

**CHAPTER 1 ZONING ADMINISTRATION**  
**ARTICLE 1303 DEFINITIONS**

**1303.01 Intent**

For the purpose of interpreting this Ordinance, certain words, concepts, and ideas are defined herein. Except as defined herein, all other words used in this Ordinance shall have their everyday meaning as determined by their dictionary definition.

**1303.02 Interpretation**

- A. Words used in the present tense include the future tense.
- B. Words used in the singular number include the plural, and words used in the plural number include the singular.
- C. Any word denoting gender includes the female and the male.
- D. The word "person" includes a firm, association, organization, partnership, corporation, trust and company as well as an individual.
- E. The word "lot" includes the word "plot" or "parcel" or "tract".
- F. The word "shall" is always mandatory and not merely directory.
- G. The word "structure" shall include the word "building."
- H. The word "District Map," or "City of Fairmont Zoning Map," shall mean the Official Land Development Map of Fairmont, West Virginia.
- I. The term "City Council" shall mean the "City Council of the City of Fairmont, West Virginia"
- J. The term "Planning Commission" shall mean the "Planning Commission of the City of Fairmont West Virginia."
- K. The term "Zoning Administrator" shall mean the "Zoning Administrator of the City of Fairmont, West Virginia."
- L. The term "Planning Department" shall mean the "Planning Department of the City of Fairmont, West Virginia."
- M. The terms "Ordinance", "Zoning Ordinance" "Code", and "Land Development Code" shall be synonymous and refer to the "City of Fairmont Land Development Code" or "City of Fairmont Zoning Ordinance"

**1303.03 Definitions**

**A**

*Abandonment*

The relinquishment of property or the cessation of the use of the property by the owner or lessee without any intention of transferring rights to the property to another owner or resuming the nonconforming use of the property for a period of one (1) year.

*Accessory Building*

A structure subordinate or incidental to the principal structure on a lot in square footage. Accessory structures include detached garages (with or without rental units), storage buildings, pools and pool houses, piers and other water related structures, etc.

### *Addition*

(1) A structure added to the original structure after the completion of the original; (2) An extension or increase in floor area or height of a building or structure.

### *Adjacent, Adjoining Lot or Land*

A lot or parcel of land that shares all or part of a common lot line or boundary with another lot or parcel of land or that is directly across a public street or right-of-way.

### *Adult Day Care*

Any building used for non-sleeping purposes for less than twenty four (24) hours per day to house one or more well, ambulatory, or semi ambulatory adults none of whom requires medical injections by staff personnel.

### *Adult Entertainment*

Adult Establishments and Entertainment include the following and like uses:

- *Adult Book Store*  
An establishment having substantial or significant portion of its stock in trade, books, magazines, and other periodicals which are distinguished or characterized by their emphasis on matter depicting, describing or related to “specified sexual activities” or “specified anatomical areas”, as defined by this Code, or an establishment with a segment or section devoted to the sale or display of such material.
- *Adult Business*  
An adult book store, adult videotape store, adult motion picture thereafter, or adult entertainment establishment.
- *Adult Entertainment Establishments*  
An establishment which features topless dancers, go-go dancers, exotic dancers, strippers, male or female impersonators, or similar entertainers.
- *Adult Motion Picture Theater*  
An establishment used for presenting motion picture material distinguished or characterized by an emphasis on matter depicting describing or relating to “specified sexual activities” or “specified anatomical areas” as defined by this Code, for observation by patrons thereto.
- *Adult Videotape Store*  
An establishment having as a substantial or significant portion of its stock in trace, videotapes which are characterized by their emphasis on matter depicting, describing, or relating to “specified sexual activities” or “specified anatomical areas” as defined by this Code, or an establishment with a segment or section devoted to the sale or display of such material.

### *Agriculture*

The production, keeping, or maintenance of plants and animals useful to man, used exclusively as a bonafide agricultural operation by the owner or tenant.

*Agricultural Use of Water*

The use of waters for stock watering, irrigation, and other farm purposes.

*Alley*

A service roadway providing a secondary means of access to abutting property and not intended for general traffic circulation.

*Alteration*

Any change or expansion in the size, configuration, or location of a structure; or any change or expansion in the use of a structure or lot, from a previously approved or legally existing size, configuration, location, or use.

*Amendment, Major*

An amendment to any approved Plan that constitutes a greater than 20 percent increase or decrease in building area, parking area, impervious area, or open space from the originally approved plan. This does not apply to residential uses. A Major Amendment also includes a change of use that differs from the uses approved under a Conditional Use Permit. A Major Amendment to a Site Plan shall be approved by the City of Fairmont Planning Commission.

*Amendment, Minor*

An amendment to any approved Plan that constitutes a less than 20 percent increase or decrease in building area, parking area, impervious area, or open space from the originally approved plan. This does not apply to residential uses. A Minor Amendment does not include a change of use that differs from the uses approved under a Conditional Use Permit. A Minor Amendment to a Site Plan shall be approved by the Planning Administrator.

*Amendment, Text*

A change to any text of the Land Development Code.

*Amendment, Zoning Map*

See Rezoning.

*Ancillary/Accessory Use*

A use subordinate or incidental to the primary use of a property.

*Apartment Buildings*

A building containing three (3) or more residential dwelling units. Such units may be leased separately or developed as condominiums.

*Arcade*

A walkway adjacent to a building which is covered by a roof yet is not fully enclosed.

*Architectural Feature*

A prominent or significant part or element of a building, structure, or site.

*Architectural Style*

The characteristic form and detail of buildings. Common or vernacular styles in the City of Fairmont include American Four Square, Colonial, Neo-Classical, Federal, American Victorian, and Arts & Crafts.

*Architectural Variation, Major*

A significant deviation from architectural facade requirements due to a unique building use, provided the overall pedestrianism of the street is maintained in accordance with all other standards. The City Planner has discretion over what constitutes a Major or Minor Architectural Variation. The Planning commission shall approve a Major Architectural Variation.

*Architectural Variation, Minor*

A slight deviation from architectural requirements. The City Planner has discretion over what constitutes a Major or Minor Architectural Variation and may approve a Minor Architectural Variation.

*Attached Home*

Rear yard buildings that share common sidewalls. Attached homes may be town homes or condominium units.

*Auto Dependent Design*

The construction of buildings and development to accommodate the car as the predominant and most reasonably available method of transportation i.e.: drive through windows, plentiful parking located in front of entrances; wide road lanes with the elimination of on-street parking, sidewalks, and street trees; and large intersections. The codification of auto design standards in engineering regulations makes the car the principle means of transport for all necessary trips, thereby inhibiting the construction of mixed uses and compact development.

*Automobile/Boat/Heavy Equipment/Manufactured Home Sales and Service*

Any building, premises, and land, in which or upon the primary use of land is a business which involves the maintenance, servicing or sale of new or used automobiles, boats, heavy equipment and/or manufactured homes generally but may include light trucks or vans, trailers, or recreation vehicles and including any vehicle leasing, rental, parking service, preparation or repair work conducted as an accessory use. This definition includes but is not limited to auto dealerships, auto body shops, auto service stations, boat repair or sales, car washes, convenience stores, gas stations, heavy equipment leasing, sales, or service, manufactured home sales or service, and oil/lube servicing. This does not include the sale of parts or related products (i.e. auto parts store).

*Awning*

See Article 1763 Signs and Similar Structures

**B**

*Banner*

See Article 1763 Signs and Similar Structures.

*Bars and Night Clubs*

Structure or part of a structure serving as a business establishment selling primarily beer and /or alcoholic beverages for consumption on the premises.

*Basement*

A story having one half or more of its clear height below grade.

*Base Flood Elevation*

The highest height, expressed in feet above sea level, of the level of floodwaters occurring in the regulatory base flood.

*Bedroom Unit*

A private room for sleeping quarters separated from other rooms, and accessible to a bathroom without crossing another bedroom.

*Bed and Breakfast Inn*

A use that takes place within a building that prior to such an establishment, was a single family residence, that consists of renting one or more dwelling rooms on a daily basis to tourists, vacationers, and business people, where the provision of meals is limited only to guests. The homeowner shall reside on site and employment shall not exceed 2 full time employees not including the owner and as regulated by the provisions of West Virginia Code.

*Berm*

A raised earth mound which is planted with ornamental vegetation.

*Block*

A unit of land bounded by streets or by a combination of streets and public land, waterways, or any other barrier to the continuity of development.

*Board and Care Home*

A facility providing accommodations and personal assistance for person who are dependent upon the service of others by reason of physical or mental impairment, whether classified as residential board and care home, personal care home, nursing home, or other designation.

*Boarding Lodging and Rooming House 1*

Means buildings in which sleeping rooms are offered providing accommodations for three to sixteen persons, with or without meals, but without separate cooking facilities for individual occupants.

*Buffer*

An area of land, open space, landscaped areas, fences, walls, berms, or any combination thereof used to physically separate or screen adjacent land uses or property, or to separate development from a stream or water body, or an area intended to preserve vegetation along a designated corridor, or to separate one use or property from another so as to visually shield or block noise, lights, or other nuisances.

*Buffer, District*

In Industrial Campus and Business Campus districts, an undisturbed perimeter area in which no parking areas or structures, except ancillary transit related structures, may be constructed.

*Buildable Area*

The area of a lot remaining after the minimum yard and open space requirements of this zoning code has been met.

### *Building*

Any structure having a roof supported by columns or by walls, and intended for shelter, housing or enclosure of persons, animals or property. The connection of two buildings by means of an open porch, breezeway, passageway, carport or other such open structure, with or without a roof, shall not be deemed to make them one building. For application of this code each portion of a building completely separated from other portions by approved fire walls shall be considered a separate building.

### *Building Area*

The aggregate of the maximum horizontal cross section area of the main building, on a lot, excluding cornices, eaves, gutters or chimneys projecting not more than three feet, steps, one story open porches, bay windows not extending through more than one story and not projecting more than four feet, balconies and terraces.

### *Building Envelope*

The three-dimensional space within which a structure is permitted to be built on a lot and that is defined by maximum height regulations, and minimum yard setbacks or build-to lines, buffers, easements, or other applicable regulations.

### *Building Footprint*

The land area on which a building is located or proposed for location.

### *Building Line*

The line between which and the street line or lot line no building or other structure or portion thereof, except as provided in this code may be erected above the grade level. The building line shall be considered a vertical surface intersecting the ground on such line. Respecting building lines means to place walls or landscaping in such a manner as to continue the frame where there is an absence of buildings.

### *Building Mass*

The height, width, and depth of a structure.

### *Building Permit*

A permit obtained from the City of Fairmont Planning Department for the construction, repair, alteration, or addition to structure, which provides for inspection and sets the construction techniques for a particular project and specified use in accordance with adopted building codes and other prevailing standards for construction, and includes any necessary zoning approval.

### *Building, Principal*

A building in which is conducted the principal use of the lot on which it is located.

### *Build Out*

The completed construction of all phases of a development as allowed by all Ordinances which regulate an area. The scale of build out can be from a single lot to the entire City's jurisdiction.

### *Build-To Line*

The line at which construction of a building can occur on a lot. A build-to line runs parallel to the front property line and is established to create an even building facade line on a street.

### *Building Setback Line*

A line establishing the minimum allowable distance between the nearest part of any building, but excluding eaves and overhangs, bay windows, and patios, to the nearest edge of a street right-of-way, property line, or easement line, when measured perpendicular thereto.

### *Building Type*

The standard classification of building construction as All yard, Side yard, Rearyard, Courtyard, Civic, and Special Use types.

## *C*

### *Caliper*

The size of tree's trunk diameter as measured six (6) inches above the ground for trees four(4) inches or less, and as measured twelve (12)inches above the ground for trees larger than four (4) inches.

### *Canopy*

A structure constructed of rigid materials, which is attached to a building that serves as an overhang intended to shield persons from the elements.

### *Canopy, Service Station*

A structure constructed of rigid materials which is either free-standing or attached to a building that serves as an overhang intended to shield persons from the elements while using the service station.

### *Carport*

A roofed accessory structure providing space for the parking of motor vehicles and enclosed on not more than two sides. Carports attached to the principal structure that are enclosed are considered an addition to the principle structure and must meet the building setback requirement for the district.

### *Car Wash*

An area of land or structure with machine or hand operated facilities used principally for the cleaning, washing, polishing, or waxing of motor vehicles.

### *Certificate of Appropriateness*

A certificate stating that work to be done on a structure within the City of Fairmont Downtown Historic District meets the criteria which maintains the structure as historic and a contributing structure to the District.

### *Certificate of Occupancy (CO)*

A document issued by a governmental authority allowing the occupancy or use of a building and certifying that the structure or use has been constructed or will be used in compliance with this Ordinance and all other applicable regulations.

### *Champion Tree*

A classification the state and federal forestry agencies use to define the largest or large trees of a specific species.

### *Change of Use*

Any use of a building or land that substantially differs from the previous use.

### *Civic Uses*

Uses intended to serve as public gathering places. Such uses include governmental offices, churches or other places of worship, schools, post offices, and non-profit or charitable clubs and organizations.

### *Clear-Cutting*

The large-scale, indiscriminate removal of trees, shrubs, and undergrowth with the intention of preparing real property for nonagricultural development purposes.

### *Clinic, medical, dental, etc.*

A facility where licensed medical professionals deliver human health care services on an outpatient basis.

### *Cluster Development*

Cluster development means the grouping of buildings in order to conserve land resources and provide for innovation in the design of the project including minimizing storm water runoff impacts. This term includes nonresidential development as well as single-family residential and multi-family developments.

### *Collegiate Club, Fraternity or Sorority House*

Any structure occupied by a club, fraternity or sorority which is recognized by a club, fraternity or sorority of a college within the corporate limits of the City which can furnish documented proof of the college administration's approval of its site and activities as provided elsewhere in this Ordinance.

### *Commercial Use*

All retail sales establishments, office uses (i.e. medical, financial), service industry uses (i.e. restaurants, hotels/motels/inns), wholesale businesses, light manufacturing, and general business (i.e. mini-storage, convenience stores).

### *Community Character*

The image of a community or area as defined by such factors as its built environment, natural features and open space elements, type of housing, architectural style, infrastructure, and the type and quality of public facilities and services.

### *Conditional Use*

A use subject to specific conditions and which requires the approval of the City of Fairmont Planning Commission before the issuance of a conditional use permit for such use, which use would not be appropriate generally or without restriction throughout the zoning district but which if controlled as to the number, area, location, or relation to the neighborhood would not be detrimental to the public health safety or general welfare.

### *Conservatory*

A greenhouse for raising plants.

### *Condominium*

A multi unit dwelling, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the unit owners. Real Estate is not a condominium unless the undivided interests in the common elements are vested in the unit owners.

*Construction Activity Area (zone)*

An area 20 feet around the building foot print.

*Construction Documents*

The drawings necessary to prepare a site for construction, guide the construction of improvements, and complete the site following construction of improvements. These plans may include an overall site plan, preliminary subdivision plat, grading plan, soil and erosion control plan, landscaping plan, lighting plan, site details, street cross sections, storm water detention details, etc.

*Contiguous*

Abutting directly or immediately adjacent to a boundary or separated only by a street, railroad or public utility right-of-way.

*Controlled Access Highway*

A roadway, according to State and Federal guidelines, designed for through traffic only with access connections at selected interchanges of public roads, with no direct access from private roads or drives.

*Convenience Store*

A use where certain retail goods and vehicular fuels are sold at the retail level. Such a use may permit car washes as an accessory use, but shall not allow the installation of such automotive items as lubricants, tires, batteries, or minor automobile repair and maintenance work.

*Country Club*

Land area and buildings containing recreational facilities, clubhouses and customary accessory uses which are open to members and their guests, or to the general public on a fee basis.

*Cul-de-sac*

A street designed with a closed end and does not intersect with another street which is terminated by a vehicular turnaround.

**D**

*Day Care Centers*

A non-residential facility where daytime care, supervision, and protection is provided to thirteen or more children who are not the legal wards or foster children of the attendant adult..

*Deciduous*

Shrubs and trees that lose their leaves annually.

*Dedication*

A fee simple transfer of land ownership to a homeowner's association, governmental unit or agency, or non-profit land trust or conservancy for a specified purpose. Because a transfer of property rights is entailed, dedication must be made by written instrument and is completed with an acceptance.

*Density, Gross*

The number of dwelling units on the entire area of a tract or parcel of land.

*Density, Net*

The number of dwelling units on a tract or parcel of land minus the area of public rights-of-way, areas of flood hazard, lakes or water bodies, or wetlands under the jurisdiction of the U.S. Army Corps of Engineers.

*Detached Home*

Allyard or sideyard buildings that function as a principal residential for one or two families.

*Developable Acreage*

That portion of a tract or parcel of land which can be developed under the provisions of this ordinance not including public rights-of-way, streams or other water bodies, wetlands under the jurisdiction of the US Army Corps of Engineers, or areas of flood hazard.

*Developer*

The legal or beneficial owner or owners of a lot or of any land included in a proposed development, including the holder of an option or contract to purchase or other persons having enforceable proprietary interests in such land.

*Development*

The construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any structure; any mining, excavation, landfill, or land disturbance; the removal of ground cover, and any use or extension of the use of land.

*Diameter at Breast Height (DBH)*

The caliper of a semi-mature or mature tree measured at 4 feet above the existing ground level.

*District*

An area delineated on the Land Development or Zoning Map which sets forth standards and guidelines for all development within.

*District, Overlay*

A zoning district that encompasses one or more underlying zoning district and that imposes additional requirements above that required by the underlying zoning district.

*Disturbed Ground*

Any area of ground on a site which during construction is dug up, filled, graded, built on or used for storage or parking.

*Drainage Basin*

The area of land which drains to a given point on a body of water.

*Drainageway*

Any natural or artificial watercourse, trench, ditch, swale, or similar depression into which surface water flows.

*Drip Line*

An imaginary vertical line extending from the outer most portion of the tree canopy to the Ground that defines the exterior limits of the tree canopy.

*Drive-Through Window Facility*

A facility designed to enable a person to transact business while remaining in a motor vehicle

*Driveway*

A private roadway providing ingress and egress from a street or thoroughfare to a property and for the off-street travel. Parking areas are separate from driveways, though the two maybe combined.

*Dormitories*

Buildings or spaces in buildings where group sleeping accommodations are provided for more than sixteen persons not members of the same family group in one room or a series of closely associated rooms under joint occupancy and single management with or without meals, but with separate cooking facilities

*Duplex*

A structure containing two dwelling units, totally separated from each other by an unpierced wall extending from the ground to the roof, each of which has direct access to the outside.

*Dwelling or Dwelling Unit*

A building, or any portion thereof, providing complete and permanent human living facilities. This term shall not apply to a hotel, motel, guesthouse, or other structures designed for transient residence..

- A. A one or single family dwelling means a building designed for or occupied exclusively by one family.
- B. A two family dwelling means a building designed for or occupied exclusively by two families.
- C. A multiple dwelling means a building designed for or occupied by more than two families.

***E***

*Easement*

A grant by the property owner of a strip of land for a specified purposes and use by the public, a corporation, or persons, such as for utilities.

*Eave*

The projecting lower edges of a roof overhanging the wall of a building.

*Encroachments*

Any portion of a structure or appurtenance extending beyond a designated zoning setback, easement, property line, or public right-of-way.

*Entertainment Use*

Any establishment which provides active recreational opportunities such as miniature golf, batting cages, arcades, carnival games, go-cart or other motorized vehicle tracks, waterslides, or passive recreation such as movie theaters and other similar uses.

*Entrance, Primary*

The principal, functional doorway for public or direct-entry access into a building.

*Environmentally Sensitive Area*

An area with one or more of the following environmental characteristics: steep slopes, flood plain, soils classified as having high water tables, soils classified as highly erodible, subject to erosion, or highly acidic, land incapable of meeting percolation requirements, stream corridors, mature stands of native vegetation, springs or aquifer recharge and discharge areas, wetlands and wetland transition areas, or habitats of endangered species.

*Esplanade*

A wide pedestrian walk formal in design which runs parallel to a waterfront. An esplanade maybe made of pavers, asphalt, crushed gravel, grass, wood decking, or concrete.

*Essential Services*

Underground or overhead or electrical, gas, communications, not regulated by the FCC, water and sewage systems, including pole structures, towers, wires, lines, mains, drain, sewers, conduits cables, fire alarm boxes, police call boxes, traffic signals, hydrants, regulating and measuring devices and the structures in which they are housed, and other similar equipment accessories in connection therewith. Essential utility equipment is recognized in three categories: 1) Local serving; 2) non-local or through the county or municipality; and 3) water and sewer systems, the activities of which are regulated, in whole or in part, by one or more of the following state agencies: A) the Public Service Commission of West Virginia; B) Department of Environment Protection; or C) Department of Health and Human Resources.

*Establishment*

A place of business or residence, including its staff and possessions, or an organized group, or a group of people who control a field of activity or rule a society or government.

*Evergreen*

Shrubs and trees that retain their foliage throughout the year.

*Evergreen Screen*

Plants growing a minimum of 8 feet in height at maturity that retains foliage year round and are planted to provide a dense vegetative screen for the purposes of visual mitigation.

*Existing Use*

The use of land, buildings or activity permitted or in existence prior to the adoption of this zoning ordinance or that at a minimum have established a vested right as of the effective date of this ordinance based on the following being satisfactorily proven to the Planning Department for the specific use, development or project in question:

- (1) substantial expenditures of resources (time, labor, money) on the project;
- (2) whether the landowner acted in good faith;
- (3) whether the landowner had notice of the proposed zoning ordinance before starting the project at issue; and
- (4) whether the expenditures could apply to other uses of the land.

If the use is non-conforming to local ordinance and lawfully existed prior to the adoption of the ordinance, the use may continue to exist as a non-conforming use until abandoned for a period of

one year; provided, that in the case of natural resources, the absence of natural resources extraction or harvesting is not abandonment of the use.

*Existing Lot (Lot of Record)*

A lot which is part of a subdivision, a plat of which has been recorded in the Office of the Clerk of the County Commission of Marion County, West Virginia prior to the adoption of this ordinance, or a lot described by metes and bounds, the description of which has been so recorded prior to the adoption of this ordinance.

*Expansion*

An increase in the size of an existing structure or use, including physical size of the property, building, parking, and other improvements or structures.

*Exterior Architectural Features*

The architectural character and general composition of the exterior of a structure, including, but not limited to, the kind, color and texture of the building material, and the type, design and character of all windows, doors, massing and rhythm, light fixtures, signs, other appurtenant elements and natural features when they are integral to the significance of the site, all of which are subject to public view from a public street, way or place.

**F**

*Facade*

The vertical surface of a building which is set along a frontage line. The elevation of a façade is the vertical surface area. Facades are subject to visual definition by building height, setback lines, recess lines (a line prescribed for the full width of the facade above which the facade setbacks, the location of which is determined by the desired height to width ratio of the enfronting space or by a desired compatibility with existing buildings), and transition lines (a line prescribed for the full width of the facade expressed by a variation of material or by a limited projection such as a cornice or balcony).

*Factory Built Homes*

Modular and manufactured homes as defined by West Virginia Code §8A-11-1.

*Family*

An individual or two or more persons related by blood, marriage, adoption or foster relationship living together in a dwelling unit as a single housekeeping unit. Domestic servants employed or living on the premise may be housed on the premises without being counted as family or families.

*Family Care Home*

See *Residential Care Home*.

*Family Subdivision*

Family subdivision means a division of a tract of land: (a) to convey the resulting parcels, with the exception of parcels retained by the grantor, to a relative or relatives as a gift or for nominal consideration, but only if no more than one parcel is conveyed by the grantor from the tract to any one relative; or (b) to divide land from a common ancestor among tenants in common, all of whom inherited by intestacy or by will.

*Farm, Bona Fide*

The raising of crops or livestock, including orchards, vineyards, or nurseries, along with any buildings or structures necessary to conduct such activities.

*FEMA (Federal Emergency Management Authority)*

The agency responsible for the promulgation and maintenance of official Flood Hazard Boundary Map and/or Flood Insurance Rate Maps.

*Fence*

A structure used to delineate, enclose, screen, separate or define a boundary, particularly for privacy or to delineate the public or private realm of a property.

*Five (5) Minute Walk*

The five-minute walk is the basic increment of good traditional neighborhood design. An average adult can walk ¼ mile (1320 feet) in five minutes. For the purposes of this code, higher densities of residential development are encouraged within a five-minute walk of a designated neighborhood, village, and town centers. Properties just outside (within 130 feet) of the ¼ mile radius may qualify for privileges associated with this measurement provided there is a qualified pedestrian connection (sidewalk required) to the designated center.

*Flat Roof*

Refers to the silhouette formed by a roofline or a particular roof system. This is separate from the roof line which can be stepped or flat in appearance through architectural elements such as cornices, mansards, and parapets; or pitched as with residential homes

*Floor Area, Gross*

For the purpose of determining the ratio of the floor areas of a building to the area of the lot means the gross floor area shall be the sum of the gross horizontal areas of several floors of the building excluding areas used for accessory garage purposes and such basement areas as are devoted exclusively to uses accessory to the operation of the building. All horizontal dimensions shall be taken from the exterior faces of the walls, including walls or other enclosures of enclosed porches.

*Floor Area Ratio (FAR)*

The gross floor area of all buildings or structures on a lot divided by the total lot area.

*Frontage*

The lot boundary which coincides with a public thoroughfare or space. The facade of a structure facing the street.

*Frontage Build-out Line*

The portion of lot frontage which has a building or wall running parallel to it.

**G**

*Garage Private*

A building or part thereof, accessory to a main building and providing for the storage of motor vehicles and in which no occupation of business for profit is carried on.

*Gazebo*

A freestanding, roofed, open sided structure providing a shady resting place.

### *General Commercial Use*

Business and retail establishments providing consumer services and products. See permitted and prohibited uses list for each District.

### *Grade*

The height of the top of the curb, or if no curb exists, the height of the edge of pavement in the lane of travel adjacent to a building, structure, or sign.

### *Ground Cover*

A prostrate plant grown less than 2 feet in height at maturity which is grown for ornamental purposes. Ground covers are used as an alternative to grasses. On slopes, ground covers control erosion while eliminating the maintenance of mowing hillsides. Many groundcovers survive in poor soils, shade and other adverse conditions.

*Group Day Care Home/In Home Day Care* – An occupied residence in which day care is provided by the resident family for up to six children, who are not the legal wards or foster children of the attendant adult within an owner-occupied residence.

### *Group Home*

See *Residential Care Home*.

## **H**

### *Halfway House*

See *Residential Care Home*.

### *Hardship*

An unusual situation, not self created or economic in nature, that prevents the full utilization of the property, or denies the right to use property, as others may do within the same zone.

### *Height*

The vertical distance from the mean grade elevation taken at the fronting street side of a structure to the parapet or roof line of a flat roof, the eave of a pitched roof, or the deck line of a mansard roof. Towers, spires, steeples, and enclosed roof top mechanical equipment are not counted in height measurements. Exceptions to this definition are listed within this code.

### *Historic Structure*

Any structure designated or eligible for designation on the National Register for Historic Places.

### *Historical District*

A district or zone designated by a local authority or state or federal government within which the buildings, structures, appurtenances, and places are of basic and vital importance because of their association with history; or because of their unique architectural style and scale, including color, proportion, form and architectural detail; or because of their being apart of or related to a square, park, or area the design or general arrangement of which should be preserved and/or developed according to a fixed plan based on cultural, historical, or architectural motives or purposes.

### *Historic Landmark*

A site, building, structure or object designated as a landmark either on a national, state or local registry

### *Historic Site*

The location of a significant event, a pre-historic or historic occupation or activity, or a building or structure, whether standing ruined or vanished, where the location itself possesses historical, cultural or archaeological value regardless of the value of any existing structure.

### *Home Occupation*

An occupation or profession conducted within a dwelling unit by a residing family member which is incidental and subordinate to the primary use of the dwelling as a residence. Home Occupations are small and quiet non-retail businesses (Mail order retail sales are excluded from this requirement) generally invisible from the frontage, seldom visited by clients, requiring little parking, no signage, and having only one employee, provided that non-front yard offstreet parking is provided. Home Occupations include in home day care where daytime care is provided to up to 6 children who are not the legal wards or foster children of the attendant adult within an owner-occupied residence.

### *Hospital*

A building or portion thereof used for the treatment of sick, injured, or infirm persons and accredited by the American Hospital Association.

### *Hotel/Motel/Inn*

A building facility containing sleeping rooms offering transient lodging accommodations to the general public for rental or occupancy and providing additional services, such as restaurants, meeting rooms, entertainment, and recreational facilities

### *Housekeeping Unit*

*The number of unrelated individuals, as defined in each residential district, permitted to reside in any single dwelling unit.*

### *Impervious Surface or Cover*

All areas covered by buildings, pavement (not including ungrouted pavers for sidewalks), gravel, rooftops of stored merchandise i.e.: cars and manufactured housing displays, even if located on grass surfaces. Wooden slatted decks and pool surfaces are exempt.

### *Impound Facility*

A place of secured temporary motor vehicle storage, exclusive of mini storage facilities, where vehicles in operable condition, or capable of being returned to operable condition, are commercially stored for not more than thirty days.

### *Industrial Uses and Development*

Any non-residential use that requires an NPDES permit for an industrial or storm water discharge or involves the use or storage of any hazardous materials or substances or that is used for the purpose of manufacturing, assembling, finishing, cleaning or developing any product or commodity.

### *Industry Heavy*

A use engaged in the basic processing and manufacturing of materials or products predominantly from extracted or raw materials, or a use engaged in the storage of, or manufacturing processes that potentially involve, hazardous or commonly recognized offensive conditions.

### *Industry Light*

A use engaged in the basic processing and manufacture, predominantly from previously prepared, materials of finished products or parts, including processing, fabrication, assembly, treatment, packaging, incidental storage, sales and distribution of such products, but excluding basic industrial processing.

### *Infill Lot Development*

The development of new housing or other buildings on scattered vacant sites in a built-up area.

### *Infill Development*

To fill in vacant or underused land in existing communities with new development which blends in with its surroundings.

### *Institutional Uses*

Large scale civic and semi-civic uses such as elementary and secondary schools, colleges, hospitals, assisted living facilities, convents, monasteries, hospices, and other long-term medical care facilities.

### *Interconnected Streets*

Refers to streets that provide through access to other streets. Interconnected means the existence of a grid or grid pattern and may include either straight or curvilinear designs.

### *Interstate Highway*

A controlled access highway, which is part of the Federal Interstate Highway System.

### *Irregularly Shaped Lots*

Lots which are located on corners or at intersections which create lots with three sides or lots with more than four sides, with corner angles greater or less than 90 degrees. The front yard of such lots shall be determined with respect to adjacent homes, and the maintenance of street vistas.

### *Island, Landscape*

In parking lot design, built-up structures, usually curbed, placed at the end or middle of parking rows as a guide to traffic and for landscaping, signage, or lighting.

## **J**

### *Junk*

Any worn out or cast off or discarded article or material which is ready for destruction or has been collected or stored for salvage or conversion to some use.

### *Junk Yard*

The use of more than one thousand square feet of the area of any lot; whether inside or outside a building, or the use of any portion of that half of the lot that joins any street, for the storage, keeping, or abandonment of junk.

## ***L***

### ***Land Development***

The Development of one or more lots, tracts, or parcels of land by any means and for any purpose, but does not include easements, rights of way or construction of private roads for extraction, harvesting or transporting of natural resources.

### ***Land Disturbing Activity***

Any use of land by any person that results in a change in the natural cover or topography and that may cause or contribute to sedimentation or soil compaction, that effects the critical root zone.

### ***Land Use Segregation***

The practice of prohibiting mixed use development or close proximity of residential and non-residential uses. This is accomplished through zoning standards which emphasize the separation of all uses and the buffering and screening of dissimilar uses from one another. The highly negative impacts of such practices result in auto dependent design that demands greater land area coverage to accommodate cars.

### ***Landfill***

Any solid waste facility for the disposal of solid waste on land as defined by West Virginia Code §22-16-1 et seq., or other applicable solid waste disposal statute or rule.

### ***Landscaped Areas***

Any portion of a site or property containing vegetation following construction activity completion.

### ***Landscaping Plan***

The Site Plan Application prescribed by this Ordinance which details pre-construction protection of existing vegetation and postconstruction supplemental plantings.

### ***Large, Medium, and Small Maturing Trees***

Tree height categories. Large Maturing trees grow to a minimum height of 40 ft. Medium Maturing trees grow to a minimum of 20 ft. Small Maturing trees grow to a minimum of 10 ft.

### ***Live-Work Unit***

See *Mixed-Use Building*.

### ***Loading Space***

An off street space or berth on the same lot with a building or contiguous to a group of buildings, for the temporary parking of motor vehicles while loading or unloading merchandise or materials, and which abuts upon a street, alley, or other appropriate means of access.

### ***Lot***

A parcel of land whose boundaries have been established by some legal instrument such as a recorded deed or a recorded map and which is recognized as a separate legal entity for purposes of

transfer of title which is occupied or capable of being occupied by a building or group of buildings devoted to a common use, together with the customary accessories and open spaces belonging to the same.

*Lot Types:*

- *Corner Lot*

A lot located at the intersection of 2 or more streets.

- *Interior Lot*

A lot other than a corner lot with only one frontage on a street.

- *Through Lot (Also Double Frontage, Reverse Frontage)*

lot other than a corner lot with frontage on more than one street. Through lots abutting 2 streets may be referred to as double frontage lots.

- *Single-Tier Lot*

A lot which backs up to a limited access highway, a railroad, a water body, a physical barrier, or another type of land use and to which access from the rear is usually prohibited, and enjoyment of other properties in terms of noise, smoke, fumes, odors, glare, health or safety hazards, or uses that otherwise do not constitute "light manufacturing," or any use where the area occupied by outdoor storage of goods and materials used in the assembly, fabrication, production or processing exceeds 25 percent of the floor area of all buildings on the lot. "Heavy manufacturing" shall include, but not be limited to, the following: enameling, lacquering, or the plating or galvanizing of metals; foundries or mills producing iron and steel products; industrial chemical manufacture; meat packing plants; mixing plants for concrete or paving materials, and manufacture of concrete products; oxygen manufacture and/or storage; pottery, porcelain, and vitreous china manufacture; poultry dressing for wholesale; pressure treating of wood; stonecutting; tire recapping and retreading, among others. This shall include resource extraction and recycling and salvage operations.

*Lot, Flag*

A large lot not meeting minimum frontage requirements and where access to the public road is by a narrow, private right-of-way or driveway.

*Lot Lines*

Lines bounding a lot as defined herein.

- A. Side means any lot line other than a front or rear lot line.
- B. Front means in the case of an interior lot, a line separating the lot from the street or place; and in the case of a corner lot, a line separating the narrowest street frontage of the lot from the street, except in cases where deed restrictions in effect specify another line as the front property line.
- C. Rear means a lot line which is opposite and more distant from the front lot line, and in the case of an irregular lot, a line ten feet in length within the lot, parallel to and at the maximum distance from the front lot line.

*Low Impact Development (LID)*

An approach to land development that uses various land planning and design practices and technologies to simultaneously conserve and protect natural resources systems and reduce

infrastructure costs. LID allows land to be developed, but in a cost-effective manner that helps mitigate potential environmental impacts.

## ***M***

### *Maintained Easement*

A recorded or legally established right of way or easement made of crushed gravel, pavement, or graded and cleared of brush, so as to permit access by all vehicles.

### *Manufactured Home Park*

A parcel or subdivision of land to accommodate manufactured housing per the provisions of this ordinance.

### *Manufactured Housing/Manufactured Single Family Dwelling Type II*

Factory-built, single-family structures that meet the National Manufactured Home Construction and Safety Standards Act effective the 15th day of June, 1976, (42 U.S.C. Sec.5401).

### *Manufacturing, Heavy*

The assembly, fabrication, production or processing of goods and materials using processes that ordinarily have greater than average impacts on the environment, or that ordinarily have significant impacts on the use. (*See also Lot Types-Single Tier Lot*)

### *Manufacturing, Light*

The assembly, fabrication, production or processing of goods and materials using processes that ordinarily do not create noise, smoke, fumes, odors, glare, or health or safety hazards outside of the building or lot where such assembly, fabrication, production or processing takes place, where such processes are housed entirely within a building, or where the area occupied by outdoor storage of goods and materials used in the assembly, fabrication, production or processing does not exceed 25percent of the floor area of all buildings on the lot. This shall not include uses that constitute "heavy" manufacturing", resource extraction, or recycling and salvage operations.

### *Marina*

A facility for the storing, servicing, fueling, berthing, and securing of boats and that may include eating, sleeping, and retail facilities for owners, crews, and guests. See Water Related Structure, Pier.

### *Massing*

The shape and form a building takes on through architectural design.

### *Mass Transit*

A public common carrier transportation system for people having established routes and fixed schedules.

### *Master Plan*

A scaled site specific drawing of a proposed development that includes a subdivision of land and proposed buildings and/or improvements. A Master Plan combines the subdivision and site plan process for the proposed development build-out on one plan. All subdivisions, except for single-family and two-family residential subdivisions, shall be considered a Master Plan and process accordingly. A Master Plan shall be approved by the Planning Commission . Construction Documents shall also be approved prior to permitting.

### *Mechanical Equipment*

All HVAC (heating, ventilation, and air-conditioning) equipment located on the roof of a building or outside a home or building.

### *Mental Health Care Home*

(See *Residential Care Home*)

### *Mini-Storage Facilities*

A building or group of buildings in which two or more individual spaces not exceeding sixteen hundred cubic feet each are offered for lease for storage of items composed of non-hazardous materials.

### *Mitigation*

Actions taken on-site and/or off-site to offset the effects of temporary or permanent loss of a buffer.

### *Mixed Use*

The presence of residential and nonresidential complementary and integrated uses within the same complex or same building. Mixed use can also refer to different categories of nonresidential uses such as institutional, retail, and office within the same complex of building. The advantage of mixed uses is the promotion of architectural compatibility and pedestrian scaled environments. Mixed-use neighborhood centers provide convenience goods and services for residents of the surrounding area. The neighborhood business area usually serves residents within five minutes driving time. The stores include food, drugs, hardware, clothing, and sundries; services include barber and beauty parlors, cleaners, and so on. The major characteristics of the neighborhood centers are its scale. It usually does not contain any large stores designed to serve several neighborhoods.

### *Mixed-Use Building*

Small commercial enterprises with the ground floor occupied by commercial uses and a residential unit above. Commercial space may be a home-based business or may be leased independently.

### *Mobile Home*

See *Factory Built Homes*

### *Mobile Home Park*

A lot used, designed or intended to be used for the purpose of supplying parking space for four or more occupied mobile homes and which including buildings, structures, motor vehicles or enclosures used or intended to be used as part of the operation of the mobile home park.

### *Modular Home*

A dwelling unit which is constructed in compliance with the West Virginia State Building Code and composed of components substantially assembled in an off site manufacturing plant and transported to the building site for final assembly on a permanent foundation.

### *Motel*

Except as otherwise provided herein means a building or group of detached or connected buildings designed or used primarily for providing sleeping accommodations for motor vehicle travelers and

having a parking space adjacent to a sleeping room. An automobile court or a tourist court with more than one unit or a motor lodge shall be deemed a motel.

*Motor Vehicle*

Includes any automobile, truck, tractor, truck-tractor, trailer, semi-trailer, motorbus, taxi cab and any self-propelling motor-driven vehicle or any combination thereof used for the purposes of transporting persons or property.

*Multi-Family*

Three or more attached dwelling units located on a single lot of record. (Exception: Rental Cottages in accessory buildings)

*N*

*Native Ornamental Species*

Native woody plants, distinctively noted for their ornamental characteristics including, but not limited to, dogwood, (cornus florida), American Holly (Ilex Opaca), Eastern Redbud (Cercis Canadensis), American Hornbeam (Carpinus Caroliniana)

*Neighborhood Commercial Use*

Commercial activities which include retail sales establishments, office uses (i.e.: medical, financial), service industry uses (i.e.: restaurants, inns), and convenience stores which are designed and/or operated to service the daily needs of the residents of the surrounding neighborhood.

*Neighborhood Store*

A general retail operation that sells groceries and other perishable and non-perishable household goods. The average size of such stores is 2,500 sq. ft. and may include additional uses such as a café, a contract post office, an automatic bank teller, and a newsstand.

*Nightclub*

See Bars and Nightclubs

*Nonconforming Lot*

A lot, the area, dimensions, or location of which was lawful prior to the adoption, revision, or amendment of the zoning ordinance but that fails by reason of such adoption, revision, or amendment to conform to the present requirements of the zoning district.

*Nonconforming Sign*

See Fairmont City Code 1763.13

*Nonconforming Structure or Building*

A structure or building, the size, dimensions, or location of which was lawful prior to the adoption, revision, or amendment to the zoning ordinance but that fails by reason of such adoption, revision, or amendment to conform to the present requirements of the zoning district.

*Non-Conforming Uses*

Any actual and active use lawfully being made of any land, building, or structure not otherwise abandoned, which exists on the effective date of this Ordinance or on the effective date of any amendment thereto, and renders such existing use illegal within a district, or which does not comply

in any fashion with any of the rules, requirements and regulations of this ordinance or any amendments thereto. If the property or structure is vacant or unused on the effective date of this Ordinance or any amendment thereto, there shall be a rebuttable presumption that any use not in compliance with this zoning ordinance has been abandoned for at least a year, and the property or structure shall be subject to the provisions of this Ordinance or any amendments thereto. A use or activity that was lawful prior to the adoption, revision or amendment of the zoning ordinance but that fails by reason of such adoption, revision, or amendment to conform to the present requirements of the zoning district. See also existing use.

*Non-Residential Development*

All development other than residential development, agriculture and silviculture.

*Non-traditional Zoning*

Means zoning that sets forth development standards and approval processes for land uses within the City of Fairmont, but does not necessarily divide it into district zoning classifications or districts requiring strict separation of different uses, and does not require a zoning map amendment.

*Nuisance*

An act or omission or use of property which is of itself harmful to health, tranquility or morals of the community

**O**

*Office Use*

Professional, service, and governmental occupations within a building or buildings which do not generally involve the on-site sale of goods to customers.

*Off-Street Parking*

Parking which occurs on a lot and not on a street or other public right of way.

*On Site, Off Site*

Located on the lot relative to a use, or structure; or located off the lot relative to a use, or structure.

*One-Family Home*

See *Single Family Residential or Dwelling Unit*

*Open Decks and Patios*

Permanent uncovered accessory structures that project from an existing principal use.

*Open Space*

Any area which does not consist of streets, right of ways, parking, or easements, and serves as a passive or active recreational area, as conservation land for important vistas and topographic features, or as pervious cover for watershed requirements. This area provides, or has the potential to provide, environmental, social and/or economic benefits to the community whether direct or indirect. Definitions and design standards in this Ordinance categorize open space by type.

*Open Space, Common Area*

Common area open spaces are designed to serve the residents of the immediate block or neighborhood. Ownership and maintenance of such common areas shall be in fee simple title to a homeowners association or similar organization.

*Open Space, Public*

Public open spaces shall be dedicated to a local government or non-profit conservancy organization for ownership and maintenance. Public open spaces shall maintain free and public access. Hours of access may be restricted in accordance with health and safety guidelines.

*Ordinance*

A document of regulations enforceable as municipal law.

*Ornamental Tree, Shrub*

A deciduous or evergreen tree or shrub planted primarily for its ornamental value or for screening purposes.

*Outdoor Kennel*

The containment of animals outside a permanently constructed building for an extended period of time. This does not include fenced areas for brief animal exercise.

*Outdoor Sales/Display*

The sale or display of products outside of a permanently constructed building or structure, including but not limited to vehicles, garden supplies, gas, tires and motor oil, food and beverages, boats and aircraft, farm equipment, motor homes, burial monuments, building and landscape materials, and lumber yards. This does not include occasional "sidewalk" sales or promotions.

*Outdoor Storage*

The storage of goods, products, or vehicles as an ancillary use by their owner or on a commercial basis outside of a permanently constructed building.

*Out parcel*

A parcel of land associated with and located within a shopping center or multi-tenant nonresidential development, which is designated on an approved site plan as a location for a structure with an intended use such as, but not limited to banks, savings and loans, drycleaners, service stations, vehicle repair garages, offices, restaurants, retail establishments, or combination of uses thereof.

*Overlay District*

A set of regulations which add an additional layer of design provisions to an underlying zoning district.

**P**

*Parapet*

That portion of a building wall or false front that extends above the roof line.

*Parcel*

A contiguous lot or tract of land owned and recorded as the property of the same persons or controlled by a single entity.

*Park*

Land owned by the City of Fairmont or another unit of government, which is used or intended for use for active or passive public recreation.

*Park and Ride Facility*

A parking lot designed for drivers to leave their cars and use mass transit facilities beginning, terminating, or stopping within immediate walking distance of the park and ride facility

*Parking Area or Parking Lot*

All the area in square footage of land designated for the storage of cars. The parking area also includes all areas for storage and trash facilities. Any public or private area, under or outside of a building or structure, designed and used for parking or storing motor vehicles including parking lots, garages, private driveways, and legally designated areas of public streets.

- Commercial Parking Lot – An area as defined above where a fee is imposed for parking privileges.
- Customer Parking Lot – An area defined as above where parking is provided in conjunction with and adjacent or nearby business use.

*Parking Space*

A space which is designed for the parking or temporary storage of an automobile as prescribed by this ordinance.

*Party Wall*

A common shared wall between two separate structures, buildings or dwelling units and lacking cross access between structures without exiting each structure.

*Paved*

Any surface area covered by crushed compacted gravel, concrete, asphalt, brick or stone pavers, or similar material in durability, appearance, and permeability.

*Pedestrian Oriented Development*

Development which accommodates the needs of the pedestrian. Such development will have parking to the side or rear of a building, will mix uses and provide them in proximity to one another, will allow the pedestrian the option or choice of not having to use a car to accomplish certain trips, and will provide a variety of interesting and detailed streetscapes which balances the needs of the pedestrian and the car.

*Pennant*

See Article 1763 Signs and Similar Structures

*Perennial Stream*

Streams which flow year round and are identified on United States Geological Survey (USGS) maps or identified through local government studies.

*Performance Guarantee*

Any security or bond that may be accepted or required by the City to assure that improvements required as part of an application for development will be satisfactorily completed.

*Permitted Uses*

Uses allowed to occur by right within a designated zoning or other planning district.

*Permitted Use*

Any use allowed within a zoning district, subject to the restrictions applicable to that zoning district and is not a conditional use.

*Pervious Surface*

Any material that permits full or partial absorption of storm water into previously unimproved land.

*Pier and Pier Facility*

A water-related structure extending into the water from the shore, whether floating or fixed to the lake bottom, for use as a boat landing place or promenade, constructed of pylons and decking for mooring and access to a boat or watercraft.

*Pier Zone, Projection Envelope*

The area beyond which no structure may extend out into navigable waters.

*Plan*

A written description for the development of land.

*Planning Commission*

The City of Fairmont Planning Commission

*Plat*

A map of the land development

*Plat, Final*

A map of all or a portion of a subdivision that is the legal instrument for recordation. Final plats for Major Subdivisions or Master Plans shall be consistent with the approved Preliminary Plat and be recorded following Construction Document approval.

*Plat, Preliminary*

A map indicating the layout of a subdivision, typically submitted and approved with Construction Drawings for a Major Subdivision or Master Plan.

*Platted Lot*

A lot surveyed and of record in the Office of the Clerk of the County Commission of Marion County, West Virginia.

*Playground*

An active recreational area with a variety of facilities, including equipment for younger children as well as court and field games.

*Porch*

A projection from the outside wall of a dwelling covered by a roof which can project beyond a setback. Roofed open areas may be screened, attached to or part of and with direct access to or from a building.

*Portico*

An open porch or walkway covered by a roof and typically leading to the building entrance.

*Preferred Development*

A geographically defined area where incentives may be used to encourage development, infill development or redevelopment in order to promote well designed and coordinated communities

*Premises*

All of a parcel of real property with a separate and distinct number and designation shown on a recorded plat, survey, parcel map, subdivision map, or a parcel legally created or established pursuant to this Ordinance.

Out parcels of shopping centers shall be considered on the premises of the shopping center for the purpose of these regulations.

*Principal Building*

A building in which the principal use of the premises is conducted.

*Private Driveway*

A privately maintained roadway serving 2 or fewer lots, building sites or other division of land and not intended to be public ingress or egress

*Private Street*

An undedicated private right-of-way or easement which affords access to abutting properties.

*Promenade*

See *esplanade*.

*Property*

Real property and fixtures subject to the provisions of this Ordinance.

*Pruning*

The cutting off or removal of dead or living parts of a tree or shrub for the intentions of improving growth.

*Public Hearing*

A meeting open to the public advertised in advance in the local printed media, or as otherwise required by statute, concerning proposed ordinances, amendments or other official Town business which require public participation and input.

*Public Space*

Any lots, tracts or parcels of land, structures, buildings or parts thereof owned or leased by the City of Fairmont, any other governing body or unit of government.

*Public Safety Station/Building*

Police, fire and rescue stations.

### *Public Street*

Any public right of way used for vehicular traffic that is maintained by the City of Fairmont or State of West Virginia and which is open to all traffic.

### *Public Utilities*

Above ground or underground publicly licensed utilities including water, sanitary sewer collection and distribution line, natural gas, cable television, storm water drainage, transit or transportation, or electrical services and any associated structures such as pumping stations, treatment plants, transformer stations for providing to the public a utility service deemed necessary for the public health, safety, and welfare. Utility service to the public has been defined broadly to mean all consumers industrial, commercial, or residential.

## **Q**

### *Quadrangles*

A rectangular area, such as a courtyard, enclosed by buildings.

## **R**

### *Recreation, Active*

Leisure-time activities, usually of a formal nature and often performed with others, requiring equipment and taking place at prescribed places, sites, or field.

### *Recreation, Passive*

Activities that involve relatively inactive or less energetic activities, such as walking, sitting, picnicking, card games, chess, checkers, and similar table games.

### *Recreational Facilities*

An area of land or combination of land and water resources for public use that is developed for active and/or passive recreational pursuits with various manmade features that accommodates such activities. Such areas shall be designed in the form of playgrounds, parks, squares, greenbelts, and parkways. They shall be designed to serve the immediate neighborhood in which they are located, or can be regional in scope, serving several neighborhoods. A place or an area of land or combination of land and water resources designed and equipped for the conduct of sports and leisure-time activities that is developed for active and/or passive recreational pursuits. Such areas shall be designed in the form of playgrounds, parks, squares, greenbelts, and parkways. They shall be designed to serve the immediate neighborhood in which they are located, or can be regional in scope, serving several neighborhoods.

### *Recreational Vehicle*

A vehicular-type portable structure without permanent foundation that can be towed, hauled or driven and primarily designed as a temporary living accommodation for recreational, camping, and travel use and including, but not limited to, travel trailers, truck campers, camping trailers, and self-propelled motor homes.

### *Recycling*

any process by which goods and materials are collected and / or converted for reuse.

### *Reservation*

The setting aside of parcels of land for a specific purpose. Reservations of land are encouraged for future development of streets, parks, and civic buildings.

### *Residential Care Facility*

An institutional facility in which supervision, care, therapeutic, or medical services are provided for more than six persons in a residential capacity or which do not otherwise meet the requirements of a *Residential Care Home*.

### *Residential Care Home*

A residential home in which the homeowner provides residential supervision, care, or therapeutic services for six or less adults, adolescents, or children with mental illness, developmental disabilities, substance abuse problems, and/or temporary or permanent physical, emotional, or mental handicaps or disturbances, but not including persons who require lock down or are dangerous or violent toward others. Medical care is provided on an incidental and occasional basis. Homes not meeting all these requirements fall into the category of *Residential Care Facility*.

### *Residential Development*

Buildings for residential use such as attached and detached single-family dwellings, apartment buildings, condominiums, townhouses, cottages, etc. and their associated outbuildings such as garages, storage buildings, gazebos, etc. Residential development includes residential care homes.

### *Resident Family*

A family, as defined herein, whose occupancy of a dwelling is of an indefinite or permanent nature and not for a fixed or limited duration.

### *Residuals*

Any solid or semi-solid waste generated from a wastewater treatment plant, water treatment plant or air pollution control facility permitted under the authority of the United States Department of Environmental Protection or the West Virginia Department of Environmental Project or other permitting authority.

### *Restaurant*

An establishment with an equipped kitchen whose primary business is the preparation of food items for meals for sale and consumption on the premises.

### *Restaurant/Lounge*

An establishment with an equipped kitchen whose primary business is the preparation of meals for sale and consumption on the premises and which upon proper licensing and subject to the following requirements may serve beer and/or alcoholic beverages incidental to the sale of food; Food and non-alcoholic beverages must comprise a minimum of sixty percent (60%) of total gross sales of all food and drink items in each calendar month. A seating capacity of at least forty persons at tables or counters must be maintained for the principal purpose of serving meals. Seats at a bar which is primarily for the purpose of serving beer and/or alcoholic beverages shall not be counted or considered in determining whether the minimum seating capacity herein has been satisfied. The licensee and/or the employees of the establishment shall, at the time of each sale or at the time of payment therefore, record the amount of revenue derived from the sale of beer and alcoholic beverages separately from the amount of revenue derived from the sale of food and non-alcoholic beverages. For each calendar month, the licensee shall maintain and preserve accurate and adequate

records including those required by subsections (58a)A. and C. hereof, to prove compliance to the City's Finance Director, and shall make all records available for review and audit promptly upon request by said Finance Director. The records for each month shall be preserved for not less than twenty-four months. Quarterly, the licensee shall send to the City Finance Director summaries showing the amount of revenue derived from beer and/or alcoholic beverages versus the amount derived from the sale of food and non-alcoholic beverages.

"An equipped kitchen" means a kitchen containing at least one range with an oven and no fewer than two burners, or a microwave oven which has a variable control and a separate range with two burners; one sink with hot and cold running water; one cold storage unit or refrigerator at least seventeen cubic feet in size; and cooking utensils and pots and pans sufficient for preparation of the required meals.

"Meals" means food consisting of one item or any combination of items. For example, fresh, canned and packaged chili, soup, pasta, fresh salad, fresh or prepackaged sandwiches, freshly prepared meats, freshly prepared and canned vegetables, and prepackaged dinners will be acceptable. Examples of items which, by themselves, do not qualify as adequate are such items as: packaged potato chips and similar products; packaged crackers; packaged nuts; packaged desserts (fruit pies, cakes, cookies, etc.); and bar sausages and similar products. The key word in the definition of meals is "preparation".

#### *Restaurant, Drive In*

An establishment that delivers prepared food and/or beverages to customers in motor vehicles, regardless of whether or not it also serves prepared food and/or beverages to customers who are not in motor vehicles, for consumption either on or off the premises.

#### *Restaurant, Fast Food*

An establishment whose principal business is the sale of foods, frozen desserts, or beverages in ready to consume individual servings, for consumption either within the restaurant building or for carry out, and where either: 1) foods, frozen desserts, or beverages are usually served in paper plastic or other disposable containers, and where customers are not served their food, frozen desserts, or beverages by a restaurant employee at the same table or counter where the items are consumed; or 2) the establishment includes a drive up or drive through service facility or offers curbside service.

#### *Retail Sales*

Establishments engaged in selling goods or merchandise to the general public for personal or household consumption and rendering services incidental to the sale of such goods.

#### *Retail, Support*

Establishments within a Business Campus development that provide goods and serve the daily needs of workers, including but not limited to restaurants, dry cleaners, and drugstores. Support retail may only be located on the first floor of multi-floor building in accordance with Article 1319.11 of this Code.

#### *Rezoning, Conditional District*

A map amendment that may be utilized to allow for those situations where a particular permitted use, if properly planned may be appropriate for a particular site, but where the general district has insufficient standards to mitigate site specific impacts on surrounding properties and neighborhoods. A site specific plan shall be approved by the Planning Commission.

*Rezoning, Standard*

A map amendment under which all permitted uses in the general district are permitted. No particular uses are specified and no site specific plan is required.

*Roofline*

The highest point of a flat roof and the lowest point of a pitched or mansard roof. Cupolas, chimneys, towers or other minor projections above the roofline are excluded.

*R-O-W (Right Of Way)*

An area of land dedicated for public or private infrastructure such as streets, sidewalks, railroads, sewer lines, water lines, electric lines, and gas lines.

**S**

*Salvage:*

Old or scrap brass, copper, iron, steel, or other ferrous or non ferrous materials, batteries or rubber and any junked, dismantled or wrecked, machinery, machines or motor vehicles or any parts of any junked, dismantled or wrecked, machinery, machines or motor vehicles.

*Salvage Yard*

Any place which is maintained, operated or used for the storing or keeping, buying, selling or processing of salvage, or for the operation and maintenance of a motor vehicle graveyard: provided, however, that no salvage yard shall accept, store or process more than one hundred waste tires unless it has all permits necessary to operate a monofill, waste tire processing facility or solid waste facility. Any salvage yard which currently on its premises more than one hundred waste tires not on a vehicle must establish a plan in conjunction with the Division of Environmental Protection for the proper disposal of the waste tires.

*Satellite Dish Antenna*

Any antenna including any supporting structure designed to receive or transmit visual and/or verbal signals via orbiting satellites or similar sources, excluding microwave antennae.

*School*

A public or private institution for education or learning including athletic or recreational facilities, which does not include lodging. This institution includes any school licensed by the state and that meets the state requirements for elementary and secondary education. Site criteria for each respective school classification shall follow the minimum campus requirements generally recognized by the State School Building Authority:

*Self-Storage Facility*

A structure containing separate, individual, and private storage spaces of varying sizes leased or rented individually for varying periods of time. This use or structure may also be called a mini-storage or mini-warehouse facility. See Mini-Storage Facility

*Senior Citizen Housing*

A multi family dwelling exclusively for senior citizens, handicapped persons, or as may be defined by State and Federal regulations.

*Setback*

The shortest horizontal distance from the property line or right-of-way to the nearest point (leading edge) of the structure or its supporting member whichever is nearest to the property line or right-of-way.

*Shade Tree*

Any large maturing tree which provides a crown width sufficient to shade a minimum of 1,200 square feet.

*Shopfront*

A business or retail use. The facade of a shopfront is aligned directly on the frontage line with the entrance at grade. This is typical for sidewalk retail. Shop fronts often have awnings or a colonnade. A transition line should separate the signage from the facade below.

*Shrub*

Vegetation that is planted for ornamental or screening purposes.

*Sight distance triangle*

The triangular area formed at street intersections by a diagonal line connecting two points located on intersecting right-of-way lines (or a right-of-way line and the curb or a driveway), each point being 75 feet from the intersection along major thoroughfare and 35 feet along the minor thoroughfare from the intersection, and the two intersecting right-of-way lines (or a right-of-way line and a driveway). Generally, nothing is erected, placed, planted, or allowed to grow in such a manner as to limit or obstruct the sight distance of motorists entering or leaving the intersection.

*Sign*

See Article 1763 Signs and Similar Structures

*Significant Vegetation*

A large canopy tree over 18 inches in diameter at breast height which displays a root zone, canopy, and structure characteristic of the particular species and is in good health and vigor.

*Single Family Residential* See Dwelling Unit

Any development where: 1) no building contains more than one dwelling unit, 2) every dwelling unit is on a separate lot, and 3) where no lot contains more than one dwelling unit. Such uses include Residential Care Homes and as defined in this Code.

*Site Plan, Conditional District Rezoning*

A scaled site specific drawing of a proposed development for a conditional district rezoning. Approval by the Town Board is required. Construction Documents shall also be approved prior to permitting.

*Site Plan, Conditional Use Permit*

A scaled site specific drawing of a proposed development for a conditional use presented to the Town Board in order to obtain Conditional Use Permit approval. Construction Documents shall be approved prior toH permitting.

*Site Plan, Major*

A scaled site specific drawing of any proposed multi-family, mixed-use, or commercial development within any permissible districts or any development over 30, 000 square feet in any district. Construction Documents shall be approved prior to permitting.

*Site Plan, Minor*

A scaled site specific drawing of a proposed on-residential development less than 30,000 square feet that does not require a Conditional Use Permit. A Minor Site Plan is typically submitted with Construction Documents for administrative approval.

*Site Plan, Site Specific Plan*

A diagram to scale showing the development plans for a project and containing all information required of Site plans and/or Subdivision Plats.

*Site Survey*

A map done by a surveyor accurately depicting the scale distances and measurements of all planned structures on a lot which may include topographical information and existing naturally occurring and constructed elements or structures, such as streams, wetlands, rock outcroppings, etc.

*Special Event*

A planned temporary activity not to exceed fourteen (14) continuous days.

*Specified Sexual Activities*

Human genitals in a state of sexual stimulation or arousal; acts of human masturbation, sexual intercourse or sodomy; or fondling or other erotic touching of human genitals, pubic region, buttock or breast. (See Also Adult Entertainment/Establishments)

*Specified Anatomical Areas*

Less than completely and opaquely covered: human genitals, pubic region, buttock, or female breast below apoint immediately above the top of the areola; or human male genitals in a discernible turgid state, even if completely and opaquely covered.

*Specimen Tree*

Any healthy, existing tree over 18 inches in caliper measured at DBH, excluding nuisance trees found in a field or open grown condition, or along the edge of a forest stand or tree stand and displaying the root zone, canopy, and structure characteristic of the particular species.

### *Sprawl/Urban Sprawl*

Poorly planned or uncontrolled growth usually of a low density nature, within previously rural areas, that is land consumptive, auto dependant, designed without respect to its surroundings, and some distance from existing development and infrastructure. (See Also Suburban Sprawl)

### *Square*

A centrally located public open space that is urban in nature

### *Story*

That portion of a building included between the upper surface of a floor and upper surface of the floor or roof next above that is habitable. Mezzanine in the front portion of the building is considered a habitable story for the purposes of this Code. Further, for Mixed Use Buildings, the habitable floor area of the second story shall be approximately equal to the habitable floor area of the first story.

### *Story Above Grade*

Any story having its finished floor surface entirely above grade except that a basement shall be considered as a story above grade when the finished surface of the floor above the basement is:

1. More than six feet above grade plane;
2. More than six feet above the finished ground level for more than fifty percent of the total building perimeter; or More than twelve feet above the finished ground level at any point.

### *Street*

A dedicated and accepted public right-of-way for vehicular and pedestrian traffic, whether designated as a street, highway, thoroughfare, parkway; throughway, road, avenue, boulevard, land place or however otherwise designated.

### *Street Orientation*

The direction of the architectural front facade of a building in relation to the street.

### *Street, Private*

A street, alley or way that has not been accepted by the municipality or other governmental entity for public maintenance.

### *Street Tree*

A tree planted along the street within the right-of-way except along an alley.

### *Street Vista*

A view framed by buildings at the termination of the axis of a thoroughfare.

### *Street Yard*

The area of land along the front property line parallel to a R-O-W reserved for tree planting and landscaping.

### *Structure*

Anything constructed or erected, including but not limited to buildings, which requires location on the land or attachment to something having permanent location on the land.

*Subdivision or Partition*

All divisions of a lot or parcel of land into two or more lots, building sites, or other divisions for the purpose of sale, lease, or building development (whether immediate or future) in accordance with Chapter 5 Subdivision Regulations of this Code Subdivision or the recombination of existing lots, tracts or parcels.

*Suburban Sprawl*

The name given to development designed according to segregated use zoning standards, and auto dependent criteria concerning access and parking. The resultant development provides for a low density landscape of independently designed uses connected by a system of hierarchical streets which do not provide through access. A majority of the land in this model is relegated to street and parking surfaces, and although the building density and population may be low, the amount of usable open space is minimal to none, and traffic congestion is common. (See also Sprawl)

*Sustainable*

Having the ability to accommodate and maintain population growth and economic expansion through intelligent design.

**T**

*Technical Review Committee*

A committee comprised of City staff and employees charged with preliminary technical review of Subdivisions, Site Plans, and Construction Documents. The departments represented on the Committee include Planning, Parks and Recreation, Public Works, Police, and Fire.

*Temporary Structures*

Buildings placed on a lot for a specific purpose which are to be removed within a specified time period. Examples of temporary structures are construction trailers and temporary sales offices and produce stands. The duration permitted for a temporary structure is established by this ordinance.

*Temporary Use Permit*

A permit issued by the Planning Department allowing a use which is not permitted within a district to continue as long as certain criteria are being met by the applicant.

*Thoroughfare*

See *Street*.

*Tinting*

The coloring of a window such that all translucence of that window is more than 50% opaque.

*Top of Bank*

The landward edge of the stream channel during high water, bank full conditions at the point where water begins to overflow onto the floodplain.

### *Topping*

Any pruning practice that results in removal of the foliage and limbs that leads to disfigurement or abnormal shape of a tree.

### *Townhouses*

Individually owned dwelling units contained within the same structure and separated by approved fire walls.

### *Tract*

All contiguous land and water bodies under single or diverse ownership being developed as a unit consisting of one or more parcels or lots.

### *Traditional Neighborhood*

A Traditional Neighborhood incorporates the best in design principles to produce compact, mixed use, pedestrian scaled, sustainable communities. Traditional Neighborhoods pursue certain objectives through their design:

1. By bringing within walking distance most of the activities of daily living, the elderly and the young gain independence of movement.
2. By reducing the number and length of car trips, traffic congestion is minimized and road construction costs are reduced.
3. By organizing appropriate building densities, alternative forms of transportation can be easily provided when appropriate.
4. By providing public open spaces such as parks, squares, and streets, people can come to know each other and to watch over their collective security.
5. By providing a full range of housing types and workplaces, age and economic class are integrated and the bonds of authentic community reformed.
6. By providing suitable sites for civic buildings, community awareness and civic responsibility are encouraged.

### *Trails, Greenway*

Pedestrian paths for walking or jogging within parkways or greenbelts. Trails are informal in design and run through natural settings. They differ from the formal design of promenades and esplanades in parks and squares.

### *Transitional Yard*

The area of a property running along the side or rear yard of a nonresidential lot when it abuts a residential lot used as a buffer. Transitional yards are planted with trees and landscaping to reduce noise, and other impacts on less intense property uses.

### *Transit Station*

Any premises for the storage or parking of transit equipment and the loading and unloading of passengers.

### *Transportation Services*

Services including but not limited to taxi cabs, limousines, charter buses, and mass transit.

*Tree and Root Protection Area*

The tree and root protection zone is that area of a lot which is not needed for building and driveway construction excluding the construction activity area, (an area 20 feet around the building foot print), any street right-of-way, utility easements, drainage ways, and soil absorption waste disposal areas. No construction activity, movement and placement of equipment, or material storage shall be permitted on the tree and root protection area. The root protection area includes an area, generally, 18-24 inches deep and a distance from the trunk of a tree equal to 1/2 its height or its drip line, and whichever is greater.

*Tree Survey*

A description of the existing trees, understory vegetation, and topographical features on a site prior to development for the purpose of identification.

*Tree, Canopy*

A tree with a height at maturity greater than 30 ft. and which produces significant shade due to the shape of the canopy tree.

*Tree, Small*

A tree with an expected height at maturity no greater than 30 ft.

*Two-Family Home*

See Duplex. - - See Dwelling Unit

*U*

*Unit of Government*

Any federal, state, regional, county, or municipal government or governmental agency

*Underpinning*

The skirting around the base of a manufactured home or temporary structure which forms a continuous wall around the structure from the foundation or grade level, to the base, or bottom floor level, of the structure. Underpinning material is prescribed by this ordinance.

*Urban Area*

All lands or lots within the jurisdiction of the City of Fairmont.

*Urban Park*

A primarily hard surface space that serves as an outdoor room for people to gather in. It should serve as a link between a building and the pedestrian network, and/or as a focal point between two or more structures. They are especially desirable at transit stops to increase the convenience and comfort of transit riders while providing points of orientation within the core area.

*Urban Tree Canopy*

A cluster of canopy trees within an urban or municipal environment.

*Utility*

A public or private distribution service to the public that it is regulated by the Public Service Commission of West Virginia

*Use*

The purpose for which land or a building is arranged, designed or intended, or for which either land or a building is or may be occupied or maintained.

*Uses Permitted with Conditions*

This Ordinance lists all allowable uses by District. The allowable uses are split into 2 categories; uses permitted by right and uses permitted with conditions. The latter are provided with criteria that must be met in order for the use to be allowed within the district.

**V**

*Vehicle*

Any vehicle which is used by a licensed business operation to render its services and/of having a load carrying capacity greater than two tons.

*Vested Right*

The right to undertake and complete a development or use of property under the terms and conditions of an approved Site Specific Plan currently in effect or as otherwise allowed by law. See Existing Use

**W**

*Warehouse or Distribution*

The operation of a facility for the principal use of storing of goods, materials, trailers, cars not currently for sale, or boats or for the distribution of goods and materials to another location. This shall include structures or buildings associated with the operation of such principal use but does not include manufacturing, or industrial incidental storage of raw materials used by the business on-site or finished product of the business made on-site.

**Y**

*Yard*

Open space that lays between the principal building or buildings and the nearest lot line. The minimum required yard is unoccupied and unobstructed from the ground upward except as may be specifically provided in this ordinance. Yards are further classified as front, rear, and side. Yard configuration establishes building typologies. Uses and structures that may be permitted in required yards include accessory structures, patios, decks and open porches, bay windows, open steps, driveways, fences, and permitted signs, underground utilities, existing vegetation, required landscaping and lighting.

*Yard, Front*

A space extending the full width of the lot between the architectural front of a building and the front lot line or the fronting street right-of-way measured perpendicular to the building at the closest point to the front lot line. Typically this yard is required to remain open and unoccupied, with the exception of certain encroachments such as porches, bay windows, porticos, arcades, stoops, sidewalks, street trees, street furniture, fences, walls, and landscaping. Unless otherwise permitted by Board of Zoning Appeals, for aesthetic purposes, parking is not permitted to be located in the front yard regardless of whether the principal structure is set farther back than required.

*Yard, Rear*

A space extending across the full width of the lot between the architectural rear of the principal building and the rear lot line and measured perpendicular to the building to the closest point of the rear lot line. Rear yards extend from the back of a building to a property line. Generally, accessory structures are permitted within this yard.

*Yard, Required*

The open space between a lot line and the yard line and the façade of a building within which no structure may be located except as permitted in this Ordinance.

*Yard, Side*

A space extending from the front yard to the rear yard between the principal building facade and the side lot line and measured perpendicular from the side lot line to the closest point of the principal building facade. Side yards extend from the sides of a building to a street right of way property line.

**Z**

*Zoning District: See District.*

*Zoning*

The division of a municipality or county into districts or zones which specify permitted and conditional uses and development standards for real property within the districts or zones.

*Zoning Map*

A map that geographically illustrates all zoning neighborhoods, districts and corridors, and other designations within the City of Fairmont as described within the zoning ordinance and which is certified as the official land use map of the City of Fairmont, West Virginia .

*Zoning Ordinance or this Ordinance*

As used in Part Thirteen-Planning and Zoning Code means this Ordinance \_\_\_\_\_, passed \_\_\_\_\_ and any amendments thereto.