligibility and other requirements and regulations contained in this chapter.**

**6. Required LIH shall be constructed concurrently and in proportion with the conventional units** built. To assure compliance with this requirement, after the issuance of certificates of occupancy for 25% of the conventional housing units, the following schedule shall be complied with:

Minimum Percentage of Low and Moderate Income Units Complete	Percentage of Conventional Housing Units Complete
0	25
10	25 + 1 unit
50	50
75	75
100	90
100	100

Nothing contained herein shall preclude the applicant from construction LIH units prior to the construction of conventional units as provided in the foregoing schedule. At every stage of the development not less than 50% of the LIH units shall be made available exclusively to low income households.



**7. Notwithstanding requirements of this or any other ordinance of the Town of Kearny** concerning fees, the Town of Kearny shall waive the following fees otherwise due in connection with LIH portions of a development: (a) Subdivision and/or site plan application fees as applicable; (b) Construction permit fees, except State and third party fees not waived; (c) Fees for certificates of occupancy; and (d) Any utility connection fees otherwise due to the Town of Kearny.

**8. Prior to the approval of any development in the CLH Zone, the Planning Board shall have** approved development plans verifying compliance with the purposes of this section and all the requirements established in this chapter. The information submitted in this regard shall include but not be limited to: (a) Environmental impact study; (b) All property boundary, topographic and soil information and other applicable details required in connection with preliminary plats; (c) Building floor plans and elevations for all structures; (d) Area lighting data, provisions for trash, garbage and refuse disposal, landscaping plans and utility information; (e) Deed restrictions, covenants or other suitable instruments designed to implement plans and requirements as well as in connection with eligibility for purchase and rental of conventional and LIH to be provided as part of the development.

**o. All medical marijuana facilities are subject to the following: [Added 6-23-2020 by Ord. No. 2020-12]**

**1. All medical marijuana uses shall be duly licensed by the State of New Jersey in accordance with the CUMMA, its implementing rules, and/or any successor legislation.**

**2. All facilities must maintain a secure, closed, clean environment in the room where marijuana is to be stored, in order to prevent outside contamination and prevent the inadvertent and/or unauthorized removal of marijuana from the facility. All facilities must provide shower and locker room facilities for employees to ensure the provision of a clean environment.**

**3. All facilities must provide at least one state-certified security officer (or more if required by the state) at all times the facility is open to the public. At the time of application for this use, the applicant must provide an affidavit indicating intention to comply with this provision.**

**4. All facilities must be equipped with security cameras covering exterior parking and loading areas, all points of ingress and egress, portions of the building open to the public or used for the storage of marijuana.**

**5. All facilities shall install, maintain in good working order, and operate a safety and security alarm system that includes a battery backup or generator system in the event of power outage.**

**6. The outside areas of the premises and its perimeter shall be well lit in accordance with the following specific standards: (a) A minimum of 3.0 footcandles of illumination shall be maintained at all building entrances. (b) A minimum of 1.0 footcandle of illumination shall be maintained throughout the property.**

**7. No medical marijuana dispensary shall be located within the following distances from the** specified land uses listed below: (a) Two hundred feet from primary and secondary schools (K-12) including vocational programs, playgrounds, parks, state-licensed day-care facilities. (b) Two hundred feet from adult and juvenile correctional facilities, college or university, either public or private, halfway house or correctional facility, group homes serving persons aged 18 and under, a halfway house, transitional housing and state-licensed substance use treatment facility. (c) No medical marijuana dispensary shall be located within a drug-free school zone. (d) No medical marijuana dispensary shall be located within a two-mile radius of another medical marijuana facility in Kearny or a neighboring municipality.

**8. All medical marijuana dispensaries shall comply with the following signage rules:** (a) External signage shall be limited to black text on a white background. (b) One wall-mounted sign per building facade shall be permitted, not to exceed 20 square feet in area. (c) Signage shall not be illuminated at any time. (d) Signage shall not display advertisements for marijuana or a brand name except for purposes of identifying the building by the permitted name. (e) The price of marijuana shall not be advertised.

**§ 38-6.2 Accessory Uses in Residential Zones.** [Ord. No. 10-14-87 § 138-6.200; Ord. No. 6-8-83; Ord. No. 6-22-83; Ord. No. 1999-O-2 §§ 33, 34, 38; Ord. No. 2005-(O)-42 § 5]

**a. Accessory structures which are not attached to a principal structure may be erected in a required side yard setback or within the rear yard, except on the street side of a corner lot provided that:**

**1. Accessory structures shall not be located closer than three feet to any lot line.**

**2. No accessory structure is located closer to the street right-of-way than the required front yard setback of the principal structure.** Subsections 38-5.1c and 38-5.3d shall also apply to all accessory structures hereunder.

**3. Portable sheds having no foundations and with a footprint of less than 100 square feet in area** shall not be counted as contributing to impervious lot coverage or lot coverage provided such a shed is located in the rear or side yard, is set back at least three feet from the closest property line, and there is no more than one portable shed.

**b. Attached Accessory Structures in Residential Districts.** When an accessory structure is attached to the principal building, it shall comply in all respects with the requirements of this chapter applicable to the principal building.

**c. Permanent Swimming Pools.**

**1. Inground or aboveground swimming pools accessory to a residential use shall be** erected on the same zone lot as the principal structure. Said pools may be erected in the side or rear yard of the zone lot. Inground swimming pools shall be located no closer than six feet to a side or rear property line. A minimum of a two-foot buffer shall exist between the property line and the pool improved area. The wall of an aboveground swimming pool and any associated decking shall be located no closer than three feet to a side or rear yard line. Such pools and associated decking shall not be counted as contributing to improved lot coverage. Where a pool is located on a corner lot, the fencing closest to the right-of-way and along the rear property line shall be solid so as to provide a visual screen.

**d. Residential Signs. Signs permitted within residential districts shall be in accordance with** subsection 38-6.8.

**e. Home Occupations. Home occupations shall comply with the following requirements:**

**1. Such use is clearly accessory to the principal use of the structure.**

**2. Such home occupation is conducted by the resident of the premises or member of his** immediate family residing on the premises.

**3. Such home occupation shall not use more than 1/3 of the total floor area of the dwelling unit** or 750 square feet, whichever is less.

**4. Not more than one nonresident employee may be permitted.**

**5. Such use shall be conducted solely within the principal structure.**

**6. One sign, not exceeding seven inches by 18 inches, shall be permitted indicating the name and home occupation of the occupant.**

**7. There shall be no change in the outside appearance of the building or premises which would alter its residential character.**

**8. No use shall generate traffic, parking, noise, dust, vibration, smell, smoke, glare, electrical interference, fire hazard, or any other hazard or nuisance to any greater or more frequent extent than what normally occurs in the applicable zoning district.**

**9. Not more than three customers or clients shall be present at the same time.**

**10. Teaching occupations of a tutoring nature shall be permitted provided that there shall be no more than three pupils in attendance at the same time.**

**11. Such uses shall not result in the outside storage or display of any materials.**

**12. The use shall be only in a single family or two family dwelling.**

**13. Where the general public is to be received, off-street parking spaces shall be provided** in addition to required spaces for the residential use according to the following schedule:  
Total floor area up to 500 square feet: One additional space Total floor area more than 500 square feet: Two additional spaces Permitted home occupations shall not in any event be deemed to include barber shops, beauty parlors, massage parlors, tattoo parlors, clinics, child day care centers (except family day care homes as permitted in **N.J.S.A. 40:55D-66.5b.**), day nurseries, dancing schools, ceramic kilns, real estate offices, auto repair (or auto repossession), the sale or repair of firearms, restaurants, animal hospitals, fortune telling, palmists, limousine services, or repair shops except for the repair of electrical appliances, cameras or other small items.

**f. Fences. Fences permitted in residential districts shall be in accordance with subsection 38-6.9.**

**§ 38-6.3 Accessory Uses in Nonresidential Zone. [Ord. No. 10-14-87 § 138-6.220; Ord. No. 2004-(O)-64; Ord. No. 2007-(O)-17 § 1; Ord. No. 2008-(O)-04 § 1]**

**a. In any nonresidential district, no accessory structure or use shall be located closer to any lot line than five feet.**

**b. In any nonresidential district, the aggregate area covered by accessory structures shall not exceed 25% of the rear yard.**

- c. In any nonresidential district, all accessory structures shall be located no less than 10 feet from the side or rear of the principal or main building.**
- d. In any nonresidential district, no accessory structure shall be located closer to the street right-of-way line than the required front yard setback of the principal structure. The requirements of subsections 38-5.1c and 38-5.3d shall also apply to all accessory structures hereunder.**
- e. When an accessory structure is attached to the principal building in all nonresidential districts, it shall comply in all respects with the requirements of this chapter applicable to the principal buildings.**
- f. No portion of an accessory structure in any nonresidential district shall be used for living quarters.**
- g. Signs identifying or advertising a use conducted on the premises, a canopy or a marquee, shall be subject to subsection 38-6.8.**
- h. The open display or storage for sale of used or new motor vehicles shall be subject to the requirements of the Town of Kearny licensing and regulating such business.**
- i. The open storage of machinery or contractors' equipment as a permitted principal use shall be prohibited in all C Districts except as may be authorized by the Board of Adjustment by a temporary permit not exceeding 60 days.**
- j. Fences in any nonresidential district shall be subject to the regulations in subsection 38-6.9.**



**k. All operations, activities and storage (except off-street parking including trucks, tractors, trailers or similar vehicles and unloading/loading, accessory lumberyards and home improvement centers), shall be conducted in completely enclosed buildings.**

**§ 38-6.4 Temporary Uses and Structures. [Ord. No. 2015-2]**

**a. Vestibules and storm enclosures as permitted by Section 3204.4 of the International Building Code (2009 N.J. Edition) shall, by permit, be allowed to encroach into the public right-of-way in the Town under the following conditions.**

**b. The vestibules and enclosures shall not be erected for a period of time exceeding seven months in any one year and shall not encroach more than three feet or more than one-fourth the width of the sidewalk beyond the street lot line.**

**c. Temporary entrance awnings must have a minimum clearance of seven feet to the lowest portion of the hood or awning where supported on removable steel or other approved non combustible support.**

**d. Permits shall be obtained by application to the Zoning Officer.**

**e. A new permit shall be required each year.**

**§ 38-6.5 (Reserved)**

**§ 38-6.6 Conditional Uses.** [Ord. No. 10-14-87 § 138-6.300; Ord. No. 1999-O-2 §§ 26 — 28, 39; Ord. No. 2002-O-78; Ord. No. 2003-(O)-23; Ord. No. 2004-(O)-64; Ord. No. 2007-(O)-06 § 1; Ord. No. 2007-(O)-17 § 1; Ord. No. 2008-(O)-04 § 1; Ord. No. 2008-(O)-14 § 2]

**a. Conditional uses as enumerated in Schedule I shall be permitted only upon authorization by the approving authority, provided that such uses shall be found by the approving authority to comply with the following requirements as set forth in this chapter.**

**1. That the use is a conditional use as set forth in Schedule I[1] thereof. [1] Editor's Note:** Schedule I, referred to herein, may be found as an attachment to this chapter.

**2. That the use is so designed, located and proposed to be operated that the public health, safety, welfare and convenience will be protected.**

**3. That the use will not cause substantial injury to the value of other property in the neighborhood where it is to be located.**

**4. That the use will be compatible with adjoining development and the proposed character of the zone district where it is to be located.**

**5. That adequate landscaping and screening are provided as required by Town Ordinance.**

**6. That adequate off-street parking and loading are provided and ingress and egress is so designed as to cause minimum interference with traffic on abutting streets.**

**7. That the use conforms with all applicable regulations governing the district where located.**

**b. Animal Hospitals and Kennels.** Animal hospitals and kennels shall be located no closer than 50 feet to any residential zone line. Such facilities shall be maintained in an enclosed structure and shall be of soundproof construction and so operated as to produce no objectionable odors at the zone lot boundary line. Open kennels, exercise pens or runways shall not be located closer than 100 feet to any property line and shall be subject to noise and odor controls.

**c. Automobile Washing Establishments.** All automobile washing establishments shall comply with the following requirements:

**1. Minimum Area Requirements:** (a) Minimum lot area 30,000 square feet. (b) Minimum lot width 100 feet.

**2. Minimum Yard Requirements:** (a) Front yard 40 feet. (b) Side yards. (1) (a) One 30 feet. (2) (b) Both 60 feet. (c) Rear yard 60 feet.

**3. Maximum Bulk Requirements: (a) Maximum building height 30 feet. (b) Maximum lot coverage 40 feet. (c) Maximum improved lot coverage 85 feet.**

**4. Location. Such establishments shall not be located closer than 100 feet to any residential zone boundary line, school, hospital, nursing home or other similar institutional or public use.**

**5. Off-Street Parking. Such establishments shall provide a reservoir parking area equal in number to seven times the maximum capacity of the laundry for automobiles awaiting entrance to the premises and 1 1/2 times the maximum capacity of the laundry for automobiles beyond the exit end of the equipment so situated as to be usable for hand-finishing of the washing process and which shall be no closer than 20 feet to any street right-of-way line. "Maximum capacity" in this instance shall mean the greatest possible number of automobiles undergoing some phase of laundering at the same time, which shall be determined by dividing the equipment line by 20 feet.**

**6. Landscaping. Such establishments shall comply in all respects with the landscaping and buffer zone requirements for side and rear yards as established in subsection 38-5.10.**

**d. (Reserved)**

**e. Clubs, Lodges, Social and Community Center Buildings.**

**1. All buildings shall be a minimum of 10 feet from any side property line and shall meet all other setback requirements of the district in which it is located.**

**2. Retail sales may be included for members and their guests only.**

**3. On-site parking shall be provided in the amount of at least one space for each three persons based on the maximum occupancy permitted by the Uniform Construction Code in the largest assembly area.**

**f. Essential Services.**

**1. Enclosed or Permanent Structures. (a) Public utility services. Such uses shall include** electric substations, transformers, switches and auxiliary apparatus serving a distribution area, and water pumping station in R Districts and shall be subject to the following regulations: (1) Such facility shall not be located on a residential street, unless no other site is available, and be so located as to draw a minimum of vehicular traffic to and through such street. (2) The location, design and operation of such facility may not adversely affect the character of the surrounding residential area. (3) Adequate fences, barriers and other safety devices shall be provided, and shall be landscaped in accordance with subsection 38-5.10.

**2. Open Uses and Structures. (a) Such uses shall be limited to the erection, construction, alteration or maintenance, by public utilities or municipal or other governmental agencies, of underground or overhead electrical, gas, water transmission or distribution systems or collection, communication supply or disposal systems, including poles, wires, mains, drains, sewers, pipes, conduits, cables, fire alarm boxes, police call boxes, traffic signals, hydrants and other similar equipment and accessories in connection therewith reasonably necessary for the furnishing of adequate services by such public utilities or municipal or other governmental agencies or for the public health, health or general welfare, but not including buildings. Open essential services shall not include any human or animal fecal matter or material. (b) Landscaping requirements established in subsection 38-5.8 shall be adhered to.**

**g. Mixed Residential Uses.**

**1. The commercial use shall be in combination with dwellings for one or two families or in combination with multiple-family dwellings for not more than 12 families.**

**2. The residential uses shall front upon an existing street or have direct access to the street uninterrupted by structures or off-street parking areas.**

**3. Business uses shall be limited to the following: (a) Retail stores where goods are sold or services rendered and where nothing is fabricated, manufactured, converted or altered except for such retail trade. (b) Financial institutions. (c) A central telephone exchange and accessory business uses. (d) Business and professional offices. (e) Restaurants and lunch counters, except fast-food restaurants. (f) Funeral homes and funeral parlors.**

**h. Outdoor Storage Areas.** Such uses, where permitted, shall not abut existing residential development, a residential street or any R District and the operation thereof shall be governed by the following provisions:

**1. Inflammable and Explosive Substances.** All inflammable or explosive liquids, solids, or gases shall be stored in appropriate containers as regulated in the Town Fire Prevention Code.

**2. Fencing and Landscaping.** All outdoor storage facilities shall be enclosed by a fence or wall adequate to conceal such facilities and the contents thereof from adjacent property and subject to the provisions of subsection 38-5.10.

**3. Deposit of Wastes.** No material or waste which might cause fumes or dust or which might constitute a fire hazard or which may be edible by or otherwise be attractive to animals or insects and shall be stored outdoors only in closed containers.

**i. Outdoor Uses.** All operations, activities and storage shall be conducted within completely enclosed buildings in both the SKI-N and SKI-S zones, except that the outdoor storage of containers, off-street parking including trucks, tractors, trailers or similar vehicles and unloading/loading, accessory lumber yards and home improvement centers may be permitted in the SKI-N Zone only and only if they shall comply with the following requirements:

**1. There shall be a ten-foot wide landscaped buffer along all property lines;**

**2. All uses shall be subject to subsection 38-6.6h.;**

**3. All uses shall be paved and curbed in accordance with the Design Standard as set forth in Section 36-12.**

**j. Service Stations.**

**1. Location of Exits and Entrances. No gas station, or vehicular repair service shop shall** be located within 200 feet measured along the street line on the same or opposite side of the street of the following uses: Public or private schools, playgrounds, churches, theaters, fire stations, hospitals, public libraries, orphanage or children's home housing children under 16 years of age, or other public gathering place or to any street entrance to such buildings or public gathering place. Vehicular access to the above uses shall not be closer to the intersection of any two street lot lines than 50 feet, nor shall any such use be located within 25 feet of any boundary line of any R District.

**2. Location of Appliances and Buildings. Service stations shall have their gasoline pumps,** including other service facilities, set back at least 15 feet from any street line and their buildings set back at least 30 feet from any street line. This provision does not apply to gasoline pumps and other service facilities within public garages.

**3. Landscaping Requirements. The provisions of subsection 38-5.10 shall also be complied with.**



**4. Proximity to Other Service Stations.** A service station shall not be located within 1,000 feet of another service station.

**5. Lot Size.** The minimum lot size for all service stations shall be 10,000 square feet. The least dimensions shall be 100 feet by 100 feet.

**6. Type of Construction.** All buildings constructed for use in connection with such station shall be of masonry construction. Any grease pits or hoists shall be contained within the area of the building.

**7. Type of Repairs.** Repair services shall be limited to mechanical repairs and shall not include auto body repair work or painting.

**8. As an accessory use, no automobile service station shall contain more than two vehicles** offered for sale at any one time and in no case shall such vehicles occupy unpaved portions of the property nor shall such vehicles occupy space needed to comply with the minimum required amount of on-site parking for the principal use.

**k. Warehouses, Commercial and Industrial.** A commercial or industrial warehouse shall be subject to the following provisions in regard to items stored in bulk:

**1. The storage in bulk of hazardous chemical, including, but not limited to, flammable solids, as** defined in the Town of Kearny Fire Prevention Code of the Town of Kearny, shall be safeguarded with such protective facilities as public safety requires.

**2. The Construction Official, on the advice of the Chief of the Bureau of Combustibles, may** require the separation or isolation of such substances from other storage facilities, dwellings, places of assembly, educational occupancies, railroads and public highways, when the quantity stored constitutes a material hazard to the surrounding area. Limitations on storage quantities shall be considered with regard to proximity to these exposures to all zone districts.

**3. Oxidizing materials that have a severe fire hazard and which are likely to deflagrate on** exposure to fire, shock or friction, but which are not likely to detonate shall be segregated or isolated in storage. Segregation shall be by walls having a fire-resistance rating of not less than two hours. Automatic sprinklers shall be provided where the building is not adequately isolated.

**l. Private Day School Operated for Profit. Except for pre-school nursery facilities, a private day** school operated for profit shall meet all of the construction and safety requirements of the New Jersey Department of Education, whether or not the facility comes under the jurisdiction of the Department. A private day school shall minimally provide a land area equal to three acres plus one acre for each and every 100 students in attendance. Parking requirements established in the Kearny Subdivision and Site Plan Ordinance shall be complied with.

**m. Abandoned Vehicles. The storage of unregistered and/or unlicensed motor vehicles shall be** prohibited in all districts except in connection with state licensed auto dealerships and scrap metal dealers which possess a valid Certificate of Occupancy from the Town of Kearny.

**n. Wireless Telecommunications Equipment.**

**1. Exemptions of Applicability. The provisions of this subchapter shall not apply to the** following: (a) Any tower, or the installation of any antenna, that is under 70 feet in height and is owned and operated only by a federally licensed amateur radio station operator or is used exclusively to receive transmissions; (b) Preexisting towers or antennas shall not be required to meet the requirements of this paragraph, except that in the case of enlargement, structural modification or addition to any existing tower or antenna facility which shall result in an increase of 10% or more in tower height or facility floor area the provisions of this ordinance shall apply; and (c) The provisions of this subsection shall not govern any parabolic satellite antennas.

**2. Overall Comprehensive Plan. (a) Any applicant to the Town for approval to erect a wireless telecommunications antenna, in addition to all other information required by this ordinance, shall provide to the approving authority substantial evidence that the proposed location of the proposed antenna(s), and any proposed supporting tower and/or ancillary cabinets or structures enclosing related electronic equipment, have been planned to result in the lowest number of tower locations within the Town and the least possible impact on community aesthetics. (b) The applicant shall provide an overall comprehensive plan indicating how it intends to provide full service throughout the Town and, to the greatest extent reasonably possible, shall indicate how its plan specifically relates to and is coordinated with the needs of all other providers of wireless telecommunications services within and around the municipality. (c) The overall comprehensive plan shall indicate the following: (1) The mapped location and written description of all existing antennas and existing and approved supporting structures within one mile of the subject site; (2) The mapped location and written description of all existing or approved water towers and existing telephone or electric towers within one mile of the subject site; (3) How the proposed location of the proposed antenna(s) specifically relates to the suitability or unsuitability of such existing structures to be utilized to provide the intended wireless communication; (4) How the proposed location of the proposed antenna(s) specifically relates to the anticipated need for additional antennas and supporting structures within and near the Town by the application and by other providers of wireless communications services within the Town; (5) How the proposed location of the proposed antenna(s) specifically relates to the overall objective of providing full wireless communication services within the Town while, at the same time, limiting the number of supporting towers to the fewest possible through the use of co-location, through the use of alternate technologies which do not require the use of towers, or through the use of existing structures; and (6) How the proposed location of the proposed antenna(s) specifically relates to the objective of minimizing the impact of the antennas, accessory equipment, and supporting structures on residences, streetscapes, and view corridors throughout the municipality.**



**3. Location Priorities. Based upon the "Overall Comprehensive Plan" submitted by the applicant,**

if the Town determines the proposed antenna(s) are needed for the provision of full wireless telecommunications services within the Town, utilizing the fewest number of towers as reasonably possible and locating on existing structures where reasonably possible, the following priority schedule shall apply: (a) Wireless telecommunication antennas shall be permitted as principal uses on existing structures at the following prioritized locations: (1) The first priority location shall be the co-location of an antenna on an existing tower with the SKM[2] Zone; [2] Editor's Note: Ordinance No. 2003-(O)-23 deleted the SKM-1 and SKM-2 Zones and added the SKI-N and SKI-S Zones. Pursuant to the direction of the Town, the reference contained herein will be amended by a subsequent ordinance. (2) The second priority location shall be the location of an antenna on an existing building within the SKM[3] Zone. [3] Editor's Note: Ordinance No. 2003-(O)-23 deleted the SKM-1 and SKM-2 Zones and added the SKI-N and SKI-S Zones. Pursuant to the direction of the Town, the reference contained herein will be amended by a subsequent ordinance. (3) Co-location on a tower shall be required for no less than three carriers and a letter of intent by the applicant to meet the co-location requirement shall be provided to the approving authority; and (4) All of the separation distance, area, setback, height, and design criteria requirements listed herein shall be met. (b) Wireless telecommunications antennas shall be permitted as accessory uses on existing structures at the following prioritized locations: (1) The third priority location shall be the co-location of an antenna on an existing tower within the M Zone; (2) The fourth priority location shall be the location of an antenna on an existing building within the M Zone; (3) The fifth priority location shall be the co-location of an antenna on an existing tower within the LI Zone; (4) The sixth priority location shall be the location of an antenna on an existing building within the LI Zone; (5) Co-location on a tower shall be required for no less than three carriers and a letter of intent by the applicant to meet the co-location requirement shall be provided to the approving authority; and (6) All of the separation distance, area, setback, height, and design criteria requirements listed herein shall be met. (c) Wireless telecommunications antennas shall be permitted as conditional uses on existing structures at the following prioritized locations: (1) The location of an antenna on an existing building within the C-4 Zone shall be considered seventh in the list of priority locations; (2) The location of an antenna on an existing building within the C-3 Zone shall be considered eighth in the list of priority locations; (3) The location of an antenna on an existing building within the C-2 Zone shall be considered ninth in the list of priority locations; (4) The location of an antenna on an existing building within the C-1 Zone shall be considered tenth in the list of priority locations; (5) The location of an antenna on an existing building within the Redevelopment Zone shall be considered eleventh in the list of priority locations; (6) The location of antenna on an existing building within the R-3 Zone shall be considered twelfth in the list of priority locations; (d) New wireless telecommunications towers, along with the antennas and equipment facilities associated with such new towers, shall be permitted as principal uses in







**4. Separation Distance Requirements. The following separation distance requirements shall** apply: (a) If the proposed antenna(s) will be attached to an existing building, the following separation distance requirements shall apply: (1) Minimum distance between facilities in residential districts or a residential portion of a duly adopted redevelopment area: 500 feet; (2) Minimum distance between facilities located in commercial districts: 300 feet; (3) Minimum distance between facilities located in industrial or manufacturing districts: 200 feet. (b) If the proposed antenna(s) will be attached to an existing wireless telecommunications tower or similar structure within an industrial district, the following separation distance requirements shall apply: (1) Minimum distance from any residential district line: 750 feet; (2) Minimum distance between facilities: 750 feet. (c) If the proposed antenna(s) will be supported by a new wireless telecommunications tower: (1) Minimum distance from any residential district line: 1,000 feet; (2) Minimum distance between facilities: 1,500 feet.

**5. Area and Setback Requirements.** (a) If the proposed antenna(s) are to be attached to an existing building or an existing or approved tower or structure, no land area shall be required in addition to the land area upon which the existing structure is situated; or (b) If the proposed antenna(s) are to be supported by a new wireless telecommunications tower: (1) The proposed antenna(s) and proposed supporting tower and ancillary related electronic equipment shall be located on a land area equal to or larger than 1/3 the minimum lot area specified for the District; (2) The minimum required land area shall either be a separate undeveloped lot or a leased portion of an already developed lot; (3) The proposed antenna(s) and proposed supporting tower and ancillary related electronic equipment and any approved building housing the electronic equipment and any approved camouflaging of the tower shall be the only land uses located on the proposed tower site, whether a separate lot or a leased portion of a lot; and (4) Excepting for any access driveway into the property, any required landscaping, and any underground utility lines reviewed and approved by the approving authority as part of the site plan submission, no building structure and/or disturbance of land shall be permitted within 100 feet from any street line, from any other existing or proposed property line, or from any "lease line," provided that if a tower will exceed 100 feet in height, the tower shall be set back from any street line and from any other existing or proposed property line a distance equal to or greater than the height of the tower, except that, in any case the tower shall be required to be set back a minimum distance of only 100 feet from any line demarcating the leased premises.

**6. Maximum Height. (a) The maximum height of any proposed antenna extending above any** existing building or existing structure shall be the minimum height necessary for the proposed installation to satisfactorily operate; (b) The height of any proposed new supporting tower shall not exceed 150 feet unless it can be demonstrated by the applicant, to the satisfaction of the approving authority, that a higher height is necessary for the proposed installation of the antenna(s) to satisfactorily operate and is necessary for the co-location of at least three other carriers on the tower; and (c) The maximum height of any proposed rooftop equipment cabinet shall be the height of the tallest accessory rooftop structure such as a stair or elevator housing, provided that no equipment cabinet shall be located on the rooftop of any building less than 60 feet in height.

**7. Design Criteria. All applications for wireless telecommunications antennas shall adhere to the**

following design criteria: (a) For location on an existing building or structure: (1) Minor site plan application to the approving authority shall be required. (2) To the greatest extent possible, any antenna(s) located on an existing building shall be surface-mounted on the building facade at the roofline or along the exterior parapet wall so as to reasonably blend in with the architectural features of the building. (3) Antenna(s) and supporting electrical and mechanical equipment shall be constructed of materials and styles consistent with surrounding street and building design and shall be of a color that matches, as closely as possible, the background color of the facade on which it is mounted or so as to make the antenna(s) and related equipment as visually unobtrusive as possible. (4) All ancillary electronic and mechanical equipment shall be housed either within an enclosed area inside the existing building or on the rooftop of the building, provided: [a] The height of the rooftop equipment facilities shall not exceed the height of the tallest accessory rooftop structure such as a stair or elevator housing nor more than 250 square feet in area and shall be fully enclosed in a cabinet which shall be constructed of a material and color which will match those of the existing rooftop accessory structures as closely as possible; and [b] Documentation by a qualified expert that any existing structure will have sufficient structural integrity to support the proposed antennas and ancillary equipment shall be provided to the approving authority. (5) Any additional public utility lines and/or cables deemed necessary for the operating of the proposed antenna facility shall be located underground. The applicant shall provide documentation to the approving authority as to the necessity of the additional lines, including a detailed schematic of specific location(s) and area(s) to be disturbed in order to accomplish the installation of the lines and/or cables. Applicant shall be responsible for compliance with any and all applicable Federal, State, or local regulations, including the specific provisions of the Town's road opening permit requirements. (6) No signage shall be permitted that is visible from adjacent properties or from the public right-of-way. (b) For a new tower: (1) Preliminary and final site plan applications shall be required for any proposed new wireless telecommunications tower. (2) Any proposed new tower shall be a monopole unless the applicant can demonstrate, and the approving authority agrees, that a different type of pole is necessary for the co-location of additional antennas on the tower. (3) Unless otherwise required by the Federal Aviation Administration (FAA) or the Federal Communications Commission (FCC), all tower designs shall be integrated with the surrounding street and building design and shall be either constructed of a neutral colored material or painted a neutral color so as to reduce the visual obtrusiveness. All applicable FAA or FCC standards regarding color materials that may apply to the proposed tower shall be provided to the approving authority. (4) No lighting is permitted on a tower except lighting that is specifically required by the FAA and any such required lighting shall be focused and shielded, to the greatest extent possible, so as not to project toward adjacent nearby properties. All applicable FAA standards regarding lighting that may apply to the proposed towers shall be provided to the approving authority. (5) All ancillary





**8. Radio Frequency Emissions. (a) Applicants shall provide current FCC information concerning** wireless telecommunications equipment and Radio Frequency (RF) emission standards to the approving authority. Upon documentation by a qualified expert, proposed wireless telecommunications projects which meet the current FCC standards shall not be conditioned or denied on the basis of RF impact. (b) If the FCC adopts a superseding emission standard, such new standard shall be controlling and become effective as directed in the FCC rulemaking. In such event, the applicant shall, within 45 days of the superseding emission standard's effective date, submit to the approving authority documentation of compliance with the superseding emission standard. Failure to submit such documentation shall result in a declaration by the approving authority that the equipment is no longer operative and the removal provisions of paragraph nine of this paragraph n shall apply.

**9. Removal of Abandoned/Obsolete and FCC Noncompliant Antennas and Towers. (a) Any** wireless telecommunications antenna facility not used for its intended and approved purpose for a period of one year shall be considered no longer operative and shall be removed by the responsible party within 60 days thereof.

**10. Inventory of Sites. (a) Existing sites.** All current owners, lessors, lessees, franchisors, franchisees, licensors and licensees of wireless telecommunication towers, antennas, equipment shelters, appurtenances thereto, and/or real property used in connection therewith, which are located within the Town, shall provide to the Zoning Officer, within 90 days of the adoption of this amended paragraph n., a complete inventory of all such wireless telecommunication towers, antennas, equipment shelters, appurtenances thereto, and/or real property used in connection therewith. A revised and updated complete inventory shall be provided to the Zoning Officer every two years from the date of the previously submitted complete inventory. The complete inventory shall include the following information: (1) Name and address of owner, lessor, lessee, franchisor, licensor or licensee; and (2) Location and full description of its wireless telecommunication tower(s), antenna(s), equipment shelter(s), appurtenances thereto, and/or real property used in connection therewith; (3) The Zoning Officer may request additional information as he or she deems necessary to reasonably comply with the purpose and provisions of this amended paragraph n. (b) Pending and future sites. The foregoing provisions of paragraph 10 shall apply to currently pending applications and new applications relative to wireless telecommunication towers, antennas, equipment shelters, appurtenances thereto, and/or real property used in connection therewith, to the extent such pending or new applicant has legal interest in an already existing site.

**o. Containers.** Container storage is only permitted within the SKI-N District and subject to the following conditions:

**1. Containers shall not be stacked more than two containers high.**



**2. There shall be a minimum ten-foot wide landscaped buffer along all property lines. Buffer** shall contain a combination of deciduous and evergreen trees and shrubs and berming necessary to visually screen the proposed use upon installation. At installation, plant material shall be sized a minimum of: (a) Deciduous trees three inch caliper. (b) Evergreen trees six feet in height, B&B. (c) Deciduous and evergreen shrubbery five-gallon container or 36 inch B&B. (d) Preference shall be given to native species. (e) No plant prohibited within the NJMC shall be permitted.

**3. Wetland plantings shall conform to most recent adopted Landscape and Open Space** Guidelines established by the New Jersey Meadowlands Commission.

**§ 38-6.7 Prohibited Uses.** [Ord. No. 10-14-87 § 138-6.400; Ord. No. 10-28-81; Ord. No. 1999-O-2 § 36; Ord. No. 2003-(O)-14. Additional amendments noted where applicable.]

**a. Uses Prohibited in all Zones. No building or premises shall be used for any purpose that is** noxious or offensive by reason of the emission of odor, dust, smoke, gas, noise or vibration or that is dangerous to the public health or safety; nor shall any building or premises be used for any of the following specified purposes, except for industrial research or laboratory purposes.

- 1. Acetylene gas manufacture for commercial purposes;**
- 2. Ammonia, chlorine or bleaching powder manufacturing;**
- 3. Arsenal;**
- 4. Asphalt manufacturing or refining, where it is the principal function of the plant;**
- 5. Blast furnace for steel making, not including cupola or converter furnaces used in foundations and in which no wood is used as fuel;**
- 6. Boiler shops, structural steel fabricating shops, locomotive shops and railway repair shops.**  
Metalworking shops operating pneumatic or electric reciprocating hammers or chisels within 100 feet of any boundary line of the property and outside of any masonry building;
- 7. Carbon lampblack, shoeblacking, graphite or stove polish manufacture;**
- 8. Celluloid and other cellulose products' manufacture, storage and processing of nitrocellulose scrap but excluding colloid-treated fabrics;**
- 9. Coal-tar products' manufacture;**
- 10. Coke ovens;**
- 11. Creosote treatment or manufacture;**

**12. Distillation of coal, wood or bones;**

**13. Electroplating shops, except those having artificial ventilating systems constructed and operated in accordance with the rules of the State Department of Labor;**

**14. Explosives, fireworks or match manufacture, assembly or storage in bulk, as principal or accessory uses including such uses which are for industrial research or laboratory purposes;**

**15. Fat rendering;**

**16. Forge shop;**

**17. Gas storage in bulk;**

**18. Glue, size or gelatin manufacture or processes involving recovery from fish or animal offal;**

**19. Glue, size or gelatin manufacture or processes involving recovering from fish or animal offal;**

**20. Hazardous waste storage;**

**21. Incineration, reduction or dumping of offal, garbage or refuse, except where controlled by the municipality;**

**22. A junkyard for the storage of abandoned automobiles or other scrap material;**

**23. Lime, gypsum, cement, plaster or plaster of paris manufacture;**

**24. Linoleum manufacture;**

**25. Oil storage in quantities exceeding 100 gallons, except where the oil is consumed on the premises and has a specific gravity corresponding to a Baume density of not over 36° and is stored in tanks located not less than 20 feet from any of the boundary lines of the property;**

**26. Ore reduction or the smelting of iron, copper, tin, zinc or lead;**

**27. Paint, oil, varnish, turpentine, shellac or enamel manufacture where it is the principal function of the plant;**

**28. Perfume and extract manufacture;**

**29. Petroleum refining;**

**30. Printing-ink manufacture;**

**31. Pyroxylin plastic manufacture or the manufacture of articles therefrom, but excluding colloid-treated fabrics.**

**32. Radium extraction;**

**33. Raw or green salted hides or skins, their storage, coloring, curing, dressing or tanning;**

**34. Rubber caoutchouc or gutta-percha manufacture from crude or scrap material;**

**35. Sandpaper and emery cloth manufacture;**

**36. Sauerkraut manufacture;**

**37. Sausage manufacture;**

**38. Sewage disposal plant, except where owned and operated by the Town of Kearny;**

**39. Slaughtering of animals;**

**40. Soap, soda or washing compound manufacture;**

**41. Starch, glucose or dextrin manufacture;**

**42. Stockyards;**

**43. Sulfurous, sulfuric, nitric or hydrochloric acid manufacture;**

**44. Tallow, grease, lard or candle manufacture or refining;**

**45. Tar distillation or the manufacture of dyes;**

**46. The storage of any radioactive material or substance, except when used in connection with medical diagnosis or treatment;**

**47. Wool pulling or scouring;**

**48. Yeast manufacture;**

**49. Disposal or storage of human effluent;**

**50. Disposal or storage of industrial wastes;**

**51. Nuclear powered generating facilities;**

**52. All medical marijuana facilities, except for medical marijuana dispensaries as permitted in the SKI-N Zone; [Added 6-23-2020 by Ord. No. 2020-12; 7-13-2021 by Ord. No. 2021-26]**

**53. All classes of cannabis establishments or cannabis distributors or cannabis delivery services** as said terms are defined in the 2021 Cannabis Act, and all medical marijuana facilities, under **N.J.S.A. 24:6I-1 et seq. (the "Medical Marijuana Act") except for (i) the delivery of cannabis** items and related supplies by a delivery service based and initiating from outside the Town of Kearny, and (ii) medical marijuana dispensaries licensed under the Medical Marijuana Act which are permitted only in the SKI-North (South Kearny Industrial North) Zone. [Added 6-23-2020 by Ord. No. 2020-12; amended 5-11-2021 by Ord. No. 2021-17; 7-13-2021 by Ord. No. 2021-26]

**b. Additional Uses Prohibited in All Zones. No building or premises shall be used for any of the** following specified purposes:

**1. The housing of persons who are civilly committed pursuant to the Sexually Violent Predator** Act (N.J.S.A. 30:4-27).

**§ 38-6.8 Signs and Awnings. [Ord. No. 10-14-87 § 138-6.500; Ord. No. 6-27-90; Ord. No. 1999-O-2 §§ 21, 35; Ord. No. 2000-0-28 §§ 1 — 8; Ord. No. 2003-(O)-22; Ord. No. 2003-(O)-34 §§ 1 - 3; Ord. No. 2005-(O)-32. Additional amendments noted where applicable.]**

**a. No sign, billboard, advertising, device, banner, canopy or marquee shall be altered,** relocated or erected in any Residential District, except signs of not more than 50 square feet in area to advertise sale of land upon which they are erected or the sale of buildings to which they are attached, and builders', architects' and engineers' signs erected on the site of construction during the course of a construction operation. Such signs shall be removed within 30 days after the sale of the land or buildings or the completion of the construction operation.

**b. Permitted Signs in Residential Districts. Signs identifying schools, colleges, churches, hospitals, and other similar public institutions, and Planned Residential Developments (provided that paragraph 2 of this subsection shall not be applicable to Planned Residential Developments), are permitted in Residential Districts, provided that:**

**1. The height of any ground sign shall not exceed six feet and the sign area shall not exceed 16 square feet on each side. Not more than one such sign shall be placed along any street on which such property fronts. The base of such signs need not be constructed entirely upon but shall be appropriately landscaped.**

**2. Not more than two wall signs may be located on the front building facades of any structures on the lot. The area of each sign shall not exceed 24 square feet.**

**3. Signs designating entrances or exits to or from parking areas shall be permitted not to exceed two square feet in area.**

**c. Additional explanation of what is meant by sign area: 1) For any sign painted upon or applied/attached to the building, the area considered to include all lettering, wording, and accompanying designs and symbols, together with the background of a different color than the natural or primary color of the building; 2) Where the sign consist of individual letters or symbols attached to or painted on a building, awning or wall the area shall be considered to be that of the smallest rectangle or other geometric shape that encompasses all of the letters, designs or symbols; 3) Only one side of a double faced sign will be counted in computing the area of that sign. Any question you may have can be answered by calling the Construction Code Department at 201-955-7880, located at 402 Kearny Avenue, Kearny, NJ 07032.**



**d. Signs, billboards, advertising devices, canopies and marquees shall be erected and** maintained to insure public safety by the owner or lessee of the premises upon which they may be erected. No sign, billboard or advertising device shall cover any part of the window, obstruct any exit or be fastened in any manner to any part of a fire escape.

**e. Construction and Location of Signs.**

**1. Wood signs shall be constructed of seasoned lumber not less than 3/4 of an inch in** thickness, battened across the backs to insure rigidity.

**2. Metal signs shall be constructed with frame made of iron or steel angles, channels and other** necessary iron or steel shapes of sufficient sizes and weights, covered on the exterior with sheet metal of not less than 26 U.S. Gauge.

**3. Supports for signs, billboards or advertising devices erected upon the ground may be** constructed of wood or metal and shall be of sufficient size and number, extended at least three feet into the ground, braced and secured in a manner approved by the Construction Official.

**4. Supports of signs, billboards or advertising devices attached to or erected upon buildings or** structures shall be constructed of iron or steel angles not less than 1/4 of an inch in thickness, of sufficient size and number, braced and secured to the building or structure in a manner approved by the Construction Official. The use of chain is prohibited.

**5. Signs, billboards or advertising devices erected upon the ground, and flat signs not over 30** inches in width attached to buildings or other structures may be constructed of wood. All other signs, billboards or advertising devices, except banners, shall be constructed entirely of metal. Raised wood letters may be attached to metal signs.

**6. Signs, billboards or advertising devices erected upon the ground shall be located not less than five feet from the street property line upon which they face, except that on a corner of two streets they shall be located not less than 10 feet from each property line, subject to subsection 38-5.1c herein.**

**7. Except for signs authorized by a governmental agency, no freestanding permanent or temporary signs shall encroach upon any public right-of-way or any public property.**

**f. Projecting Signs. Projecting signs are to be made out of wood, komatex (rigid plastic), or framed aluminum. No internally illuminated signs are allowed. Signs are not permitted to be located less than nine feet above the sidewalk and shall not exceed 10 square feet in area. Two copies of color to-scale sketches with the location of the projected sign on the building, along with letter sizes, must accompany the permit application.**

**1. Projecting signs or advertising devices erected at right angles to the face of the building or structure shall be not more than 16 inches in thickness, including the overall dimensions of raised or applied letters or other ornament or attachment. Such signs or advertising devices shall not be higher than the building or structure upon which they are erected, except that on one story buildings they may extend five feet above the roof of the building. Not more than one projecting sign shall be permitted for each business use.**

**2. Projecting signs or advertising devices shall be erected not less than nine feet above the surface of the ground and shall project not more than 4 1/2 feet from the face of the building or structure and in no case to within three feet of the curblin, and shall not be erected nearer to an interior property line than a distance equal to the greatest projection.**

**3. Flat signs of metal of any dimensions, reinforced by wood or metal frames, may be erected on** any business building occupying space below, between or above windows, provided such signs do not project more than eight inches at any point beyond the walls or extend above the roof of the building to which they are attached; and further provided that such signs shall not be less than seven feet six inches above the surface of the ground. Wood letters and decorated wood mouldings may be attached to the face of such metal signs.

**4. In C-1, C-2, C-3 and C-4 Districts, total sign area of wall signs shall not exceed 10% of the** first floor front building facade area and in any event shall not exceed 100 square feet. Buildings on a corner lot or with a side building wall exposed to public view may include each building facade as a separate frontage.

**g. Signs Erected Upon the Ground and Roof.**

**1. Signs, billboards or advertising devices erected upon the ground shall not be more** than 16 feet high above the surface of the ground at any point and shall be constructed entirely open for a height of at least three feet above the surface of the ground, except that open lattice work may be placed in such openings.

**2. Roof signs shall not be permitted in any district.**

**3. Ground Signs. Maximum sign area for a ground sign shall not be more than 30 square** feet on each side. Not more than one ground sign permitted on any lot except for corner lots which may be permitted one ground sign on each frontage. Retail centers, industrial parks or office centers with five or more separate uses may erect a ground sign totaling not more than 100 square feet in area and set back not less than 20 feet from the street property line.

**h. Canopies, Marquees and Temporary Banners.**

**1. Canopies may be erected and maintained across the sidewalk to within 18 inches of the** curblin, in a manner so as not to interfere with normal sidewalk traffic, and shall be constructed with iron or steel framework covered with canvas or other suitable material, anchored to the ground and to the building or structure from which they may extend, in a manner approved by the Construction Official. Such applications shall first be approved by the Mayor and Council of the Town of Kearny, New Jersey before approval by the Construction Official.

**2. Marquee and marquee signs and similar structures shall be of fireproof construction, erected** not less than 10 feet above the sidewalk and not less than 18 inches from the curblin. Such applications shall first be approved by the Mayor and Council of the Town of Kearny, New Jersey, before approval by the Construction Official.

**3. Temporary banners may be erected, maintained and suspended across a street or streets** when properly attached to the buildings or other supports on either side of the street, and in no case less than 20 feet above the surface of the street. The application shall be accompanied by the consent of the owners of the buildings to which the supports are to be attached, and no permit shall be issued for a greater period of time than 60 days. Such applications shall first be approved by the Mayor and Council of the Town of Kearny, New Jersey, before approval by the Construction Official.

**i. Flashing, Animated or Confusing Signs and Devices.**

**1. Notwithstanding the provisions of any other ordinance, any advertising, or** commercially used sign or device located in whole or in part within 100 feet of the right-of-way of any street and which sign contains lights which move, flash, blink, fluctuate, animate or rotate, or which contains any light or lights, whether flashing or not, similar in color and size, color and shape or color and arrangement to any traffic control device or emergency vehicle light is hereby declared to be a public nuisance and is prohibited. Signs giving public service information such as time, date, temperature, weather or similar information intermittently with low-intensity lights which are not similar in any respect to traffic control devices or emergency lights are not prohibited after the effective date of this section. It shall be unlawful for any person, firm or corporation to install, cause to be installed, operate, maintain or modify any sign or device prohibited by this section as a nuisance, and each day such nuisance is maintained shall be a separate offense.

**2. Any provision of paragraph 1 above to the contrary notwithstanding, the prohibitions herein** contained shall not apply to any sign already erected and attached to any building on the effective date hereof.

**j. Administration.**

**1. Permit Required. Except as heretofore mentioned, no sign, billboard, fence, advertising** device, banner, canopy or marquee shall be altered, relocated or erected upon the ground or upon or above any building or structure in the Town of Kearny, New Jersey, without having first obtained and paid for a permit from the Construction Official of the Town of Kearny, New Jersey.

**2. Permit Applications.** Applications for permits shall be made on forms furnished by the Construction Official, together with two sets of drawings showing the construction and supports of such sign, billboard, fence, advertising device, banner, canopy or marquee, and a plot plan or diagram showing the proposed location. Applications for electrical signs, billboards or advertising devices shall be accompanied with an acknowledgment of application for certificate of inspection and approval by the electrical subcode official.

**3. The fee for a permit to alter, relocate or erect any sign, billboard, advertising device, banner, canopy or marquee shall be in accordance with the Fee Ordinance of the Town of Kearny.**

**k. Signs in the C-1, C-2, C-3 and C-4 Districts.**

**1. Any sign hereafter erected, displayed or repaired, except as permitted under** subsection 38-8.2, within the C-1, C-2, C-3 or C-4 Zone Districts shall conform to the provisions of this paragraph and any other ordinance or regulation of the Town of Kearny and shall not be erected, displayed or replaced without the issuance first of a zoning and sign permit by the Construction Official along with the payment of the required fees. Applications for permits shall be submitted to the Construction Official of the Town of Kearny in accordance with subsection 38-6.8j and shall include (i) an accurately scaled, prepared drawing of the proposed sign and supporting frame, construction, size of letters, details and illumination and (ii) a scaled drawing or photograph of the building for which the sign is proposed, with the location of the sign accurately indicated. Two sets of these drawings must accompany the application. Applications for permits shall be made on forms furnished by the Construction Department located at 402 Kearny Avenue, Kearny, NJ 07032. The Construction Official shall consult with the UEZ coordinator before issuing the permit.

**2. Definitions. As used in this paragraph, the following terms shall have the meanings indicated:**

AWNING Shall mean a flexible covering constructed out of acrylic canvas (Sunbrella brand or similar) over a rigid or fixed canopy-like frame that is affixed to a building wall and must be of a shape and color that compliments the architecture of the building. AWNING SIGN Shall mean a sign applied directly to a flexible covering over a rigid or fixed canopy-like frame that is affixed to a building wall. An awning sign shall be considered as a sign which projects perpendicularly from a building wall for purposes of this paragraph. BUSINESS DISTRICT Shall mean the area of the Town of Kearny located within the C-1, C-2, C-3 and C-4 Zone Districts as shown on the official Zoning Map. GROUND SIGN Shall mean a freestanding sign permanently affixed, anchored or secured to the ground. They must be made out of wood, framed aluminum or any other solid traditional material. PORTABLE SIGN Shall mean a freestanding sign not permanently affixed, anchored or secured to the ground. Portable signs include sandwich signs and blackboards. PROJECTING SIGNS Shall mean any signs made out of wood, komatex (rigid plastic), or framed aluminum which shall be prohibited at height less than nine feet above the sidewalk and may not exceed 10 square feet in area. SIGN Shall mean any structure, light, letter work, model, banner, pennant, insignia, trade flag or representation or any other device used to advertise, inform or attract the attention of the public and which is designed to be seen from outside a building, excluding window displays of merchandise and informational material incidental to the display or sale of merchandise. SIGN AREA Shall mean:

**a. For a sign painted upon or applied/attached to a building, the area is considered to include all lettering, wording and accompanying designs and symbols, together with the background of a different color than the natural or primary color of the building.**

**b. Where the sign consists of individual letters or symbols attached to or painted on a building, awning or wall, the area shall be considered to be that of the smallest rectangle or other geometric shape that encompasses all of the letters, designs or symbols.**

**c. Only one side of a double-faced sign will be counted in computing the area of that sign.**

**d. The area of a flat, irregularly shaped sign shall be the smallest plane geometric figure that will wholly contain it. WALL SIGNS** Shall mean nonilluminated signs that can be made out of wood, komatex (rigid plastic), or framed aluminum. **WINDOW SIGN** Shall mean any sign temporarily or permanently affixed to the glass of a window or door of a business or that is visible through a window or door and placed on a regular basis within three feet of the glass.



**3. All signs in the Business District shall comply with the following regulations:** (a) No sign shall be backlighted. Signs (including wall signs, awning signs, window signs and portable signs) may only be indirectly illuminated so that such light source is properly shielded from residences and streets. (b) No sign shall be lighted with flashing lights. (c) Signs which project perpendicularly from a building wall are prohibited unless such sign (i) does not exceed 10 square feet, (ii) the lowest portion of which is a minimum of nine feet above the sidewalk and (iii) is not internally illuminated. (d) Neon. Only two pieces of neon are allowed per establishment and shall be no more than four square feet per piece. No flashing neon is allowed. No neon borders are allowed. Neon is considered part of the allowable 10% of the first floor front square footage sign area. Two color to-scale sketches with the location of the neon must accompany the sign application. (e) Neon channel or reverse neon channel letters are letters that are made from metal formed letters that house rows of neon inside the letters that are then covered with plastic faces. In the case of reverse neon channel letters the front and sides of the letters are made out of metal mounted up off the wall and the neon halo of light stream out the back of the letters onto the facade of the building. The total sign area for neon channel and reverse neon channel letters follows the same guidelines as for wall signs which is not to exceed 10% of the first floor front building facade area and in any event may not exceed 100 square feet. Two copies of a color to-scale sketch of the placement of the letters on the building must accompany the sign application. Buildings on a corner lot may erect an additional sign for each business establishment or use in that building. (f) Individually formed letters are nonilluminated plastic or metal individual letter or logos mounted on a wall with stainless steel studs. The sign area for individual formed letters is the same as for wall signs which is not to exceed 10% of the first floor front facade area and in any event shall not exceed 100 square feet. Buildings on a corner lot may erect an additional sign for each business establishment or use located in that building. Two copies of a color to-scale sketch of the placement of the letters on the building must accompany the sign application. (g) Window lettering is only allowed using pressure sensitive vinyl and is considered part of the allowable 10% of the first floor front square footage sign area. No window may be painted except for seasonal displays. Two color to-scale sketches of the placement of the lettering must accompany the permit application.

**4. Wall signs nonilluminated signs that can be made out of wood, komatex (rigid plastic), or framed aluminum.** Two copies of color to-scale sketches must accompany the sign application. Letter sizes must be shown on the sketch. Wall signs are permitted on each building wall that faces a street in the business district, subject to the following limitations and requirements: (a) Not more than one wall sign shall be permitted for each business establishment or use located in the building except that on corner properties an additional sign may be erected on the side of the building for each business establishment or use located in that building. (b) No wall sign shall extend farther than six inches from the face of the building wall to which it is attached except that an awning sign may extend up to three feet from the facade of the building to which it is attached. (c) The height of any sign shall not exceed 2 1/2 feet or 20% of the height of the building wall to which it is attached, whichever is less. In no event may the Sign Area of any sign exceed 10% of the area of the building wall to which it is attached. (d) (Reserved) (e) No sign shall be affixed upon a building or structure in any manner which disfigures, damages or conceals any window opening, door or significant architectural feature or detail of said building or structure. (f) (Reserved) (g) On a sign with horizontal format attached to a building, the maximum allowable height for lettering shall not be more than 80% of the height of the sign.

**5. (a) Notwithstanding any other provision which requires permits for signs, a temporary banner** in the Business District may be displayed temporarily to advertise a grand opening, sale, business anniversary or other celebratory milestones for a period not to exceed 30 days within any nine month period. The banner shall be limited to a size no greater than 15 square feet. A permit shall not be required for such a temporary banner [Amended 2-22-2022 by Ord. No. 2022-1] (b) Except as provided for in paragraph k,5(a), coroplast or paper signs may be displayed temporarily for a period of not to exceed seven days. The display of Coroplast or paper signs shall not exceed the greater of five square feet or 5% of each of the total footage of each windowpane. A permit shall not be required for installation.

**6. Portable signs that inform the public of sales or events may be displayed temporarily on a** public sidewalk, subject to the following limitations and requirements: (a) The sign does not exceed an area of four square feet and a height of four feet. (b) The sign is on display only during hours that the retail establishment conducting the sale or event is open for business. (c) The sign is located within three feet of the property line of the retail establishment conducting the sale or event. (d) The application for a permit shall include an indemnification agreement pursuant to which the applicant shall agree to forever defend, protect, indemnify and save harmless the Town of Kearny, its officers, agents and employees from any and all claims, causes of action, injuries, losses, damages, expenses, fees and costs arising out of such portable sign. (e) Only one sign per establishment is allowed.

**7. Ground signs shall mean any freestanding sign permanently fixed, anchored or secured to the ground in the Business District and are subject to the following limitations and requirements:** (a) Sign must be made out of wood, framed aluminum or any other solid traditional materials. (b) Sign may not exceed 30 square feet on each side. (c) Sign height is not to exceed 16 feet. (d) Sign must be set back at least five feet from the property line. (e) Only one sign shall be permitted per lot. (f) Sign may not be internally illuminated, but may be externally illuminated by either ornamental incandescent fixtures mounted to the sign structure or by ground fixtures. (g) Two copies of a color to-scale sketch of the sign and the placement of it on the property must accompany the permit at the time of application. Letter sizes must be indicated on the sketch.

**8. Political nonprofit or not-for-profit organization signs and temporary contractors signs shall be of temporary construction and the signs shall not remain displayed for longer than 30 days during any six-month period.**

**9. Awnings. The installation of awnings is encouraged. The awning may be stationary or retractable.** The size of the awning is regulated by Kearny Construction Code Enforcement Department and requires a zoning permit and construction permit to be installed. Two copies of a to-scale sketch of the awning on the building must accompany the permit at the time of application. Awning shall be subject to the following limitations and restrictions: (a) Awning must be made out of acrylic canvas (Sunbrella brand or similar) and should be a shape and color that compliments the architecture of the building. (b) No vinyl awnings are permitted. (c) No back-lit awnings are permitted. (d) Lettering is restricted to the vertical flap of the awning, which shall not exceed eight inches in height. (e) Permission to encroach over town property with the awning must be sought and obtained from the Kearny Governing Body prior to making application for permit. Requests for approval to encroach must be in writing and submitted before the second Tuesday of the month to: Mayor and Town Council, 402 Kearny Avenue, Kearny NJ 07032.

**§ 38-6.9 Fences and Walls.** [Ord. No. 10-14-87 § 138-6.600; Ord. No. 1999-O-2 § 29; Ord. No. 2018-3]

**a. No fence or wall located to the rear of the minimum required front yard shall be erected more than six feet in height and shall be erected within the property lines, except that a height of eight feet shall be permitted in such side or rear yard areas along those property lines where a residential use abuts a nonresidential use.**

**b. The maximum height of a fence or wall shall not exceed 48 inches in the required front yard of a residential district or in a side yard adjacent to the street line of a corner lot. All fences and walls in the required front yard of residential districts or in the side yard of a corner lot shall be at least 50% open.**

**c. No fence, wall, or other visual barrier shall be so located that it obstructs the vision of a motor vehicle driver approaching any street or driveway intersection. All fences shall meet the requirements of subsection 38-5.1c where applicable.**

**d. The finished side of any fence or wall shall be oriented to the outside of the lot.**

**e. On through lots, as defined under this chapter, where a residential use abuts a non-residential use and the building rear of the residential use borders the non-residential use, a fence or wall not exceeding six feet is permitted along those property lines where a residential use abuts a non-residential use.**

**§ 38-6.10 Planned Developments. [Ord. No. 10-14-87 § 138-6.700; Ord. No. 12-12-90; Ord. No. 2004-(O)-64]**

**a. General. Prior to approval of any planned development, the Planning Board shall find as required by N.J.S.A. 50:55D-45, the following facts and conclusions:**

**1. That departures by the proposed development from zoning regulations otherwise applicable to the subject property conform to the zoning standards applicable to the planned development.**

**2. That the proposals of maintenance and the amount, location and purpose of the common open space are adequate.**

**3. That provision through the physical design of the proposed development for public services, control over vehicular and pedestrian traffic, and the amenities of light and air, recreation and visual enjoyment are adequate.**

**4. That the proposed planned development will not have an unreasonably adverse impact upon the area in which it is proposed to be established.**

**5. In the case of a proposed development which contemplates construction over a period of years, that the terms and conditions intended to protect the interests of the public and of the residents, occupants and owners of the proposed development in the total completion of the development are adequate.**

**b. Planned Commercial Development Groups.**

**1. Purpose. Planned commercial development groups shall be permitted in certain locations and under specific conditions to accommodate commercial or office uses or both and other uses incidental to the predominant use as hereinafter permitted.**

**2. Required Area. The minimum contiguous size for planned commercial development groups shall be as follows: C-3 and C-4 District: One acre SKM District: Five acres**

**3. Development Plan.** The planned commercial development group shall be developed according to a plan as a single entity containing one or more structures with appurtenant common areas. The development plan shall demonstrate a coordinated treatment of building location, orientation and relationship; vehicular access, parking, pedestrian access and emergency access; landscaping, lighting and open space areas; and facility management, security and operations.

**4. Permitted Uses. Permitted uses shall be as follows:** (a) **C-3 Community Business District:** Any principal and accessory uses permitted in the C-3 District other than residential uses and under the same conditions as prescribed therein. (b) **C-4 General Business District:** Principal and accessory uses permitted in the C-4 District other than residential uses and under the same conditions as prescribed therein. (c) **SKI-N South Kearny Industrial-North and SKI-S South Kearny Industrial-South Districts:** (1) Principal uses: Bank and other financial institutions; Department store; Dry goods, clothing and variety store but not including outlet sales; Food store; Furniture store; Hotel and conference facilities; Movie theater; Offices, business and professional; Restaurants; Fast food restaurants if developed as part of a shopping center building but which shall not include drive through service. (2) Accessory uses: Any accessory uses permitted in the C-3 District other than residential uses and under the same conditions as prescribed therein. (3) Other incidental uses: In the SKM[1] District, industrial uses permitted in the LI District may be permitted as part of a planned commercial development group, provided however that such use shall be incidental to the predominant use and shall conform to all other requirements of this chapter. [1] Editor's Note: Ordinance No. 2003-(O)-23 deleted the SKM-1 and SKM-2 Zones and added the SKI-N and SKI-S Zones. At the direction of the Town, the reference contained herein will be amended in a subsequent ordinance. (4) Conditional uses: Any conditional uses permitted in the SKI-N and SKI-S zone under the same conditions prescribed therein.



**5. Bulk Regulations. Planned commercial developments shall conform to the following bulk regulations:** (a) Height regulations shall be the same as the height regulations in the SKM[2] Zone. [2] Editor's Note: Ordinance No. 2003-(O)-23 deleted the SKM-1 and SKM-2 Zones and added the SKI-N and SKI-S Zones. At the direction of the Town, the reference contained herein will be amended in a subsequent ordinance. (b) Improved lot coverage regulations shall be the same as the improved lot coverage regulations in the SKM[3] Zone. [3] Editor's Note: Ordinance No. 2003-(O)-23 deleted the SKM-1 and SKM-2 Zones and added the SKI-N and SKI-S Zones. At the direction of the Town, the reference contained herein will be amended in a subsequent ordinance.

**c. Planned Industrial Development Groups.**

**1. Purpose.** Planned industrial development groups shall be permitted in certain locations and under specific conditions to accommodate industrial uses in single planned development.

**2. Required Area.** The minimum contiguous size for planned industrial development shall be 10 acres.

**3. Development Plan.** The planned industrial development group shall be developed according to a plan as a single entity containing one or more structures with appurtenant common areas. The redevelopment plan shall demonstrate a coordinated treatment of building location, orientation and relationship; vehicular access, parking, pedestrian access and emergency access; landscaping, lighting and open space areas; and facilities management, security and operations.

**4. Permitted Uses and Bulk Regulations.** Permitted uses and bulk regulations shall be the same as the district in which the planned industrial development group is located.

**d. Limited Income Housing.**

**1. Conditions. Limited income housing (LIH) as required by and regulated in this chapter**

shall meet the following conditions: (a) LIH units within each such development in the CLH Zone shall be made available exclusively to limited income households at the ratio of not less than 50% low income households nor more than 50% moderate income households. (b) For purposes of this section, a low income household is one having a total income which is not more than 50% of the median household income adjusted for household size in the Standard Metropolitan Statistical Area (SMSA), Newark, New Jersey Housing Region, as established by the United States Department of Housing and Urban Development (HUD) for the purpose of administering the Federal Housing Assistance Payments Program (Section 8) or by other generally accepted Federal or New Jersey data base. The aforesaid percentage may be amended from time to time as provided in this section. For purposes of this section, a moderate income household is one having a total income which is not less than 50% nor more than 80% of the median household income adjusted for household size in the Standard Metropolitan Statistical Area (SMSA), Newark, New Jersey Housing Region, as established by the United States Department of Housing and Urban Development (HUD) for the purpose of administering the Federal Housing Assistance Payments Program (Section 8) or by other generally accepted Federal or New Jersey data base. The aforesaid percentages may be amended from time to time as provided in this section. (c) Occupancy of LIH units constructed under the provisions of this section shall be limited to low and moderate income households as defined in this section and shall be affordable to such households as follows: (1) In establishing affordability of a unit of a given number of bedrooms, such units must be affordable to household sizes as set forth below. 1 bedroom unit 2 person household 2 bedroom unit 3 person household 3 bedroom unit 5 person household (2) In the case of LIH units offered for sale, each unit shall be affordable to a household earning no more than 80% of the ceiling income for that household, by household size and income category, spending not more than 28% of its gross household income for the sum of the mortgage, based on: (i) a 10% down payment and realistically available mortgage interest rates; (ii) property taxes as currently levied in the Town of Kearny; (iii) insurance; and (iv) homeowners' association fees, if any. The proposed prices of LIH units to be offered for sale, and the calculation by which those prices have been determined, shall be submitted for approval by the applicant as a part of application for preliminary site plan approval. (3) In the case of LIH units offered for rent, they shall be rented for no more than 30% of the gross household income of the low or moderate income household, the rental to be inclusive of all services, maintenance and utilities. In the event that any utility or other charges are paid directly by the tenant, the maximum rental of 30% shall represent the sum of the contract rent and all such utility or other charges. Rents shall be set individually for each tenant on the basis of individually verified household income. (d)



**i. The original sales price plus the original sales price multiplied by 75% of the percentage**

increase in the Consumer Price Index between the date of initial purchase and the date of resale. ii. Reimbursement for documented monetary outlays made for reasonable property improvements and iii. Reasonable costs incurred in selling unit. (2) Any such plan shall provide that the low income units upon resale may be sold only to low income households, and the moderate income units to either low or moderate income purchasers; provided, however, that the administering agency may establish reasonable provisions for waiver of this condition on a case by case basis in the event it finds that a particular unit may not feasibly be sold subject to this condition. In the event that the administering agency grants such a waiver, it may provide that the unit be sold at the formula price, and that the resale controls remain in effect for any subsequent sales of the unit. (3) The Town of Kearny may administer these controls directly, or may enter into an agreement with a nonprofit corporation or other governmental entity, or may permit the developer to administer these controls, either directly or through a nonprofit entity established by the developer, but in no event may the Town of Kearny require the developer to administer these controls as a condition of approval nor may the resale controls be administered merely by the existence of a deed restriction on the property. (4) Resale controls shall be embodied in a deed restriction on the property that shall be submitted by the developer at the time of preliminary site plan approval, and shall be subject to approval by the Town Attorney and by the administering agency. All deed restrictions shall be consistent with all of the provisions of this section, and with any regulations or guidelines adopted by the administering agency. (5) Any LIH unit offered as a rental unit shall continue to be offered as a rental unit for at least 15 years. After 15 years, they may be converted to condominium or cooperative occupancy, but must be sold at prices affordable to moderate income households, as defined herein, occupied by low or moderate income households, and subject to such resale controls as may be necessary to insure that the units will continue to be affordable to moderate income households for the remainder of the thirty-year period commencing with the issuance of certificates of occupancy on the last LIH unit in that development. (6) The administering agency, subject to review by the Town at the option of the Council, shall adopt such regulations and guidelines as may be necessary to carry out the provisions of paragraph (g) through (g)(6). (h) Notwithstanding any other provisions of this section, the Town of Kearny shall have the right to purchase, either directly or through a governmental agency or authority or through corporation under contract with the Town, any or all LIH units constructed in any development. Such right must be exercised by written notice to the developer within 30 days after the issuance of a construction permit or permits for the unit or units involved. Notice shall be mailed by certified mail return receipt requested, to the developer at the address of the developer set forth in the application for construction permit, and the notice shall become effective upon mailing. The purchase price for any unit shall be the agreed upon estimated highest price at which the unit could be sold to a qualified low or moderate income purchaser, as the case may be. Closing of

**2. Administration.** Except as to the provisions of paragraph (g) above, the administration and enforcement of the provisions of this paragraph as they pertain to LIH units shall be undertaken and performed by the Town Administrator, unless the Town Council shall by resolution designate a governmental agency or nonprofit entity to undertake and perform responsibilities.

**3. Periodic Review for Modification of Standards.** The standards established in this section for qualification as a low income household, a moderate income household and the rental allowed to be charged for occupancy of LIH units shall be reviewed periodically by the Town Council which shall, from time to time, adopt such amendments to this section as are required to assure that such standards conform to the applicable decisional and statutory law of New Jersey. In the event that the standards established by this section are so amended hereafter, such amended standards shall apply to any LIH units which have been constructed pursuant to this section and which are in existence at the time that such standards are so amended.

**a. Findings, Purpose and Intent.**

**1. The uncontrolled placement of newsracks in public rights-of-way presents an** inconvenience and danger to the health, safety and welfare of persons using such public rights-of-way, including pedestrians, persons entering and leaving vehicles and buildings, and persons performing essential utility, traffic control and emergency services.

**2. The uncontrolled placement of newsracks is also detrimental to the aesthetic characteristics** of the Town and unsightly newsracks located in the public rights-of-way constitute public nuisances and cause visual blight.

**3. It is the purpose and intent of this section, in the interest of public safety, aesthetics and the** general welfare of the Town, to reasonably regulate the placement, maintenance and operation of newsracks within the Town of Kearny.

**b. Definitions. As used herein, the following terms shall have the meanings indicated:**

DISTRIBUTOR Shall mean the person, corporation, employee or agent who places and maintains or operates a newsrack in a public right of way as herein defined. DRIVEWAY Shall mean that surface, whether improved or not, over and by which ingress and egress is made by private or public property or by which vehicles move from private or public property onto a street. NEWSPAPER, NEWS PERIODICALS, NEWS MAGAZINE Shall mean any newspaper, periodical or magazine of general circulation as defined by general law; any newspaper duly entered with the Post Office Department of the United States, in accordance with Federal statute or regulation; and any newspaper filed and recorded with any recording officer, as provided by general law. NEWSRACK Shall mean any self-service or coin-operated box, container, storage unit or other dispenser erected, installed, maintained or operated for the display, distribution and/or sale of newspapers, circulars, pamphlets, news periodicals, magazines, or other similar publications. PUBLIC RIGHT-OF-WAY Shall mean a street, sidewalk or roadway. ROADWAY Shall mean that portion of a street improved, designated or ordinarily used for vehicle travel. SIDEWALK Shall mean any public surface or area provided for the use of pedestrians, including the area between the curb of any street and the sidewalk, or, if there is no sidewalk, the area between the edge of the street and the property line adjacent thereto. STREET Shall mean all that area dedicated to public use for public street purposes and shall include but not be limited to roadways, parkways, alleys and sidewalks.



**c. Compliance and Permit Required.**

**1. It shall be unlawful for any person, firm, corporation or distributor to erect, place, maintain or operate a newsrack on any public right-of-way within the Town of Kearny, without first having obtained a permit from the Zoning Official. The permit shall specify the exact location of each newsrack. One permit may be issued to include any number of newsracks and shall be signed by the applicant.**

**2. An application for such permit shall be made, in writing, to the office of the Zoning Official of the Town of Kearny upon such form as shall be provided and shall contain the name and address of the applicant and the proposed specific location of said newsrack or newsracks and shall be signed by the applicant. The application must be accompanied by a color sketch or color drawing, to scale, and specifications of the proposed newsrack depicting compliance with the requirements for dimensions, color and lettering, and the application shall be signed by the applicant.**

**3. If the applicant meets all the requirements of the provisions of this section, the permit shall be issued within 10 business days.**

**4. If the application is denied, the Zoning Official, within 10 business days and by regular mail, shall set forth in writing the reasons for the denial. For each requested location, the Zoning Official shall have an additional two business days to act.**

**5. Such denial by the Zoning Official may be appealed within 30 days to the Construction Board of Appeals who shall render a decision within 30 days.**

**d. Conditions for Permit; Fee; Term; Liability Insurance.**

**1. Permits may be issued for the installation of a newsrack or newsracks, but such newsrack or newsracks and the installation, use or maintenance thereof shall be conditioned upon compliance with the provisions of this section.**

**2. The application for a permit shall require the payment of an application fee of \$100.**

**3. There shall be a registration fee of \$50 per newsrack payable after the time the application for a permit is approved.**

**4. The permit shall be valid for a period of one year, on a fiscal-year basis, commencing on January 1, and shall be renewable on January of the subsequent year. Permits shall be renewable pursuant to the procedure for original applications, upon payment of the \$50 registration fee per newsrack which shall be used to defray the cost of inspection. The registration fee shall be prorated if the permit issued is effective subsequent to January 1.**

**5. No permit shall be issued or continued in operation unless the applicant and any other persons, organizations, firms or corporations on whose behalf the application is made for filing such application do represent, stipulate, contract and agree that they will jointly and severally defend, indemnify and hold the Town of Kearny harmless against liability for any and all claims for damage to property or injury to or death of persons arising out of or resulting from the issuance of the permit or the control, maintenance or ownership of the newsracks permitted.**

**6. No permit shall be issued or continued in operation unless the applicant shall file with the Zoning Officer an insurance policy or policies of a company duly licensed to transact business under the insurance laws of this State, with coverage limits of at least \$100,000 per person and \$1,000,000 per accident, insuring against loss from liability imposed by law upon the distributor for damages on account of bodily injury or death suffered, and in the sum of \$50,000 against loss on account of property damage suffered by any person or persons as a result of an accident occurring by reason of the ownership, control or maintenance of a newsrack, and no permit shall continue effective unless such insurance shall remain in full force and effect, during the entire term of the permit. Such insurance policy shall provide for the payment of any final judgment recovered by any person on account of the ownership, maintenance and control of such newsrack, or any fault in respect thereto, and shall be for the benefit of any person suffering loss, damage or injury as aforesaid. Each insurance policy shall provide that neither the distributor, nor its insurer, shall have any right to subrogation against the Town of Kearny. Each insurance policy shall provide primary coverage for any and all losses and shall be drafted so as to protect all parties. The distributor shall have the Town of Kearny added as an additional insured on the insurance policies required by this subsection.**

**e. Maintenance; Installation.**

**1. Any newsrack which in whole or in part rests upon or over any public sidewalk, roadway or street and which is so permitted in a location under the terms of this section shall comply with the following standards;**

**2. No newsrack shall exceed 49 inches in height, 20 inches in width or 18 inches in depth.** Newsracks shall be manufactured of sturdy metal housing, using 12 gauge sheet metal or better, finished with a prime coat and baked powder coat finish.

**3. Newsracks shall be green with white lettering, but lettering shall not exceed three inches in height and shall not cover more than 10% of the surface area of the newsrack.**

**4. Notwithstanding any provision in this subsection to the contrary, any newsrack located in a streetscape design area shall conform to the aesthetic characteristics of the streetscape plan.**

**5. No newsrack shall be used for advertising signs or publicity purposes other than those dealing with the display, sale or purchase of the news materials sold therein.**

**6. Each newsrack wherein a consideration is charged for the dispensing of its product shall be** equipped with a coin-return mechanism to permit a person using the machine to secure an immediate refund in the event that he is unable to receive the publication paid for. The coin-return mechanism shall be maintained in good working order.

**7. Each newsrack shall have affixed to it, in a readily visible place so as to be seen by anyone** using the newsrack, a notice setting for the name and address of the distributor and the telephone number of a working telephone service to report a malfunction or to secure a refund in the event of a malfunction of the coin-return mechanism or to give the notices provided for in this section.

**8. Each newsrack shall be maintained in a neat and clean condition and in good repair at all** times. Specifically, but without limiting the generality of the foregoing, each newsrack shall be serviced and maintained so that: (a) It is reasonably free of chipped, faded, peeling and cracked paint in the visible painted areas thereof. (b) It is reasonably free of rust and corrosion in the visible unpainted metal areas thereon. (c) The clear plastic or glass parts thereof, if any, through which the publications therein are viewed are unbroken and reasonably free of cracks, dents or blemishes and discolorations. (d) The paper or cardboard parts or inserts thereof, if any, are reasonably free of tears, peeling or fading. (e) The structural parts thereof are not broken or unduly misshapen. (f) It is free from all graffiti.

**9. It shall be unlawful for any person or place to maintain any publication or material in newsracks which is obscene as defined by the United States Supreme Court and/or as set forth in N.J.S.A. 2C:34-2 or -3 or which exposes to public view any pictorial material which depicts or appears to depict nudity or offensive sexually explicit material.**

**10. Each newsrack shall be maintained to prevent the newspapers or magazines from being scattered about the area.**

**11. Each newsrack not located on an existing sidewalk or other hard surface area shall be placed on a precast concrete base. Installation, maintenance and removal of the base shall be the responsibility of the distributor.**

**f. Location and Placement.**

**1. No newsrack shall be placed or permitted except in conformity with the provisions of** this section and upon permit application to the office of the Zoning Official. Any newsrack which rests in whole or in part upon or on any portion of a public street or sidewalk or projects onto, into or over any part of a public street or sidewalk shall be located in accordance with the provisions of the following: (a) No newsrack shall be used or maintained which projects onto, into or over any part of the roadway of any public street or which rests wholly or in part upon or over any portion of the roadway of any public street. (b) No newsrack shall be permitted to rest upon, in or over any public street or sidewalk when such installation, use or maintenance: (1) Endangers the safety of persons or property. (2) Unreasonably interferes with or impedes the flow of pedestrian or vehicular traffic. (3) Unreasonably interferes with access to or exit from any legally parked vehicle. (4) Unreasonably interferes with the ingress or egress from any residence or place of business. (5) Unreasonably interferes with the use of traffic signs or signals, hydrants or mailboxes permitted at or near said location. (6) Unreasonably interferes with or impedes the operation of any bus stop. (c) A newsrack or newsracks shall be placed or otherwise secured so as to prevent their being blown down or around the public street or sidewalk but shall not be chained or otherwise secured to any traffic or street signs, signals, hydrants, trees or mailboxes. (d) No newsracks shall be placed, installed, used or maintained: (1) Within three feet of any marked crosswalk or handicap curb ramp. (2) Within 15 feet of any fire hydrant, fire call box, police box or other emergency facility. (3) Within 18 inches of a curb. (4) At any location whereby the clear space for the passageway of pedestrians is reduced to less than six feet. (5) Within 10 feet of any standby or sprinkler connection or related safety or fire equipment. (6) Within five feet of any building, showroom or display window, unless written permission from the owner is secured and same is submitted with the application. (7) At any location whereby the clear space for the passageway for pedestrians is reduced by the newsrack to less than six feet. (8) Within three feet of or on any public area improved with lawn, flowers, shrubs, trees or landscaping. (9) Within 300 feet of any other newsrack containing the same issue or edition of the same publication. (10) In front of a single-family or two-family residence. (11) In any district other than the C1, C2 and C3 zones. (12) To cause a sight line obstruction at any intersection or driveway. (13) No newsracks shall be permitted in any location zoned as residential. (14) No more than two newsracks may be placed adjacent to each other at any location that complies with this subsection. After a newsrack, or pair of newsracks, is permitted for a specific location, no additional newsracks shall be placed less than one city block from the permitted newsrack.



**g. Abandonment/Removal of Newsracks.**

**1. In the event that a newsrack remains empty for a period of 10 continuous days or does** not contain the publication specified in the application therefor within 96 hours after the release of the current issue, the Zoning Official may deem the newsrack abandoned and may, after having given 30 days' written notice to the applicant to remedy the problem specified in said written notice, remove the newsrack from the public right-of-way and/or impound said newsrack.

**2. In the event that a newsrack does not confirm to any of the provisions of this subsection, the** Zoning Official may deem the newsrack a nonconforming newsrack and may, after giving 30 days' written notice to the applicant to remedy the problem specified in said written notice, remove the newsrack and all supporting structures from the public right-of-way or impound said newsrack. Newsracks that do not contain proper owner/operator identification permanently attached thereto may be removed by the Town at any time without notice.

**3. Storage after Removal. For any newsrack that is removed or impounded in accordance with** this section and then stored by the Town, the Township shall charge a storage fee of \$25 per day.



**h. Violations and Penalties.** In addition to all enforcement procedures provided herein, any violation of the provisions of this subsection shall be subject to prosecution as a violation and, upon conviction, shall subject the violator to a penalty of not less than \$100 nor more than \$500, to confinement of not more than 90 days in jail, or both Each day that a violation of this section continues after due notice from the office of the Zoning Official to the violator shall be deemed a separate and distinct violation for each separate newsrack.

**i. Suspension or Revocation of Permit.** In addition to the penalties provided herein, it shall be within the power and discretion of the Zoning Official to suspend or revoke a permit for continued or repeated violations or infractions of any provision of this subsection, or of any rule, direction or regulation of the Zoning Official. Suspension or revocation of a permit shall be mandatory for the third violation of this subsection.

**j. Permits Not to Be Assigned.** The permits issued pursuant to this subsection shall not be assigned or transferred.

## **§ 38-7 OFF-STREET PARKING AND LOADING.**

### **§ 38-7.1 Off-Street Parking and Loading Spaces Required. [Ord. No. 10-14-87 § 138-7.100]**

In all districts, in connection with every industrial, business, institutional, recreational or residential or any other use, there shall be provided, at the time any building or structure is erected or is enlarged or increased in capacity, off-street parking and loading spaces for automobiles and other vehicles in accordance with the requirements set forth in the Land Subdivision and Site Plan Review Ordinance of the Town of Kearny. Such facilities shall be completed prior to the issuance of a certificate of occupancy. In cases where site plan approval is not required, the standards herein shall prevail.

**§ 38-7.2 Joint Facilities. [Ord. No. 10-14-87 § 138-7.200]** Off-street parking and loading facilities for separate uses may be provided jointly if the total number of spaces so provided is not less than the sum of the separate requirements for each use and provided that all regulations governing the location of accessory spaces in relation to the use served are adhered to. Further, no accessory space or portion thereof shall serve as a required space for more than one use unless otherwise approved as provided in the Land Subdivision and Site Plan Review Ordinance.

**§ 38-7.3 Maintenance of Off-Street Parking and Loading Areas. [Ord. No. 10-14-87 § 138-7.300]** Every parcel of land hereafter used as a public or private off-street parking or loading area shall be maintained in good condition, free of hazards and deterioration. All pavement, areas, sidewalks, curbs, drainage facilities, lighting, bumpers, guardrails, markings, signs, landscaping and other improvements shall be maintained in workable, safe and good condition.

**§ 38-7.4 Off-Site Parking Facilities. [Ord. No. 10-14-87 § 138-7.400]** All permitted and required accessory off-street parking spaces open or enclosed, shall be located on the same zone lot as the use to which such spaces are accessory, except that such spaces may be provided elsewhere within a radius of no greater distance than 400 feet from the lot, and further provided that the required spaces are provided off the site in accordance with the provisions set forth herein or in the Land Subdivision and Site Plan Ordinance. Such spaces shall be in the same ownership as the use to which they are accessory and shall be subject to deed restrictions filed in the office of the County Clerk in Hudson County, binding the owner and his heirs and/or assigns to maintain the required number of spaces available throughout the life of such use, and such spaces shall conform to all regulations of the district in which they are located.

**§ 38-7.5 Off-Street Parking for One and Two-Family Dwellings.** [Ord. No. 10-14-87 § 138-7.500; Ord. No. 2004-(O)-12; Ord. No. 2005-(O)-09 § 4; Ord. No. 2005-(O)-42 § 4]

**a. Except as provided for in the following paragraph b below, every one family and two family dwelling, and any dwelling converted from a one family to a two family dwelling, shall be required to provide a minimum of one off-street parking space for each dwelling unit.**

**b. Off-Street Parking for All Residential Uses. Off-street parking requirements shall be in accordance with the Residential Site Improvement Standards, New Jersey Administrative Code, Title 5, Chapter 21 et seq.**

**c. Any existing one or two family dwelling, except townhouses, shall be permitted to park operable automobiles in the side or rear yard area, without an enclosed structure, provided there is no adverse effect to the property or abutting properties and subject to subsection 38-7.7.**

**§ 38-7.6 Private Garages in Residential Zones.** [Ord. No. 10-14-87 § 138-7.600; Ord. No. 1999-O-2 §§ 30, 40] A private garage permitted as an accessory use in a residential district shall be subject to the following special provisions:

**a. A private garage for not more than two motor vehicles shall not be over 14 feet in height** measured to the peak of a sloped roof and not over 10 feet in height measured to the highest point of a flat roof and shall not be erected within less than 25 feet of the front of the street line. On a corner lot, no part of a garage shall be nearer the side street line than the side yard dimensions permitted for the said corner lot. If a private garage accessory to a residential building is made part of the principal building, the requirements of this subsection shall not apply. The maximum height of a garage shall be one story in height. Maximum dimensions for a one-car garage is 10 feet by 20 feet and maximum dimension for a two-car garage is 20 feet by 20 feet.

**b. Space for not more than one noncommercial motor vehicle may be leased in a private garage** in the R-1 District, and space for not more than two non-commercial motor vehicles may be leased in a private garage for not more than three motor vehicles in an R-2 and R-3 District.

**c. Upon mutual agreement between property owners, party-wall garages may be built across a** common lot line. Otherwise, a private garage for not more than three motor vehicles shall be everywhere distant at least three feet from any side or rear lot line, except that if it extends to within less than 70 feet of the front street line, it shall be at least 10 feet distant from a side lot line which adjoins a lot in any residential district. In the case of a corner lot, it shall be at least eight feet distant from the rear lot line.

**d. A group of garages in the form of a motor court permitted as an accessory use to a** garden-type apartment dwelling for four or more but not over 12 family units shall not be located nearer the front street line than the principal building nor within less than four feet of any side or rear lot line.

**e. Garage spaces where provided shall be used only by the owners, tenants, or guests, except** as noted in paragraph b and in the following alternative ways:

**1. Within the building.**

**2. Beneath any part of the side or rear yards or courts except within 10 feet of any lot line,** provided no portion of the roof of such garage, except parapets, extends higher than the level of the first floor beams of the principal building and such roof is so designed as to be used for an open terrace or part of the yard.

**3. In a separate building, above the ground on the same lot, provided no part of such building is** less than four feet distant from any side or rear lot line.

**4. No permit shall be issued for the erection or construction of a depressed garage, attached to** a residence, as an accessory use, in a residential zone if any portion of the garage (excepting the foundation) is less than one foot above the street level of the lot upon which the garage is to be erected or constructed; provided, however, that the aforementioned prohibition shall be inapplicable where the entrance to a garage attached to a residence faces away from the public street upon which the dwelling faces, if the elevation of the land behind the garage entrance and further away from the public street is lower than the elevation of the land at the entrance to the aforementioned garage.

**f. Within any residential district, no garage built into a basement or terrace shall project in any** part of a front yard by more than four feet.

**g. Notwithstanding anything in this chapter to the contrary, a private garage in a residential** district, lawfully in existence on December 29, 1952, may be rebuilt or repaired and may also be extended by the addition of not more than three feet to its length, which extension may be in the front or in the rear, provided such extension is only to the first floor of the building.

**h. Private garages which are accessory uses customarily incidental to the principal permitted** uses and are located on the same lot, may include a private garage for not more than three motor vehicles. Except as provided herein, such accessory uses shall not include any use customarily carried on as a gainful business or industry nor the erection or maintenance of any advertising sign except as herein specified, provided, however, that the parking of a commercial vehicle under a rated capacity of one ton shall not constitute a prohibited use under this section.

**i. Private garages accessory to garden apartment dwellings and multiple-family residences may** be grouped in motor courts enclosed on all sides except for necessary driveway entrances, but shall provide storage for not more than two motor vehicles for each family dwelling unit on the premises. Garages or off-street parking spaces shall be provided as accessory uses to garden and multiple-family residences in accordance with the provisions of the Subdivision and Site Plan Ordinance.

**§ 38-7.7 Off-Street Parking for Certain Dwellings. [Ord. No. 10-14-87 § 138-7.700; Ord. No. 1999-O-2 § 31; Ord. No. 2000-0-17; Ord. No. 2004-(O)-12]** Off-street parking spaces with a paved or graveled surface and roadway connecting with the street may be substituted for all or part of the private garage space required for dwellings under subsection 38-7.5 or 38-7.6e, provided such parking space is in the side or rear yard and is not less than three feet distant from any side or rear lot line with the intervening space appropriately buffered by landscaping. Access to such side or rear yard parking.[1] The maximum driveway width and curb width of a driveway located between the building line and street line in the R-1M Zone shall be 10 feet. Such parking space shall be used only by tenants of the principal building or buildings and temporarily by guests of such tenants. Where such parking is provided in the rear yard, no more than 33% of the rear yard shall consist of impervious surfaces including such parking areas, except that a maximum of 60% impervious coverage in the rear yard shall be permitted with lots having a width of 25 feet or less. In no case shall the improved lot coverage for the entire lot exceed the maximum permitted in Schedule I.[2] Additional parking may be permitted on the paved driveway leading to such parking spaces, or to a garage. Such additional parking is intended to alleviate on-street parking congestion with the least impact on aesthetic and environmental concerns. This additional parking alone does not fulfill the off-street parking requirements mandated in other sections of this chapter. [1] Editor's Note: Amended at the direction of the Town and in accordance with instruction of Ordinance No. 2004-(O)-12. This sentence will be amended in a subsequent ordinance. [2] Editor's Note: The schedule referred to herein may be found as an attachment to this chapter.

**§ 38-7.8 Paving of Front Yard Areas. [Ord. No. 1999-O-2 § 32] (Reserved)**

**§ 38-7.9 Driveway Construction.** [Ord. No. 2004-(O)-70 § 2; Ord. No. 2005-(O)-09 § 4] This subsection shall be known as the Town of Kearny "Driveway Construction" Ordinance.

**a. Purpose.** The purpose of this subsection is to promote the public health, safety, and general welfare of the community, to further the safe and orderly layout of driveways that enter onto Town streets or roads.

**b. Definitions.** See subsection 38-2.2, Definitions.

**c. Permit Required.** No person or entity shall establish, construct, modify, or rework a driveway from a private property line to a public roadway without first filing a zoning permit application form and receiving a zoning permit from the Kearny Construction Code Enforcement Department.

**d. Application Requirements and Procedures.**

**1. Application Form.** Applications for zoning permits shall be made on a form approved by the Construction Code Official and are available at the Kearny Construction Code Enforcement Office.



**2. Application Procedures.** A completed zoning application form shall be filed with the Construction Code Enforcement Department along with the required application fee and attachments, including the following: (a) A scale drawing of the property parcel, to include all buildings or structures existing and any proposed buildings or structures the applicant intends to add to the parcel. The drawing shall include the proposed or existing driveway location. Distances from the existing property lines to the centerline of the driveway shall be dimensioned to establish the driveway location. The width of the driveway at the edge of the roadway will be dimensioned, and the proposed driveway slope shall be provided. (b) A copy of a Hudson/Essex County Soils Conservation District approval, if applicable.

**3. Application Review.** The Construction Code Official shall review the completed application and shall approve or deny stating reasons for any denial.

**4. Permit Period.** The zoning permit shall be effective for 12 months from the date of issuance. If the driveway is not completed within the permit period, the permit is deemed expired and a new application must be submitted for approval.

**5. Driveway Inspection.** The applicant shall notify the Construction Code Enforcement Office within five working days from the completion of construction or improvement of the driveway. The Building Inspector shall conduct an inspection of the driveway to ensure full compliance with all provisions of this section and terms of the permit.

**6. Building Permits.** The Building Inspector shall determine whether the driveway must be completed prior to commencing construction of any buildings or structures on the parcel and may condition any building permit on completion of the driveway for the following reasons: (a) Construction activities are reasonably likely to cause the tracking of soil, gravel vegetation or other material onto the public street or roadway. (b) Construction of the driveway is necessary to allow for the safe and efficient access of construction vehicles entering or leaving the construction site.

**7. Application Fee.** The fee for each zoning permit shall be \$25 plus a \$50 inspection fee. There shall be no inspection fee required for the resurfacing or patching of a lawfully existing driveway with the same or similar material as currently exists, providing that there is no expansion of the driveway area and that the existing curb cut remains unchanged.

**8. Town Authority Preserved.** The Town of Kearny, notwithstanding the issuance of any permit under this subsection or construction of any driveway, reserves the right to make any changes, additions, repairs or relocation of any part of a driveway within the dedicated right of way at any time, including but not limited to, in connection with the relocation, construction, widening and maintaining the street or road or right of way, without compensating the owner of such private driveway of the damages to or destruction of such private driveway.

**e. Driveway Location, Design and Construction Requirements.**

**1. General Requirements. The location, design and construction of driveways shall be in**

accordance with the following: (a) General Design. Driveways shall not provide direct ingress or egress to or from any street intersection, and shall not encroach upon or occupy areas of the street right-of-way required for effective traffic control. A driveway shall be located a minimum of 40 feet from the intersecting centerlines of streets or roadways, or a maximum distance from the intersecting centerlines to the driveway that can be achieved to provide access to an existing lot. A driveway shall be so located and constructed that vehicles approaching or using it shall have adequate sight distance along the street or road. Driveway approaches shall be at least 10 feet apart and shall be placed wherever possible as not to interfere with utilities in place. (b) Number. Not more than one driveway shall be permitted to serve an individual residential property.

Preexisting commercial or light industrial uses situated within any residential zone shall be limited to not more than one driveway. No two adjoining parcels shall be served by two or more driveways on adjoining properties, which share a single access point onto a Town street or road. (c) Drainage. The surface of the driveway connecting with the street or road shall be sloped to preclude an extraordinary or inordinate amount of surface water drainage from flowing onto the street or roadbed. No driveway apron shall extend out into the street or road further than the edge of the street or road or face of the curb.

All driveway entrances and approaches shall be so constructed that they shall not interfere with the drainage of the street or road or any existing structure in the right-of-way. (d) Relocation of Utilities. Any costs of relocating utility structure or facilities shall be the responsibility of the property owner. (e) Removal of Trees

Prohibited. No existing trees within the right-of-way shall be altered, removed or otherwise damaged to accommodate the location of any driveway. (f) Variances. The

Zoning Board of Adjustment may vary any of the above requirements where the peculiar nature of the property or the design of the street or road may make the rigid adherence to the above requirements impossible or impracticable.

**2. Special Requirements for Residential Driveways. (a) Width of driveway. A residential driveway shall be no greater than: (1) For a one-family dwelling 10 feet wide. (2) For a two-dwelling 14 feet wide. At the edge of the pavement of the street/road or curblane. In all R-1 Zones, the width limitation at the edge of the pavement of the street/road or curblane as provided herein shall not be exceeded for the entire length of that portion of the driveway located between the street/road or curblane and the front line of the principal structure or dwelling. (b) Angular placement prohibited. The centerline of the driveway between the property line and the curb must be at a right angle to the edge of the pavement of the street or roadway or curblane of the lot it serves. The centerline of the driveway may not be parallel to the propertyline of the lot it serves. The Construction Code Official may grant special permission for a driveway to be at an angle other than a right angle to the street, only if the owner demonstrates a legitimate need and there exists no reasonable alternative to safe ingress and egress to or from the property or to preserve existing mature tree growth on the lot or within the row. Preexisting, nonconforming driveways, lawfully existing at the time of adoption of paragraph e,2(b) Angular placement, of this subsection[1] may be continued upon the lot of the building or structure served by said driveway unless the nonconformity is abandoned for a period of one year or more. [1] Editor's Note: Ordinance No. 2004-(O)-70, codified herein as subsection 38-7.9 was adopted December 7, 2004.**

**3. Prohibited Driveways. (a) No driveway shall be located within the sight triangle. At roadway intersections a driveway shall not provide direct ingress or egress to or from the roadway intersection area and shall not occupy areas of the roadway deemed necessary by the Town for effective traffic control. (b) Joint or common driveways serving two separate adjoining parcels or properties by way of a single access point in a street or road shall be prohibited.**

**4. Construction/Reconstruction of Curbs. When construction of a driveway requires the removal of a curb the same shall be replaced and restored with equivalent acceptable material per Town standards. (See Chapter 23, Sections 23-17 and 23-18 of these Revised General Ordinances). Curb returns shall be provided or restored in a neat and acceptable manner.**

**5. Maintenance Responsibility. The property owner is responsible for maintaining the driveway approach in such a manner necessary to permit free and unobstructed flow of water. The Town of Kearny does not assume any responsibility for repair or replacement of concrete or decorative pavement, decorative endwalls/headwalls, the removal or clearance of snow and/or ice, upon any portion of a driveway within the Town of Kearny right-of-way.**

**f. Enforcement. The Construction Code Enforcement Department may post a stop-work order if a driveway or other permitted construction or any part thereof is being installed contrary to the terms of this subsection or without a permit.**

**g. Penalties.** Any person who constructs or modifies any driveway without a permit as required by this subsection shall be subject to a fine of \$250, plus all applicable assessments, surcharges and court costs. Any person who shall construct or modify a driveway in violation of any other provision of this subsection, shall, unless the violation is corrected within 30 days of the date of the written notice from the Construction Code Enforcement Department, be subject to the penalties as provided for in Chapter 1, Section 1-5, plus all applicable assessments, surcharges and court costs. Each day that any violation continues shall constitute a separate offense. An unlawful driveway constitutes a public nuisance and may be subject to abatement by any applicable procedure.

## **§ 38-8 NONCONFORMING USES AND STRUCTURES AND UNDERSIZED STRUCTURES.**

**§ 38-8.1 Continuation of Use.** [Ord. No. 10-14-87 § 138-8.100] A use, building or structure which is lawfully in existence at the effective date of the chapter and shall be made nonconforming at the passage of this chapter or any applicable amendment thereto may be continued, except as otherwise provided herein.

**§ 38-8.2 Regulation of Nonconforming Uses.** [Ord. No. 10-14-87 § 138-8.200] No existing use, building or premises devoted to a nonconforming use shall be enlarged, extended, reconstructed, substituted or structurally altered, except when changed to a conforming use or when required to do so by law and as follows:

**a. Any nonconforming structure or use damaged to less than 80% of its previous existing area** may be restored, reconstructed or used as before, provided the area of such use, building or structure shall not exceed the area which existed prior to such damage nor increase the intensity of use. The Board of Adjustment shall determine the time period in which complete restoration shall take place.

**b. Repairs. Normal maintenance and repair of a structure containing a nonconforming use is** permitted, provided that it does not extend the area or volume of space occupied by the nonconforming use and does not increase the number of dwelling units or increase the intensity of use.

**c. Nothing in this chapter shall prevent the strengthening or restoring to a safe or lawful** condition any part of any building or structure declared unsafe or unlawful by the Construction Official or other authorized State or Town official.

**§ 38-8.3 Termination of Nonconforming Uses. [Ord. No. 10-14-87 § 138-8.300; Ord. No. 8-8-82]**

**a. Abandonment. The change of a nonconforming use to a more restricted, or conforming** use for any period of time shall be considered an abandonment thereof, and such nonconforming use shall not thereafter be revived.

**b. Partial Destruction. When 80% or more of the existing area of a nonconforming structure is** destroyed by fire or other casualty or an act of God, the use of such structure as a nonconforming use shall thereafter be terminated.

**c. Nonconforming Buildings Lawfully Under Construction. Any nonconforming building or** structure lawfully under construction on the effective date of this chapter, pursuant to plans filed with the Construction Official and approved by him and all other municipal boards and agencies as required under law, may be completed and may be used for the nonconforming use for which it was designed, to the same extent as if such building had been completed and been in use at the effective date of this chapter, provided that such building or structure shall be completed within one year after the effective date thereof.

**d. Nonconforming Billboards.** A nonconforming billboard which is damaged by elements to such an extent that its supporting members are broken shall be deemed to have been destroyed and shall not be reconstructed.

**§ 38-8.4 Exceptions to Nonconforming Uses and Structures and Undersized Structures.** [Ord. No. 10-14-87 § 138-8.400] Notwithstanding any other provision of this Zoning Ordinance and particularly the provisions of Article VIII hereof, any building or structure located in a R-1, R-2 or R-3 zone presently used for residential purposes and lawfully in existence at the effective date of this chapter or one year prior thereto, may be rebuilt in the event of damage, destruction, or intentional demolition without obtaining a variance provided the dimensions of the structure are substantially identical to the dimensions of the damaged, destroyed or demolished structure.

## **§ 38-9 ADMINISTRATION AND ENFORCEMENT.**

**§ 38-9.1 Construction Official/Zoning Officer.** [Ord. No. 10-14-87 § 138-9.100; Ord. No. 2002-O-8 § 1] There is created hereby the full-time position of Construction Official/Zoning Officer.



**a. Duties, Power and Authority.** The Construction Official/Zoning Officer shall have the chief administrative responsibility for administering and enforcing the provisions of Chapter 35, 36 and 38, other applicable State, County and local construction and zoning laws, ordinances, rules and regulations, and the New Jersey Uniform Construction Code as it applies to the Town. He shall issue zoning permits, construction permits and certificates of occupancy. He shall examine the working plans of proposed buildings and shall conduct field work to ensure compliance with construction and zoning requirements. He shall examine all applications for permits and issue permits for the construction, alteration, enlargement and occupancy of all uses which are in accordance with the aforesaid requirements. He shall also issue permits for those applications which require a variance from the requirements of Chapters 35, 36 and 38 or which require site plan or subdivision approval, but only upon written order of the Board of Adjustment or the Planning Board, as the case may be. He shall also record and file and safely keep all applications for permits, with accompanying plans and documents, and make reports to the Mayor and Council.

**b. Compensation.** The salary for the position shall be as set forth in the salary ordinance of the Town for Construction Official.

**c. References.** All references now in the General Ordinances to "Construction Official" or to "Zoning Officer" shall be read to mean Construction Official/Zoning Officer.

## **§ 38-9.2 Building Permits. [Ord. No. 10-14-87 § 138-9.200]**

**a. Purpose.** To ensure compliance with the provisions of this chapter, no person shall erect, alter or convert any structure or building or part thereof or alter the use of any land subsequent to the adoption of this chapter, until a building permit has been issued by the Construction Official.

**b. Issuance of Permit.** Any building permit issued under this section shall be valid for a period of one year from the date of issuance. Unless a certificate of occupancy as hereinafter provided is issued for the structure covered by the permit within one year, the permit shall automatically lapse; application may, however, be made for renewal of the permit for a one-year period. One copy of the building permit shall be kept conspicuously on the premises affected and protected from the weather whenever construction work is being performed thereon. No owner, contractor, workman or other person shall perform any building operations of any kind unless a building permit covering such operation has been displayed as required by this chapter, nor shall anyone perform building operations of any kind after notification of the revocation of the building permit.

**c. Denial of Permit.** When the Construction Official is not satisfied that the applicant's proposed development will meet the requirements of this chapter, he shall refuse to issue a building permit and the applicant may appeal to the Zoning Board of Adjustment as prescribed by law.

**d. Revocation of Permit.** If it shall appear, at any time, to the Construction Official that the application or accompanying plan is in any respect false or misleading, or that work is being done on the premises differing from that called for in the applications filed with him under existing laws or ordinances, he may forthwith revoke the building permit, whereupon it shall be the duty of the person holding the same to surrender it and all copies thereof to the Construction Official. After the building permit has been revoked, the Construction Official may, in his discretion, before issuing the new building permit, require the applicant to file an indemnity bond in favor of the Town of Kearny with sufficient surety conditioned for compliance with this chapter and all laws and ordinances then in force, and in a sum sufficient to cover the cost of removing the building or structure if it does not comply.

**§ 38-9.3 Certificate of Occupancy.** [Ord. No. 10-14-87 § 138-9.300; Ord. No. 4-12-94; Ord. No. 2003-(O)-10 §§ 1, 2; Ord. No. 2003-(O)-11; Ord. No. 2003-(O)-32 §§ 1, 2; Ord. No. 2005-(O)-42 §§ 2, 3]

**a. For New Uses.**

**1. It shall be unlawful to use or permit the use of any building or premises or part thereof,** hereafter erected or converted, altered or changed from one use to another use, wholly or partly, until a certificate of occupancy shall have been issued by the Construction Official. Such certificate shall show that such building or premises or part thereof and the proposed use thereof are in conformity with the provisions of this chapter. It shall be the duty of the Construction Official to issue a certificate of occupancy within 10 days after a request for the same shall be filed in his office by any owner, after having determined that the building and the proposed use thereof conform to all the requirements herein set forth.

**2. Compliance with Other Ordinances. No certificate of occupancy shall be issued unless the** applicant first obtains a zoning permit for that property from the Zoning Official. Further, a certificate of occupancy shall not be issued until the Construction Official determines that all applicable codes and ordinances administered and enforced by any of the following names, department(s) or agencies have been complied with: (a) The Board of Health. (b) The Town Engineer. (c) The Fire Department. (d) The Police Department. (e) The Planning Board. (f) The Board of Adjustment. (g) The Recreation Commission. (h) The Department of Public Works. (i) The Governing Body. (j) The County Planning Board. (k) Any other applicable department, board or agency, by the Municipal, County, State, Federal, or interstate government agency.

**b. Existing Residential Uses — Certificate of Continued Occupancy.**

**1. Upon the transfer of title to any property located within the boundaries of the Town of Kearny,** it shall be unlawful for any owner to occupy or permit the occupancy of that property without first obtaining a certificate of continued occupancy. This section does not apply to property transfers by inheritance. No certificate of continued occupancy shall be issued unless the applicant first obtains a zoning permit for the specific property. When any R-3 and R-5 (use groups) (pertains to one- and two-family dwellings) property is sold, a smoke and carbon monoxide detector compliance certificate, as required by the laws of the State of New Jersey, must be obtained from the Construction Official/Zoning Officer, prior to the issuance of a certificate of [continued] occupancy. The fee for the compliance certificate shall be included in the fees below. No certificate of [continued] occupancy shall be issued unless the applicant first obtains a zoning permit for that property. A certificate of continued occupancy shall be applied for through the Construction Code Enforcement Department for the Town of Kearny. The certificate of continued occupancy shall indicate that as a result of a general inspection of the visible parts of the structure, no violations have been determined to have occurred and no unsafe conditions have been found, and that the existing use of the structure heretofore lawfully existed. If any violations are found, no occupancy shall be permitted until all items designated for correction by the Construction Code Enforcement Department are made, corrected, and inspected. No certificate of continued occupancy shall be issued unless the applicant first obtains a zoning permit for that property.

**2. Fees. Fees payable through the Construction Code Enforcement Department of the Town of Kearny** for a residential certificate of continued occupancy shall be as follows: One-family dwelling \$60 (Includes smoke detector) Two-family dwelling \$80 (Includes smoke detector) Three-family or more \$40/dwelling unit (No smoke detector necessary)

**c. Change of Use. No owner, tenant or other person shall use or occupy any building or structure** thereafter erected or altered, the use of which shall be changed after the passage of this chapter, without first procuring a zoning permit and certificate of occupancy, provided that certificate of occupancy once granted shall continue in effect as long as there is no change of use, however, a new zoning permit must be issued upon every change of commercial tenancy or commercial occupancy.

**d. Certificate of Occupancy Records. A record of all certificates shall be kept on file in the office** of the Construction Official and copies shall be furnished upon request to any person having a proprietary interest or tenancy in the building affected.

**§ 38-9.4 Completion of Buildings for Which Plans Have Been Filed. [Ord. No. 10-14-87 § 138-9.400]** Nothing herein contained shall require any change in the plans, construction or designated use of a building or which a building permit has been heretofore issued or for which plans are on file with the Construction Official at the time of passage of this chapter and for the erection of which a permit is issued within one month from the passage of this chapter and the construction of which, in either case, shall have been diligently prosecuted within three months of the date of such permit, and the ground-story framework of which, including the second tier of beams, shall have been completed within six months of the date of such permit; and which entire building shall be completed, according to such plans as have been filed, within one year from the date of the passage of this chapter, except if construction has been delayed as a result of a national emergency.

**§ 38-9.5 Violations and Penalties. [Ord. No. 10-14-87 § 138-9.500; Ord. No. 4-12-94; Ord. No. 9-26-95; Ord. No. 2003-(O)-40]**

**a. Complaints of Violations. Any person may file a complaint if there is any reason to believe a** violation of this chapter exists regarding a violation of the building code, certificate of occupancy requirements, zoning permit requirements or conditions of site plan, subdivision or variance approvals. All such complaints must be in writing and shall be filed with the Construction Official, who shall properly record such complaint and immediately investigate.

**b. Procedures for Abatement of Violations. A violation of any of these terms of this chapter shall** be abated within five days, or within as reasonable a time as may be determined, after written notice has been served, either by mail or personal service.

**c. Penalties.** Any person, firm or corporation violating any provision of this chapter, shall upon conviction be subject to a fine of not less than \$100 nor more than \$1,000 for each offense or imprisonment not exceeding 90 days or both, in the discretion of the Court imposing sentence pursuant to N.J.S.A. 40:49-5. Each day that a violation occurs or is committed shall constitute a separate offense. The imposition of the penalties herein prescribed shall not preclude the Town of Kearny from instituting an appropriate action or proceeding to prevent an unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use, or to restrain, correct or abate a violation, or to prevent the occupancy of a building or structure or premises, or to prevent an illegal act, conduct, business or use in or about any premises.

**§ 38-9.6 Zoning Permits. [Ord. No. 2003-(O)-11 § 2; Ord. No. 2003-(O)-31 § 2]**

**a. Required Permit.** Before the commencement of a use or the erection, construction, reconstruction, alteration, conversion, or installation of any structure or building the property owner shall obtain a zoning permit. Failure of a property owner to comply with this paragraph is a violation of law and subjects the owner to penalty under Kearny Code, **N.J., § 38-9.5.**

**b. Duties of the Zoning Official.** The Zoning Official shall grant or deny the issuance of a zoning permit in writing within 10 days of a request. A zoning permit shall be issued only if the Zoning Official determines that the use, structure, or building complies with the provisions of the municipal zoning ordinance or variance.

**c. Compliance with Other Ordinances.** The Zoning Official shall not issue a zoning permit until determining that the use, structure, or building complies with all applicable codes and ordinances administered and enforced by any of the following departments or agencies:

**1. The Board of Health.**

**2. The Town Engineer.**

**3. The Fire Department.**

**4. The Police Department.**

**5. The Planning Board.**

**6. The Board of Adjustment.**

**7. The Recreation Commission.**

**8. The Department of Public Works.**

**9. The Governing Body.**

**10. The County Planning Board.**

**11. Any other applicable department, board or agency, by the Municipal, County, State, Federal or interstate government agency.**

**d. Fees. Every applicant for a zoning permit shall pay a \$25 application fee to the Construction Code Enforcement Department for each permit.**



**e. Zoning Permit Records.** The Zoning Official shall keep records of all permits issued in his or her office. Copies shall be provided upon request to any person having a proprietary interest or tenancy in the buildings or lands affected.

## **§ 38-10 INTERPRETATION AND VALIDITY.**

**§ 38-10.1 Governing Body May Amend. [Ord. No. 10-14-87 § 138-10.110]** All amendments to this chapter and to the zoning map,[1] which forms a part hereof, shall be in accordance with the provisions of N.J.S.A. 40:55D-62 et seq. and any amendments or revisions thereto. [1] Editor's Note: The Zoning Map can be found as an attachment to this chapter.

### **§ 38-10.2 Interpretation. [Ord. No. 10-14-87 § 138-10.200]**

**a. In their interpretation and application, the provisions of this chapter shall be held to be** the minimum requirements adopted for the promotion of the public health, morals and general welfare; for lessening the congestion in the streets; for securing safety from fire, panic and other dangers; for the provision of adequate light and air; for preventing overcrowding of land or buildings; for the avoidance of undue concentration of population; and for facilitating adequate provision of transportation, water, sewerage, schools, parks and other public improvements.

**b. It is not intended by this chapter to repeal, abrogate, annul or in any way to impair or interfere** with any existing provision of law or ordinance or with any rules, regulations or permits previously adopted or issued or which shall be adopted or issued pursuant to law relating to the use of buildings or premises; nor is it intended by this chapter to interfere with or abrogate or annul any easements, covenants or other agreements between parties; provided, however, that where this chapter imposes greater restrictions upon the use of buildings or premises or upon the height of buildings, or requires larger yards, courts or other open spaces than are imposed or required by such existing provision of law or ordinance or by such rules, regulations or permits or by such easement, covenants or agreements, the provisions of this chapter shall control.

**c. Nothing contained in this chapter shall apply to any public building in the Town of Kearny.**

**§ 38-10.3 Amendments. [Ord. No. 10-14-87 § 138-10.300]**

**a. The Town Council may from time to time either on its own motion or on petition, after** public notice and hearing, amend, supplement or change the regulations and districts herein established. Every such proposed amendment, supplement or change shall be referred by the Town Council to the Planning Board for report before the above public hearing.

**b. Such amending ordinance shall be adopted after the Planning Board has adopted the land use plan element of a master plan and all of the provisions of such zoning ordinance or any amendment or revision thereto shall either be substantially consistent with the land use plan element of the master plan or designed to effectuate such plan element; provided that the Governing Body may adopt a zoning ordinance or amendment or revision thereto which in whole or part is inconsistent with or not designed to effectuate the land use plan element, but only by affirmative vote of the majority of the full authorized membership of the Governing Body with the reasons of the Governing Body for so acting recorded in its minutes when adopting such a zoning ordinance; and provided further that, notwithstanding anything aforesaid, the Governing Body may adopt an interim zoning ordinance pursuant to law.**

**c. A protest against any proposed zoning amendment or revision of a zoning ordinance may be** filed with the municipal clerk, signed by the owners of 20% or more either of the area of the lots or land included in such proposed change, or of the lot or land extending 200 feet in all directions therefrom inclusive of street space, whether within or without the municipality. Such amendment or revision shall not become effective following the filing of such protest except by the favorable vote of 2/3 of all the members of the Governing Body of Kearny.

**§ 38-10.4 Validity. [Ord. No. 10-14-87 § 138-10.400] If any section, subsection, sentence, clause** or phrase of this chapter or the location of any district boundary shown on the Zoning Map that forms a part hereof is for any reason held by a court of competent jurisdiction to be invalid, such a decision shall not affect the validity of the remaining portions of this chapter or Zoning Map. The Governing Body of the Town of Kearny hereby declares that it would have passed this ordinance and each section or part thereof irrespective of the fact that any one or more sections or parts thereof be declared invalid.

**§ 38-10.5 Fees. [Ord. No. 10-14-87 § 138-10.600; Ord. No. 12-12-90; Ord. No. 1996-29 § 1]**

**a. Payment of Fees.** All fees required hereunder shall be paid in cash, certified check or money order payable to the Town of Kearny.

**b. Construction Official Fees.** Construction Official fees shall be paid at the office of the Construction Official upon filing of an application for a building permit or Certificate of Occupancy. The fee will be based on the Uniform Construction Code fees established by the regulations of the New Jersey Uniform Construction Code.

**c. Additional Fee.** An additional fee of \$25 as required in response to inquiries relative to the issuance of a Certificate of Occupancy, use of premises, use of structures, flood zone location or any inquiry requiring a search and written response.

**d. Escrow Fees.** Unless waived by the authority, an applicant for development shall deposit professional review fees in an escrow account with the Township of Kearny for review of an application for development and the preparation of documents related thereto. Such fees are in addition to the application filing fees in subsection 36-3.2a. There shall be no initial escrow deposit required. However, if in the course of an application, the approving authority determines that an escrow account or deposit is needed and contains insufficient funds to perform required application reviews, the Chief Financial Officer of the Town of Kearny shall provide the applicant with a notice of insufficient escrow or deposit balance. Upon such notice, the applicant shall within a reasonable time period post a deposit to the account in an amount to be agreed upon by the approving authority and the applicant. The charging to and processing of escrow fees and any disputes related thereto shall be handled in accordance with the Municipal Land Use Law, **N.J.S.A. 40:55D-53.2.**