

**AN ORDINANCE TO AMEND CHAPTER 48 OF THE CITY CODE TO UPDATE
THE ZONING CODE**

#4549

Sponsor:

**Council
President
Shabazz**

**Council
Member
Dixon**

WHEREAS, the Wilmington City Code establishes laws for operations within the City of Wilmington; and

WHEREAS, although the City Code is regularly amended, it nonetheless contains certain provisions that are no longer necessary or appropriate, as well as sections that require clarification; and

WHEREAS, recognizing the importance of the City Code, the City has embarked upon a comprehensive review of the Code to identify sections requiring revision and to propose such amendments through legislation; and

WHEREAS, at its May 22, 2018 meeting, the City Planning Commission reviewed the proposed Ordinance and, by its Resolution 15-18, recommended the proposed amendments to Chapter 48 of the City Code contained in the proposed Ordinance; and

WHEREAS, the City desires to make logical updates to the Zoning Code, such as correcting outdated cross references; and

WHEREAS, the City seeks to encourage the development of residential properties in the Central business district; and

WHEREAS, the City would like to make the process to obtain certain required approvals more efficient; and

WHEREAS, the City has determined that non-profit organizations and community associations should have greater opportunities to partner with the City on local parks; and

WHEREAS, the City desires to provide additional opportunities for development in W-4 districts; and

WHEREAS, the City would like to reduce storm water runoff to the City’s combined sewer overflow system; and

WHEREAS, the City seeks to maintain the beauty of Wilmington and its landscaping; and

WHEREAS, City Council deems it necessary and proper to amend Chapter 48 of the City Code to effectuate the aforementioned changes.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF WILMINGTON HEREBY ORDAINS:

SECTION 1. Section 48-443(a)(1) of the City Code, entitled “Parking spaces accessory to dwellings and related use” and subtitled “Apartment houses, unless exempted under subsection (2) of this subsection”, is amended by deleting the stricken language to read as follows:

Apartment houses, unless exempted under subsection (2) of this subsection:		
	R-4	Two for each three families
	R-2-A, R-5-A, R-5-A-1	One for each family
	R-5-B	Two for each three families
	R-5-C, W-4	One for each two families

	C-1, C-1-A, C-2, C-5	Two for each three families
	C-3, C-4, C-6	One for each two families

SECTION 2. Section 48-212 of the City Code, entitled "Floor area ratios", is amended by deleting the stricken language to read as follows:

District and Use	Floor Area Ratio	
C-1 and C-1-A: All uses	1.5	
C-2: All uses	5.0	
C-2-A: All uses	1.0	
C-3: All uses	6.0	
C-4:		
	Apartment house	6.0
	All other uses	20.0
C-5: All uses	3.0	

C-6: All uses	10.0
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SECTION 3. Section 48-473 of the City Code, entitled “Projections into required open spaces”, is amended by deleting the stricken language and adding the underlined language to read as follows:

(a) *Generally.* Every part of a required yard or court or other required open space shall be open and unobstructed to the sky except as otherwise permitted under sections 48-154, and 48-477 and division 2 of this article or by the following specified projections and encroachments:

(1) Uncovered steps, an open porch, or an enclosed porch may project into a required rear yard a distance of not more than ten feet in an R-1, R-2 or R-2-A district and a distance of not more than eight feet in an R-3, R-4, R-5-A, R-5-A-1, R-5-B or R-5-C district.

(2) Any permissible projection beyond the street line or the building setback line permitted as follows: ~~under sections 506 and 507 of the building code of the city.~~

- a. General: Except as herein provided, a part of any building hereafter erected and additions to an existing building theretofore erected shall not project beyond the lot lines or beyond the building line where such lines are established by the zoning law or any other statute controlling building construction.
- b. Below grade: A part of a building hereafter erected below grade that is necessary for structural support of the building shall not project beyond the lot lines, except that the footings of street walls or their supports which are located at least 8 feet below grade shall not project more than 12 inches beyond the street lot line.
- c. Above grade: All projections hereafter permitted beyond the street lot line or the building lot line above grade shall be so constructed as to be readily removable without endangering the safety of the building.
- d. Projections necessary for safety: In any specific application, the code official is authorized to designate by approved rules such architectural features and accessories which are deemed desirable or necessary for the health or safety of the public as well as the maximum extent to which such features shall project beyond the street lot line or the building line where established by statute.

subject to all provisions and restrictions that are otherwise prescribed by law, ordinance or rule of the authorities having jurisdiction over streets or public spaces.

- e. Permit revocable: Any permit granted or permission expressed or implied in the provisions of this code to construct a building so as to project beyond the street lot line or building line shall be revocable by the jurisdiction at will.
 - f. Existing encroachments: Parts of existing buildings and structure which already project beyond the street lot line or building line are not required to be altered until their removal is directed by the proper authorities of the jurisdiction.
- (3) Any other permissible encroachment into a required yard or court permitted as follows: ~~under section 508 of the building code of the city.~~
- a. Permissible projections: Every required court and yard shall remain unobstructed for its required area and full height, except for the projections permitted in the following subsection b.-g.
 - b. Maximum encroachment: A part of any building or structure shall not extend into side courts, inner courts or yards required for light and ventilation of habitable and occupiable rooms by the zoning law or other statutes controlling building construction. The encroachment shall not exceed 20 percent of the legal area of the yard or court which is required for light and ventilation purposes.
 - c. Accessories: In use groups R and I, clothes poles, arbors, garden trellises and other such accessories shall not be prohibited in the open spaces at ground level.
 - d. Roof eaves: Roof eaves shall not project more than 3 feet beyond the face of the wall.
 - e. Steps and architectural features: Steps, window sills, belt courses and similar architectural features, as well as rain leaders and chimneys, shall not project more than 2 feet beyond the face of the wall.
 - f. Exterior stairways and fire escapes: Outside stairways, smokeproof tower balconies, fire escapes or other required elements of a means of egress shall not project more than 4 feet beyond the face of the wall.
 - g. Motor vehicle parking: Where approved, required court and yard areas for automobile parking spaces or private garages not exceeding one story in height where accessory to and only for the occupants of a use group R occupancy are permitted, provided that required windows for light and ventilation are not obstructed thereby.

(b) *Compliance with section.* It shall be unlawful for any person to fail, neglect or refuse to comply with the provisions of subsection (a) of this section.

SECTION 4. Section 48-38(b)(8) of the City Code, entitled “Nonconforming uses and buildings”, is amended by deleting the stricken language and adding the underlined language to read as follows:

Whenever a nonconforming use has been discontinued for a period of one year, such use shall not thereafter be reestablished, and any future use shall be in conformity with the provisions of this chapter; except, that when such discontinuance is on account of any cause beyond the control of the owner or tenant, such as extended disability or service in the armed forces, the period of abandonment shall for the purpose of this chapter date from the termination of such cause. The discontinuance of any nonconforming use for a period of one year shall create a rebuttable presumption that the owner or tenant of the subject property intended to discontinue and abandon such nonconforming use. Except as provided in subsection 10 of this section, no such discontinued nonconforming use shall be reestablished after discontinuance for a period of one year, unless the reestablishment of such use is approved by the zoning board of adjustment based on a determination by the board that the discontinuance was due to a cause beyond the control of the owner or tenant or other set of facts clearly rebutting the presumption of intent to discontinue, such as ~~substantial work toward completion of renovation of the premises under a valid building permit~~ or inability to lease the premises to a tenant despite evidence of diligent, good faith efforts to do so. Failure to register a nonconforming use or failure to renew the registration of a nonconforming use shall be further evidence of the intent of the owner or tenant to discontinue such use. No discontinued nonconforming use shall be reestablished unless the application or appeal of the owner or tenant to the zoning board of adjustment for approval of such reestablishment is filed with the zoning administrator within one year of the beginning of the discontinuance of such use or of the termination of such cause or of such facts rebutting the presumption of intent to discontinue. Notwithstanding, the zoning administrator may administratively determine whether to approve the reestablishment of a nonconforming use when substantial work toward completion of renovation of the premises under a valid building permit has taken place and the other requirements of this subsection are met.

SECTION 5. Section 48-39 of the City Code, entitled “Restoration of existing buildings”, is amended by deleting the stricken language and adding the underlined language to read as follows:

(a) *For same nonconforming use.* Nothing in this chapter shall prevent the restoration of a building devoted to a nonconforming use for the same nonconforming use in the event that such building is damaged or destroyed by fire, explosion, act of God, or act of the public enemy subsequent to March 8, 1962, provided, that the restored building conforms with the building code of the city and the permits for restoration be applied for shall ~~take place~~ within not more than 12 months from the time of such damage or destruction.

(b) *For conforming use.* Nothing in this chapter shall prevent the restoration of a nonconforming building devoted to a conforming use in the event that such building is damaged or destroyed by fire, explosion, act of God, or act of the public enemy subsequent to March 8, 1962; provided, that the restored building conforms with the building code of the city and the permits for restoration be applied for shall ~~take place~~ within not more than 12 months from the time of such damage or destruction.

SECTION 6. Section 48-286(b)(3) of the City Code, entitled “O districts”, is amended by deleting the stricken language and adding the underlined language to read as follows:

A park or playground owned ~~and~~ or operated by a nonprofit institution or a community association.

SECTION 7. Section 48-511 of the City Code, entitled “General requirements”, is amended by deleting the stricken language and adding the underlined language to read as follows:

A parking lot and individual parking spaces in any district, whether in the form of any parking space accessory to a one-family or a two-family dwelling, parking spaces accessory to a dwelling for more than three families, or accessory to any nonresidential use, or in the form of a commercial parking lot, shall conform to the following special provisions:

(1) All areas devoted to access driveways or roadways, maneuvering areas and parking berths, pads or spaces shall be paved with materials which form an all-weather surface and shall be properly drained to a sewer or properly managed at the discretion of the commissioner of public works;

(2) It shall be so designed that no parking pad or space for any vehicle will project over any lot line or building setback; provided, however, that the zoning board of adjustment may approve one such parking space per family if each is to be accessory to an existing one-family or two-family dwelling

or to a one-family or two-family dwelling to be constructed, if curb cuts are minimized for such new construction or for existing dwellings, except that, the owner or owners together of two or more adjacent lots may apply for a greater number of parking spaces and the zoning board of adjustment may then approve a greater number not to exceed two parking spaces per lot, if only a single curb cut is proposed for both lots and further provided in any case that each such parking space:

- a. Shall conform to all other applicable requirements of this section;
- b. Shall not be detrimental to the character of the neighborhood; and
- c. Before taking final action on any application for such use, the zoning board of adjustment submits the application to the department of public works for review and report and receives such report;

(3) No other use shall be conducted from or upon the premises and no structure other than an attendant's shelter shall be erected thereon unless such use or structure is otherwise permitted in the district in which the parking lot is located or is a use on the premises to which the parking lot is accessory;

(4) No vehicular entrance or exit shall be within 25 feet of a street intersection as measured from the intersection of the nearest street lines;

(5) Any lighting used to illuminate it or any accessory structure shall be so arranged that all direct rays of light are confined to the surface of the parking lot; ~~and~~

(6) No building permit shall be issued for a parking lot until the application for the same has been submitted to the department of public works for review and report and such report is received by the department of licenses and inspection; and

(7) All non-residential parking lot designs should incorporate current storm water management best practices, where practical, as described in section 11-311, to reduce storm water runoff to the City's combined sewer overflow system and to enhance the quality of storm water discharge. Non-residential parking lot owners may apply to the Department of Public Works for storm water credits outlined in the City Storm Water Credits and Fee Adjustment Appeals Manual, which may result in lower quarterly storm water charges.

SECTION 8. Section 48-530 of the City Code, entitled "Maintenance", is amended by deleting the stricken language and adding the underlined language to read as follows:

Each parking lot owner or parking garage owner, or their authorized agents, as the case may be, shall be responsible for the maintenance, repair and replacement of all landscaping, trees, interior and perimeter landscaping, screening, plants, materials and barriers required by the provisions of this subdivision. All plants and trees shall be tended and maintained in a healthy growing condition, replaced when necessary, and kept free of refuse and debris. All landscape materials shall be maintained in a safe and attractive condition. It shall be illegal to remove a street tree and fill or otherwise cover a street tree pit without written permission of the Department of Public Works, a copy of which shall be forwarded by the Department of Public Works to the zoning administrator.

SECTION 9. Section 48-371 of the City Code, entitled "Generally", is amended by deleting the stricken language and adding the underlined language to read as follows:

(a) Applicants for proposals for development on parcels that are divided between a waterfront district and another zoning district shall have the option of developing the entire parcel under the provisions of this section which relate to the waterfront zoning district in which the parcel is partially located.

(b) Each application for a permit shall be classified at the time of filing as either a minor development or major development by the zoning administrator based on the criteria set forth above in section 48-316.

(c) The department of licenses and inspections shall identify all applicable ordinances under which the proposal must be reviewed and shall inform the applicant that the department of commerce can provide assistance with necessary applications and arrange for such assistance when possible.

(d) Review of all development proposals will be based upon the waterfront review standards adopted by city council. Approval of a major or minor development according to the waterfront review standards shall be issued by the zoning administrator ~~in the form of a development permit~~.

(e) An applicant may submit preliminary plans, elevations and descriptions of proposed development to the zoning administrator for review ~~development permit~~ before application for a building permit.

(f) The applicant shall show evidence that all applicable state and federal requirements for waterfront development have been or will be satisfied.

SECTION 10. Section 48-373(c) of the City Code, entitled “Major developments”, is amended by deleting the stricken language and adding the underlined language to read as follows:

During the review process, the applicant through the zoning administrator may consult with the staff of the planning department and may submit written modifications to its original application. No later than 40 calendar days after the planning department has received the application, it shall report its findings to the applicant and to the zoning administrator. All other city agencies wishing to comment shall do so by written statements to the planning department. The planning department report shall address each standard, and in any case where it finds a standard has not been met, will state the basis for its findings, and recommend conditions or modifications necessary to meet the standard. If the planning department finds that waterfront review standards have been met, the zoning administrator shall issue a permit. If the recommendation is for disapproval or for approval subject to conditions and recommendations, the applicant shall have 30 days to submit a revised application. If the revised application meets all the conditions and recommendations, the zoning administrator shall approve it ~~issue a development permit~~; otherwise, he shall deny the application. The applicant may appeal the decision of the zoning administrator as provided under section 48-69.

SECTION 11. Section 48-339(c) of the City Code, entitled “W-4 district” is amended by adding a subsection 11 to read as follows:

(11) Place of business of a builder, carpenter, caterer, cleaner, contractor, decorator, dyer, dressmaker, electrician, furrier, mason, milliner, optician, painter, photographer, plumber, roofer, shoemaker, tinsmith, upholsterer, and similar non-nuisance businesses; provided, that power propelling units of not more than five horsepower are used for processing equipment or machinery. The outdoor/exterior storage of materials and equipment, as well as automobile/truck repair services, are prohibited.

SECTION 12. This Ordinance shall become effective upon its passage by City Council and approval by the Mayor.

First Reading..... June 7, 2018
Second Reading..... June 7, 2018
Third Reading.....

Passed by City Council,

President of City Council

ATTEST: _____
City Clerk

Approved this ____ day of _____, 2018.

Mayor

SYNOPSIS: This Ordinance is part of a comprehensive set of revisions to the City Code to repeal certain provisions that are no longer necessary or appropriate and to amend sections that require clarification or updating. This Ordinance amends Chapter 48 of the City Code to make the following eleven changes to the Chapter 48 of the City Code: (1) eliminates the dedicated parking space requirement for apartment houses in C-3 and C-4 districts because this requirement is impractical and unnecessary; (2) eliminates the apartment house specific FAR in C-4 districts, so that the applicable FAR is the same for all uses in C-4 districts as is the case in the other commercial zoning districts; (3) replaces a defunct cross reference to the Building Code with the applicable language to improve clarity; (4) allows the Zoning Administrator to approve reestablishment of a nonconforming use when the respective property has been under active renovation during the period of non-use to make this process more efficient; (5) adjusts the time required for permits to be pulled to repair a property damaged by fire to make the timeline more practical; (6) allows parks or playgrounds owned or operated by a nonprofit institution or community association in O zoning districts; (7) provides information regarding storm water management best practices and storm water credits to promote better storm water management in nonresidential parking lot designs; (8) clarifies that landscaping requirements apply to all interior and perimeter landscaping and addresses the illegal removal of street trees; (9-10) removes references to a waterfront development permit to reflect longstanding practice; and (11) adds a special exception use to permit trade-like businesses in W-4 zoning districts with the approval of the Zoning Board of Adjustment to further development in an underutilized zoning district designation, while maintaining protections to ensure the uses are in keeping with the district requirements.

FISCAL IMPACT STATEMENT: This Ordinance has no significant anticipated fiscal impact.

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