

FIRST READING: January 1, 2016

ORD. NO. 60-1

2ND & FINAL READING: February 16, 2016

AN ORDINANCE TO AMEND AND SUPPLEMENT CHAPTER XXVI, FLOOD DAMAGE PROTECTION, OF AN ORDINANCE ENTITLED, "AN ORDINANCE ADOPTING AND ENACTING THE REVISED GENERAL ORDINANCES OF THE CITY OF LINDEN, 1999," PASSED NOVEMBER 23, 1999 AND APPROVED NOVEMBER 24, 1999, AND AS AMENDED AND SUPPLEMENTED

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LINDEN:

Section 1. That Chapter XXVI, Flood Damage Protection, shall be and the same is

hereby amended as follows:

ADD:

ARTICLE IV

§26-21 - LOT GRADING PLANS.

§26-21-1. Applicability.

In order to provide against the adverse consequences of uncontrolled surface water drainage, prevent the increase in stormwater runoff from a site and to prevent soil erosion and control sediment deposition associated with land disturbance including but not limited to construction activities, a lot grading plan shall be submitted and approved prior to the issuance of a construction/zoning permit for the following activities:

A. The erection of any new structure, any addition, repair or renovation to an existing structure involving an extension of the foundation of the existing structure, any of which is not shown upon an approved site plan; or

B. Any of the following activities, if not shown upon an approved site plan:

(1) Land disturbance, except for the purposes of turf replacement, of one thousand (1,000) square feet, or greater;

(2) Placement of more than ten (10) cubic yards of fill, excluding mulching, or

(3) Land disturbance of less than one thousand (1,000) square feet or placement of less than twenty (20) cubic yards of material if the project affects any critical areas, or

(4) Land disturbance within five (5) feet of the property line that impacts drainage.

(5) Removal of more than three (3) trees.

§26-21-2. Waiver.

A. Notwithstanding the foregoing, the City Construction Official may grant a waiver from the requirements of this subsection with respect to an addition to a single-family dwelling if the City Construction Official determines that the project involves less than one thousand (1,000) square feet of impervious coverage, does not affect any drainage or critical areas, and does not require any significant changes in the existing grading of the lot. Any such determination shall be made upon the basis of the construction plans and such further information as may be requested from the owner of the property by the City Construction Official.

§26-21-3. Lot Grading Plan Details.

A lot grading plan showing the proposed final grading of the lot shall be reviewed and approved by the City Engineer in accordance with the provisions of this subsection and more specifically as follows:

A. The lot grading plan shall be approved by the City Engineer prior to the issuance of a construction permit.

B. Upon construction of the foundation, and prior to framing or other further construction, the

applicant shall submit an "as-built" foundation survey confirming that the first floor elevation of the building is within the twelve (12) inches of the first floor elevation as shown on said approved subdivision plat. If the property is not the subject of a grading plan on an approved subdivision plat, the "as-built" foundation survey shall confirm that the first floor elevation is located within eighteen (18) inches of the elevation as shown on the lot grading plan.

C. Following the completion of construction, the owner shall provide an as-built survey of the site for approval by the City Engineer.

D. The plan shall be prepared by a professional engineer licensed in New Jersey and shall be drawn to a scale of not less than one (1) inch equals fifty (50) feet, but may be supplemented by a key map of smaller scale, and shall be prepared in sufficient detail to show the following:

- (1) The existing surface drainage pattern as it affects the subject property and all abutting land;
- (2) The elevation of the street at each limit of the frontage of the subject property and a permanent feature such as a manhole rim or set corner or similar structure;
- (3) The location of any existing streams, watercourses, ponds, storm sewers or drainage facilities which relate to drainage of surface waters from the subject property;
- (4) Any proposed storm sewers, ditches or other drainage facilities which will receive surface waters from the subject property;
- (5) The proposed location of the structure for which a construction permit is being sought;
- (6) The elevation of the finished garage floor, top of foundation, first floor of the structure, and top of finished roof ridge proposed for the subject property, and the proposed lowest elevation within fifteen (15) feet of the proposed structure;
- (7) The proposed location of all roof leader drains, driveways, dry wells, utility lines below ground and any individual sewage disposal system;
- (8) The outer limits of all areas in which any grading or filling is proposed on the subject property;
- (9) Any proposed changes in the existing surface drainage pattern which will result from the construction proposed for the subject property including any proposed changes on abutting lands;
- (10) All existing trees with trunks exceeding four (4) inches in diameter measured at a point four (4) feet above the existing ground level, which trees are located within the outer limits of the areas mentioned in paragraph (h) above as well as within ten (10) feet of the outer limits of any such areas.
- (11) Topography reflecting contours at two (2) foot intervals.
- (12) Top of wall and toe of wall elevations of all proposed retaining walls shall be clearly delineated at regular intervals on the plan.

§26-21-4. Fees.

Three (3) copies of each required lot grading plan shall be filed with the City Construction Official, together with an application fee as determined below:

A. Grading Permit Application for Engineering Review of Individual Plot House Location/Grading Plans for Fill Over Ten (10) Cubic Yards.

1. Lot area less than 7,500 square feet \$100.00
2. Lot area of 7,500 square feet, but less than 1.5 acres \$150.00
3. Lot area of 1.5 acres or greater \$500.00
4. If original submission is not approved, each subsequent resubmission will require payment of an additional fee, as set forth above. If original submission is approved conditionally, no additional fee is required.

B. Grading Permit Application for Engineering Review of Non-residential Location/Grading Plans for Fill Over Ten (10) Cubic Yards.

1. Lot area less than 7,500 square feet \$300.00
2. Lot area of 7,500 square feet, but less than 1.5 acres \$400.00
3. Lot area of 1.5 acres or greater \$600.00
4. If original submission is not approved, each subsequent resubmission will require payment of an additional fee, as set forth above. If original submission is approved conditionally, no additional fee is required.

§26-21-5. Review by City Engineer.

The lot grading plan shall be filed with the Construction Official and shall be reviewed by the Zoning Officer for zoning compliance. Upon the filing of a lot grading plan, the receipt of the required fee, and completion of Zoning Officer review, the City Construction Official shall submit one (1) copy of the plan to the City Engineer.

§26-21-6. Standards for Approval.

The City Engineer shall not approve a lot grading plan or revised plan unless he determines that the plan is designed to control surface waters in a manner that will minimize the adverse effects of such waters upon the subject property and abutting lands. In addition, a lot grading plan shall not be approved unless the following conditions are met:

A. Driveway grades shall not exceed fifteen (15%) percent, except that under unusual conditions and for short distances the City Engineer may approve grades not exceeding eighteen (18%) percent, provided the average centerline grade of the driveway does not exceed fifteen (15%) percent.

B. There shall be no change in existing grade that raises the elevation of the lot within five (5) feet of a property line. Furthermore, there shall be no change in existing grade, which raises any portion of the lot within fifteen (15) feet of a property line to an elevation that is more than four (4) feet above the existing ground level at the property line. Any new grade shall be at an even slope with the toe of the slope at the ground level which exists at five (5) feet inside the property line, provided, however, that, when necessary, swales shall be created in order to control surface waters in a manner that will protect abutting lands. Retaining walls shall not exceed six (6) feet in height provided that for each six (6) inches in height above the pre- or post- construction grade at the toe of the wall, a retaining wall shall be set back one (1) foot from the property line to which it is adjacent. Distances from property lines shall be measured at right angles to straight portions and radial to curved portions.

C. Grades steeper than 1 (vertical) to 3 (horizontal) should be avoided. In cases where these grades are unavoidable, provisions for soil stabilization, access and maintenance of those areas must be provided to the City Engineer for approval.

D. An area of at least ten (10) feet in width around the foundation of any building shall be graded downward, away from the foundation, in accordance with the requirements of the New Jersey Uniform Construction Code.

E. Roof runoff from any roofed area shall be in accordance with the New Jersey Uniform Construction Code.

F. Dry wells, or other infiltration facilities acceptable to the City Engineer, are required for all new structures and for additions to structures involving a roof area greater than one thousand (1,000) square feet and/or a total of one thousand (1,000) square feet of additional impervious cover. The design of the infiltration facilities must, at a minimum, be for three (3) inches of rainfall over the area of the roof of the new structure or addition to a structure. Design of these facilities must be based on appropriate site specific tests certified by the applicant's engineer and submitted and approved by the City Engineer. Should site specific conditions obviate the use of infiltration facilities, an alternative means, acceptable to the City Engineer, for management of stormwater runoff must be provided.

G. If the lot grading plan contains a structural retaining wall, a copy of the structural calculations, signed and sealed by an engineer or architect licensed in the State of New Jersey shall accompany the plans.

§26-21-7. Temporary Measures.

Whenever the City Engineer considers it necessary or appropriate, he may require that a lot grading plan include temporary measures to be taken during the performance of any construction work to prevent adverse effects upon abutting lands.

§26-21-8. Violations.

The failure of an owner of property to comply with an approved lot grading plan for such property, including any temporary measures to be taken during the performance of construction work, shall subject the owner to a maximum fine of \$500.00 per violation.

§26-21-9. Soil Erosion and Sediment Control Standards.

The project shall be designed in accordance with the New Jersey Soil Erosion and Sediment Control Standards.

§26-21-10. Escrow to Complete Work.

Notwithstanding any other provision of this chapter, the Zoning Officer may issue an occupancy/zoning permit prior to full compliance with a lot grading plan if the Zoning Officer received written evidence of the existence of a cash escrow deposit in the amount of the estimated cost effecting full compliance with the plan as determined by the City Engineer, and if the Zoning Officer receives a written statement from any contract-purchaser requesting the issuance of a certificate of occupancy pursuant to the provisions of this section.

If a certificate of occupancy is issued for a property prior to full compliance with a lot grading plan and full compliance is not effected by the date set forth in the report of the City Engineer, then continued occupancy of such property after such date shall constitute a use of such property in violation of this chapter.

§26-21-11. Inspections.

Neither an occupancy/zoning permit nor a certificate of occupancy shall be issued until the City Engineer certifies in writing that the property conforms to the lot grading plan. The City Engineer shall make and inspection and issue a report within five (5) days after notification from the Construction Official of an application for a certificate of occupancy.

§26-21-12. Additional Inspections.

In the event that more than two (2) inspections of a property are required to be made by the City Engineer either by reason of a provision for temporary measures to prevent adverse effects upon abutting lands or by reason of a failure to comply with an approved lot grading plan, then the owner of the property shall pay to the City an inspection fee for each additional inspection which fee shall be calculated in accordance with the schedule of inspection fees established and from time to time amended by the City Council pursuant to the provisions of the Zoning Ordinance of the City. All fees for any such additional inspections shall be paid to the City prior to the issuance of a certificate of occupancy for the new structure or addition.

§26-21-13. Definitions.

CRITICAL AREA shall mean an area consisting of wetlands, flood hazard areas, areas of shallow water table soils, recharge soils or steep slopes.

Section 2. That Chapter XXIX, Land Development, shall be and the same is hereby amended as follows:

DESIGN STANDARDS

§ 29-5.9 Site Plan Approval.

Except as herein exempted, no building permit shall be issued for the construction, structural alteration or relocation of any building or structure unless a site plan is first submitted and approved in accordance with Chapter 29, Land Development, and no certificate of occupancy shall be issued unless all construction conforms to the approved plan.

B. No site plan approval shall be required prior to issuance of a building permit or other required permit for any of the following:

(1) Single-family and two-family dwellings.

(2) Accessory structures, such as private garages, swimming pools, storage sheds, etc., which are incidental to single-family and two-family dwellings.

(3) Fences, provided that said fence does not violate a condition of prior variance approval, and further provided that if the proposed fence is to be located on a site developed for nonresidential use, said fence shall not alter the means of ingress and egress as approved by the Board.

(4) Paving of an unpaved driveway on property developed for single-family or two-family dwellings, provided that said paving shall not violate a condition of a prior variance approval.

(5) Interior alterations or work on exterior building facades, windows or roofing. However, issuance of a building permit for said work in no way limits the City's authority to require future site plan approval based upon the proposed use of the building.

(6) Building additions.

(a) Building additions which are less than 500 square feet, provided that said addition meets the following criteria:

[1] It will not require any additional parking spaces.

[2] It will not violate zoning regulations nor increase the extent of nonconformance with existing zoning regulations.

[3] There will be no loading bay proposed as part of the addition.

[4] There will be no chemicals or hazardous substances stored in the addition.

(b) An affidavit stating compliance with Subsection B(6)(a)[4] shall be required to be submitted to the City Zoning Officer prior to issuance of a building permit. There shall be no more than one addition constructed under this provision within any two-year period without first requiring site plan approval.

(7) Request for approval by the City Zoning Officer for issuance of a motor vehicle dealership license as required by the State of New Jersey, provided that said license is required for an operation which is accessory to a principal permitted use, and further provided that a certification shall be signed by the applicant agreeing that he will not use the dealership license for the display of more than three vehicles.

(8) Any change of occupancy which does not meet the criteria established in § 29-5.9 for classification as a change of use.

(9) Overnight storage of no more than four motor vehicles as defined in N.J.S. 39:1-1, excluding equipment, truck tractors and trailers, used by the approved business owning or leasing the property upon which such vehicles are stored; provided, however, that such motor vehicles must be removed for daily use during the regular business hours and days of such approved business.

(10) Home occupations which meet the requirements of Section 31-19.14.

§ 29-5.10 Determination of change of use.

A. A change in the occupancy of a building or the utilization of a building or land which meets any of the following criteria shall be determined to be a change of use under this chapter:

- (1) The proposed use requires more off-street parking spaces than the previous use, based upon parking requirements in Chapter 31, Zoning;
- (2) The proposed use has significantly different hours of operation than the previous use;
- (3) The proposed use has special pickup and discharge or loading and unloading requirements which affect either on-site or off-site circulation; or
- (4) The proposed use involves the storage or handling of chemicals or hazardous substances.

B. All such changes of use shall require site plan approval prior to issuance of any required municipal permits.

C. A signed affidavit stating that the proposed use does not meet any of the above criteria must be submitted to the City Zoning Officer prior to issuance of a certificate of occupancy.

ADD:

§ 29-10.6. Community Impact Statement.

The Planning Board or Zoning Board of Adjustment, whichever is appropriate, in its sole discretion, may, as a condition of preliminary major subdivision or site plan approval, require the applicant to prepare, at his own expense, a Community Impact Statement describing and explaining the impact and effect of the proposed land development upon the City's educational system and other municipal facilities. The Board shall retain the right to select a qualified consultant to prepare a Community Impact Statement. In determining whether or not such a statement shall be required, the Board in question shall give consideration to the character and size of the development and the recommendations of the City's Board of Education, if any.

§ 29-10.7. Traffic Impact Statement.

- a. The Planning Board, Zoning Board of Adjustment, whichever is appropriate, in its sole discretion, may require the applicant to prepare, at his own expense, a Traffic Impact Statement describing and explaining the impact and effect of the proposed land development upon all roads which are adjacent to or immediately affected by traffic. The Board shall retain the right to select a qualified consultant to prepare a Traffic Impact Statement. Such report shall be a requirement for all proposed developments generating 100 or more peak hour trips during the morning and evening as analyzed using the most recent edition of the Trip Generation Handbook of the Institute of Transportation Engineers, or as otherwise required by the reviewing Board.
- b. The Traffic Impact Statement shall be prepared by a person or persons having appropriate experience and background, and shall identify all relevant sources of information used in the preparation of said statement and shall, at a minimum, address the following:
 1. Existing/Background conditions in the vicinity of the proposed project including:
 - a) Roadway network.
 - b) Representative Traffic Count, not during holiday or summer periods.
 - c) Traffic Accident Statistics.
 - d) Availability of public transportation.
 - e) Level of Service of adjacent roadway.
 2. Traffic Generated by the proposed development including:
 - a) Trip Generation.
 - b) Trip Distribution.
 - c) Modal Split.
 - d) Trip Assignment.
 - e) Level of Service under proposed conditions.
 3. Traffic impacts caused by the proposed development as per change in existing conditions.
 4. Explanation of Traffic Reduction/Traffic Management Plans necessary pursuant to any current Federal, State or County requirements, and, where applicable, proposed interaction with appropriate County Transportation Management Areas (TMA).
 5. Recommendations for alleviating or diminishing any possible congestion or disruption to the established traffic pattern.
 6. Any other information requested by the appropriate board reasonably required to make an informed assessment of potential traffic impacts of a proposed development.
 7. Disposition. The Board shall not approve any submission unless it determines and finds that the proposed development will not result in appreciable harmful effects to traffic.

§ 29-11.6 Shade Trees and Planting Strips.

- a. Shade trees shall be provided in all residential subdivisions. Trees shall be planted within the subdivision along each side of the street at proper intervals and in types, sizes and locations conducive to healthy growth with graded and seeded or sodded planting strips and according to any standards adopted by the City Council or City Shade Tree Commission so as not to interfere with street paving, sidewalks, or utilities.
- b. All trees should be of nursery stock of an approved species grown under the same climatic conditions as at the location of the development. They shall be of symmetrical growth, free of insect pests and disease, suitable for street use, durable under the maintenance contemplated, and approved by the City Shade Tree Commission.

§ 29-11.9 – Landscaping and buffers for parking areas.

- a. All open areas not utilized for parking areas, driveways, streets or roads, recreational facilities, patios or terraces shall be provided with lawns or other suitable growing ground cover, trees and shrubs.
 - b. Continuous evergreen screening may be required along the tract boundary line, such screening to be no less than three feet high when planted. In addition, the Planning or Zoning Board of Adjustment may, if conditions warrant, require supplemental screening by a solid fence up to six feet in height.
 - c. Shade trees shall be provided along walks, driveways, parking areas, streets and roads. Screening or buffers, consisting of berms, fencing and/or landscaping may be required around recreation, parking, utility and refuse disposal areas and around other similar areas at the discretion of the Planning Board.
 - d. All landscaping shall be maintained in good condition and shall be replaced where necessary. Where yards, patios and gardens in multifamily developments are shielded with masonry walls, such walls shall conform architecturally to and be of similar materials as the principal buildings in the development.
 - e. Not less than 10% of the area of each parking area in excess of 20,000 square feet shall be suitably landscaped to minimize noise, glare and other nuisance characteristics as well as to enhance the aesthetics, environment and ecology of the site and surrounding area.
 - f. Off-street parking areas shall be effectively screened by a berm, fence or wall not less than two to three feet in height, maintained in good condition; or a screening hedge or other natural landscaping. The screening as required by this section may be waived by the Board if, in its judgment, because of topographic or other unusual conditions, said screening is not necessary to protect adjoining property.
 - g. Parking lots in excess of 20,000 square feet shall be planted with trees at a rate of one (1) tree per twelve (12) spaces. Parking shall not extend more than twenty (20) spaces without a tree island break.
 - h. Whenever an off-street parking area exceeds one hundred (100) spaces, the area shall be divided into at least (3) sections with each section being separated by a curbed divided strip, a minimum of ten to fifteen (10-15) feet wide, landscaped with canopy trees as provided in such divider strip to provide adequate and safe lighting for the site. Such divider strip shall also be designed with a pedestrian route similar to a sidewalk which will provide safe access from the off-street parking area to the principal buildings on the site.
 - i. At time of parking lot construction and planter installation, all planter islands shall be excavated to the full width of the parking planter island and through the full depth of compacted subgrade to remove all compacted material, or other material harmful to plant health, and backfilled with clean planting fill.
 - j. Pedestrian walkways shall be landscaped with additional shade or ornamental trees equal to an average of one (1) shade tree per fifty (50) linear feet of walkway, unless the walkway is adjacent or included within an existing compliant buffer or frontage planting. One (1) shade tree shall be planted for each two-hundred (200) square feet of separate additional landscaped area.
- b. Landscape Buffers facing Route 1/9 shall meet the following guidelines.
1. A fifteen (15) to twenty (20) foot landscape buffer shall be required along the right-of-way and shall include canopy trees and groundcover. Optional understory and shrubs are permitted within the buffer and must follow the standards provided herein.
 2. The buffer along public streets shall include a berm ranging in height from one (1) to two (2) feet, maintaining a two (2)-foot height for at least forty (40) percent of the overall length. The course and base of the berm shall meander where possible and have side slopes no greater than 4:1.
 3. Buffers smaller than ten (10) feet may be permitted by approval from the Board of Jurisdiction.
 4. Permitted features within front buffers – sidewalks, signs, low wall and ‘wrought iron’ picket fences, Additional features such as a knee walls and decorative ‘wrought iron’ picket fencing are permissible

with the following standards.

a. Frontage wall- Up to one third of the required percentage may consist of frontage walls. The frontage wall shall be a minimum height of eighteen (18) inches with a maximum height of twenty (24) inches and a minimum width of twelve (12) inches. The wall shall be constructed of stone, brick or stucco. The material shall complement the primary building's architecture.

5. Prohibited features in front landscape buffers – chain-link, wood or PVC fences, walls greater than two (2) feet, loading, service or dumpsters areas or similar items may not be placed in the front buffer or in any additional 'open space' adjacent to the street or any direction visible from the street.

§ 29-11.13 Bicycle Racks.

- a. Bicycle racks shall be provided for all multifamily and nonresidential developments at the ratio of one bicycle space for each dwelling unit and one bicycle space for each 50 off-street parking spaces. At a minimum, bicycle parking for at least 3 bicycles shall be provided.

§ 29-11.14 Structured parking.

- a. The facades of structured parking shall be disguised facing public streets, public parking lots, plazas, and other locations that are highly visible from the public right-of-way using all of the following components.
- b. Design of parking façades shall be integrated into the design of the building, and shall be architecturally integrated with the building façade both horizontally and vertically. Parking façades shall be broken into structural bays, following the bay pattern of the building.
- c. The same type and quality of materials used elsewhere in comparable portions of building facades shall be employed for parking area facades.
- d. All garage areas shall include regular window-type openings. The openings shall either appear as larger 'storefront' windows or mimic the upper-floor window typology of the buildings in which they are located. Garage façade openings shall be designed to shield possible vehicle headlamp glare and leakage to adjacent streets, driveways, or residential units by means of translucent glass, spandrel glass, or planted trellises.
- e. Translucent glazing and/or trellises with plantings shall be used to add visual interest to parking garage window openings. Trellises should provide a variety of textures, colors, and species; the plantings should remain green at all seasons of the year. Decorative window grilles are encouraged as well.
- f. Where structured parking is located adjacent to a street at the ground floor or a public parking lot, a planter or a planting bed shall be provided next to the building facade, with minimum depth three (3) feet measured perpendicular to the façade, to soften the parking visibility.

§ 29-11.15. Building facades facing the street.

1. Applicability.

- a. All nonresidential buildings in the C-1, C-2(40), C-2 (60), C-2 (100), SA-1 and SA-2 districts, whether newly constructed or substantially improved, shall comply with the regulations in this section.
- b. The project architect will be responsible for providing sufficient drawings, calculations and general notes to specifically identify how the proposed building complies with the regulations set forth below.
- c. The word "facade" as used in this section refers to the building wall facing the street. In most instances, this will only be the front wall. In the case of a corner building, the regulations apply to both building walls facing the street.

2. Regulations.

- a. Materials.

1. To be used over at least 70 percent of the non-glazed portion of the building facade:
 - i. Standard brick masonry.
 - ii. Stone (e.g., brownstone, limestone, sandstone).
 - iii. Metal.
 2. To be limited to less than 30 percent of the non-glazed portion of the building facade:
 - i. Wood or materials designed to simulate the appearance of wood.
 - ii. Synthetic stucco systems or exterior insulation and finish systems.
 - iii. Cement stucco.
- b. Articulation. Variation in the surface is to be achieved with a combination of some or all of the following features: bay windows, balconies, stoops and vertical and/or horizontal demarcations as stipulated below:
1. Vertical demarcations.
 - i. A vertical demarcation shall be required at every 25 linear feet or less of building facade.
 - ii. A vertical demarcation having a depth of at least four feet shall be required for every 100 linear feet of building facade.
 - iii. Horizontal demarcations shall be required for any building taller than three stories. A horizontal demarcation may be achieved by such elements as a cornice line, a course of brick or stone which projects or is differently colored or differently laid, or a floor (such as the ground floor) which has a different material from the main facade.
 - c. Fenestration.
 1. Glazing shall represent at least 30 percent of the total facade area.
 - d. Doorway.
 - e. An active doorway shall face a public street.

§ 29-11.16. Building surfaces other than street facades.

1. Applicability.
 - a. All nonresidential buildings in the C-1, C-2(40), C-2 (60), C-2 (100), SA-1 and SA-2 districts, whether newly constructed or substantially improved, shall comply with the regulations in this section.
 - b. The project architect will be responsible for providing sufficient drawings, calculations and general notes to specifically identify how the proposed building complies with the regulations set forth below.
2. Materials.
 - a. To be used over at least 25 percent of any exterior wall other than a street facade:
 - i. Standard brick masonry.
 - ii. Stone (e.g., brownstone, limestone, sandstone).
 - b. To be limited to less than 75 percent of any exterior wall other than a street facade:
 - i. Wood.
 - ii. Synthetic stucco systems or exterior insulation and finish systems.
 - iii. Cement stucco.

3. Articulation. Horizontal demarcations shall be required for any building taller than three stories. A horizontal demarcation may be achieved by such elements as a cornice line, a course of brick or stone which projects or is differently colored or differently laid, or a floor (such as the ground floor) which has a different material from the main facade.

§ 29-22. Performance Guarantee

In the event that an applicant obtains site plan approval and thereafter applies for a certificate of occupancy without having first completed the improvements required by the approved site plan, the approving board, upon application, may authorize a certificate of occupancy to be issued if the applicant first supplies to the City a performance guaranty with sufficient sureties, in a form satisfactory to the board Attorney, in an amount sufficient in the opinion of the City Engineer and Construction Official to ensure the completion of the improvement shown on the approved site plan.

§ 29-23. Inspection Fees

Delete 29-10.5-19. After completing the construction

(1) Inspection fees shall be charged only for actual work shown on a subdivision or site plan required by the City. Professionals inspecting improvements under construction shall charge only for inspections that are reasonably necessary to check the progress and quality of the work and such inspections shall be reasonably based on the approved development plans and documents.

(2) The developer shall be required to deposit funds into an escrow account for the inspection fees pursuant to Subsection 25-3.4c.

(3) The amount of monies to be deposited with the City shall be as set forth in Subsection 25-3.4b of this Chapter.

(4) The terms and provisions of Subsection 25-3.4-a, 2(d), Inspection-Fees, shall apply to those inspection fees paid to the City under the terms and provisions of a Land Use Developer's Agreement, if any, whereby it was agreed by the developer that said inspection fees would be treated as a flat, non-escrow inspection fee.

(e) Refund of Monies in Escrow Account. The following close out and refund procedure shall apply to all deposits and escrow accounts established under the provisions of the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., and shall commence after the City has granted final approval and signed the subdivision plat or site plan, in the case of application review escrows and deposits, or after the improvements have been approved, in the case of improvement inspection escrows and deposits and the City has further determined that there is no longer any need to retain any escrow account:

(1) The applicant shall send written notice by certified mail to the City Chief Financial Officer and to the Engineering Department, as well as to the relevant City professional, that the application or the improvements, as the case may be, are completed.

(2) After receipt of such notice, the professional shall render a final bill to the Chief Financial Officer within thirty (30) days and shall send a copy simultaneously to the applicant.

(3) The Chief Financial Officer shall render a written final accounting to the applicant on the uses to which the escrow account deposit was put within forty five (45) days after the receipt of the final bill.

(4) Any balances remaining in the deposit or escrow account, including interest in accordance with the requirements of N.J.S.A. 40:55D-53.1, shall be refunded to the developer along with the final accounting.

(5) In the event that an applicant requests a refund of any balances remaining in a deposit or escrow account and it is necessary for the City to provide additional professional services or inspection services relating to that development application, it will be necessary for developer to post a new deposit or escrow amount pursuant to this Ordinance as if it were a new development application.

(6) The City shall not be required to refund an amount of interest paid on a deposit which does not exceed one hundred (\$100.00) dollars for the year. If the amount of interest exceeds one hundred (\$100.00) dollars, that entire amount shall belong to the developer and shall be refunded to him by the City annually or at the time the deposit is repaid or applied to the purposes for which it was deposited, as the case may be; except that the City may retain for administrative expenses a sum equivalent to not more than thirty-

three and one-third (33 1/3%) percent of that entire amount, which shall be in lieu of all other administrative and custodial expenses pertaining to the escrow account.

(f) Dispute of Charges.

(1) An applicant shall notify in writing the City Council with copies to the Chief Financial Officer, the approving authority and the professional whenever the applicant disputes the charges made by a professional for services rendered to the City in reviewing applications for development, review and preparation of documents, inspection of improvements, or other charges made pursuant to the provisions of P.L. 1975, c. 291 (C. 40A:55D-1, et seq.).

(2) The governing body or its designee shall, within a twenty-one (21) day period attempt to remediate any disputed charges. In the event that the matter is not resolved to the satisfaction of the applicant, the applicant may appeal, in writing, to the County Construction Board of Appeals established under Section 9 of P.L. 1975, c. 217 (N.J.S.A. 52:27D-127).

(3) An applicant filing an appeal shall simultaneously send a copy to the City approving agency, and any professional whose charge is the subject of the appeal.

(4) Any appeal shall be filed within forty-five (45) days from receipt of the informational copy of the professional's voucher, except that if the professional has not supplied the applicant with the informational copy of the voucher, then the applicant shall file his appeal within sixty (60) days from receipt of the municipal statement of activity against the deposit or escrow account.

(5) During the pendency of any appeal, the municipality or approving authority shall continue to process, hear and decide the application for development, and to inspect the development in the normal course, and shall not withhold, delay or deny reviews, inspections, signing of subdivision plats or site plans, the reduction or the release of performance or maintenance guarantees, the issuance of construction permits or certificates of occupancy, or any other approval or permit because an appeal has been filed or is pending under this subsection. The Chief Financial Officer of the municipality may pay charges out of the appropriate escrow account or deposit for which an appeal has been filed. If a charge is disallowed after payment, the Chief Financial Officer of the municipality shall reimburse the deposit or escrow account in the amount of any such disallowed charge or refund the amount to the applicant. If a charge is disallowed after payment, the Chief Financial Officer of the municipality shall reimburse the deposit or escrow amount in the amount of any such disallowed charge or refund the amount to, the applicant. If a charge is disallowed after payment to a professional or consultant who is not an employee of the municipality, the professional or consultant shall reimburse the municipality in the amount of any such disallowed charge.

b. Non-Refundable Inspection Fees.

1. Minor Site Plan. No inspection fee shall be required for a minor site plan unless bonded improvements are required as part of the site plan approval. If a minor site plan requires bonded improvements an inspection fee of three hundred fifty (\$350.00) dollars shall be paid by the applicant.

2. Major Site Plan. Required inspection fees shall be paid prior to issuance of a development permit or signing of a final plat or, when authorization has been granted pursuant to the provisions of this Chapter, prior to the start of construction of any improvements before final plat approval. Such fees shall be paid for the section or sections for which final approval has been granted or in which the developer proposes to install improvements prior to final approval.

Inspection fees for Major Site Plan shall be:

(a) The same as those required for Major Subdivisions for all bonded improvements.

(b) Sixty-five (65%) percent of those set forth for Major Subdivisions for the balance of all site improvements not included in a. above.

3. Off-Site Public Improvements in Connection with Site Plans or Subdivisions. Inspection fees shall be the same as those required for Major Subdivisions.

4. Major Subdivisions. Required inspection fees shall be paid prior to issuance of a development permit or signing of a final plat, or where authorization has been granted pursuant to the provisions of this Chapter, prior to the start of construction of any improvements before final plat approval. Such fees shall be paid for the lots in the section or sections granted in which the developer proposes to install improvements prior to final approval.

Inspection fees for Major Subdivisions shall be determined from the following table:

Estimated Cost of Improvements	Inspection Fee (% of the Estimated Cost of Improvements)
Less than \$10,000	Ten percent (\$350.00 min.)

Estimated Cost of Improvements	Inspection Fee (% of the Estimated Cost of Improvements)
\$10,000 but less than \$50,000	\$1,000 + 8% of excess over \$10,000
\$50,000 but less than \$150,000	\$4,500 + 7% of excess over \$50,000
\$150,000 but less than \$500,000	\$12,000 + 6% of excess over \$150,000
\$500,000 but less than \$1,000,000	\$34,000 + 5% of excess over \$500,000
\$1,000,000 but less than \$3,000,000	\$60,000 + 4 1/2% of excess over \$1,000,000
\$3,000,000 or more	\$150,000 + 4% of excess over \$3,000,000

c. Additional Inspection Fee Escrow for Excess City Expenses.

1. If the Municipal Agency determines that a proposed development involves unusual or complicated aspects which could result in expenses to the City in excess of the inspection fees set forth above, the Municipal Agency may, as a condition of final approval, require the developer to provide an additional escrow deposit. Expenses in excess of the normal inspection fees may be deducted from the escrow deposit. Any balance shall be returned to the applicant upon release of performance guarantees and/or issuance of a final certificate of occupancy. In determining the amount of any escrow required, the Municipal Agency may consider: the duration and size of the project; unusual design aspects; the degree and extent of municipal inspection required and the extent of conformity to normal municipal design standards.

2. For those developments for which the reasonably anticipated fees are less than ten thousand (\$10,000.00) dollars, fees may, at the option of the developer, be paid in two (2) installments. The initial amount deposited by a developer shall be fifty (50%) percent of the reasonably anticipated fees. When the balance on deposit drops to ten (10%) percent of the reasonably anticipated fees because the amount deposited by the developer has been reduced by the amount paid to the Municipal Engineer for inspection, the developer shall deposit the remaining fifty (50%) percent of the anticipated inspection fees. For those developments for which the reasonably anticipated fees are ten thousand (\$10,000.00) dollars or greater, fees may, at the option of the developer, be paid in four (4) installments. The initial amount deposited by a developer shall be twenty-five (25%) percent of the reasonably anticipated fees. When the balance on deposit drops to ten (10%) percent of the reasonably anticipated fees because the amount deposited by the developer has been reduced by the amount paid to the Municipal Engineer for inspection, the developer shall make additional deposits of twenty-five (25%) percent of the reasonably anticipated fees. The Municipal Engineer shall not perform any inspection if sufficient funds to pay for those inspections are not on deposit.

Section 3. That Chapter XXXI, Zoning, shall be and the same is hereby amended as follows:

§ 31-2 Definitions (Add the following definitions)

For the purpose of this chapter, unless the context clearly indicates a different meaning, the term "shall"

indicates a mandatory requirement, and the term "may" indicates a permissive action. The singular shall also mean the plural, and "person" shall also mean other legal entities.

ABUTTING COUNTY ROAD — Any existing or proposed county road shown on the adopted County Master Plan or Official Map, which adjoins or lies within a lot or parcel of land submitted for subdivision or site plan approval.

ACCESSORY BUILDING — A building detached from and subordinate to the principal building on a lot and used for purposes customarily incidental to those of the principal building. (See **ACCESSORY STRUCTURE** and **ACCESSORY USE**.)

ACCESSORY STRUCTURE — A structure detached from a principal building located on the same lot and customarily incidental and subordinate to the principal building or use. (See also **ACCESSORY BUILDING** and **ACCESSORY USE**)

ACCESSORY USE — A use of land or of a building or structure or portion thereof customarily incidental and subordinate to the principal use of the land, building or structure and located on the same lot as the principal use. (See also **ACCESSORY BUILDING** and **ACCESSORY STRUCTURE**.)

ADVERSE DRAINAGE CONDITION — The absence of drainage facilities, drainage easements or drainage rights-of-way leading to, along or through a street, road, drainage structure or property, either within or exterior to a proposed subdivision or site plan, of such location, size, design, construction or condition which would provide adequately for storm drainage or which would prevent flooding, erosion, silting or other damaging effect to a street, road, drainage structure or property or which would remove the threat of such damage.

ALTERATIONS — Any change or rearrangement in the supporting members of an existing building, such as bearing walls, columns, beams, girders, or interior partitions, as well as any change in doors, windows, means of ingress or egress, or any enlargement to or diminution of a building or structure, whether horizontally or vertically, or the moving of a building or structure from one location to another. Normal repairs and maintenance shall not be considered as alterations.

ANIMAL HOSPITAL — A place where animals or pets are given medical or surgical treatment. Use as a kennel shall be limited to short-term boarding and shall be incidental to such hospital use.

ANIMAL KENNEL — Any building, structure or premises in which animals are kept, boarded, bred or trained for commercial gain.

APPROVED PLAN — A plan which has been granted final approval of the Planning Board or Board of Adjustment of the City of Linden.

AREA OF SHALLOW FLOODING — A designated AO or VO Zone on a community's Flood Insurance Rate Map (FIRM), with base flood depths from one to three feet, where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate and where velocity flow may be evident.

AREA OF SPECIAL FLOOD HAZARD — The land in the floodplain within a community subject to a one-percent or greater chance of flooding in any given year. This area is also called the "floodplain" or "flood-prone area."

ARTIST AND ARTISAN STUDIO OR WORKSHOP — An establishment wherein persons skilled in the fine arts such as drawing, painting or sculpture, or persons with special skills or trade in the manual arts, such as pottery, glass blowing and jewelry-making, work or carry out light manufacturing or repairs.

ASSEMBLY AND PACKAGING FACILITY — Activities and uses such as those that involve the assembly and sale of pre-manufactured components, telemarketing, personal storage facilities, and other similar commercial activities which have minimum environmental impact, are largely conducted within entirely enclosed structures.

ASSISTED LIVING FACILITY — Residences for the frail elderly that provide rooms, meals, personal care and the supervision of self-administered medication, and may in addition provide recreational activities, financial services and transportation for the residents.

ATTACHED HOUSE — A dwelling unit, located on its own lot, that shares one or more common or

abutting walls with one or more dwelling units. The common or abutting wall must be shared for at least 75 percent of the length of the side of the building. The shared or abutting walls may be any wall of the buildings, including the walls of attached garages. An attached house does not share common floor/ceilings with other dwelling units. An attached house is also commonly referred to as a rowhouse or a common-wall house.

ATTIC — The space between the ceiling beams of the top story and the roof rafters

ATTIC STORY — An attic having, within its space, possible floor area with headroom of five feet or greater over sixty (60) percent or more of the story directly beneath.

AVIATION USES — Facilities primarily engaged with the landing and takeoff of flying vehicles, including loading and unloading areas, which also includes terminals for aircraft.

AWNING — A roof-like cover that projects from a wall of a building for the purpose of shielding a doorway or window from the elements.

BANNER — A flexible substrate on which copy or graphics may be displayed.

BASE FLOOD — The flood having a one-percent chance of being equaled or exceeded in any given year.

BASE FLOOD ELEVATION — The highest elevation, expressed in feet above sea level, of the level of floodwaters occurring in the regulatory base flood.

BED AND BREAKFAST ESTABLISHMENT — A building that contains a minimum of two units utilized for lodging and a morning meal for transient guests in exchange for compensation.

BOARDING HOME FOR SHELTERED CARE — An establishment licensed by the New Jersey State Department of Health to operate as a "boarding home for sheltered care."

BOARDINGHOUSE or ROOMING HOUSE — A dwelling which contains sleeping accommodations for more than two but not more than eight persons who are not members of a family as defined in this article. The term "rooming house" shall be deemed to include lodging house and boardinghouse, but not hotel or any accommodations for transient occupancy.

CABARET OR NIGHTCLUB — Any room, place, space or premises operated as a commercial establishment in which eating and/or drinking may take place and in which there is also provided entertainment. Such entertainment may include music by a live musician or musicians, or any mechanical, electronic or other means, such as records, laser discs, audio or videotapes or other audio or audiovisual means; this does include the operation of a motion-picture theater. Also included as entertainment are any act, play, burlesque show, revue, pantomime, scene, dance act or song-and-dance act participated in by one (1) or more employees, guests, customers or any other person or persons. For the purpose of this definition, background piped-in music shall not be deemed as a form of entertainment.

CAPITAL IMPROVEMENT — A governmental construction project or acquisition of equipment or real property.

CAR DEALER, NEW — An establishment primarily engaged in the factory authorized retail sale of new cars; permitted accessory uses are the maintenance of a service and repair shop, the retail sale of used cars, car parts and accessories and the sale of used, new and unused light vehicles other than cars.

CAR DEALER, USED — An establishment solely engaged in the sale of used cars.

CARPORT — A roofed structure providing space for the parking of motor vehicles and enclosed on not more than three sides.

CERTIFICATION — A signed, written statement by the appropriate officer that specific constructions, inspections, tests or notices, where required, have been performed and that such comply with this chapter.

CHANGE OF USE — A change from any use listed in §29-5.9 of this chapter to any other use, or from any use not listed to any other use.

CHANNEL — A watercourse with a definite bed and banks which confine and conduct continuously or intermittently flowing water.

CHECK CASHING STORE — An establishment primarily engaged in the business of cashing of checks for individuals and not offering the full range of financial services normally associated with a bank.

COMMERCIAL OR INDUSTRIAL CENTER — A group of commercial or industrial establishments planned, developed and managed as a unit in a building or buildings and utilizing such common facilities as customer parking areas, pedestrian walks, truck loading and unloading space and utilities and sanitary facilities.

COMMERCIAL RECREATION — SEE RECREATION, COMMERCIAL

COMMERCIAL VEHICLE or COMMERCIAL LIGHT VEHICLE — Any such currently registered and operational motor vehicle containing advertising, signs, lettering, names or addresses, other than trademarks and labels of manufacturer and dealer, but not including any omnibus, school bus or school vehicle as defined by Title 39 of the New Jersey Revised Statutes.

COMMON OWNERSHIP — Ownership of two or more contiguous parcels of real property by one person or by two or more persons owning such property jointly.

COMPLETE APPLICATION — An application form completed as specified by Chapter 29 and the rules and regulations of the Boards and all accompanying documents required for approval of the application for development.

CONDITIONAL USE — A use permitted in a particular zoning district only upon showing that such use in a specified location will comply with the conditions and standards for the location or operation of such use as contained in this chapter and upon the issuance of an authorization therefor by the Planning Board.

CONVENIENCE STORE — Establishments that sell a range of everyday items such as groceries, prepared food for off-site consumption, toiletries, alcoholic and soft drinks, tobacco products, newspapers and may offer money order and wire transfer services.

COUNTY MASTER PLAN — A composite of the plan elements for the physical development of Union County, with the accompanying maps, plats, charts and descriptive and explanatory matter adopted by the County Planning Board pursuant to N.J.S.A. 40:27-2 and N.J.S.A. 40:27-4.

COUNTY PLANNING BOARD — The Union County Planning Board.

COURT — Any open, unoccupied area which is bounded by three or more building walls.

COURT, INNER — An open area, unobstructed from the ground to the sky, which is bounded on more than three sides by the exterior walls of one or more buildings.

COURT, OUTER — An open space unobstructed from the ground to the sky which is bounded on not more than three sides by the exterior walls of one or more buildings.

CUL-DE-SAC — The turnaround at the end of a dead-end street.

CULVERT — A structure with a clear span of 20 feet or less under a driveway, road, railroad or pedestrian walk, not incorporated in a closed system.

CUT — Portion of land surface or area from which earth has been removed or will be removed by excavation; the depth below original ground surface or excavated surface.

DATA CENTERS — A space dedicated to the processing of data in servers and/or associated computer equipment which is not intended, designed or used for human occupancy due to computer operations, HVAC limitations, fire suppression system requirements and/or other physical or system constraints.

DATA PROCESSING AND COMMUNICATION STUDY ESTABLISHMENTS - A space containing computers, computer equipment, data processing equipment and/or related equipment which is intended, designed and used for human occupancy.

DAYS — Calendar days.

DEAD-END STREET — A street or portion of a street which is accessible by a single means of ingress or egress.

DEDICATION FOR STREET PURPOSES — A dedication of land for construction, reconstruction, widening, repairing, maintaining or improving a street, public or private, and for the construction, reconstruction or alteration of facilities related to the safety, convenience or carrying capacity of said street, including but not limited to curbing, pedestrian walkways, drainage facilities, traffic control devices and utilities in or along road rights-of-way.

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 person having an enforceable proprietary interest in such land.

DELICATESSENS - establishments primarily engaged in providing food services (except snack and nonalcoholic beverage bars) where patrons generally order or select items and pay before eating. Food and drink may be consumed on premises, taken out, or delivered to the customer's location. Some establishments in this industry may provide these food services in combination with selling alcoholic beverages.

DEDICATION FOR STREET PURPOSES — A dedication of land for construction, reconstruction, widening, repairing, maintaining or improving a street, public or private, and for the construction, reconstruction or alteration of facilities related to the safety, convenience or carrying capacity of said street, including but not limited to curbing, pedestrian walkways, drainage facilities, traffic control devices and utilities in or along road rights-of-way.

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 person having an enforceable proprietary interest in such land.

DISTRIBUTION CENTERS — Includes the warehousing and distribution of goods, provided that up to 10% of the gross floor area of any "distribution center" may be used for executive or administrative office uses ancillary to the warehouse distribution uses. Warehousing in "office distribution centers" shall not include the storage of fuels, hazardous materials, hazardous waste, highly flammable liquids or gases or petrochemical products. All warehousing and storage of goods shall be conducted entirely within enclosed structures and buildings. "Distribution centers" shall not include mini warehouses or similar uses or truck depots or similar uses.

DRAINAGE — The removal of surface water or groundwater from land by drains, grading or other means, and includes control of runoff to minimize erosion and sedimentation during and after construction or development and the means necessary for water supply preservation or prevention or alleviation of flooding.

DWELLING, ATTACHED — A one-family dwelling attached to two or more one-family dwellings by common vertical walls.

DWELLING, DETACHED — A dwelling which is not attached to any other dwelling.

ELECTRONIC MESSAGE CENTER OR SIGN (EMC) - An electrically activated changeable sign whose variable message and/or graphic presentation capability can be electronically programmed by computer from a remote location. Also known as an EMC. EMCs typically use light emitting diodes (LEDs) as a lighting source. (See also following terms principally associated with Electronic Message Centers: Display Time, Dissolve, Dynamic Frame Effect, Fade, Frame, Frame Effect, Scroll, Transition, Travel)

Display Time – The amount of time a message and/or graphic is displayed on an Electronic Message Sign.

Dissolve – A mode of message transition on an Electronic Message Sign accomplished by varying the light intensity or pattern, in which the first message gradually appears to dissipate and lose legibility with the gradual appearance and legibility of the second message.

Dynamic Frame Effect – An Electronic Message Sign frame effect in which the illusion of motion and/or animation is used.

Fade – A mode of message transition on an Electronic Message Sign accomplished by varying the light intensity, where the first message gradually reduces intensity to the point of not being legible and the subsequent message gradually increases intensity to the point of legibility.

Frame – A complete, static display screen on an Electronic Message Sign.

Frame Effect – A visual effect on an Electronic Message Sign applied to a single frame. See also Dynamic Frame Effect.

Scroll – A mode of message transition on an Electronic Message Sign in which the message appears to move vertically across the display surface.

Transition – A visual effect used on an Electronic Message Sign to change from one message to another.

Travel – A mode of message transition on an Electronic Message Sign in which the message appears to move horizontally across the display surface.

ELEVATED BUILDING — A non-basement building built, in the case of a building in an area of special flood hazard, to have the top of the elevated floor, or, in the case of a building in a coastal high-hazard area, to have the bottom of the lowest horizontal structural member of the elevated building or structure above the ground level by means of piling, columns (posts and piers) or shear walls parallel to the flow of the water and adequately anchored so as not to impair the structural integrity of the building during a flood of up to the magnitude of the base flood.

(a) In an area of special flood hazard, "elevated building" also includes a building elevated by means of fill or solid foundation perimeter walls with openings sufficient to facilitate the unimpeded movement of floodwaters.

(b) In areas of coastal high hazard, "elevated building" also includes a building otherwise meeting the definition of "elevated building" even though the lower area is enclosed by means of breakaway walls.

EXISTING GRADE — The vertical location of the ground surface prior to excavating or filling.

Remove existing definition of FAMILY and replace with:

FAMILY — One or more persons related by blood, marriage or adoption and foster children placed by the New Jersey Board of Child Welfare or a duly incorporated child-care agency, living together as a single housekeeping unit, and not more than two roomers or boarders; or a group of persons, not necessarily related by blood or marriage, living together as a bona fide, single nonprofit housekeeping unit.

FAMILY DAY CARE — A private residence which is registered as a family day-care home pursuant to the Family Day Care Provider Registration Act, P.L. 1987, c. 27 (N.J.S.A. 30:5B-16 et seq.) and is further defined as a private residence in which child-care services are provided for a fee and not less than three and no more than five children at one time for no less than 15 hours per week; except that the division shall not exclude a family day-care home with less than three children from voluntary registration.

FINE ART SCHOOLS — Establishments primarily engaged in offering instruction in the arts, including dance, art, drama, and music.

FLOOD DAMAGE POTENTIAL — The susceptibility of a specific land use at a particular location to damage by flooding and the potential of the specific land use to increase off-site flooding or flood-related damages.

FLOOD or FLOODING — A general and temporary condition of partial or complete inundation of normally dry land areas from:

(a) The overflow of inland or tidal waters.

(b) The unusual and rapid accumulation or runoff of surface waters from any source.

FLOOD FRINGE AREA — That portion of the flood hazard area outside of the floodway based on the total area inundated during the regulatory base flood, plus 25% of the regulatory base flood discharge.

FLOOD HAZARD AREA — The floodplain, consisting of the floodway and the flood fringe area.

FLOOD HAZARD DESIGN ELEVATION — The highest elevation, expressed in feet above sea level, of the level of floodwaters which delineates the flood fringe area.

FLOOD INSURANCE RATE MAP — The official map on which the Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

FLOOD INSURANCE STUDY — The official report in which the Federal Insurance Administration has provided flood profiles, the Flood Boundary and Floodway Map and the water surface elevations of the base flood.

FLOODPLAIN — The same as the "flood hazard area," and shall include Zones A-1 through A-30 on the Flood Insurance Rate Map.

FLOODWAY — The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than 0.2 foot.

FLOOR AREA, RATIO — The ratio of the gross floor area of all buildings on a lot to the lot area.

FLY ASH — Particles of gas borne matter, not including process material, arising from the combustion of solid fuel such as coal or wood.

GALLERIES, ART — establishments primarily engaged in retailing original and limited edition art works.

GASOLINE STATION, AUTOMOTIVE — A place where gasoline or other motor fuels are sold to the public and delivered directly into motor vehicles and which may also provide for the maintenance and service of motor vehicles or the sale and installation of motor vehicle equipment and accessories.

GOVERNING BODY — The City Council of the City of Linden.

GOVERNMENT AGENCY — Any department, commission, independent agency or instrumentality of the United States and of the State of New Jersey and of any country, city, City, village, authority, district or other governmental unit.

GRADE, FINISHED — The final grade or elevation of the ground surface conforming to the proposed design.

GRADE PLANE — Shall be defined as follows:

A. Areas Located Outside the Flood Hazard Area: A reference plane representing the average of the finished ground level adjoining the building at all exterior walls. Finished grade shall be preconstruction grade on level sites and not in excess of two (2) feet above the preconstruction grade on the upland side(s) of a structure on sloping sites.

B. Areas or Portions of the Building Area of a Lot Located Within the Flood Hazard Area: The reference plane shall be the more restrictive of the base flood elevation or advisory base flood elevation of the flood hazard area plus one (1) foot.

GRADING — Any stripping, culling, filling, stockpiling or any combination thereof, including the land in its cut or filled condition.

HAZARDOUS MATERIALS — Includes but is not limited to inorganic mineral acids of sulfur, fluorine, chlorine, nitrogen, chromium, phosphorous, selenium and arsenic and their common salts; lead, nickel and mercury and their inorganic salts or metallo-organic derivatives; and coal tar acids, such as phenols and cresols and their salts.

HAZARDOUS WASTE — Those wastes that can cause or help to cause illness or death or that, in the absence of proper management, represent a significant threat to either human health or the environment based upon the criteria of ignitability, corrosivity, reactivity and toxicity as established by the United States Environmental Protection Agency (EPA), pursuant to the provision of the Resource Conservation and Recovery Act of 1976.

HEALTH CARE FACILITY — A facility which provides a full range of medical preventative, diagnostic, treatment and surgical services, excluding drug rehabilitation services, by a group of physicians to persons who come to the facility to receive medical services and depart from the facility on the same day, which may also include ancillary lab testing, pharmaceutical, food service and other support services.

HEIGHT — The vertical distance from the grade plane to the highest point of the roof surface of a building.

HIGHLY FLAMMABLE LIQUIDS OR GASES — Liquids or gases having a flash point of 100° F. (37° C.) or less or auto ignition temperatures of 1,040° F. (560° C.) or less.

HISTORIC SITE — Any building, structure, area or property that has been designated to be significant in the history, architecture, archeology or culture of this state, its communities or the nation pursuant to the New Jersey Municipal Land Use Law.

HOME OCCUPATION — An activity carried out for gain by a resident, conducted entirely within a dwelling unit, which is clearly incidental and secondary to the use of the lot for residential purposes. The term shall not include businesses or occupations such as the operation of a beauty parlor, barber shop, automobile repair servicing or body shop, convalescent or nursing home, insurance or real estate agency, boarding house, kennel or stable, massage parlor, dancing instructions, band instrument instructions in group, day care centers or nurseries, drug counseling centers, antique shops, restaurants, tea rooms, tourist homes, real estate offices, insurance offices, mortuary establishments, stores, trades or similar establishments offering services to the general public and veterinary hospitals.

HOSPITAL — An institution providing primary health services and medical or surgical care to persons suffering from illness, disease, injury and other physical or mental conditions and including as an integral part of the institution related facilities such as laboratories, outpatient facilities, training facilities, medical facilities and staff residences.

HOTEL — A building which contains six (6) or more Hotel Units which are designated and intended to be used, let or hired out for compensation for transient occupancy to the general public by reservation or walk-up without reservation, but in any case without lease, for occupancy in periods of not less than one (1) night and not more than 20 continuous nights; except that resident management shall not be subject to the occupancy limitation; and

(a) contains one or more public lobby or public registration (check in) and information stations (front desk) serving the guest rooms;

(b) provides access to all Hotel Units solely through one or more common public lobby areas via elevator or other conveyance system;

(c) has full-time on-site staff and management;

(d) provides amenities such as restaurants, banquet or dining rooms, conference rooms, swimming pools and other aquatic facilities as well room service, linen service and other elements normal and customary to a Hotel;

(e) maintains a published business phone number and, to the extent that such advertising is part of the Hotels business model, advertise daily rentals and hotel-like services to the general public.

HOTEL UNITS — Lodging units located within a Hotel which are designed, designated and intended to be used, let or hired out for compensation for transient occupancy to the general public by reservation or walk-up without reservation, but in any case without lease, for occupancy in periods of not less than one (1) night and not more than 20 continuous nights; except that resident management shall not be subject to the occupancy limitation. Each Hotel Unit shall contain, at a minimum, one (1) bedroom and one (1) separate bathroom, which shall be internal to the Hotel Unit; and

(a) shall consist of not less than 350 s.f. of net habitable floor area;

(b) shall contain no laundry facilities (other than an iron/ironing board);

(c) other than a coffee maker, small (typical bar size) refrigerator, microwave or honor bar, not more than 25% of the total number of Hotel Units shall contain facilities for the preparation, cooking or heating of food. Nothing herein shall prohibit the Developer locating Hotel Units without cooking facilities adjacent to and contiguous with Hotel Units with cooking facilities with a common door between units such that, when opened, a multi-bedroom suite is created. In such case, such door shall be independently lockable from both sides to provide for security when the units are not used as a suite.

This definition shall specifically be construed to prohibit Hotel Units from being occupied or otherwise used

as multiple dwellings as defined by the New Jersey Department of Community Affairs under the Hotel and Multiple-Dwelling Health and Safety Law. (N.J.S.A. 55:12A-1 et seq.)

HOUSEHOLD — A family living together in a single dwelling unit with common access to, and common use of, all living and eating areas and all areas and facilities for the preparation and storage of food within the dwelling unit.

IMPERVIOUS SURFACE — Any material which generally reduces or prevents absorption of stormwater into previously undeveloped land. Retention and detention basins and drywells allowing water to percolate directly into the ground shall not be considered as "impervious surfaces."

INDUSTRIAL SERVICE — Establishments that are primarily engaged in the repair or servicing of industrial, business or consumer machinery, equipment, products or by-products. Firms that service consumer goods do so by mainly providing centralized services for separate retail outlets. Contractors and building maintenance services and similar uses typically perform services off-site. Few customers, especially the general public, come to the site. Examples of Industrial Service Uses include but are not limited too: welding shops; machine shops; tool repair; electric motor repair; repair of scientific or professional instruments; sales, repair, storage, salvage or wrecking of heavy machinery, metal, and building materials; auto and truck salvage and wrecking; heavy truck servicing and repair; tire retreading or recapping; building, heating, plumbing or electrical contractors; trade schools where industrial vehicles and equipment, including heavy trucks, are operated; printing, publishing and lithography; exterminators; recycling operations; janitorial and building maintenance services; fuel oil distributors; solid fuel yards; research and development laboratories; drydocks and the repair or dismantling of ships and barges; laundry, dry-cleaning, and carpet cleaning plants; and photofinishing laboratories.

INTERESTED PARTY — In a criminal or quasi-criminal proceeding, any citizen of the State of New Jersey; in the case of a civil proceeding in any court or in an administrative proceeding before a municipal agency, any person, whether residing within or without the municipality, whose right to use, acquire or enjoy property is or may be affected by any action taken under this chapter or under any other law of this state or of the United States or has been denied, violated or infringed by an action or a failure to act under this chapter.

JUNK — Any scrap, waste, reclaimable material and debris, whether or not stored or used in conjunction with the dismantling, processing, salvage, storage, baling, disposal or other use or disposition. "Junk" may include, for purposes of illustration, vehicles, tires, vehicle parts, equipment, paper, rags, metal, glass, plaster, household appliances, wood, lumber, brush and building materials.

JUNKYARD — Any area, lot, parcel, building or structure used for the storage, sale, processing, abandonment or storage of junk.

LABORATORIES, RESEARCH — Limited to laboratories engaged in scientific investigation, testing or the production of factual information for industrial, commercial or institutional clients. No tangible or physical product for general marketing shall be directly produced therein, and no operation shall be conducted which would generate hazardous waste or by-products.

LAND DISTURBANCE — Any activity involving the clearing, cutting, excavating, filling, grading and any other activity which causes land to be exposed to the danger of erosion.

LIGHT VEHICLE

(a) Pedal-operated vehicles, motorcycles, mopeds and other similar vehicles.

(b) The following light motor vehicle classes, as recognized by the United States Environmental Protection Agency:

[1] Cars, including station wagons.

[2] Pickup trucks, but only those with a gross vehicular weight which does not exceed 8,600 pounds. Pickup trucks with a gross vehicular weight exceeding 8,600 pounds may be classified as "light vehicles," provided that the length, width and height are the same as those of a comparable vehicle with a gross vehicular weight of 8,600 pounds or less, as produced by the same manufacturer during the same model year

[3] Vans, but only those with a gross vehicular weight which does not exceed 8,600 pounds. Vans with a gross vehicular weight exceeding 8,600 pounds may be classified as "light vehicles," provided that the length,

width and height are the same as those of a comparable vehicle with a gross vehicular weight of 8,600 pounds or less, as produced by the same manufacturer during the same model year.

[4] Special purpose vehicles, but only those with a gross vehicular weight does not exceed 8,600 pounds. Special purpose vehicles with a gross vehicular weight exceeding 8,600 pounds may be classified as "light vehicles," provided that the length, width and height are the same as those of a comparable vehicle with a gross vehicular weight of 8,600 pounds or less, as produced by the same manufacturer during the same model year.

(c) This term does not include any omnibus, school bus or school vehicle as defined by Title 39 of the New Jersey Revised Statutes

LOT COVERAGE — That portion of one lot or more than one lot which is improved or is proposed to be improved with buildings and structures, including but not limited to driveways, parking lots, pedestrian walkways, signs and other man-made improvements on the ground surface which are more impervious than the natural surface. (See also "building coverage" and "open space.")

LOT LINE, REAR — Shall mean the lot line opposite and most distant from the front lot line or the point at which the two side lot lines meet in the case of a triangular lot.

LOT LINE, SIDE — Any lot line other than a front or rear lot line.

LOT, THROUGH — An interior lot which extends from one street to another.

MAINTENANCE GUARANTY — Any security, other than cash, which may be accepted by the City for the maintenance of any improvements required by this chapter.

MAJOR SITE PLAN — A development plan for one or more lots which meets one or more of the following criteria:

(a) Five or more acres.

(b) Six or more dwelling units.

(c) A planned development.

(d) Any new street.

(e) Any off-tract improvement which is to be provided pursuant to N.J.S.A. 40:55D-42.

MEDICAL CAMPUS — A campus which is devoted to a medical institution such as a hospital or medical center.

MICROCELL — A small patch antenna which is generally surface-mounted to a building facade.

MOTEL — A building which contains six (6) or more lodging Units which are designed designated and intended to be used, let or hired out for compensation for transient occupancy to the general public by reservation or walk-up without reservation, but in any case without lease, for occupancy in periods of not less than one (1) night and not more than 20 continuous nights; except that resident management shall not be subject to the occupancy limitation. Motels shall maintain the characteristics of a Hotel as defined herein except that Motels need not:

(a) provide access to all Motel Units through common public lobby areas via elevator or other conveyance system;

(b) have full-time on-site staff and management;

(c) provide amenities such as restaurants, banquet or dining rooms, conference rooms, swimming pools and other aquatic facilities. However, Motels shall provide room service, linen service and other elements normal and customary to a such facility.

MOTEL UNITS — Lodging units located within a Motel which are designed, designated and intended to be used, let or hired out for compensation for transient occupancy to the general public by reservation or walk-up without reservation, but in any case without lease, for occupancy in periods of not less than one (1) night and not more than 20 continuous nights; except that resident management shall not be subject to the occupancy

limitation. Motel Units shall maintain the characteristics of a Hotel Unit as defined herein except that Motel Units shall not consist of less than 350 s.f. of net habitable floor area;

NATURAL GROUND SURFACE — The ground surface in its original state before any grading, excavation or filling.

NEW CONSTRUCTION — Structures for which the start of construction commenced on or after the effective date of this chapter.

NURSING CARE — Health care services provided by a licensed skilled nursing facility.

NURSING HOME — A building or portion thereof in which the facility is licensed by the State of New Jersey and the primary use is intermediate care or nursing care.

OBSTRUCTION — Includes but is not limited to any structure, fill, excavation, channel modification, rock, gravel, refuse or matter in, along, across or projecting into any channel, watercourse or flood hazard area which may impede, retard or change the direction of the flow of water, either in itself or by catching or collecting debris carried by such water, or that is placed where the flow of water might carry the same downstream to pose a danger to life or property.

OPEN SPACE — Any parcel or area of land or water essentially unimproved and set aside, dedicated, designated or reserved for public or private use or enjoyment or for the use and enjoyment of owners and occupants of land adjoining or neighboring such open space, provided that such area may be improved with only those buildings, structures, streets and off-street parking and other improvements that are designed to be incidental to the natural openness of the land.

OPEN SPACE, COMMON — An open space area within or related to a site designated as a development, and designed and intended for the use or enjoyment of residents and owners of the development. "Common open space" may contain such complementary structures and improvements as are necessary and appropriate for the use or enjoyment of residents and owners of the development.

OPEN SPACE, PUBLIC — An open space area conveyed or otherwise dedicated to the City or a City agency, Board of Education, state or county agency or other public body for recreational and conservational uses.

PARKING AREA, PRIVATE — Any open area, including parking spaces, driveways and access aisles or other public ways, used for the temporary storage of automobiles and other permitted vehicles for the private use of the owners or occupants of the lot on which the area is located.

PARKING AREA, PUBLIC — Any open area, including parking spaces, driveways and access aisles, other than a street or other public way, used for the temporary storage of automobiles and other permitted vehicles and available to the public, with or without compensation or as an accommodation for clients, customers and employees.

PATIO — A horizontal area located at existing grade and used for other than vehicular purposes, which is without roof or walls and surfaced with wood, macadam, masonry, stone, brick, block or other such material.

PENTHOUSE — A roofed enclosure up to 12 feet in height on top of a building and occupying not more than 20% of the main roof area.

PERFORMANCE GUARANTY — Any security which may be accepted by the City, provided that 10% of the total performance guaranty shall be in cash.

PERFORMANCE STANDARDS — The maximum emission level that a nuisance element is permitted under this chapter.

PERMIT — A certificate issued to perform work under this chapter.

PERMITTED USE — Any use which shall be allowed, subject to the provisions of this chapter.

PERMITTEE — Any person to whom a permit is issued in accordance with this chapter.

PORCH — A deck, patio or terrace with a permanent roof.

PRIVATE GARAGE — A building with enclosed parking as the primary principal use and with other principal uses restricted to liner commercial uses along the ground floor frontage or in other areas of the building as may be permitted by this chapter.

PROHIBITED USE — A use which is not permitted in a zone district.

PUBLIC AREAS — Existing or proposed public parks, playgrounds, trails, paths and other recreational areas; other public open spaces; scenic and historic sites; and schools and other public buildings and structures.

RECREATION, COMMERCIAL -- Recreation facilities operated as a business and open to the general public for a fee and where no alcoholic beverages are served and no live entertainment is conducted.

RECREATION, PUBLIC -- Recreation facilities operated as a nonprofit enterprise by the City of Linden, any other governmental entity or any nonprofit organization and open to the general public.

RESIDENTIAL DENSITY — The number of dwelling units per gross acre of residential land area, including streets, easements and open space portions of a development.

RETAIL SALES — Establishments engaged in the selling or rental of new merchandise (usually to the general public for personal use or household consumption, although they may also serve business and institutional clients) and in rendering services incidental to the sale of such goods. Retail sales establishments include galleries for the display and sale of art but do not include studios, schools, commercial schools or vehicle or boat sales, rental, leasing or service.

RETAIL SERVICE — Establishments primarily engaged in providing services involving the care of a person or his or her personal goods or apparel, including, but not limited to, laundry, linen supply, diaper service, beauty and barber shops, shoe repair and nail salons. A personal service establishment may have accessory retail sales, but shall not be primarily engaged in retail sales. Funeral home services shall not be considered personal services.

ROOF DECK — An unenclosed area on a roof which is protected by a parapet wall or railing and which is designed for the use and enjoyment of the occupants of the building or a portion thereof.

ROOF GARDEN — An unenclosed area on a roof which is planted with vegetation that requires periodic watering and maintenance of the living material. A roof garden shall not be considered a green roof for the purposes of this chapter.

SELF-STORAGE FACILITY — A facility containing separate, individual and private storage spaces available for lease or rent for varying periods of time.

SIDEWALK CAFÉ — A structure or area used for eating and drinking that is located within a public right of way and that is attached and accessory to a restaurant or bar on private property and conforms to all applicable City regulations and approvals.

SIGHT TRIANGLE — A triangular-shaped portion of land established at intersections in accordance with the requirements of this chapter in which nothing shall be erected, placed, planted or allowed to grow in such a manner as to limit or obstruct sight distance.

SIGN — A name, identification, description, display or illustration which is affixed to or represented directly or indirectly upon a building, structure or piece of land, directing attention to a product, business, service or individual. However, a "sign" shall not include a display of official court or public notices or any official traffic control device and shall not include the flag, emblem or insignia of a nation, state, county, municipality or religious group. A "sign" shall not include a "sign" located completely within an enclosed building except if it is visible and directed to be seen from outside the building. Each display surface of the "sign" shall be considered to be a single "sign," except that where two such surfaces of a sign are physically attached, parallel and separated by less than 12 inches, the two surfaces shall be considered a single "sign."

SIGN, ABANDONED — A sign that no longer identifies or advertises an ongoing business, product, location, service, idea, or activity conducted on the premises on which the sign is located. Whether a sign has been

abandoned or not shall be determined by the intent of the owner of the sign and shall be governed by applicable State Case Law and Statutory Law on abandoned structures.

SIGN, ALTERATION – A change in the size or shape of an existing sign. Copy or color change of an existing sign is not an alteration. Changing or replacing a sign face or panel is not an alteration. A change in the size or shape of an existing sign copy or color change of an existing sign is not an alteration. Changing or replacing a sign face or panel is not an alteration.

SIGN, ANIMATED — A sign employing actual motion, the illusion of motion, or light and/or color changes achieved through mechanical, electrical, or electronic means. Animated signs, which are differentiated from changeable signs as defined and regulated by this Code, include the following types:

- 1) Environmentally Activated: Animated signs or devices motivated by wind, thermal changes, or other natural environmental input. Includes spinners, pinwheels, pennant strings, and/or other devices or displays that respond to naturally occurring external motivation.
- 2) Mechanically Activated: Animated signs characterized by repetitive motion and/or rotation activated by a mechanical system powered by electric motors or other mechanically induced means.
- 3) Electrically Activated: Animated signs producing the illusion of movement by means of electronic, electrical, or electromechanical input and/or illumination capable of simulating movement through employment of the characteristics of one or both of the classifications noted below:
 - a) Flashing: Animated signs or animated portions of signs whose illumination is characterized by a repetitive cycle in which the period of illumination is either the same as or less than the period of non-illumination.
 - b) Patterned Illusionary Movement: Animated signs or animated portions of signs whose illumination is characterized by simulated movement through alternate or sequential activation of various illuminated elements for the purpose of producing repetitive light patterns designed to appear in some form of constant motion.

SIGN, AWNING — A sign displayed on or attached flat against the surface or surfaces of an awning.

SIGN, BANNER — A sign utilizing a banner as its display surface.

SIGN, BENCH — A sign applied or affixed to the seat or back of a bench.

SIGN, BUILDING — A sign that is applied or affixed to a building.

SIGN, CANOPY — A sign affixed to the visible surface(s) of an attached or freestanding canopy. May be internally or externally illuminated. Similar to a Marquee Sign.

SIGN, CHANGEABLE — A sign with the capability of content change by means of manual or remote input, includes the following types:

- 1) Manually Activated - Changeable sign whose message copy or content can be changed manually on a display surface.
- 2) Electrically Activated - Changeable sign whose message copy or content can be changed by means of remote electrically energized on-off switching combinations of alphabetic or pictographic components arranged on a display surface. Illumination may be integral to the components, such as characterized by lamps or other light-emitting devices; or it may be from an external light source designed to reflect off the changeable component display. See also: Electronic Message Center.

SIGN, COPY — The letters, numerals, figures, symbols, logos and graphic elements comprising the content or message of a sign, exclusive of numerals identifying a street address only.

SIGN, DIRECTIONAL — Any sign that is designed and erected for the purpose of providing direction and/or orientation for pedestrian or vehicular traffic.

SIGN DISSOLVE – A mode of message transition on an Electronic Message Sign accomplished by varying the light intensity or pattern, in which the first message gradually appears to dissipate and lose legibility with the gradual appearance and legibility of the second message.

SIGN, EXTERNALLY ILLUMINATED — See Illuminated Sign.

SIGN, FLASHING — See Animated Sign, Electrically Activated.

SIGN, FREESTANDING - A sign principally supported by one or more columns, poles, or braces placed in or upon the ground.

SIGN, ILLUMINATED — A sign characterized by the use of artificial light, either projecting through its surface(s) [Internally or trans-illuminated]; or reflecting off its surface(s) [Externally illuminated].

SIGN, INTERNALLY ILLUMINATED — See Illuminated Sign.

SIGN, INTERIOR — Any sign placed within a building, but not including window signs as defined by this ordinance. Interior signs that are prominently visible and/or are designed to be visible from the outside of the building are regulated by this ordinance.

SIGN, MONUMENT — is a ground sign generally having a low profile with little or no open space between the ground and the sign and having a structure constructed of masonry, wood, or materials similar in appearance.

SIGN, MULTIPLE FACED - A sign containing three (3) or more faces.

SIGN, NONCONFORMING - A sign that was legally installed by permit in conformance with all municipal sign regulations and ordinances in effect at the time of its installation, but which may no longer comply with subsequently enacted laws and ordinances having jurisdiction relative to the sign.

SIGN, ON-PREMISE — A sign erected, maintained or used in the outdoor environment for the purpose of the display of messages appurtenant to the use of, products sold on, or the sale or lease of, the property on which it is displayed.

SIGN, POLITICAL - A temporary sign intended to advance a political statement, cause, or candidate for office.

SIGN, PORTABLE - Any cord-connected sign not permanently attached to the ground and can be removed without the use of tools.

SIGN, PROJECTING - A sign other than a Wall Sign that is attached to or projects more than eighteen (18) inches from a building face or wall or from a structure whose primary purpose is other than the support of a sign.

SIGN, PYLON – See Freestanding Sign.

SIGN, REAL ESTATE - A temporary sign advertising the sale, lease, or rental of the property or premises upon which it is located.

SIGN, REVOLVING - A sign that has the capability to revolve three hundred and sixty degrees (360°) about an axis. See also: Animated Sign, Mechanically Activated.

SIGN, ROOF - A sign mounted on the main roof portion of a building or on the uppermost edge of a parapet wall of a building and which is wholly or partially supported by such building. Signs mounted on mansard facades, pent eaves, and architectural projections such as canopies or marquees shall not be considered to be roof signs.

SIGN, SPECIAL EVENT — A temporary sign pertaining to any civic, patriotic, or special event of general public interest.

SIGN, TEMPORARY — A sign intended to display either commercial or noncommercial messages of a transitory or temporary nature. Portable signs or any sign not permanently embedded in the ground, or not permanently affixed to a building or sign structure that is permanently embedded in the ground, are considered temporary signs.

SIGN, UNDER CANOPY OR SIGN, MARQUEE UNDER — A sign attached to the underside of a canopy or marquee.

SIGN, WALL OR FASCIA — A sign that is in any manner affixed to any exterior wall of a building or structure and that projects not more than eighteen (18) inches from the building or structure wall. Also includes signs

affixed to architectural projections that project from a building provided the copy area of such signs remains on a parallel plane to the face of the building facade or to the face or faces of the architectural projection to which it is affixed.

SIGN, WAYFINDING — A sign, frequently off-premise, specifically designed to provide directional or destination information. See also, Off-Premise Sign.

SIGN, WINDOW - A sign affixed to the surface of a window with its message intended to be visible to the exterior environment.

SLOPE — The degree of deviation of a surface from the horizontal, usually expressed in percent or degree.

SOIL EROSION AND SEDIMENT CONTROL PLAN — A plan which indicates necessary land treatment measures, including a schedule for installation, which will effectively minimize soil erosion and sedimentation. Such measures shall be at least equivalent to the standards and specifications as adopted by the Somerset Union Soil Conservation District.

STORMWATER DETENTION — Any storm drainage technique which retards or detains runoff, such as a detention or retention basin, parking lot storage, rooftop storage, porous pavement, dry wells or any combination thereof.

STREET, MARGINAL ACCESS — A street which is parallel and adjacent to an arterial street and which provides access to abutting properties and protection from through traffic.

Replace existing definition of structure

STRUCTURE — (a) A combination of materials to form a construction for occupancy, use or ornamentation, whether installed on, above or below the surface of land or water. In addition to the above definition, "structure" also means a walled and roofed building or a gas or liquid storage tank that is principally aboveground.

SUBSTANTIAL IMPROVEMENT — Any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure either before the improvement or repair is started or, if the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either:

(a) Any project for the improvement of a structure to comply with existing state or local health, sanitary or safety code specifications which are solely necessary to assure safe living conditions; or

(b) Any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

TERRACE — A raised horizontal structure or area having the characteristics of a deck or patio but not more than one foot in height.

Replace existing definition of Townhouse

TOWNHOUSE — An attached or semidetached dwelling with two direct means of access from the outside and having separate cooking, sleeping and sanitary facilities and separate facilities for sewerage, heating, water, electric and gas.

CITY — The City of Linden.

TRAILER — A vehicular chassis or structure designed to be hauled by another vehicle and to carry any structure, object, material, person, animal or thing.

TRUCK TERMINAL — An establishment primarily engaged in furnishing, hauling or transfer services without long-term product or cargo storage and where trucks load and unload products or cargo for transshipment or reshipment without accessory consolidation, repacking or value added services. A truck terminal may also include accessory areas for the repair, service, maintenance temporary storage or parking of trucks.

TWO FAMILY SEMI-DETACHED DWELLING — A one-family dwelling attached to one other one-family dwelling by a common vertical wall, and each dwelling is located on a separate lot.

VEGETATIVE PROTECTION — Stabilization of erosive or sediment-producing areas by covering the soil with permanent or short-term seeding, mulching or sodding.

VEHICLE, MOTOR — A self-propelled device which is licensed as a motor vehicle by the State of New Jersey.

VEHICULAR SALES AREA — An open area, other than a right-of-way, or public parking area, used for display, sale or rental of new or used vehicles in operable condition and where no repair work is done.

VENDING MACHINES — A coin-operated device located outside of a principal building, which dispenses various items or products such as, but not limited to, food, drink, ice, reading materials or toiletries.

WEB BASED RETAILERS – establishments engaged in retailing all types of merchandise using the Internet.

WHOLESALE SALES – establishments engaged in the sale, lease, or rent of products primarily intended for industrial, institutional, or commercial businesses. The uses emphasize on-site sales or order taking and often include display areas. Businesses may or may not be open to the general public, but sales to the general public are limited as a result of the way such uses operate. Products may be picked up on site or delivered to the customer. Examples include but are not limited to: sale or rental of machinery, equipment, heavy trucks, building materials, special trade tools, welding supplies, machine parts, electrical supplies, janitorial supplies, restaurant equipment, and store fixtures; mail order houses; and wholesalers of food, clothing, auto parts, building hardware, and office supplies.

Eliminate definitions for Yard, minimum front, Yard minimum rear, Yard, minimum side and replace the definitions of Yard, front, Yard, rear and Yard, side with the following:

YARD, FRONT — A space extending the full width of the lot between any building and the front lot line, measured perpendicular to the building at its closest point to the front lot line. Said "front yard" shall be unoccupied and unobstructed from the ground upward except as may be permitted elsewhere in this chapter.

YARD, REAR — A space extending across the full width of the lot between the principal building and the rear lot line, measured perpendicular to the building at its closest point to the rear lot line. Said "rear yard" shall be unoccupied and unobstructed from the ground upward except as may be permitted elsewhere in this chapter.

YARD, SIDE — A space extending from the front yard to the rear yard between the principal building and the side lot line, measured perpendicular to the side lot line at its closest point to the principal building. Said "side yard" shall be unoccupied and unobstructed from the ground upward except as may be permitted elsewhere in this chapter.

YARD, STREET SIDE — On a corner lot, the side yard where the face of a principal building does not front upon.

ZONING PERMIT — A document signed by the Zoning Officer, which is required by this chapter as a condition precedent to the commencement of a use or the erection, construction, reconstruction, alteration, conversion or installation of a structure or building and which acknowledges that such use, structure or building complies with the provisions of this chapter or variance therefrom.

31-3.1 Zoning Districts.

For the purpose of this chapter, the City of Linden is hereby divided into use districts as follows:

<i>Symbol</i>	<i>District Name</i>
R-1a	Single Family (50 feet)
R-1b	Single Family (40 feet)
R-2a	Two-Family (50 feet)
R-2b	Two-Family (40 feet)
R-3	Apartment
OPT	Office, Professional, Transitional
ROC	Residential, Office, Commercial
C-1	Central Business
C-1A	Commercial

C-1B	Commercial
C-2 (40)	Residential/Retail Commercial
C-2 (60)	Retail Commercial
C-2 (100)	Retail Commercial
C-2 (HD)	Highway Commercial
LI, LI-A,	Light Industrial Zones
HI	Heavy Industrial
PCD	Planned Commercial Development
SA - 1	Linden Station Area - Core Transit Village District — Mixed Use
SA - 2	Linden Station Area - Transit Village Residential District
RPZ	Runway Protection Overlay

<i>Symbol</i>	<i>Redevelopment District Name</i>
B-R	Bayway Redevelopment
C-R	Conocco Phillips Redevelopment
ED - R	Economic Development Redevelopment
I-R	Infineum Redevelopment
L-R	Landfill Redevelopment
M-R	Merck Redevelopment
SGA-1-R	Saint Georges Avenue – Phase I Redevelopment
SGA-2-R	Saint Georges Avenue – Phase II Redevelopment
SA-R	Linden Station Area – South Wood Avenue Redevelopment District
T-R	Theater Redevelopment District
U-R	United Lacquer Redevelopment

§ 31-3.3 Interpretation of Boundaries.

District boundary lines are intended to follow street centerlines, lot or property lines and watercourses as they exist at the time of enactment of this chapter unless otherwise indicated by dimensions on the zoning map. The exact location of any disputed district boundary line shall be determined by the Board of Adjustment.

The City’s Zoning Map identifies one C-2 District. The boundary lines for each C-2 sub-district, which include the C-2 (40), C-2 (60), C-2 (100) and C-2 (HD) shall be determined by measuring the lot frontage of the roadway with the highest street classification. State and County roadways shall be considered to have a higher street classification than a local roadway. Where two roadways have the same street classification, the roadway with the larger lot frontage shall be used as the basis for determining which C-2 sub-district the property is zoned for in accordance with the following table:

**City of Linden
C-2 Sub-District Determination Table**

Lot Frontage	C-2 Sub District
59 feet and less	C-2 (40)
60 feet to 99 feet	C-2 (60)
100 feet to 199 feet	C-2 (100)
200 feet and greater	C-2 (HD)

§ 31-4.1 DISTRICT REGULATIONS – Schedule of Limitations, Permitted and Accessory Uses. (See Attached Table)

§ 31-4.2 Principal Use of Nonresidential Lots. (Replace Existing)

There shall be no more than one (1) principal use on a nonresidential lot, except where specifically permitted by the zone regulations or associated with a commercial or industrial center as defined by ordinance.

§ 31-4.3 Principal buildings.

- A. Second dwelling prohibited. Except for two-family homes and multifamily housing developments, in no case shall there be permitted more than one residential building on each subdivision lot of record.
- B. Location on improved street. All principal buildings shall be built upon a lot with frontage upon a

public street or private road improved in accordance with City requirements or for which such improvements have been insured by the posting of a performance guaranty.

§ 31-4.4 Accessory structures.

Unless specified elsewhere in this chapter, accessory structures shall conform to the following regulations:

A. Location.

(1) In any residential zone, no private detached garage or other accessory building or parking area shall be located within a required front yard nor within a required side yard, except that nothing shall prohibit an owner of a home from counting a driveway as an off-street parking space.

(2) A residential driveway shall be set back a minimum of two feet from the side property line.

(3) In the case of exceptionally wide lots where side yards are provided of greater width than required by this chapter, accessory buildings may be erected in the side yards, provided that the side yard required as a minimum by this chapter for the particular zone involved shall be left open and unoccupied except as permitted in this chapter.

B. Accessory structure as part of principal building. A private garage constructed as a structural part of a main dwelling shall be considered part of the principal building and shall comply in all respects with yard requirements of this chapter for the principal building.

C. Area restrictions. Accessory structures may occupy, in aggregate, not more than 40% of the required rear yard area in all zoning districts.

D. Distance from principal buildings. The minimum distance of any detached accessory structure from the principal building shall be five feet.

E. Height restrictions. In any residential district, no accessory structure shall exceed 15 feet in height.

F. Distance from street line. On through lots (any lot running from one street to another), no accessory building erected in the rear yard shall be nearer the street line than the minimum distance specified for a front yard setback on the street which said yard abuts.

G. Accessory building not to be resided in. No accessory building shall be used for residential dwelling purposes in any zoning district.

H. Private swimming pools. See Section § 31-19.4.

§ 31-12 C-1B Commercial District.

Delete section 31-12.1 d. Area, Yard and Bulk Regulations.

§ 31-17 PERMITTED MODIFICATIONS.

Delete § 31-17.10 and replace with § 31-17.10 Permitted obstructions in required yards.

Except as hereinafter specified in this section, every part of a required yard shall be unobstructed and open except for the following man-made structures:

- A. Accessory buildings in a required rear or side yard in accordance with § 31-4.4.
- B. The ordinary projection of sills, parapets, cornices, eaves, leaders, bay/bow windows and other ornamental features, provided that said features shall not project into a required yard area more than 24 inches.
- C. Air-conditioning equipment, permanent generators and other utility equipment placed on the ground, which may not project more than three feet into a required side or rear yard setback.
- D. An unroofed porch or terrace projecting into a required front yard or rear yard, at the level of the first floor, provided that the area of said porch or terrace which projects into a required front or rear yard shall not exceed 150 square feet.
- E. Fences, in accordance with § 31-20.9.
- F. Flagpoles.

§ 31-19 AMEND Supplementary Use Regulations to Supplementary or Conditional Use Regulations.

Wherein certain uses exist or may be reasonably expected to exist in the future and wherein the uses possess distinguishing features and/or associate activities supplementary use standards are necessary to ensure that continued development and operation of such uses furthers the comprehensive planning objectives and therefore certain supplementary development standards are hereafter established.

Add the following text.

When uses identified in Section 31-4.1 District Regulations identify a land use as a principal permitted use these requirements shall serve as additional requirements for said use and when a land use is identified as a conditional use, these requirements shall serve as conditional use requirements as regulated by Sections 40:55D-67, 40:55D-70 and 40:55D-76 of the Municipal Land Use Law as may be amended from time to time. Variances associated with conditional use requirements may only be granted by the Zoning Board of Adjustment.

Add the following text to § 31-19.8 Restaurants, Drive-Ins and Restaurants, Fast Food.

- 1. Drive-through lanes must be separated from parking areas and circulation aisles with a 3 to 5-foot landscaped island which is located and designed in a manner that provides safe ingress and egress to and from the drive-through.

DELETE § 31-19.9 Planned Office and Commercial Park Development

ADD Apartments in the ROC and C-2 (40) Districts.

Within the ROC and C-2 (40) districts permitting apartments on upper floors, the following minimum standards are required:

- a. There shall be a minimum lot size of 6,000 square feet.
- b. The maximum lot coverage percentage shall be 35%.
- c. A maximum of 4 apartments per building shall be permitted.
- d. No more than one principal building per lot shall be permitted.
- e. The minimum side yard shall be 10 feet.
- f. All other development regulations of this district shall apply.

§ 31-19.12 Car Washes

The construction of a car wash shall not take place unless the following minimum standards are met:

- a. A minimum lot size of 20,000 sq. ft. is required.
- b. A maximum lot coverage of 25% is permitted.

§ 31-19.13 Automobile and truck dealerships

The construction of an automobile and truck dealership shall not take place unless the following minimum standards are met:

- a. Automotive and/or truck repair shall not be permitted.
- b. No vehicle shall be parked, displayed or stored less than 5 feet from the front lot line.
- c. The maximum lot coverage shall be 35%.
- d. Truck dealerships shall only be permitted on Route 1/9.

§ 31-19.14 Home Occupation

- a. Any occupation or activity carried out for gain by a resident shall be conducted entirely within the dwelling unit and shall be clearly incidental to the use of the structure as a dwelling. No accessory structures or areas outside the principal structure shall be used for or in connection with the home occupation.
- b. There shall be no change in the appearance of the dwelling or premises, or any visible evidence of the conduct of a home occupation.
- c. There shall be no storage of equipment, vehicles or supplies associated with the home occupation outside the dwelling.
- d. There shall be no display of products visible in any manner from outside the dwelling, nor shall any advertising display or identification signs be permitted.
- e. No persons outside of the residents who occupy the dwelling shall be permitted to work on the premises.
- f. The home occupation shall not involve the use of commercial vehicles or delivery service for delivery of materials to or from the premises or create more traffic than is customary for a residence of the type permitted in the zone.
- g. No customer, clients, colleagues or members of the public shall visit the home in connection with the home occupation carried on within the dwelling.
- h. Commercial newspaper, radio or television services or other forms of advertising shall not be used to advertise the location of the home occupation to the public.
- i. No equipment or process shall be used in a home occupation other than is customarily used for domestic and household purposes and no equipment shall be used or process conducted which creates, noise, vibration, glare, fumes or odors detectable to the normal senses at the property boundary lines of the premises or within other dwelling units in the same building.

§ 31-19.15 Nonprofit clubs and lodges.

The construction of a club or lodge shall not take place unless the following minimum standards are met:

- a. Any such club or lodge shall have a minimum of a 200 foot radius from a religious use or public school.
- b. A minimum lot area of 5,000 sq. ft. is required.

§ 31-19.16 Public utilities.

The construction or alteration of a public utility shall not take place unless the following minimum standards are met:

- a. The utility service provider shall provide evidence demonstrating that the proposed utility cannot be located in one of the City's industrial districts.
 - b. The utility service provider shall provide an environmental impact statement.
 - c. The proposed utility shall not cause or contribute to the release of stray electric current or voltage, or static charge, or cause or contribute to the mobilization of toxic or hazardous substances, or contamination of ground or surface waters, result in a noxious fumes or hazardous materials on a City public or private roadway, or municipal or private property located in the City.

§ 31-19.17 Institutional uses, including but not limited to private, non-profit and public schools; hospitals; places of worship; and federal, state and county government buildings.

The construction or alteration of an institutional use identified above shall not take place unless the following minimum standards are met:

- a. Minimum lot area – 1/2 acre.
 - b. Minimum lot width – 100 feet.
 - c. Minimum front yard – 35 feet.
 - d. Minimum rear yard – 35 feet.
 - e. Buffer – in accordance with Section 31-22.
 - f. Maximum coverage – 35%.
 - g. Maximum building height – 35 feet, however the height of a religious steeple may extend an additional 15-feet in height.

§ 31-22 – Buffers

1. Within any zone, other than permitted uses in a residential zone, in which the lot(s) submitted for plat approval abut a residential zone, the following buffer area and landscaping requirements shall apply.

- a. A strip of land 10 percent of the average width of the property when a non-residential use abuts a residential zone on the side, and/or 10 percent of the average depth of the property when a non-residential use abuts a residential zone at the rear, shall be designated as a buffer area and so indicated on the plat. Buffer areas shall be contiguous with residential property lines and shall be of uniform width. In no case shall the width of the buffer be required to exceed 50 feet. If the buffer is less than 10 feet wide, the applicant may be required to erect a six foot high stockade fence within the buffer area parallel to the lot line of the abutting residential lot and set back a distance appropriate for the landscaping treatment in the buffer area. Where more restrictive standards are set forth in specific zoning districts, they shall apply.
 - b. A solid and continuous landscaped screen shall be planted and maintained to conceal the parking and loading areas, and eliminate the glare of vehicle lights throughout the year from the abutting residential areas. In addition, adequate plantings including deciduous trees shall be utilized to soften the appearance of the building as viewed from adjoining residential lots. The parking lot and loading area screen shall consist of evergreen trees, such as hemlock, Douglas fir, or Norway spruce. Trees shall be planted in a zigzag pattern and not more than 7 feet apart, except where otherwise authorized by the approving authority. Evergreen trees shall not be less than 6 feet high when planted and the lowest branches shall not be more than 1 foot above the ground. In the event the existing evergreen trees do not cover the required area from the ground, said landscaping screen shall be supplemented with evergreen shrubbery.
 - c. The shade trees, such as sugar maples, scarlet oaks, pin oaks, willow oaks, Norway maples, sweet gum or ash, shall be planted by the applicant at a distance of not more than 40 feet from each other.
 - d. The height of the landscaped screen shall be measured in relation to the elevation of the edge of the parking and loading area. Where the landscaped screen is lower than the elevation of the parking or loading area either the required height of the screen shall be increased equal to the difference in elevation or the parking or loading area shall be moved to allow the plantings to be located in an area with a similar elevation as the parking or loading area.
 - e. If the buffer area includes existing growth of evergreen and deciduous trees and shrubbery, but not enough to provide a suitable screen as required above, existing trees and shrubbery may remain and shall be supplemented by additional evergreen plantings to provide the required landscape screen.
 - f. All proposed landscaping screens and planting under this subsection shall be referred by the approving authority to the City Planner for recommendations. In the event the City Planner finds that further planting of evergreen will not grow satisfactorily in said buffer areas, stockade fences 6 feet in height shall be erected in the buffer area as provided. No applicant shall be required to erect more than one six foot high stockade fence in any one buffer area.
 - g. Under exceptional circumstances, the approving authority shall have the power to waive any of

the requirements or details specified above if they determine an adequate buffer can be provided in less than 10 feet while maintaining the purposes of this section. The approving authority when considering waiving any of the buffer requirements, shall review the proposed plat and the standards and purposes of N.J.S.A. 40:55D-51, and to these ends shall consider the location of buildings, parking areas, outdoor illumination and other features of the topography of the area and existing features such as trees; streams; the efficiency, adequacy, and safety of the proposed layout of driveways, streets, sidewalks and paths; the adequacy and location of existing green areas and buffer areas; the adequacy and location of screening and parking areas; structures and uses; and such other matters as may be found to have a material bearing on the above standards and objectives.

§ 31-25.8 Signs Permitted in Business District C-1, C-2, and ROC Zones.

a. *Attached Signs.* Signs attached to the main building advertising a business or business conducted on the premises shall be subject to the following regulations:

1. For a building having one (1) side facing a street, the attached signs may be placed on the front of the building of thirty (30) square feet or ten (10%) percent of the front of the building, whichever is greater. No sign shall have a vertical dimension in excess of four (4) feet.
2. For a building on a corner lot or having both front and rear entrances for customers or patrons to the business, attached signs may be placed on the front, side or rear of the building not to exceed ten (10%) percent of the wall area of the front and side or rear walls of the building except that no such sign shall have a vertical dimension in excess of four (4) feet.
3. Such sign shall not project more than four (4) feet from the building facade to which it is attached, provided, however, where a sign extends more than eight (8) inches from the face of the wall, the bottom of the sign shall not be closer than ten (10) feet from the ground level of the sign.
4. No sign projecting more than eight (8) inches from a wall shall have a vertical dimension in excess of five (5) feet, and no such sign shall extend above the roof line.

b. *Free-Standing and Monument Signs.*

1. Freestanding and monument signs shall not be permitted in the C-1 district.
2. Where permitted, such signs shall not exceed a height of eighteen (18) feet or the height of the principal building on the lot, whichever the greater.
3. No such sign shall exceed fifty (50) square feet in area on any one (1) side except that wherein the lot on which the sign is to be located has a frontage exceeding fifty (50) feet, an additional two and a half (2.5) square feet of sign area for each side of the sign for each ten (10) additional feet of lot frontage or fraction thereof shall be permitted.
4. Not more than one (1) freestanding sign or monument sign per business premises shall be permitted on any one (1) street frontage.
5. Such sign shall advertise only such business as conducted on the premises where the sign is located.
6. Such sign shall not overhang the front property line nor be less than one (1) foot from a side or rear property line.

§ 31-25.9 Signs Permitted in the C-1A (Commercial) and LI-B (Light Industrial) District.

a. *Attached Signs.* Signs attached to the main building advertising the business or businesses conducted on the premises shall be permitted subject to the following regulations:

1. For a building having one (1) side facing a public or private street, attached signs may be placed on the front of the building or use therein with a maximum area of thirty (30) square feet or ten (10%) percent of the front of the building or portion thereof occupied by the use, whichever is greater. No sign shall have a vertical dimension in excess of four (4) feet.
2. For a building on a corner lot or having both front and rear entrances for customers, attached signs may be placed on the front, side or rear of the building. Each sign shall not exceed ten (10%) percent of the area of the wall to which it is attached. No such sign shall have a vertical dimension in excess of four (4) feet.
3. Attached signs shall not project more than four (4) feet from the building facade to which it is attached, provided, however, where a sign extends more than eight (8) inches from the face of the wall, the bottom of the sign shall not be closer than ten (10) feet to the ground level.
4. No sign shall extend above the roof line.
5. Where a building or structure has multiple occupants, each occupant shall be entitled to erect signage on its portion of the building facades in accordance with the requirements of this section.

b. *Directory Signs.* In addition to the signage permitted above, directory signs for multi-tenanted developments shall be permitted subject to the following regulations:

1. Directory signs shall not exceed thirty-five (35) feet in height and five (5) feet in width.

2. Directory signs shall not exceed one hundred fifty (150) square feet in area on any one (1) side.
 3. One (1) directory sign shall be permitted on each street frontage.
 4. Directory signs may include the name of the development as well as the names of each business or tenant in the development.
 5. Directory signs shall not be located closer than one (1) foot to any property line.
- c. *Directional Signs.* Within any multi-tenanted development directional signs shall be located to insure the safe and proper movement of vehicles within the development. Directional signs may include the names of individual occupants.
(1979 Code § 22-6.8A; Ord. No. 27-18 § III)

§ 31-25.10 Signs Permitted in Industrial Districts, L-I, L-1A and H-I Zones.

- a. *Attached Signs.* Conditions and regulations as specified in subsection 31-25.8a. and b.
- b. *Freestanding and Monument Signs.* Freestanding and monument signs advertising a permitted use within the district shall be subject to the following regulations:
 1. Such sign shall not exceed a height of eighteen (18) feet or the height of the principal building on the lot, whichever the greater.
 2. No such sign shall exceed fifty (50) square feet in area on any one (1) side, except that wherein the lot on which the sign is to be located has a frontage exceeding one hundred (100) feet, an additional five (5) square feet of sign area for each side of the sign for each ten (10) additional feet of lot frontage or fraction thereof shall be permitted.
 3. All permitted freestanding and monument signs shall be set back at least twenty (20) feet from the curb line and any side or rear property line.
 4. No such sign shall have a vertical dimension in excess of ten (10) feet.

§ 31-25.14 Additional Standards in All Zones.

- a. Where these regulations apply. These regulations apply to all signs regulated by this Code.
- b. Sign placement. All signs and sign structures must be erected and attached totally on or within the site or property to which they refer, behind any applicable legal right of way.
- c. Signs extending into the right-of-way. Exceptions:
 1. Projecting signs: in the C-1, SA-1 & SA-2 Districts, projecting over a public sidewalk.
 2. Awnings and marquees: in a Downtown or Central Business District, projecting over a public sidewalk.
 3. A-frame signs. A-frame signs or sandwich board type signs may be used in in the C-1, C-2, SA-1 & SA-2 Districts if they meet the following standards:
 - i. The sign is entirely outside the street or roadway;
 - ii The sign is no larger than six (6) square feet;
 - iii. The sign does not obstruct a continuous through pedestrian zone of at least six (6) feet in width.
 - iv. The sign does not obstruct pedestrian and wheelchair access from the sidewalk to any of the following transit stop areas, designated disabled parking spaces, disabled access ramps, or building exits including fire escapes.
- d. Removal of signs. The City Engineer may require signs extending into the right-of-way to be modified or moved if streets are widened, or other improvements made in the right-of-way, which result in the creation of unsafe conditions. The modification or moving will be at the owner's expense. If a nonconforming sign is moved under this requirement, it may be re-erected on the site without being brought into conformance.
- e. Freestanding and Monument Signs
 1. Freestanding and monument signs may not extend into the right-of-way.
- f. Fascia or Wall Signs
 1. Vertical extensions: Fascia or wall signs may not extend above the top of the building wall upon which they are mounted.
 2. Horizontal extensions: Fascia or wall signs may not extend more than eighteen (18) inches out from the wall or structure to which they are attached.
- g. Pitched Roof Signs
 1. Vertical extensions: A pitched roof sign may not extend above the roofline.
 2. Placement and angle. Pitched roof signs must be parallel to the building face. They may not extend

beyond the building wall.

3. Support structures: Support structures must be designed so that there is no visible support structure above the sign.

h. Projecting Signs

1. Placement: Projecting signs are not allowed on rooftops or on pitched roofs. Building signs may project up to five feet over a right-of-way if they are located in the C-1, SA-1 & SA-2 Districts.

i. Directional Signs

1. General standards: Directional signs that meet the standards of this subsection are allowed in all zones and are not counted in the total square footage of permanent signage allowed on any property or site.

2. Size: Freestanding directional signs may be up to 4 (4) square feet in area and forty-eight (48) inches in height. Fascia directional signs may be up to ten (10) square feet in area.

3. Directional signs in any zone may have internal or external illumination.

j. Temporary Signs

1. Signs that meet the standards of this subsection are exempt from the standards for permanent signs and are not counted in the total square footage of signage allowed on any particular property or site. Signs that do not meet the standards of this subsection are subject to the standards for permanent signs.

2. Temporary signs may not have external or internal illumination.

3. Temporary banners: Temporary banners are subject to the following regulations:

a. In all Residential Zones, temporary banners are not permitted on sites with houses, duplexes, and attached houses. Exception: banners for holidays, religious commemoration, and special family events.

b. In the Office, Professional, Commercial and Industrial Zones, one banner no larger than thirty-two (32) square feet in size is permitted per property or, on a multi-use property, per storefront. Only one (1) of these banners may be hung on each building wall or on each separate structure. Any additional banners, or banners larger than thirty-two (32) square feet in size, must meet the following standards for permanent signs in this Code.

i. In no case may a site or storefront have more than two (2) temporary banners.

ii. In no case shall a temporary banner be larger than fifty (50) square feet in size.

iii. A temporary banner may be displayed no longer than ninety (90) days per calendar year.

iv. Banners that do not meet the regulations of this subparagraph, must meet the standards for permanent signs.

4. Temporary Wall or Fascia Signs. One (1) temporary wall sign is allowed per street frontage in the Commercial and Industrial Zones. Temporary wall signs may be up to thirty-two (32) square feet in area. Temporary wall signs may not extend above roof lines. Extensions into the right-of-way are prohibited. A temporary wall sign may be displayed no longer than ninety (90) days per calendar year.

5. Temporary Freestanding or Portable Signs. One (1) temporary freestanding sign is allowed per property in the Commercial Zones and is not counted in the total square footage of permanent signage allowed on the site. Temporary freestanding signs may be up to thirty two (32) square feet in area. Extensions into the right-of-way are prohibited. A temporary freestanding sign may be displayed no longer than ninety (90) days per calendar year.

k. Electronic Message Centers

1. In the Office, Professional, Commercial and Industrial Zones, one (1) Electronic Message Center (EMCs) is permitted as a freestanding monument sign having a maximum height of six feet and a sign area of 20 square feet.

2. Additional general EMC regulations:

(a) All EMC signs shall have automatic dimming controls, either by photocell (hardwired) or via software settings, in order to bring the EMC lighting level at night into compliance with Sign Illumination

Standards subsection of the code.

l. EMC regulations by Zone

(1) In Residential Zones, EMC signs are specifically prohibited.

(2) In Office and Professional Zones, EMC signs shall have a minimum display time of eight (8) seconds. The transition time between messages and/or message frames is limited to three (3) seconds and these transitions may employ fade, dissolve, and or other transition effects.

(3) In Office and Professional Zones, the following EMC display features and functions are prohibited: continuous scrolling and/or traveling, flashing, spinning, rotating, and similar moving effects, and all dynamic frame effects or patterns of illusionary movement or simulating movement.

(4) In Commercial and Industrial Zones, all EMC display features and functions are permitted, with the exception of (a) flashing, which is prohibited, and (b) full motion video or film display via an electronic file imported into the EMC software or streamed in real time into the EMC. Full motion video as described shall be permitted by special exception only as approved by the Planning Board or Zoning Board of Adjustment.

m. Sign Illumination Standards

Signs may be illuminated consistent with the following standards:

1. A sign in any district may be illuminated at night. Signs that are illuminated at night may not exceed a maximum luminance level of seven hundred fifty (750) cd/m² or Nits, regardless of the method of illumination.

2. Signs that have external illumination, whether the lighting is mounted above or below the sign face or panel, shall have lighting fixtures or luminaires that are fully shielded.

3. All illuminated signs must comply with the maximum luminance level of seven hundred fifty (750) cd/m² or Nits at least one-half hour before Apparent Sunset, as determined by the National Oceanic and Atmospheric Administration (NOAA), US Department of Commerce, for the specific geographic location and date. All illuminated signs must comply with this maximum luminance level throughout the night, if the sign is energized, until Apparent Sunrise, as determined by the NOAA, at which time the sign may resume luminance levels appropriate for daylight conditions, when required or appropriate.

4. On-premise signs do not constitute a form of outdoor lighting at night, and are exempt from any other outdoor lighting regulations that the City has adopted, or will adopt in the future.

n. Nonconforming permanent signs may continue to exist after passage of this Code. Nonconforming signs will be removed and changed in accordance with the provisions of this Code.

1. Permanent signs and sign structures that are moved, removed, replaced, or structurally altered must be brought into conformance with the sign regulations. However, nonconforming signs required to be moved because of public right-of-way improvements may be re-established. Removable faces or sign panel inserts in a cabinet style sign may also be changed by right, and such change does not constitute a structural alteration nor trigger loss of nonconforming status.

2. Nonconforming temporary signs must be removed within two (2) months of the passage of this Code.

3. Ownership. The status of a nonconforming sign is not affected by changes in ownership.

4. Once a sign is altered to conform or is replaced with a conforming sign, the nonconforming rights for that sign are lost and a nonconforming sign may not be re-established.

n. Loss of nonconforming sign status.

1. Discontinuance. See definition of Sign, Abandoned.

o. Destruction. When a sign or sign structure is removed or intentionally destroyed, replacement signs and sign structures must comply with the current standards.

p. Repair and maintenance. A nonconforming sign or sign structure may be removed temporarily to perform sign maintenance or sign repair.

q. Unintentional destruction. When a sign or sign structure that has nonconforming elements is partially or totally damaged by fire or other causes beyond the control of the owner, the sign and sign structure may be rebuilt to the same size and height using the same materials.

r. Clearances

(1) Vision clearance areas: Vision clearance areas are triangular shaped areas located at the intersection of any combination of rights-of-way, alleys or driveways. The sides of the triangle extend thirty (30) feet from the intersection of the right-of-way, alley or driveway in either/each direction. No sign may be installed within this clear sight triangle.

(2) Vehicle area clearances: In areas outside of rights-of-way, when a sign or awning extends over an area in which vehicles travel or are parked, the bottom of the structure must be at least fourteen (14) feet above the ground. Vehicle areas include driveways, alleys, parking areas, and loading and maneuvering areas.

(3) Pedestrian area clearances. When a sign or awning extends more than twelve (12) inches over a sidewalk, walkway, or other space used by pedestrians, the bottom of the structure must be at least eight (8) feet above the ground.

(4) Clearances from fire escapes, means of egress or standpipes. Signs, sign structures and awnings are prohibited from being erected in any manner that interferes in any way with the free use of any fire escape, means of egress or standpipe. Attaching signs, sign structures or awnings to a fire escape is prohibited.

(5) Obstruction of windows and ventilation. Signs, sign structures and awnings are prohibited from being installed in any way that obstructs any building openings to such an extent that light, ventilation or exhaust are reduced to a level below that required by either the Building Code, Plumbing Regulations, Heating and Ventilating Regulations or Housing and Maintenance Regulations.

s. Maintenance Requirements.

1. Signs, sign structures and awnings, together with their supports, braces, guys, anchors and electrical components must be maintained in a proper state of repair. The Zoning Officer may order the removal of any sign, sign structure or awning that is not maintained in accordance to this Code.

t. Signs on Vehicles

It shall be unlawful to use a vehicle or a trailer as a sign in circumvention of the requirements set forth in this chapter. Thus, any sign painted, attached or displayed on any vehicle or trailer whose primary purpose is advertisement of products or activity and directing people to a business or activity located on the same or other property shall be prohibited in all zones. Signs advertising to the public that the vehicle in question is "for sale" are not intended to be included in this regulation.

§ 31-27.19 Required Off-Street Parking Spaces.

This section should be amended to include:

- u. Childcare center – 1 space per 2 employees.
- v. Self storage facility – 1 space per 5,000 square feet of gross floor area.
- w. Assisted living facility – 0.5 spaces per dwelling unit.
- x. Dwelling not subject to RSIS – 1.5 spaces per dwelling unit.
- y. New and used automotive dealer - 1 space for each 200 square feet of net floor area plus 1 per each 1000 square feet of lot area.
- z. Gallery, art - One space for each 500 square feet of net floor area.
- a.1. – Nursing home – 1 space for each 2 beds.
- a.2 – Physical fitness studio or gym – 1 space per 150 square feet of gross floor area.

Delete Section 31-36 Nonconforming Uses

ADD:

§ 31-36 NONCONFORMING USES, STRUCTURES AND LOTS.

A. Continuance. Except as otherwise provided herein, nonconforming uses or structures which lawfully existed at the time of passage of this chapter may be continued even though such uses or structures do not comply with the regulations of this chapter; provided, however, that:

- 1. A nonconforming use shall not be expanded or changed to another nonconforming use.
- 2. Any addition to an existing nonconforming building may be constructed to continue the existing building setback, but shall not be permitted to encroach further into the required setback than the existing structure. Furthermore, any vertical addition may not exceed eighty (80%) percent of the original building footprint.
- 3. Abandonment. A nonconforming use that has been abandoned shall not thereafter be reinstated. A nonconforming use shall be adjudged to have been abandoned:
 - a. When it is changed to a conforming use.
 - b. In cases where such nonconforming use is a building or structure designed for such use, when it has been voluntarily discontinued for a period of twenty-four (24) consecutive months.
 - c. In cases where such nonconforming use is of a building or structure not designed for such use or is of a lot or land whereon there is no consequential building or structure devoted to such use, when it has been voluntarily discontinued for a period of twelve (12) consecutive months.

B. Reserved.

C. Restoration. If a nonconforming use or structure is partially destroyed by any cause whatsoever to an extent of fifty (50%) percent or more of the appraised value, it shall only be reestablished as a conforming use in the zone in which it is located. A nonconforming structure may only be rebuilt to the same size on the same foot print, provided however, that the structure may be modified to conform with the requirements of Chapter XXVI, Flood Damage Prevention.

D. Waiver. Nothing in this chapter shall prevent the strengthening or restoring to a safe condition of any wall, floor or roof which has been declared unsafe by the Construction Code Official or other competent authority having jurisdiction; nor shall it prevent compliance with the requirements of the Flood Damage Prevention rules established in Chapter XXVI.

E. Unlawful Uses. No unlawful structure or unlawful use of a building or structure, lot or land existing at the effective date of this chapter shall be deemed to be a nonconforming structure or use.

F. Nonconforming Lots in a Residential Zone. Any parcel of land with an area, width or depth less than required in the zone in which such lot is located may be used as a lot for purposes permitted in the zone without a variance, provided that it meets the requirements below.

1. Pre-existing nonconforming vacant lots may be used for single-family residential purposes; and single-family or two-family uses on pre-existing nonconforming lots may be enlarged, if the following requirements are met:

a. The proposed use will be a new single-family dwelling or the enlargement of an existing single- or two-family use. A single-family dwelling shall not be converted to a two-family dwelling.

b. The lot area is not less than seventy (70%) percent of the required lot size.

c. There is no available vacant land abutting the lot.

d. The lot either provides off-street parking or the proposed enlargement includes the provision of off-street parking.

e. The building and lot coverage will not be exceeded.

f. For lots which do not meet the lot width requirements, the side yards may be reduced in the same proportion as the reduced width bears to the required width, but in no case shall one side yard be less than 5 feet.

g. For lots which do not meet the lot depth requirement, the front and rear yards may be reduced in the same proportion as the reduced lot depth to the required lot depth, but in no case shall the proposed front yard be less than the smallest front yard allowed under Section 31-4.1 or 31-17.1. nor the proposed rear yard be less than eighty (80%) percent of the required rear yard for the zone.

2. Existing single-family dwellings on undersized lots which are not large enough to meet the requirements of paragraph F.1. above may be enlarged if the following requirements are met:

a. The proposed use shall be a single-family dwelling. A single-family dwelling shall not be converted to a two-family dwelling.

b. Minimum lot size shall be two thousand five hundred (3,500) square feet; minimum lot width shall be thirty-five (35) feet and the maximum height shall be twenty-six (26) feet with no more than two (2) stories.

c. There is no available vacant land abutting the lot.

d. There shall be no reduction of any existing off-street parking.

e. Expansion shall not further reduce the existing front of side yard setbacks and shall be limited to the existing footprint and/or the rear of the lot.

f. The rear yard setback requirement of the district shall be met.

§ 31-45.2 Linden Station Area – Core Transit Village District – Mixed Use (SA-1)

Subsection b. 8. (a) shall be revised to read:

The principal use of the ground floor shall be one or more nonresidential uses permitted in the C-1 district, excluding private parking lots, skating rinks, hospitals, religious uses and other institutional uses.

§ 31-47 Application for Rezoning

§ 31-47-1. Application authorized.

The owner of any real property in the City of Linden may submit an application to the Planning Board of the City of Linden for the rezoning of its real property. A "developer," as that term is used in the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., may submit an application for rezoning, provided that such application is submitted with the written consent of the owner of the affected property.

§ 31-47-2. Required submissions.

Each application for rezoning shall include all required fees and escrows and 24 copies of the following:

A. A fully completed application for rezoning.

B. A map of the entire tract depicting, at minimum, all of the information required by § 29-5.

C. A concept plan, depicting the nature, features and proposed use of the property as rezoned.

D. A specific proposal for rezoning, which may be either that the tract in question be rezoned to a specific existing zoning district or that a new zoning district be created. If a new zoning district is to be created, applicant shall submit a specific, detailed proposal for said zoning district which shall include permitted uses, conditional uses, if any, and all required bulk conditions, including lot size and area, setbacks, height requirements, open space requirements, building coverage requirements, parking requirements and the like.

§ 31-47-3. Certification of complete application.

The procedure set forth in § 29-5 with respect to an application for development shall be utilized for the purpose of certifying an application to be complete.

§ 31-47-4. Distribution.

When an application shall be deemed complete, the Zoning Officer shall distribute 14 of the 24 copies of the application to the Board and appropriate professionals, and the remaining 10 copies shall be distributed to the Planning Board Secretary.

§ 31-47-5. Hearing procedure.

The Planning Board shall hold a hearing on each application for rezoning which complies with the procedures set forth in the Municipal Land Use Law. The hearing shall be held within ninety (90) days of the certification of a complete application.

§ 31-47-6. Proofs, findings and report.

After hearing the application, the Planning Board shall determine whether any action other than rezoning will properly protect the interest of the community of the municipality. The Planning Board shall review the application in light of the existing Master Plan, the conditions existing within the community and the expertise of the Planning Board in matters of land development to determine whether the applicant's proposal should be favorably recommended to the City Council. The Planning Board shall make specific detailed findings of fact and conclusions of law concerning the applicant's proposal as it relates to the review standards set forth below. It shall be the applicant's burden of proof to present sufficient credible evidence to the Planning Board for the Board to make appropriate findings, conclusions and recommendations.

§ 31-47-7. Decision.

The Planning Board shall conclude its review and make its recommendation within 120 days of the certification of a complete application. Unless the applicant shall consent in writing to an extension of the time for decision, if the Planning Board shall not act favorably on such application within said one-hundred-twenty-day period, the applicant's request that the Planning Board recommend rezoning to the City Council shall be deemed denied.

§ 31-47-7. Report to governing body.

Subsequent to action by the Planning Board, the Board shall cause its written findings and conclusions to be forwarded to the City Clerk for action by the City Council. The Planning Board Secretary shall also forward the 10 remaining copies of applicant's application. The report to the City Council shall also include a brief statement as to whether or not the Planning Board recommends that the City Council adopt an ordinance rezoning the subject property.

§ 31-47-7. Review standards.

Each application for rezoning shall comply with and address the following standards:

A. Necessity. No application for rezoning shall be granted if the relief sought could be granted through an application for development other than one pursuant to N.J.S.A. 40:55D-70d.

- B. Master Plan. In submitting its recommendations, the Planning Board shall submit a report in accordance with N.J.S.A. 40:55D-26. The governing body shall comply with such section in acting on the application. If the proposed rezoning is inconsistent with the Master Plan, the Planning Board shall include in its recommendation whether it is in the best interest of the municipality to amend the Master Plan in accordance with the Municipal Land Use Law.
- C. Modification. In making its recommendations, the Planning Board may recommend that the application for rezoning be granted, in whole or in part, or be modified. If the Planning Board recommends the granting of the application with modifications or conditions, the Planning Board shall set out such modifications or conditions in detail, including findings, conclusions and recommendations.
- D. Effect of current zoning. The applicant shall demonstrate by proper proof that, absent rezoning, there is a substantial likelihood that the zoning regulations currently in existence will zone the property into inutility or that the rezoning shall substantially and meaningfully benefit the municipality and further the purposes of the Municipal Land Use Law, including purposes set forth in N.J.S.A. 40:55D-2.
- E. Municipal services. In demonstrating that the proposed rezoning will substantially benefit the municipality and will advance the purposes of the Municipal Land Use Law, the applicant shall demonstrate that the proposed rezoning will not unduly burden the planned and orderly development of the municipality or place an undue burden upon community services and facilities. Where deemed appropriate by the Planning Board, the Board may require traffic studies, fiscal impact studies or such other information as it requires to be produced either by the applicant or for the Board at the applicant's expense.

§ 31-47-8. Action by City Council.

After receipt of the report and recommendations of the Planning Board, the City Council shall consider the application. The decision of the City Council to act or not to act on any application shall be deemed a legislative act in the sole discretion of the City Council. The City Council may determine, in its sole discretion, whether or not to act on any application and whether or not to grant, deny or modify any application. If the City Council shall act on any proposed amendment to this chapter, it shall do so in compliance with N.J.S.A. 40:55D-62, et seq.

§ 31-48. Off-tract improvements.

A. Purpose. The purpose of this section is to ensure a pro rata share allocation of the costs for off-tract improvements necessitated by new development.

B. Definition of principles.

(1) As a condition of final subdivision and/or site plan approval, the municipal agency may require an applicant to either install or pay his pro rata share of the costs of providing necessary circulation improvements, water, sewerage, drainage facilities, any other public improvements or facilities (i.e., public recreation, public buildings, public equipment), including land and easements and all items necessary to administer and maintain the City's public functions, located off tract of the property limits of the subdivision or development but necessitated or required by the development. "Necessary improvements" are those clearly and substantially related to the development in question.

(2) The municipal agency shall provide, in its resolution of approval, the basis of the required improvements.

(3) The capacity and design of proposed improvements shall be based upon sources, including, but not limited to, the adopted City of Linden Master Plan, the adopted Linden City Zoning Ordinance and the adopted Linden City Land Use and Zoning Ordinances.

(4) The improvement and/or widening of a stream or the construction of drainage or other improvements in a street or road fronting on the tract to be subdivided and/or developed shall not constitute an off-tract improvement, and the cost of said improvement shall not be allocated.

(5) The proportionate or pro rata amount of the cost of such facilities within a related or common area shall be based on the criteria contained herein.

C. Cost allocation.

(1) Full allocation. In cases where off-tract improvements are necessitated by the proposed development and no other property owner(s) receive(s) a special benefit thereby, the applicant may be required at his sole expense and as a condition of approval to provide and install such improvements.

(2) Proportionate allocation.

(a) Where it is determined that properties outside the development will also be benefited by the off-tract improvement, the following criteria shall be utilized in determining the proportionate share of the cost of such improvements to the developer, provided that the improvements are not required because the developer has realigned existing easements in order to obtain the maximum density for development.

(b) Allocation formula.

[1] Drainage improvements. The applicant's proportionate share of stormwater and drainage improvements, including the purchase of land for easements, the installation, relocation or replacement of storm drains, culverts, catch basins, manholes, riprap, improved drainage ditches and appurtenances thereto, and installation, relocation or replacement of other storm drainage facilities or appurtenances associated herewith, shall be determined as follows:

[a] The capacity and the design of the drainage system to accommodate stormwater runoff shall be based on the methods and standards consistent with this chapter, computed by the developer's engineer and approved by the engineer and the municipal agency.

[b] The capacity of the enlarged, extended or improved system required for the development and areas outside of the developer's tributary to the drainage system shall be determined by the developer's engineer and shall be subject to the approval of the engineer of the municipal agency. The plans for the improved

system shall be prepared by the developer's engineer and the estimated cost of the enlarged system calculated by the engineer of the municipal agency. The pro rata share for the proposed improvement shall be computed as follows:

[2] Roadways and transportation facilities. The applicant's proportionate share of street improvements,

Total cost of enlargement or improvement	=	Capacity of enlargement or improvement (total capacity expressed in cubic feet per second)	alignment, channelization, barriers, new or improved traffic signalization, signs,
Developer's cost		Development-generated peak rate of runoffs expressed in cubic feet per second to be accommodated by the enlargement or improvement	

curbs, sidewalks, street lighting, trees, utility improvements uncovered elsewhere, the construction or reconstruction of new or existing streets and other associated street or traffic improvements shall be as follows:

[a] The applicant shall provide the engineer of the municipal agency with the existing and anticipated future peak-hour flows for the off-tract improvements.

[b] The applicant shall furnish a plan for the proposed off-tract improvement, which shall include the estimated peak-hour traffic generated by the proposed development and the proportion thereof which is to be accommodated by the proposed off-tract improvement. The ratio of the peak-hour traffic development, which is to be accommodated by the off-tract improvement, to the future additional peak-hour traffic anticipated to impact the proposed off-tract improvement shall form the basis of the proportionate share. The proportionate share shall be computed as follows:

Total cost of enlargement or improvement	=	Capacity of enlargement or improvement (peak-hour traffic)
Developer's cost		Development peak-hour traffic to be accommodated by the enlargement or improvement

[3] Sanitary sewers. The applicant's proportionate share of distribution facilities, including the installation, relocation or replacement of collector, trunk and interceptor sewers and associated appurtenances, shall be computed as follows:

[a] The capacity and the design of the sanitary sewer system shall be based on the requirements and standards set forth in this chapter.

[b] The Linden City Municipal Engineer shall provide the applicant with the existing and reasonably anticipated peak-hour flows as well as capacity limits of the affected sewer system.

[c] If the existing system does not have adequate capacity to accommodate the applicant's flow, given existing and reasonably anticipated peak-hour flows, the pro rata share shall be computed as follows:

Total cost of enlargement or improvement	=	Capacity of enlargement or improvement (gallons per day-gpd)
Developer's cost		Development-generated gallons per day to be accommodated by the enlargement or improvement

[4] Water supply. The applicant's proportionate share of water distribution facilities, including the installation, relocation, or replacement of water mains, hydrants, valves and associated appurtenances, shall be computed as follows:

[a] The capacity and the design of the water supply system shall be based on the requirements and standards set forth in this chapter.

[b] The Linden City Municipal Engineer shall provide the applicant with the existing and reasonably anticipated capacity limits of the affected water supply system in terms of average demand, peak demand and fire demand.

[c] If the existing system does not have adequate capacity as defined above to accommodate the applicant's needs, the pro rata share shall be computed as follows:

Total cost of enlargement or improvement	=	Capacity of enlargement or improvement (gallons per day-gpd)
Developer's cost	=	Development-generated gallons per day to be accommodated by the enlargement or improvement

[5] Other improvements. The applicants' proportionate share of other capital improvements shall be computed as follows:

Total cost of enlargement or improvement	=	Capacity of enlargement or improvement
Developer's cost	=	Development share of enlargement or improvement

D. Escrow accounts.

(1) Where the proposed off-tract improvement is to be undertaken at some future date, the monies required for the improvement shall be deposited in an interest-bearing account to the credit of the City in a separate account until such time as the improvement is constructed.

(2) If the off-tract improvement is not begun within 10 years of deposit, all monies and interest shall be returned to the applicant upon his request. An off-tract improvement shall be considered "begun" if the City has taken legal steps to provide for design and financing of such improvement.

(3) If the applicant does not request the return of the money within a period of one year, the money shall be placed in the City's general capital improvement fund and shall not be returnable to the applicant thereafter.

E. Redetermination upon completion of improvements.

(1) Upon completion of off-tract improvements required pursuant to this section, the developer's liability hereunder shall be recalculated in accordance with the actual, as compared with the estimated cost of the improvements. To the extent that it shall decrease the amount thereof, the City shall forthwith refund the amount of such decrease to the developer.

(2) In the event that the payment by the applicant provided for herein is less than his share of the actual cost of the off-tract improvements, then the applicant shall be required to pay the appropriate share of the cost thereof.

F. Referral to City Council.

(1) Where an application for development suggests the need for off-tract improvements, whether to be installed in conjunction with the development in question or otherwise, the municipal agency shall forward to the City Council a list and description of all such improvements, together with a request that the City Council determine and advise the municipal agency of the procedure to be followed in installation thereof, including timing. The municipal agency shall defer final action on the application for development until receipt of the City Council' determination or the expiration of 90 days after the forwarding of such a list and description to the City Council without determinations having been made, whichever comes first.

(2) The City Council, within 90 days after receipt of said list and description, shall determine and advise the municipal agency of the procedure to be followed and may suggest conditions of approval, if any, to adequately protect the City.

(3) In the event that the municipal agency is required by statute to act on the application prior to receipt of the City Council determination as to installation and/or payment of pro rata share of off-tract improvements, it shall request the applicant to consent to an extension of time, within which to act, of sufficient duration to enable the City Council to make the aforesaid determination. In the event that the applicant is unwilling to consent to the requested extension of time, the municipal agency shall, in its discretion, either itself determine the procedure to be followed in installation and/or payment of pro rata share of the aforesaid off-tract improvements or shall condition its approval upon the subsequent determination of the City Council.

(4) The municipal agency shall only grant a preliminary approval until all off-tract improvements have been completed and approved by the appropriate municipal, county, state and/or federal agency having jurisdiction thereover.

G. Implementation of off-tract improvements.

(1) In all cases, applicants shall be required to enter into an agreement with the City in regard to installation and/or payment of their pro rata share of off-tract improvements in accordance with this

chapter and any other ordinances, policies, rules and regulations of Linden City, Union County, the State of New Jersey and any departments, authorities or agencies thereof deemed necessary.

(2) Where properties outside the subject tract will be benefited by the improvements, the City Council may require the applicant to escrow sufficient funds in accordance with this chapter to secure the applicant's pro rata share of the eventual cost of providing future improvements and/or facilities based on the standards set forth herein.

(3) General improvement.

(a) Where properties outside the subject tract will benefit by the improvement, the City Council may determine that the improvement is to be installed by the City as a general improvement, the cost of which is to be borne as a general expense.

(b) If the City Council determines that the improvement shall be installed as a general improvement, the City Council may direct the municipal agency to estimate, with the aid of the engineer of the municipal agency or such other persons who have pertinent information or expertise, the amount (if any) by which the total cost thereof will exceed the total amount by which all properties, including the subject tract, will be specifically benefited thereby, and the applicant shall be liable to the City for such expense.

(c) If the City Council determines that the improvement shall be installed as a local improvement, all or a part of the cost of which is to be assessed against properties benefited thereby in proportion to the benefits conferred by the improvement in accordance with Chapter 56 of Title 40 of the Statutes of the State of New Jersey, the applicant may be required to sign an agreement acknowledging and agreeing to this procedure. In addition, the City Council may require that the applicant be liable to the City in addition to the amount of any special assessments against the subject property for benefits conferred by the improvement, the difference between the total amount by which all properties, including the subject tract, are specially benefited by the improvement as may be determined by the City.

(4) If the City Council determines that the improvement is to be installed by the applicant, such agreement may contain provisions consistent with the standards in this chapter and any other ordinances, rules, regulations or policies of the City of Linden, County of Union, the State of New Jersey and any departments, authorities or agencies thereof with jurisdiction therein, whereby the applicant shall be reimbursed by the City or otherwise as a result of any participation fees, connection charges, charges paid in regard to developer's agreements with other applicants and the like, all in accordance with an agreement between the City Council and the applicant.

(5) In determining the procedures to be followed in the event of the submission of a list and request from the municipal agency, the City Council shall be guided by the following:

(a) The local trends in regard to the potential of development within the drainage or circulation area in question and the intensity of such development.

(b) The risk or exposure that neighboring areas are subject to in the event that required improvements are delayed.

(c) The extent to which temporary measures may sufficiently alleviate the condition or conditions requiring the off-tract improvements and the likelihood that larger, regional or subregional facilities will be required in the future to serve the development tract and the general area of the City in which the same is located.

(d) The extent to which the health, safety and welfare of both present and future municipal residents depend upon the immediate implementation of the off-tract improvement.

(e) Provisions of the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., as it now exists or as it may hereafter be amended.

Section 4. The remaining provisions of the chapter hereby amended and supplemented shall continue in full force and effect to the same extent as if herein fully repeated.

Section 5. If any section, subsection, provision, clause, or portion of this ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, such adjudication shall not

affect the remaining sections, subsections, provisions, clauses, or portions, which shall be deemed severable therefrom.

Section 6. All ordinances or parts of ordinances inconsistent herewith are hereby repealed.

Section 7. This Ordinance shall take effect in the manner provided by law.

PASSED: February 16, 2016

APPROVED: February 17, 2016

ATTEST:

President of Council

Mayor

City Clerk

linden zoning changes