



Philadelphia's New Zoning Code

MODULE 1—ADMINISTRATION AND PROCEDURES

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Chapter 14-100: General Provisions

Section 14-101 Purpose¹

The provisions of this title are enacted to:

- Promote the public health, safety, order, and general welfare by regulating the location, height, size, bulk, and use of buildings;
- Regulate the size of yards, courts, and other open spaces;
- Avoid undue congestion in the streets that would compromise safety;
- Encourage the most appropriate use of land;
- Provide adequate light and air to residents;
- Avoid undue concentration of population;
- Provide for the adequate provision of transportation, water, sewerage, schools, parks, and other public necessities;
- Avoid undue odor, noise, and pollution;
- Provide for the administration and enforcement of such, regulations; and
- Provide for penalties for violations of this Title.

Section 14-102 Citation and Title²

Title 14 of the Philadelphia Code shall be known as the “Zoning Code”.

Section 14-103 Authority

(1) Authority³

This Zoning Code is enacted pursuant to the powers granted and limitations of the Philadelphia Home Rule Charter (“Charter”).

¹ Carried over from current 14-101(1) *Purpose and Scope*, with minor wording changes to clarify and update intent.

² This is a new Section.

³ This is a new Section.

(2) Construction of Authority⁴

- (a) Nothing in this Title shall be construed to confer or attempt to confer upon any officer, department, Zoning Board of Adjustment (ZBA), or commission of the City, the power of eminent domain. All actions by any officer, department, ZBA, or commission pursuant to this Title shall be deemed to be in the exercise of the police power.
- (b) The provisions of this Title, as far as they are the same as those of existing statutes or ordinances, shall be construed as a continuation of those statutes or ordinances, and not as new enactments.

(3) Prior Zoning Regulations Superseded⁵

- (a) Except as otherwise provided in the Charter, the provisions of this Title constitute the exclusive law with regard to zoning in Philadelphia. Accordingly, the following acts are superseded.
 - (.1) The Act of May 11, 1915, P.L. 285, entitled "An Act to authorize the regulation of the location, size, and use of buildings in cities of the first class; and
 - (.2) The Act of May 6, 1929, P.L. 1551, entitled "An Act authorizing cities of the first class to adopt and enforce zoning ordinances; regulating and restricting the height, location, size; bulk and use of buildings and/or land, the areas to be occupied by buildings in proportion to the size of the lots upon which they stand, the size of courts, yards and other open spaces appurtenant thereto, and the density of population, and for these purposes, to establish districts and boundaries; to designate and regulate residential, commercial, and industrial or other uses within such districts and boundaries; and providing for the appointment of a zoning commission and a Zoning Board of Adjustment, the creation of a bureau of zoning, and setting forth the duties and functions of that commission, Zoning Board of Adjustment, and bureau; providing for the administration and enforcement of rules and ordinances authorized by this Act, and penalties for violation thereof"; and
 - (.3) The provisions of Title 14 of the Philadelphia City Code as they existed immediately prior to the adoption of this Title on [date of adoption], except as may be authorized by City Council (Council) for a fixed transition period following the adoption of this Zoning Code.

⁴ Carried over from current 14-1701(1) and (2) *Construction, Repeals, and Supersessions*.

⁵ Carried over from current 14-1701(3) *Construction, Repeals, and Supersessions*, but updated to reference more recent versions of Title 14.

Section 14-104 Applicability and Jurisdiction⁶

(1) Applicability

Every building, structure, or portion of a building or structure, and the use of all land (except public streets), including every use within a building or structure and accessory uses, in the City of Philadelphia shall conform with the provisions of this Zoning Code.

(2) Compliance Required

No building or structure shall be erected, converted, enlarged, reconstructed, or altered for use, nor shall any land, building, or structure be used or changed, except in accordance with all of the applicable regulations established by this title. No lot of record that did not exist on the effective date of this title shall be created, by subdivision or otherwise, that does not conform to the applicable requirements of this title, unless allowed by Section 14-110.

(3) Property Owned, Leased or Operated by Public Agencies⁷

Property leased or operated by the Commonwealth of Pennsylvania or the United States, and property owned, leased or operated by the City or any other public or governmental body or agency, shall be subject to the terms of this Zoning Code, as follows:

- (a) Where public or governmental uses are specifically listed in this Zoning Code, they shall be subject to the regulations in this Zoning Code;
- (b) Where public or governmental uses are not specifically listed, they shall be permitted only in districts permitting substantially similar private uses;
- (c) Property owned by the Commonwealth of Pennsylvania or the United States shall be exempt from the provisions of this Title only to the extent that the Pennsylvania or United States constitutions prohibit the regulation of those properties by this City.

⁶ Carried over from current 14-101(3) *Purpose and Scope*.

⁷ Carried over from current 14-103(4) *Zoning Maps and Districts*. The Law Department is reviewing these provisions for accuracy.

Section 14-105 Relationship to Plan Documents⁸

(1) The Comprehensive Plan

The adopted comprehensive plan serves as the statement of goals, recommendations, and policies guiding the development of the physical environment of the city. The comprehensive plan shall serve as the basic policy guide for the administration of this Zoning Code as described in subsection (3) below.

(2) Amendments to the Comprehensive Plan

In addition to the comprehensive plan, other plans and manuals contain additional recommendations, policies, and standards regarding development within the city. Those documents include but are not limited to neighborhood plans and citywide plans addressing a specific topic or a specific type of facility or type of service. If a plan is prepared by the City or a public or quasi-public agency and is adopted by the Planning Commission it shall be treated as an amendment to the comprehensive plan and shall serve as an additional guide for the administration of this Zoning Code as described in subsection (3) below. In the case of a direct conflict between the provisions of the comprehensive plan and more detailed provisions in an amendment to the comprehensive plan adopted after the comprehensive plan, the provisions of the later amendment govern.

As an alternative to adoption, a plan prepared by organization other than the City or a public or quasi-public agency may be “accepted” by the Planning Commission. If a plan is accepted (rather than adopted) by the Planning Commission, it shall serve as a policy guide for the comprehensive plan, additional plans, and other Planning Commission policies. If a plan is not formally adopted by the Planning Commission pursuant to Section 14-204(1) it shall not serve as a guide for administration of this Zoning Code.

(3) Adopted Plans Guide Discretionary Decisions

Where a comprehensive plan or comprehensive plan amendment has been adopted pursuant to Section 14-204(1), the recommendations of that plan shall be used by the Department of Licenses and Inspections (L&I), the Planning Commission, and the ZBA in making any decision on a development application on a topic or area covered by the adopted plan, except where the application is for an administrative permit by L&I pursuant to Section 14-204(11).

⁸ This is a new Section.

Section 14-106 Zoning Districts and Official Map⁹

(1) Zoning Districts

The City is hereby divided into the classes of districts described in Chapters 14-300 *Base Zoning Districts* and 14-400 *Overlay Zoning Districts*.

(2) Official Zoning Map

The base and overlay districts authorized by this Zoning Code are shown on a zoning map. The official zoning map shall be the version of those maps that includes the most recent amendment to zoning district boundaries approved by Council. The official zoning map shall be kept on file in the L&I office in electronic form and shall be available for public inspection during normal business hours. The zoning map shall be the final authority as to the current zoning status of lands, water areas, buildings, and other structures in the city. The official zoning map is incorporated into and is part of this Zoning Code.

Section 14-107 Determination of District Boundaries

(1) Boundaries of Districts¹⁰

Where uncertainty exists with respect to the boundaries of the various districts, as shown on any zoning map, the following rules apply:

- (a) The district boundaries are street lines unless otherwise shown; and where the designation on the zoning maps indicates a boundary approximately upon an existing street line, that street line shall be construed to be the boundary;
- (b) Where the district boundaries are not shown to be street lines, the district boundaries shall be construed to be lot lines; and where the designations on the zoning maps indicates a district boundary approximately upon existing lot lines, those lot lines shall be construed to be the boundary;
- (c) In undivided property, the district boundary lines on the zoning maps shall be determined by measurement according to the scale of the maps;
- (d) No district boundary shown on the zoning maps shall be construed as extending the authority of L&I beyond the low water mark on any navigable stream; and
- (e) Where a street is stricken from the City Plan or where a railroad right-of-way is abandoned, the zoning boundaries of the abutting land shall be extended to the

⁹ Carried over from current 14-101(2) *Purpose and Scope* and 14-103(1) *Zoning Maps and Districts*, with revisions to avoid repetitive language.

¹⁰ Carried over from current 14-103(2)-(4) *Zoning Maps and Districts*.

center line of said street or right-of-way, unless otherwise provided in a plan approved by the Commission with the consent of the affected property owners.¹¹

(2) Multiple Districts or Provisions

When the boundaries of various districts as shown on the zoning map are established so that a single property has more than one base zoning district designation, the following provisions apply. For purposes of this subsection (2), L&I shall determine which district or provision is more restrictive.

(a) Splits Involving Residential Districts

- (.1) If the district with the more restrictive requirements is classified as a residential district in Chapter 14-300 and that district covers more than 20 percent of the parcel, the provisions of that district shall apply to the entire parcel.
- (.2) If the district with the more restrictive requirements or controls is classified as a residential district in Chapter 14-300 and that district covers 20 percent or less of the parcel, the provisions of that district shall only apply to the part of the parcel where it is mapped.¹² In this case, if the more restricted portion of the parcel is in a residential zoning district and the less restricted portion of the property is in a commercial/mixed-use, industrial, or special purpose zoning district, the more restricted portion of the property shall not be used to provide street frontage or driveway access to the less restricted portion of the property, or for any other purpose that is not specifically allowed in the more restrictive zoning district.¹³

(b) Splits Involving Other Districts

If the district with the more restrictive requirements is not classified as a residential district in Chapter 14-300 and that district covers more than 40 percent of the parcel, the provisions of that district shall apply to the entire parcel. If the district with the more restrictive requirements or controls is not classified as a residential district in Chapter 14-300 and that district covers 40 percent or less of the parcel, the provisions of that district shall only apply to the part of the parcel where it is mapped.

¹¹ The last clause allows the Commission to vary this standard rule with the consent of property owners.

¹² This provision has been changed to promote reinvestment. The 20% rule now applies to protect adjacent residential district, but where no residential district is involved a 40% rule applies.

¹³ The second sentence comes from L&I Code Bulletin Z-0401 "Application of Split Zoning District Designations" and reflects a Pennsylvania court decision.

Section 14-108 Relationship to Other Regulations¹⁴

(1) Conflict

This Title is intended to complement other municipal, state, and federal regulations that affect land use, but is not intended to revoke or repeal any other public law, ordinance, regulation, or permit. Where conditions, standards, or requirements imposed by any provision of this Title are either more restrictive or less restrictive than comparable standards imposed by any other public law, ordinance, or regulation, the provisions that are more restrictive or that impose higher standards or requirements shall govern, except as described in subsection (2) below.

(2) Overlay Districts

If the provisions of an overlay district listed in Chapter 14-400 [Overlay Districts] conflict with other provisions of this Zoning Code, the overlay district provisions shall govern regardless of whether they are more restrictive or less restrictive than the conflicting provision.¹⁵

(3) L&I Determination

Where there is a conflict under this Section 14-108, L&I shall determine which district or provision is more restrictive.

Section 14-109 Relationship to Private Agreements¹⁶

It is not the intent of this Zoning Code to interfere with, abrogate, or annul any easement, covenant, deed restriction, or other agreement between private parties concerning any property or activity regulated by this Title. Where the provisions of this Zoning Code impose a greater restriction than that imposed by a private agreement, the provisions of this Zoning Code will control. Where the provisions of a private agreement impose a greater restriction than this Zoning Code, the provisions of the private agreement may be enforced between private parties notwithstanding the provisions of this Title. The existence of a private agreement shall not excuse any failure to comply with this title. The City shall not be responsible for monitoring or enforcing private agreements.

¹⁴ This is a new Section.

¹⁵ This provision is necessary because overlay districts are sometimes used to relax standards as well as to make them stricter than the base zoning.

¹⁶ This is a new Section.

Section 14-110 Transition from Prior Regulations

(1) Violations Continue

Any violation of the previous zoning regulations will continue to be a violation under this Zoning Code and be subject to Section 14-206, unless (a) the use, development, construction, or other activity that violated the previous zoning regulations is no longer a violation of this Zoning Code, and (b) the city has not yet issued a notice of violation.

(2) Approved Projects

The following transitional provisions shall apply to projects approved prior to the adoption of this Zoning Code.

- (a) Permits and approvals that are valid on the effective date of this Zoning Code shall remain valid until their expiration date. Projects with valid approvals or permits may be carried out in accordance with the development standards in effect at the time of approval, provided that the permit or approval is valid and has not lapsed;
- (b) No provision of this Zoning Code shall require any change in the plans, construction, or designated use of any structure for which a building permit has been issued prior to the effective date of this Zoning Code;
- (c) Any re-application for an expired permit or approval, including conditional and regulated use approvals, shall meet the standards in effect at the time of re-application.

(3) Applications in Progress

The following provisions shall apply to complete permit applications submitted prior to the adoption of this Zoning Code, but not approved as of that date:

- (a) Applications for permits and other approvals, submitted before the effective date of this Zoning Code that are found to be complete, and that are pending approval at the time of enactment of this Zoning Code may, at the applicant's option, be reviewed wholly under the terms of the previous zoning regulations. Where approved, these projects may be carried out in accordance with the development standards in effect at the time the completed application was submitted. Any re-application for an expired permit shall meet the standards in effect at the time of re-application. At the applicant's option, the application may instead be considered wholly under the terms of this Zoning Code. The applicant may not choose to have some aspects of the application subject to the previous regulations and other aspects subject to this Zoning Code.

- (b) Projects for which no application has been submitted, or for which an application has been submitted but has not been accepted as complete, prior to the effective date of this Zoning Code, shall be subject to all requirements of this Zoning Code, except as may be authorized by City Council for a fixed transition period following the adoption of this Zoning Code.

Section 14-111 Text and Graphics¹⁷

Illustrations, graphics, pictures, and flowcharts are included in this Zoning Code to help illustrate the intent and requirement of the text. In the case of a conflict between the text of this Zoning Code and any illustration, graphic, picture, or flowchart, the text shall govern.

Section 14-112 Severability¹⁸

If any Section, subsection, sentence, or phrase of this Zoning Code is held to be invalid or unconstitutional by a Court of competent jurisdiction, for any reason, the remaining portions of this Zoning Code shall not be affected. It is expressly declared that this Zoning Code and each Section, subsection, sentence, and phrase would have been adopted regardless of the fact that one or more other portions of this Zoning Code would be declared invalid or unconstitutional.¹⁹

¹⁷ This is a new Section.

¹⁸ This is a new Section.

¹⁹ This is standard language.

Chapter 14-200: Administration and Procedures

Section 14-201 Reviewers and Decision Makers²⁰

(1) Purpose

This Section identifies the roles and responsibilities of appointed and elected government officials and bodies primarily involved in the administration of this Zoning Code. Additional officials or entities may be involved based on the character of the application and the size or type of development involved. No provision of this Section 14-201 shall add to or detract from a power granted to any boards, commissions, departments, committees, or agencies of the city by a grant of power, duty, or responsibility in another section of The Philadelphia Code.

(2) City Council

The City Council (Council) serves as the legislative body for the City of Philadelphia.

(a) Powers Related to Zoning

The powers of Council related to this Zoning Code include:

- (.1) Review and approve amendments to the text of this Zoning Code, the official zoning map.
- (.2) Review and approve regulations for the subdivision of land included in this Zoning Code.²¹
- (.3) Review and approve plans of development at the time any planned development district is adopted or added to the official zoning map. The list of planned development districts is shown in Section 14-204(2)(e).

²⁰ This is a new Section to inform readers about the various agencies that may be involved with their applications. The amount of detail in this section may be reduced in the final draft Zoning Code to reduce chances of inconsistency if these lists of responsibilities and/or the procedures table in Section 14-202 are amended in the future and to shorten the ordinance.

²¹ From current 14-204(1) *Zoning Map and Text Amendments*. This replaces current language stating that Council will approve Commercial Entertainment Districts, Industrial Transformation Districts, RC-6 districts, Waterfront Redevelopment Districts, and Neighborhood Conservation Districts, because those are all amendments to the official zoning map.

- (.4) Review and approve Major Amendments to plans of development in any planned development district as described in Section 14-204(3)(c).²²

(3) City Planning Commission

(a) Creation and Administration

The Philadelphia City Planning Commission (Planning Commission), established by the Philadelphia Home Rule Charter Section 3-800, is responsible for guiding the orderly development and redevelopment of the City.

(b) Powers and Duties²³

The duties of the Planning Commission related to this Zoning Code include:

- (.1) Prepare and adopt a comprehensive plan for the city and amendments to that comprehensive plan.
- (.2) Prepare and adopt or accept other plans for specific areas, facilities, services, or aspects of development or redevelopment in the city, and amendments to those plans.
- (.3) Review and decide on land subdivisions and plans of streets.
- (.4) Prepare proposed zoning ordinances and maps, and amendments to zoning ordinances and maps, for consideration by Council.
- (.5) Prepare regulations governing the subdivision of land for consideration by Council.
- (.6) Review plans of development at the time any planned development district is proposed for adoption or addition to the official zoning map, and provide recommendations to Council. The list of planned development districts is shown in Section 14-204(2)(e).
- (.7) Review and decide on Minor Amendments to plans of development in any planned development district as described in Section 14-204(3)(b)
- (.8) Review and make recommendations on Major Amendments to plans of development in any planned development district, as described in Section 14-204(3)(b).²⁴

²² This provision reflects a change – the Planning Commission would be authorized to approve some amendments to plans of development.

²³ These provisions are carried over from current Section 4-601. Several recent provisions giving the Planning Commission authority to approve plans, or amendments, or zoning permits, in the ITD, WRD, RC-6, and NC districts, have been consolidated into a requirement giving the Planning Commission to review and approve plan amendments in planned development districts.

- (.9) Make recommendations to the Council on all bills originating in the Council that affect any adopted plan, any adopted redevelopment plan, any zoning ordinance, or the capital program, or that would authorize the acquisition or sale of City real estate. Unless such recommendations are received by the Council within 35 days from the date any such bill shall have been introduced, the approval of the Planning Commission shall be presumed.²⁵
- (.10) Make recommendations to the ZBA on all applications for variances, conditional uses, or regulated uses.

(4) Zoning Board of Adjustment

(a) Creation and Administration

The Zoning Board of Adjustment (ZBA) established by Section 3-911 of the Philadelphia Home Rule Charter is the zoning board of the Department of Licenses and Inspections.²⁶

(b) Powers and Duties²⁷

As authorized by Section 5-1006 of the Philadelphia Home Rule Charter, the ZBA has the following responsibilities related to this Zoning Code.

- (.1) Hear and decide appeals in zoning matters where error is alleged in any order, requirement, decision, or determination made by an administrative official in the enforcement of this Zoning Code or related regulation, pursuant to Section 14-203(14);
- (.2) Hear and decide zoning variances from the terms of this Zoning Code pursuant to Section 14-204(10);
- (.3) Review and decide applications for conditional uses pursuant to Section 14-204(4);²⁸
- (.4) Review and decide applications for regulated uses pursuant to Section 14-204(5);

²⁴ This provision reflects a change – the Planning Commission would be authorized to approve some amendments to plans of development.

²⁵ The list has been expanded to include comment on redevelopment plans. The current variety of 30 and 45 day comments periods for various types of applications has been replaced with a single 35 day period.

²⁶ If pending bills regarding the structure or operation of the ZBA are adopted by Council before this Zoning Code is adopted, those changes will be incorporated into this section.

²⁷ Carried over from current 14-1801(1) *Jurisdictions and Powers*, 14-1806 *Decisions of the Zoning Board*, and 14-1808 *Regulations of the Zoning Board*. This list no longer includes temporary uses, which are an administrative approval by the L&I Department subject to restrictions on activities, times, and impacts to be drafted in Module 2.

²⁸ These replace current code provisions listing authority to grant special exceptions and special use permits, which have been consolidated into the authority to grant conditional uses.

- (.5) Hear and decide appeals in any matter where it has been given special jurisdiction by any ordinance or Act of Assembly; and
- (.6) Adopt regulations, not inconsistent with the provisions of this subsection (4), in accordance with the terms of the Philadelphia Home Rule Charter.

(5) Department of Licenses and Inspections

(a) Creation and Administration

The Department of Licenses and Inspections (L&I) has been created as an administrative department of the City of Philadelphia.

(b) Powers and Duties²⁹

L&I has the power and duty of administering and enforcing the provisions of this Zoning Code, with the exception of those provisions related to the approval of land subdivisions (see Section 14-204(7)) and any powers specifically granted to another department, agency, board, or commission of the City under this Zoning Code. No permit, certificate, license, or document relating to the use of property shall be issued by any other department, agency, board, or commission of the City until L&I shall have certified that the use to be made of the property is in full compliance with the provisions of this Title. The specific powers and duties of L&I include the following.³⁰

- (.1) Make available to the public the official zoning map showing the current zoning classifications of all land in the city. Access to the map shall be available at the L&I offices and through the city's web site.
- (.2) Administer the requirement that a use registration permit be obtained for every new use commenced on any land or in any structure except for use as a single family dwelling or place of worship.
- (.3) Administer the requirement that a zoning permit shall be obtained for every new structure or addition to an existing structure commenced on any land within the city.³¹
- (.4) Issue a zoning permit or use registration permit for a conditional use only after the ZBA has approved the application and when all the other applicable provisions of this Title have been met.

²⁹ Carried over from current 14-1702: *Duties and Powers of Department of Licenses and Inspections*.

³⁰ The provisions on access to the zoning map have been updated to reflect that the official map is now in electronic form. The duty to maintain a register of nonconforming uses has been deleted from this list as impractical.

³¹ This requirement has been applied but is not explicitly stated in the current zoning code.

- (.5) Issue building permits required under The Philadelphia Code only after zoning permits and use registration permits required under this Title have been issued.
- (.6) Upon application, issue a certification noting that the zoning district classifications of any property and the current zoning status of that property as shown by the official zoning map and other maps and records of L&I.
- (.7) To cause the L&I Board of Licenses and Inspections Review to hear appeals of decisions made by the Art Commission and the Historical Commission.³²
- (.8) Adopt and administer regulations necessary to perform its duties under Section 14-204(8) and Section 14-204(9).

(6) Design Review Committee

[These provisions are reworded from the proposal made by Executive Director Alan Greenberger to the Planning Commission in early 2009, and may be revised as that proposal is refined following the results of the continuing facilitated dialogue between neighborhood and development interests.]

(a) Membership

The Design Review Committee members shall include seven volunteer members, recommended by the Planning Commission and appointed by the Mayor, with one member representing and knowledgeable about each of the following fields: (1) architecture, (2) landscape architecture, (3) urban planning, (4) historic preservation, (5) engineering, (6) development, and (7) civic association development review. A member of the Planning Commission will be the Chair of the Committee and will fill one of the designated positions. The Executive Director of the Planning Commission (or appointed designee) will advise the Committee but will have no vote.

(b) Powers and Duties

The duties and responsibilities of the Design Review Committee under this Zoning Code include:

- (.1) Meet monthly to review those proposals for which design review is required under Section 14-204(6) and to offer advisory recommendations on those proposals.

³² This is currently being implemented, but is not specifically stated in the current zoning ordinance.

- (.2) Where the Art Commission has responsibility to review the design of a project, building, structure, or site (see Section 14-201(8)), the Design Review Committee may exercise its advisory review role.

(7) Historical Commission³³

(a) Membership

The Mayor has appointed a Philadelphia Historical Commission consisting of the President of City Council or his designee, the Director of Commerce, Commissioner of Public Property, the Commissioner of Licenses and Inspections, the Chairman of the City Planning Commission or the Chairman's designee, the Director of Housing or his designee, and eight other persons learned in the historic traditions of the city and interested in the preservation of the historic character of the city. At least one member represents and is knowledgeable about each of the following fields: (1) an architect experienced in the field of historic preservation; (2) an historian; (3) an architectural historian; (4) a real estate developer; (5) a representative of a Community Development Corporation; and (6) a representative of a community organization.

(a) Powers and Duties

The powers and duties of the Philadelphia Historical Commission shall be as follows:

- (.1) Designate as historic those buildings, structures, sites, and objects that the Historical Commission determines are significant to the city, pursuant to Section 14-204(8).
- (.2) Designate as historic those public interior portions of buildings that the Historical Commission determines are significant to the city, pursuant to Section 14-204(8).
- (.3) Delineate the boundaries of and designating as historic those districts that the Historical Commission determines are significant to the city, pursuant to Section 14-204(8).
- (.4) Prepare and maintain or cause to be prepared and maintained a comprehensive inventory of historic buildings, structures, sites, objects, and districts, and making that inventory available for public inspection in the offices of the Historical Commission, L&I, and the Department of Records.³⁴

³³ Carried over from 14-2007(3) *The Historical Commission*, 14-2007(4) *Powers and Duties of the Historical Commission*, 14-2007(6)(g), and Council Bill 080527 (2008).

³⁴ Carried over from current 14-2007(6)(g).

- (.5) Review and act on all applications for permits to alter or demolish historic buildings, structures, sites, or objects, or to alter or demolish buildings, structures, sites, or objects located within historic districts, pursuant to Section 14-204(9).
- (.6) Review and comment on all applications for permits to construct buildings, structures, or objects within historic districts.
- (.7) Make recommendations to the Mayor and Council concerning the use of grants, gifts and budgetary appropriations to promote the preservation of buildings, structures, site, objects or districts of historic importance to the City;
- (.8) Make recommendations to the Mayor and Council that the City purchase any building, structure, site or object of historic significance where private preservation is not feasible, or that the City acquire facade easements, development rights, or any other property interest that would promote historic preservation;
- (.9) Increase public awareness of the value of architectural, cultural and historic preservation;
- (.10) Adopt rules of procedure and regulations and establishing any committees deemed necessary for the conduct of its business;
- (.11) Keep minutes and records of all proceedings, including records of public meetings during which proposed historic designations are considered.

(8) Art Commission³⁵

(a) Creation and Administration

The Art Commission has been created pursuant to The Philadelphia Code Section 3-910 as a commission of the Department of Public Property. In the case of any conflict between the provisions of this Section 14-201(8) and the provisions of Section 3-910, the latter shall govern.

(b) Powers and Duties

The duties and responsibilities of the Art Commission related to this Zoning Code include:

- (.1) Approve the design and proposed location of any building, bridge and its approaches (but excepting a bridge that is part of a road), arch, gate, fence, or other structure or fixture to be paid for, either wholly or in

³⁵ This material is carried over from current Philadelphia code 5-903 *Art Commission*, 14-214(9) *Public Art*, and 14-411(5) *Public Art*.

part, from the City treasury or for which the City or any other public authority is to furnish a site, provided that the approval conform to the comprehensive plan.³⁶

- (.2) Approve any structure or fixture to be erected by any person upon or to extend over any highway, stream, lake, square, park or other public place within the City.
- (.3) Approve the construction of signs on private property in the Area Surrounding the Vine Street Parkway and Benjamin Franklin Bridge Approach, Benjamin Franklin Parkway, Passyunk Avenue Special District, the Convention Center Expansion Area Special District, and Areas Abutting Parkways, Historical Shrines, and Civic Projects;³⁷
- (.4) Approve all public art submitted to meet the requirements of the Commercial Entertainment districts or that part of the CMU-4 district that was zoned RC-4 prior to the adoption of this Zoning Code.
- (.5) Approve the erection or alteration of a building in certain areas along the Benjamin Franklin Parkway³⁸ and Independence National Park.

(9) Streets Department

(a) Powers and Duties ³⁹

The duties and responsibilities of the Streets Department related to this Zoning Code include:

- (.1) Review and comment to the Planning Commission on traffic and circulation elements of proposed subdivisions of land.
- (.2) Review and comment to the Planning Commission on the adequacy of traffic flow and circulation of proposed development applications in the Commercial Entertainment Districts and the Waterfront Redevelopment area of the RMU-2 district.

³⁶ The current text says Physical Development Plan.

³⁷ These provisions are carried over from current 14-214(15) *Signs*, 14-410 *Signs*, 14-1604.1(5) *Sign Controls*, 14-1607(12) *Sign Controls*, 14-1611 *Benjamin Franklin Parkway Controls*, *Passyunk Avenue Special District Controls*, 14-1632 *Convention Center Expansion Area Special District Controls*, and 14-2001 *Special Controls in Areas Abutting Parkways, Historical Shrines, and Civic Projects*. Since some of these areas are being consolidated as part of the proposed Center City overlay district, we will have to review the applicability of this provision after drafting Module 2.

³⁸ Carried over from current 14-1611 *Benjamin Franklin Parkway Controls*.

³⁹ This list has been updated to reflect actual current duties of the department. Approval of lighting plans in the M30-O district has been deleted from this list since it implies that private plans may be reviewed, and since street lighting plans are already covered in the list.

- (.3) Prepare amendments to the official City Plan to reflect changes to or vacation of an existing street or the addition of a new street;
- (.4) Review and comment on proposed driveways, loading docks, curb cuts, parking lots, sidewalks, curb bump-outs, lay-by-lanes, street signals, signs, and paving;
- (.5) Review street lighting plans for proposed development and redevelopment, and require installation of additional street lights as necessary;
- (.6) Review of parking garages in that part of the CMU-4 district that was zoned RC-4 prior to the adoption of this Zoning Code;
- (.7) Approve parking plans in the Commercial Entertainment District;
- (.8) Approve off-street parking, layout, and access conditions in the Sports Stadium District; and
- (.9) Assist other departments, boards, and commissions in managing and enhancing the relationship between development and the character and functioning of adjacent streets.⁴⁰

(10) Water Department

(a) Powers and Duties

The duties and responsibilities of the Water Department related to this Zoning Code include:

- (.1) Review and comment on the storm water impacts of all development applications (a) in the Wissahickon Watershed or (b) outside the Wissahickon Watershed that involve more than 5,000 sq. ft. of earth disturbance. City storm water regulations will generally apply when:
 - (.a) The application involves earth disturbance of more than 15,000 sq. ft.; or
 - (.b) The property involves earth disturbance of more than 5,000 sq. ft. in the Darby-Cobbs Creek Watershed; or
 - (.c) The property is located in the Wissahickon Watershed Overlay [WW-O] district.⁴¹

⁴⁰ This final duty has been added.

⁴¹ This is a new provision to reflect current practice.

- (.2) Review and comment to the Planning Commission on the storm water impacts and mitigation measures of development applications in the Commercial Entertainment Districts and the Waterfront Redevelopment area of the RMU-2 district.
- (.3) Review and provide comments to the Planning Commission on requests for additional impervious surfaces in the WW-O overlay district.
- (.4) Review applications for approval and amendment of master plans in the RR-O overlay district based on of sewer infrastructure capacity.
- (.5) Approve proposed storm-water runoff control methods in applications for land subdivision.

Section 14-202 Procedures Summary Table

Table 14-202 summarizes the roles of the review and decision bodies listed in Section 14-201 in specific types of Zoning Code applications. In the event of conflict between the provisions of that table and the text of this Zoning Code, the text shall govern.

Administration and Procedures
Section 14-202: Procedures Summary Table

| TABLE 14-202: PROCEDURES SUMMARY TABLE | | | | | | | | | | | |
|----------------------------------------------------------------------------------------------------------------------------------------------|------------------------|--------------------------|---------------------------|----------------------------------------|-----|-----|-----|---------------------|---------|--------|---|
| R = Review D = Decision A = Appeal N = Newspaper Notice S = Sign Notice M = Mail Notice W= Web Notice of Scheduled Meeting | Public Notice Required | Public Meeting Required? | Pre-Application Required? | Review, Decision, and Appeal Authority | | | | | | | |
| | | | | Historical Commission | L&I | ZBA | DRC | Planning Commission | Council | Courts | |
| Type of Application | | | | | | | | | | | |
| Plan Adoption | N, W | Under Discussion | Under Discussion | | | | | D | | | |
| Zoning Amendment | | | | | | | | | | | |
| Map Amendment | S, W | | | | | | | R | D | A | |
| Text Amendment | N, W | | | | | | | R | D | A | |
| Amendments to Plan of Development | | | | | | | | | | | |
| Minor Amendments | W | | | | | R | | | D | | A |
| Major Amendments | S, W | | | | | R | | | | D | A |
| Conditional Use Approval | S | | | | | R | D | | | | A |
| Regulated Use Approval | S | | | | | R | D | | | | A |
| Design Review | W | | | | | R | | R | | | |
| Subdivision Plat | | | | | | R | | | D | | A |
| Designation of Historic District or Structure | S, N, M | | | | | D | | | R | | A |
| Construction in Historic District or Alteration/Demolition of Historic Resource | | | | | | D | | | R | | A |
| Zoning Variance | S | | | | | | R | D | | | A |
| Administrative Permits | | | | | | | D | A | | | |

Section 14-203 Common Procedures and Requirements

Procedures that are common to several types of applications for permits, approvals, or variances are listed in this Section. In addition, more detailed information on some of these topics is available in the Zoning Code Administrative Manual.

(1) Pre-Applications and Neighborhood Meetings

[The Zoning Code Commission understands that recommendations regarding neighborhood meetings have raised significant concerns on the part of many stakeholders. The ZCC has accepted an offer from the Philadelphia Chapter of the AIA and the Penn Project for Civic Engagement to convene a series of work sessions with neighborhood organizations and developers to discuss and identify whether the consultant recommendation for a neighborhood meeting requirement should be included in the new Zoning Code, and if so, in what form. The ZCC will revisit this issue after receiving and discussing the report of these workshops.]

(2) Authority to File Applications⁴²

(a) Comprehensive Plan

Only the Planning Commission may submit a comprehensive plan for approval pursuant to Section 14-204(1). The City or any public or quasi-public agency may submit a proposed amendment to the comprehensive plan for approval pursuant to Section 14-204(1). Other organizations may submit plans for acceptance by the Planning Commission, but if accepted those plans will not be considered amendments to the comprehensive plan (see Section 14-105).

(b) Zoning Text or Map Amendment

- (.1) Any person or entity, including the Planning Commission or a department or agency of the City, may file an application for amendment of the text of this Zoning Code pursuant to Section 14-204(2) *Zoning Map or Text Amendment*.
- (.2) An application for an amendment to the official zoning map may be filed by (a) the Planning Commission or a department or agency of the city, or (b) the owner of the property proposed for rezoning, or (c) an agent authorized in writing to act for the owner of the property proposed for rezoning, or (d) a conservator for the property pursuant to [Codification of Pennsylvania Act 135 of Nov. 26, 2008.]

⁴² This Section is new, and generally addresses an issue not addressed by the current zoning ordinance.

(c) Other Applications

An application for any other approval listed in Section 14-204 may only be filed by (a) the Planning Commission or a department or agency of the City, or (b) the property owner, or (c) an agent of the property owner authorized in writing by the owner to file the application, or (d) a conservator for the property pursuant to [Codification of Pennsylvania Act 135 of Nov. 26, 2008.] Applications for an interpretation of this Zoning Code are subject to the provisions of Section 14-203(11).

(3) Application Materials and Fees⁴³

- (a) Lists of required application materials for each type of application listed in Section 14-204 may be obtained from L&I or from the City's web site. If requested by the applicant, L&I shall review the list of materials required for a proposed application, and may waive any materials that L&I determines (a) are not required to demonstrate compliance with applicable state or federal law, and (b) are not required to demonstrate compliance with this Zoning Code or related regulations of the City, because of the size, nature, or location of the application.
- (b) Each application for a permit or approval, including conditional use and regulated use approvals, pursuant to this Zoning Code shall require the payment of a fee in the amount shown in the Philadelphia Administrative Code. The schedule of fees may be obtained from L&I or from the City's web site. Fees are calculated to cover the City's costs of reviewing applications, and shall not be refunded if the application is subsequently denied.

(4) Complete Application Required

- (a) Each application filed pursuant to the requirements of this Zoning Code shall be reviewed to confirm that it contains all of the required application materials. No application shall be reviewed for compliance with this Zoning Code until it is complete. If L&I determines that an application does not contain the required application materials it shall notify the applicant of the missing materials within 15 days after L&I's receipt of the application and shall request that the applicant

⁴³ This is a new provision. As noted in the *Detailed Recommendations for a New Zoning Code* document, specific application materials and fees are often not included in the code itself in order to make the code more readable and to allow for amendments that reflect new technologies or required review topics without amending the Zoning Code itself. The provision allowing L&I to waive an unnecessary filing requirement is a new provision to promote efficient review and promote investment in the city.

provide the missing materials within 15 days after the applicant's receipt of that notice. If the applicant does not supply the requested materials, the provisions of Section 14-203(11) shall apply.

- (b) The determination that an application is complete shall not prevent L&I, the ZBA, or the Planning Commission from later requesting additional materials that it deems necessary to evaluate whether the application meets the applicable criteria for approval set forth in Section 14-204.

(5) Referrals

L&I, the ZBA, or the Planning Commission may refer an application to any other department or agency of the City, state, or federal if deemed necessary to evaluate the impacts of the application. Specific requirements for referrals in some districts are listed in Section 14-204(3).⁴⁴

(6) Public Notice

(a) Content⁴⁵

All mailed, newspaper, or sign notices required by this Section shall include the following information unless another provision of this subsection (6) indicates that different information is required:

- (.1) Indicate the name and address of the applicant or the applicant's agent;
- (.2) Indicate where documents copies of the application and any related information submitted by the applicant can be obtained;⁴⁶
- (.3) Describe the property involved by general vicinity, street address, size, and/or nearest cross street, and the zoning district in which the property is located;
- (.4) Describe the nature, scope, and purpose of the application or proposal being advertised and the type of permit, approval, or variance being sought;
- (.5) Indicate the time and place of any required meeting or public hearing regarding the application;
- (.6) Indicate that interested parties may appear at the meeting or public hearing and speak on the matter or may file written comments, and the address to which written comments may be sent; and

⁴⁴ This is a new provision that is standard in many cities but does not appear in the current zoning ordinance.

⁴⁵ This is a new provision.

⁴⁶ The current language for creation of an NCD district reads "a location where interested parties may review the proposed map and proposed design guidelines for the NCD".

- (.7) Contain any additional information required by L&I, the ZBA, or the Planning Commission for the type of application being proposed.

(b) Sign Notice⁴⁷

Where Section 14-202 requires notice by sign, the notice shall contain the content listed in subsection (a) above, and shall meet the following requirements.

(.1) Provision and Posting of Signs

L&I shall provide each applicant with the required number of signs.

(.2) Number and Location of Signs

At least one sign shall be clearly posted by the applicant on each street frontage of the property that is the subject of the application and as close to the sidewalk as possible. On large parcels, or when a property is in the interior of a block or tract of land, additional signs may be required to be posted adjacent to and facing the surrounding properties. Signs shall be posted in plain view, not obstructed by bushes, tree limbs, fences, or gates, and at eye level so that passers-by may read the sign without coming onto the property. Signs may not be posted on moveable gates, doors, or windows, or on trees or utility poles. In the case of an appeal where the appellant does not control the property that is the subject of the appeal, L&I may waive the posting requirement and require alternative notice designed to provide effective notice to all interested parties.

(.3) Time of Posting

Notification signs shall be posted as shown in the Table 14-203-C. It shall be the applicant's responsibility to see that each required sign remains posted during the entire period.

⁴⁷ This provision carries over materials from 14-2007 and the regulations of the ZBA. The language in the current 14-19805(7) reads "The ZBA shall fix a reasonable time for the hearing of appeals or other matters within its jurisdiction, give public notice of the public hearing, as well as due notice to the parties of interest, and decide the appeal or other matter within a reasonable time."

| Table 14-203-C: Sign Notice by Type of Application⁴⁸ | |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Type of Application | Sign Posting Requirements |
| Any public hearing before the ZBA | At least 12 consecutive days immediately prior to the hearing and including the day of the hearing |
| Designation of Historic District ⁴⁹ | At least 60 days before the Historical Commission public hearing for designation, with at least one sign per block in the proposed district. |
| Demolition of a Historic Building, Structure, Site, Object, or Public Interior Portion of a Building, or a Building, Structure, Site, or Object Located in a Designated Historic District | No more than 7 days after application for a demolition permit. Notice shall state that the applicant has applied for a demolition permit, that the property is historic or located in a historic district, and that the application has been forwarded to the Historical Commission for review. Posting of a notice shall not be required in the event of an emergency identified by the Police Department, Fire Department, or L&I that requires immediate action to protect the health or safety of the public. ⁵⁰ |

(.4) Reposting

If signs are not posted in accordance with the preceding requirements, the ZBA or Historical Commission shall delay action on the matter and require reposting of the signs, unless the applicant satisfies that (a) the required posting began on or before the required date, and (b) the applicant made diligent efforts to keep the signs posted during the entire period, and (c) that only circumstances beyond applicant’s control prevented a continuous posting, then the ZBA or Historical Commission may act on the application. Any reposting of required signs will be treated as a new posting and a new posting fee shall be required.⁵¹

(.5) Sign Removal

No person shall alter, deface, remove or affect the visibility of any sign posted pursuant to this Section 14-203(6) until after a the public hearing has been held or the application has been withdrawn. Each required notice sign shall be removed by the applicant within five days after a decision has been made or a permit issued on the matter referenced on the sign or the application has been withdrawn.

⁴⁸ Tables 14-203-c, -d, and –e may be consolidated in the final draft Zoning Code.

⁴⁹ Carried over from current 14-2007(6). The one sign per block requirement was added because the current ordinance does not specify how many signs or where they are to be posted.

⁵⁰ References to Police, Fire, and L&I have been added.

⁵¹ Some provisions come from 14-1805(11).

(b) Mailed Notice⁵²

Where Section 14-202 requires mailed notice, that notice shall contain the content listed in subsection (a) above and shall comply with the requirements of Table 14-203-D. The applicant shall provide a copy of a Department of Records plat showing properties within 200 feet and a mailing label for each address within that area. The City shall complete the mailing of notice based on information provided by the applicant.

| Table 14-203-D: Mailed Notice by Type of Application | | |
|-------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Type of Application | Time of Notice | Recipients |
| Creation of a Neighborhood Conservation Overlay District ⁵³ | At least 60 days before City Council public hearing on creation of the district | All property owners within the proposed overlay district and all persons who signed the petition to create the NC-O district. Notice shall state the time and date of the public hearing. |
| | Following City Council adoption of Overlay district | All property owners within the overlay district describing (a) boundaries of the NC-O, (b) types of activities regulated by the NC-O, (c) procedures for approval of regulated activities, and (d) where to review or obtain copies of NC-O design regulations. |
| Designation of Historic Structure, Building, Site, Object, or Public Interior Portion of a Building ⁵⁴ | At least 30 days before Historical Commission public hearing on designation | The owner of the property proposed for designation. Notice shall be sent to the registered owner's last known address listed in the real estate tax records of the Department of Revenue and sent to "Owner" at the street address of the property proposed for designation. Notice shall state the time and date of the public hearing. |
| Designation of Historic District ⁵⁵ | At least 60 days before Historical Commission public hearing on designation | The owners of each building, structure, site or object within the proposed district. Notice shall be sent to the registered owner's last known address as it appears in the real estate tax records of the Department of Revenue and sent to "Owner" at the street address of the property proposed for designation. Notice prior to designation shall state the time and date of the public hearing. Notice following designation of the district shall also be sent to each person appearing at the public hearing who requests notification. |
| | Following Historical Commission designation of the district | |

⁵² This is a new provision.

⁵³ From current 14-903.

⁵⁴ Carried over from 14-2007(6).

⁵⁵ Carried over from 14-2007(6).

(c) Newspaper Notice⁵⁶

Where Table XX[Procedures Table] requires newspaper notice, that notice shall be in a newspaper of general circulation within Philadelphia, shall contain the content listed in subsection (a) above, and shall meet the requirements of Table 14-203-E. If a hearing is required the notice shall also comply with all applicable requirements of Pennsylvania Statutes related to notices of public hearings.

| Table 14-203-E: Newspaper Notice by Type of Application | |
|----------------------------------------------------------------|----------------------------------------------------------------------------------|
| Type of Application | Time of Publishing |
| Zoning Map or Text Amendment | Once at least 15 days before public hearing by City Council |
| Designation of Historic District | Once at least 60 days before Historical District public hearing for designation. |

(d) Other Forms of Notice

No provision of this Section 14-203(6) shall restrict any department or agency of the City from providing additional notice in a different form, including without limitation notice through posting of information on the City’s web site, or through links to other web sites, or through electronic mail or mailing lists. Notices pursuant to this subsection (e) shall be provided at the City’s option, and shall not substitute for any required notices under subsections (a) through (d) above. Failure to provide any form of supplemental notice under this subsection (e) shall not be cause to delay, reverse, or appeal any decision of the ZBA or any department or agency of the City.

(7) Public Hearings⁵⁷

Whenever this Zoning Code requires that the ZBA conduct a public hearing, the following provisions shall apply.

- (a) Hearings of the ZBA shall be held at the call of the Chairman and at such other times as the ZBA may determine.
- (b) Four members of the ZBA shall constitute a quorum for any public hearing required under this Title.⁵⁸

⁵⁶ This is a new provision.

⁵⁷ Carried over from current 14-1805 *Hearings*. The cross-reference to fees has been removed because all references to fees are now covered by a single statement. The cross-reference to “reasonable” notice has been replaced by the public notice provisions in 14-203(6).

⁵⁸ If pending Council bills to revise the quorum or operation of ZBA are adopted, these provisions will be changed accordingly.

- (c) The concurring vote of a majority of the ZBA, present and constituting a quorum at a public hearing, shall be required for action by the ZBA.
- (d) All hearings shall be open to the public. Any member of the public who attends a public hearing before the ZBA shall be permitted to offer testimony individually, even if that individual would not have standing to appeal a decision by the ZBA following that testimony. Any organization that attends a public hearing before the ZBA shall be allowed to offer testimony on behalf of the organization, even if that organization would not have standing to appeal a decision by the ZBA following that testimony. The ZBA may determine the order of testimony and may establish time limits on testimony in order to allow all interested parties to be heard.⁵⁹
- (e) The ZBA may administer oaths and compel the attendance of witnesses, and issue subpoenas for that purpose.
- (f) The ZBA shall keep minutes of its deliberations showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact, and shall keep records of its hearings, inspections, examinations, and other official actions, all of which shall be immediately filed in the office of the ZBA and shall be a public record.
- (g) Any party may appear in person or by his attorney. For good and proper cause, the right of an attorney to practice before the ZBA may be suspended by the ZBA. Statements by a person's attorney on his behalf may be considered as testimony.
- (h) Any agency of the City shall have the power, in all public hearings before the ZBA, to appear and to present facts and information to assist the ZBA in reaching a decision.
- (i) Hearings on appeals relating to the One Year Rule set forth in Section 14-204(11)(g) shall be conducted in accordance with the procedures set forth in that section.
- (j) All decisions of the ZBA shall be in writing, shall state the reason(s) for the decision, and notice of the decision shall be mailed to the applicant and his

⁵⁹ These provisions on public testimony are new, and are intended to reflect requirements of Pennsylvania law and to clarify that limitations on standing to appeal a decision do not require that testimony on the decision be limited to those with standing to appeal. A similar provision exists for designation of historic structures in current 14-2007(6)(c).

attorney of record and to such other persons or attorneys who have properly entered an appearance in the case. The decision shall be a public record.⁶⁰

- (k) The ZBA shall prepare an annual report to be sent to the Federal Insurance Administration of all variances granted during the previous calendar year within areas subject to flooding as provided in Section 14-XX[Flood Plain Controls] describing the conditions under which the variances were granted.

(8) General Decision-Making Criteria⁶¹

Where L&I, the ZBA, or the Planning Commission is required to render a decision or provide a recommendation on an application and this Zoning Code does not provide specific criteria for review and approval of that type of application in Section 14-204, the application shall be recommended for approval or shall be approved, with or without conditions, if the application complies with all applicable standards of this Zoning Code and any related regulations adopted by the City.

(9) Conditions on Permits and Approvals⁶²

- (a) L&I is authorized to impose conditions on permits necessary to bring the application into compliance with the requirements of this Zoning Code.
- (b) The ZBA and the Planning Commission are authorized to recommend or impose conditions on approvals that it determines are necessary to:
 - (.1) Bring the application into compliance with the requirements of this Zoning Code or any previously adopted plan of development for the property, or
 - (.2) Prevent or minimize adverse effects upon surrounding areas or upon public facilities and services.
- (c) All conditions imposed by L&I, the ZBA, or the Planning Commission shall be reasonably related to the anticipated impacts of the proposed use or development and the purposes of this Zoning Code.
- (d) In the case of decisions made by the ZBA or Planning Commission, where mitigation of the impacts of a proposed plan or development requires an applicant to dedicate land or pay money to a public entity in an amount that is not calculated according to a formula applicable to a broad class of applicants,

⁶⁰ Subsections (j) and (k) are carried over from current 14-1806 *Decisions of the ZBA* but add a requirement that the Board's written decision specify the reasons for the decision.

⁶¹ This is a new provision. Some types of applications are also required to be consistent with the adopted plans, and that additional criterion is listed in the applicable Section of 14-304 *Specific Procedures*.

⁶² This is a new provision generally reflecting the limits on conditions stated in federal court decisions.

and the ZBA or Planning Commission has authority to impose those conditions, any condition imposed shall be roughly proportional both in nature and extent to the anticipated impacts of the proposed development, as shown through an individualized determination of impacts. This subsection (d) shall not constitute a grant of authority to either the ZBA or the Planning Commission to require the dedication of land or payment of money, but constitutes a limitation on any existing authority to impose such conditions.

- (e) Any conditions on approvals shall be expressly listed in or attached to the approval document, and violation of any approved condition shall be a violation of this Zoning Code.

(10) Referral from L&I to ZBA⁶³

- (a) Notwithstanding the provisions of Section 14-202, where a decision pending before L&I concerns a proposed development that will occupy more than 100,000 square feet of gross floor area of non-residential use or more than 25 dwelling units and the proposed development is located on a property that is adjacent to a residential zoning district along at least one property line or is separated from a residential zoning district only by a public street or right-of-way no more than 100 feet wide, L&I may refer the application for decision by the ZBA rather than L&I.
- (b) The purpose of referring a decision to the ZBA is to allow for public discussion of whether the application meets the requirements of this Zoning Code and whether the size of the application requires mitigation of impacts that would not be required of a smaller similar project.
- (c) Where a decision is referred for decision by ZBA pursuant to this subsection (10), the ZBA shall provide public notice pursuant to Section 14-203(6) and conduct a public hearing pursuant to Section 14-203(7), but shall make the decision pursuant to the same criteria that would have applied to L&I decision.
- (d) The ZBA shall make a decision on the application within 30 days after L&I notifies the ZBA that the application is being referred for decision.

⁶³ If the ZCC decides to adopt a pre-application meeting requirement for some types of development, the referral process could be integrated into pre-applications. For example, the decision as to whether an application should be decided by the ZBA rather than L&I could be made at that time, which would make it less subject to outside pressure.

(11) Inactive Applications

If L&I requests additional information regarding any application and the applicant does not respond, or if L&I issues a permit and the applicant does not pick up the permit, the application will be treated as inactive. The definition of inactive applications and specific timeframes and rules regarding their disposition are found in the City of Philadelphia Administrative Code.

(12) Protection of Property Rights⁶⁴

- (a) All review and approval procedures in this Zoning Code shall be conducted, and decisions made, so as to protect the property rights of applicants pursuant to the fifth and fourteenth Amendments to the U.S. Constitution and [comparable provisions] of the Pennsylvania Constitution.
- (b) Without limiting the previous Section, no decision pursuant to this Zoning Code shall have the effect of depriving a property owner of all reasonable economic use of the property, or of denying a property owner of a property right protected by the U.S. of Pennsylvania Constitutions without due process of law.
- (c) If an applicant alleges that the provisions of this Section have been violated, that allegation shall be treated as a request for (a) a variance pursuant to Section 14-204(10), or (b) a code interpretation pursuant to Section 14-203(13). If it is treated as a request for a variance, the ZBA may grant such relief as it deems appropriate to avoid a denial of constitutionally protected rights, including but not limited to a variance allowing a use that is not otherwise allowed in the zoning district, provided that the use does not constitute a public nuisance. The relief granted by the ZBA of Adjustment need not be the same as that requested by the applicant, provided that it results in the applicant retaining a reasonable economic use of the property. If treated as a request for a code interpretation, the Planning Commission may consider revising and existing code interpretation or adopting a new code interpretation to avoid a denial of constitutionally protected property rights.

(13) Code Interpretations⁶⁵

- (a) Any person may request a written interpretation of the meaning of any provision of this Zoning Code as it applies to a specific property or circumstance, provided that the request does not relate to a pending application for a permit or approval before L&I, the ZBA, or the Planning Commission.

⁶⁴ This new provision paraphrases general due process protections of property rights and clarifies how claims of denial of property rights shall be processed.

⁶⁵ This is a new provision.

- (b) A request for a written interpretation shall be filed with the Planning Commission and a response to the request shall be provided by the Planning Commission within 30 days.
- (c) The Planning Commission may consult with a department or agency of the city, including but not limited to L&I or the ZBA, whose interests may be affected by the interpretation, and to avoid inconsistencies between decisions and interpretations of L&I, the ZBA, and the Planning Commission related to this Zoning Code.
- (d) The written interpretation of the Planning Commission shall be posted on the City's web site as an L&I Code Bulletin within one week after its issuance and shall be transmitted to the applicant at the street address or electronic address stated on the application.
- (e) Following the issuance of a written interpretation, the decisions of L&I, the ZBA, and the Planning Commission shall be generally consistent with that interpretation unless and until a replacement or modifying written interpretation is issued by the Planning Commission. However, the issuance of a written interpretation shall not require that L&I, the ZBA, or the Planning Commission to reach a particular decision on any application if the facts of the application or property or the location or character of the proposed use or structure in any application differ from those stated or assumed by the Planning Commission at the time the written interpretation was made.

(14) Appeals

(a) Appeals to Zoning Board of Adjustment⁶⁶

- (.1) A decision made by L&I pursuant to this Zoning Code may be appealed to the ZBA by any taxpayer, organization, or entity affected by the decision, or by any department or agency of the City affected by the decision.
- (.2) A recommendation by the Planning Commission or by any agency or department of the City is not a final decision and may not be appealed to the ZBA.
- (.3) Any appeal of an L&I decision shall be filed with the ZBA within 30 days after L&I's decision through a written notice of appeal stating

⁶⁶ Carried over from current 14-1705 *Appeals to ZBA of Appeals*.

specifically how L&I's decision is inconsistent with the requirements of this Zoning Code.⁶⁷

- (.4) After the filing of an appeal, L&I shall promptly transmit to the ZBA copies of the application materials, all documents related to L&I's decision, and a statement of the reasons for L&I's decision.
- (.5) The ZBA may decide to consider the appeal at a hearing based on written materials such as the information contained in L&I record, and the reasons stated in the appeal form if it believes that additional testimony is not necessary to determine compliance with this Zoning Code, or may allow additional testimony to determine compliance. If additional testimony is accepted, the ZBA may receive testimony from any person pursuant to Section 14-203(7) regardless of whether that person would have had standing to file the appeal.
- (.6) The ZBA may affirm or reverse, in whole or in part, or may modify the order, requirement, decision, or determination appealed from; and may make decision or order, with or without conditions, necessary to make the decision appealed consistent with the provisions of this Zoning Code. It shall have all the powers of the agency from which the appeal is taken.
- (.7) The ZBA shall make a decision on the appeal within a reasonable time after receiving the appeal.
- (.8) An appeal to the ZBA shall not stay any actions consistent with L&I's decision unless (a) the applicant requests that the ZBA stay those activities because of specific negative impacts on the surrounding area, and (b) the applicant cites specific inconsistencies between the requirements of Zoning Code and L&I's decision making it likely that the applicant's appeal will be successful, and (c) the ZBA grants the applicant's the request for a stay of activities based on those factors.⁶⁸

(b) Appeals to the L&I Board of Licenses and Inspections Review

A decision by the Art Commission or a decision by the Historical Commission regarding construction, alteration, or demolition in a historic area pursuant to Section 14-204(9) may be appealed to the L&I Board of Licenses and Inspections Review.⁶⁹

⁶⁷ The 30 day limit replaces a "reasonable time" limit in the current code to make administration more predictable.

⁶⁸ This is a rewording of current 14-1705(4) for clarity.

⁶⁹ The treatment of these appeals is being confirmed with the Law Department.

(c) Appeals to the Courts⁷⁰

A decision made by the ZBA or the Planning Commission pursuant to this Zoning Code may be appealed to a Pennsylvania Court of Common Pleas by any aggrieved party pursuant to state law within 30 days of the decision or such other time as the Courts allow.⁷¹

(15) Lapsing of Approvals

- (a) Except as specifically stated in another section of this Zoning Code, an approval or permit granted under this Zoning Code shall expire if construction or operation pursuant to the permit or approval has not begun within three years after the date the permit or approval was granted.⁷²
- (b) L&I, the ZBA, or the Planning Commission that granted the original approval may renew or extend the time of a previous approval one time for up to one year if the required findings or criteria for that approval remain valid. No more than one extension may be granted.

Section 14-204 Specific Procedures

(1) Comprehensive and Other Plan Adoption⁷³

(a) Applicability

This Section applies whenever a comprehensive plan or other plan is intended to become the adopted policy of the city and to guide the approval of rezonings, permits, or approvals, including conditional use and regulated use approvals, in the area of the city covered by the plan.

(b) Review and Action by Planning Commission

- (.1) No plan shall become the adopted policy of the city unless it is first approved by the Planning Commission.

⁷⁰ Most of the content of current 14-1807 *Appeals to the Court* was deleted to avoid paraphrasing court rules and reduce the likelihood of inconsistency when those rules change over time.

⁷¹ The treatment of Historical Commission designation appeals is being confirmed.

⁷² The current standard is one year. In 14-217 the ITD district (now merged into the RMU-2 district) is currently subject to a one-year permit lapsing period, but we have deleted that provision as we do not believe it makes sense for the city to have a different standard for a single district.

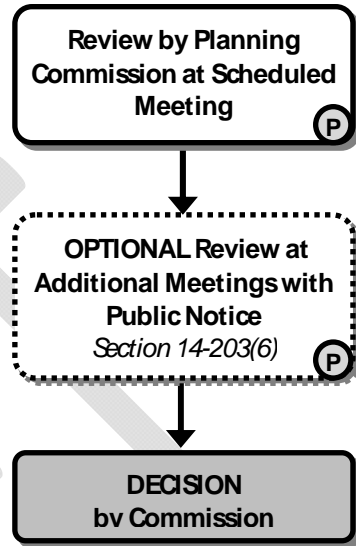
⁷³ This is a new Section. The current ordinance does not address this issue.

(.2) The Planning Commission shall review the plan in at least one regularly scheduled Planning Commission meeting. The Planning Commission may schedule additional public meetings to review the plan, and notice of those meetings shall be provided as set forth for in Section 14-203(6) *Public Notice*.

(.3) In the case of a comprehensive plan or other plan prepared by the City or any public or quasi-public entity, if the Planning Commission determines that the plan will promote the best interests of the city and that it should become the policy of the City, it shall adopt the plan, or adopt it with changes, and the plan shall then be considered an amendment to the comprehensive plan. If the Planning Commission determines that the plan will not promote the best interests of the city, or that it should not become the policy of the City, it shall not adopt the plan.

(.4) In the case of a plan prepared by a group other than the City or a public or quasi-public agency, if the Planning Commission determines that the plan will promote the best interests of the city it may accept the plan, but the plan will not be considered an amendment to the comprehensive plan.

Comprehensive Plan Adoption



(P) Indicates Public Meeting or Hearing Required

(c) Effect of Approval

Only plans that have been adopted by the Planning Commission as amendments to the comprehensive plan shall be used by the Planning Commission, L&I, or the ZBA to support the approval, approval with conditions, or denial of permits or approvals, including conditional use and regulated use approvals.

(d) Amendment

An adopted plan may be amended through the same process used for initial review and decision on the plan.

(2) Zoning Map and Text Amendments⁷⁴

(a) Applicability

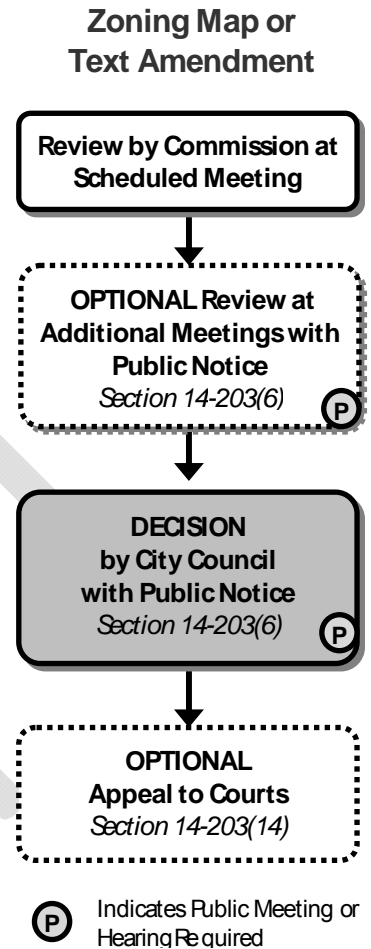
This Section applies whenever an ordinance for amendment to the text or illustrations of this Zoning Code or for an amendment to the official zoning map related to this Title.

(b) Review by Planning Commission

- (.1) No ordinance amending the text or illustrations of this Zoning Code or amending the official zoning map shall be considered by City Council unless it is first reviewed by the Planning Commission.
- (.2) The Planning Commission shall review the ordinance in at least one regularly scheduled Planning Commission meeting. The Planning Commission may schedule additional public meetings to review the ordinance, and notice of those meetings shall be provided as set forth for in Section 14-203(6).
- (.3) The Planning Commission shall then forward to City Council a recommendation for approval, approval with changes, or disapproval of the ordinance based on whether it meets the criteria in subsections (d) and (e) below.

(c) Action by City Council

The City Council shall consider the ordinance in the manner set forth in the Home Rule Charter, except that not less than 15 days notice shall be given for any public hearing.⁷⁵ In the case of a zoning ordinance or map amendments initiated by City Council, the Council shall not act until it has referred the proposed ordinance to the Planning Commission for comment and waited at least 30 days following the introduction of the ordinance to receive the Planning



⁷⁴ This Section integrates materials from current 14-1708 *Enactment of Ordinances*, 14-403 *Procedures for Establishment of a Commercial Entertainment District*, and 14-903 *Creation of an NCD, Amendment*. These are now two procedures for adopting zoning changes – one when the district does not require approval of a more detailed plan for the area covered, and another when it does.

⁷⁵ This notice may be moved to Section 14-203(6) *Public Notice*.

Commission's recommendation on the ordinance.⁷⁶ In the case of zoning map or text amendments not initiated by Council, Council shall only act after receiving a recommendation from the Planning Commission. City Council may approve, approve with changes, or disapprove the ordinance, and may approve or disapprove an ordinance regardless of the recommendation of the Planning Commission.

(d) Criteria for Review

The Planning Commission shall only recommend that the ordinance be approved or approved with changes if it determines that the ordinance meets the following criteria.

- (.1) The ordinance is consistent with the comprehensive plan;
- (.2) The ordinance is consistent with other plans adopted by the city as amendments to the comprehensive plan for the area affected by the ordinance;
- (.3) The adoption of the ordinance is in the best interest of the city;
- (.4) The impacts of the ordinance on areas surrounding the land affected by the ordinance will be positive, or that any negative impacts are unavoidable or will be mitigated to the extent reasonable.
- (.5) If the ordinance proposes a new overlay district, the same result cannot be achieved through amendments to an existing base or overlay district or the text of this Zoning Code.⁷⁷

(e) Special Provisions for Certain Districts

- (.1) Planned Development Districts
 - (.a) The zoning districts listed in Table 14-204-A require the approval of any rezoning of land into that district be accompanied by a plan for the development or redevelopment of land in the area to be rezoned, and that the plan is approved as part of any change to the official zoning map.

⁷⁶ The current code varies between a 30 and 45 day waiting period for different types of amendments, but we believe it is clearer to have a single 30 day waiting period.

⁷⁷ (4) is a new criterion.

| Table 14-204-A: Zoning Districts Requiring Approval of a Plan of Development at the Time of Rezoning |
|-------------------------------------------------------------------------------------------------------------|
| Residential Mixed Use -1 (RMU-1) – [formerly RC-6] |
| Residential Mixed Use -2 (RMU-2) – [including WRD and ITD] |
| Institutional Development (IDD) |
| Commercial Entertainment (CED) |
| Sports Stadium District (SSD) |
| Neighborhood Conservation Overlay (NC-O) |
| River Road Overlay (RR-O) |
| Delaware River Conservation Overlay (ND-O) |
| Transit-Oriented Development Overlay (TOD-O) |

- (.b) Any ordinance proposing the designation of any lands into a planned development district other than the Neighborhood Conservation Overlay (NC-O) district shall be reviewed and approved as described in either subsection (.c) or subsection (.d) below.
- (.c) The ordinance may be accompanied by a plan of development for the area to be rezoned that meets the requirements of this Zoning Code. In this case, the ordinance and plan of development shall be reviewed concurrently, any recommendation by Planning Commission shall address both the ordinance and plan, any action by City Council shall address both the ordinance and the plan, and the rezoning and plan of development shall become effective immediately upon City Council action.
- (.d) As an alternative to subsection (.c), City Council may approve the amendment without approving a plan of development. In this case, the amendment shall not become effective until a plan of development for the property has been submitted, Planning Commission has reviewed that plan and made a recommendation to City Council, and City Council has approved a plan of development pursuant to this Zoning Code.

(.2) Neighborhood Conservation Overlay Districts⁷⁸

⁷⁸ These provisions are simplified and significantly changed from those in current 14-903. It requires that the applicants submit proposed design guidelines for consideration rather than obligating the Planning Commission to develop them. Zoning ordinances rarely “task” the Planning Commission to develop plans, because they may not have the time or budget to do so and the mandated task may prevent them from accomplishing more important

Administration and Procedures
Section 14-204: Specific Procedures
(2) Zoning Map and Text Amendments

- (.a) A petition requesting that the Planning Commission initiate the process towards creating an NC-O district shall be filed with the Planning Commission either (1) by a neighborhood association located within the proposed NC-O district accompanied by proof that the filing was duly authorized and adopted, or (2) containing the signatures of at least 30 percent of all property owners and at least 30 percent of all owners of owner-occupied housing units located within the proposed NC-O district. The petition shall include a draft map of NC-O district boundaries and draft design guidelines meeting the requirements of Section XX [14-904: NCD Design Guidelines] that would apply to the NC-O district.
- (.b) The Planning Commission shall review the petition and shall convene at least one public meeting within the NC-O district's proposed boundaries in order to seek public comment on the proposed NC-O district and design guidelines.
- (.c) Within six months of receiving the petition, the Planning Commission shall draft and transmit to City Council a recommendation on the proposed NC-O district that includes a map of the proposed boundaries of the NC-O district and the proposed design guidelines to be applied in the area shown on that map.
- (.d) City Council shall not enact any ordinance creating an NC-O district if by the date of the Council public hearing, at least 51 percent of all property owners or 51 percent of all owners of owner-occupied housing units located within the proposed NC-O district have filed in writing with the Clerk of Council a statement of opposition to creation of the NC-O district. Those written statements may include petitions with multiple signatures opposing the creation of the NC-O district.⁷⁹
- (.e) City Council shall consider the proposed NC-O district ordinance, design guidelines, and map in the same manner as

planning functions. In addition, these revised provisions state that Council shall consider NCD Overlay districts in the same manner they consider other zoning ordinances, and that the Planning Commission shall transmit its recommendation along with the NCD proposal, rather than having a separate step to seek Planning Commission and Historical Commission recommendations after transmitting the ordinance. The standard for approving an NCD remains the same.

⁷⁹ Carried over from current 14-903.

other zoning ordinances, but shall not approve or approve with changes a proposed NC-O district unless it finds that the proposed NC-O district area has a consistent physical character as a result of a concentration of residential buildings of similar character or a continuity established by an overall plan. The City Council decision shall not include any areas within the NC-O district that were not included in the proposed boundaries of the NC-O district as set forth in the map attached to the proposed ordinance.

(.f) The boundaries or design guidelines of an NC-O district may be amended using the same procedures used to create the district.

(.3) Commercial Entertainment District⁸⁰

(.a) The owner of any lot within a proposed or adopted Commercial Entertainment district may submit to the Planning Commission a proposed plan of development for the Planning Commission's review and recommendation.

(.b) The Planning Commission shall review the proposed plan of development and shall make a recommendation to City Council based on whether the plan or amendment is (1) consistent with the purposes of the Commercial Entertainment District, (2) otherwise in compliance with the provisions of this Zoning Code applicable to the Commercial Entertainment District, and (3) otherwise appropriate in terms of scale, density, accessibility and design for the neighborhood where it is located. The Planning Commission may recommend approval, approval with changes, or disapproval.

(.c) Council approval of a plan of development or amendment to a plan of development shall be presumed if City Council fails to approve by ordinance, disapprove by ordinance, or table consideration of a proposed plan by the later of (1) 45 days when Council is in session after submission by the Planning Commission of a proposed plan or amendment to the Council, or (2) the fifth Council meeting after Planning Commission

⁸⁰ From current 14-403 *Procedures for the Establishment of a Commercial Entertainment District*. Plan submission requirements have been removed for inclusion for an Administrative Manual of application requirements for various types of permits and certificates.

transmits its recommendation to Council. In the event the owner of a lot within a Commercial Entertainment District, submits a proposed plan or amendment to the Planning Commission and the Planning Commission fails to approve, disapprove, or table consideration of it within 45 days after submission, the proponent may submit the application directly to the Council and it will be deemed submitted to the Council by the Planning Commission.

(3) Amendments to Plans of Development⁸¹

(a) Applicability

This Section shall apply to the amendment of any plan of development required in a planned development district listed in Table 14-204-A.

(b) Action by Planning Commission on Minor Amendments

Proposed amendments that comply with the criteria in subsections (d) through (h) below, as applicable, are “Minor Amendments” and amendments that do not comply with those standards are “Major Amendments”. Amendments shall be submitted to the Planning Commission for review, and the Planning Commission shall provide public notice pursuant to Section 14-203(6) and conduct a public meeting on the proposed amendment. If, after the public meeting, the Planning Commission determines that the proposed amendment is a Minor Amendment, the Planning Commission may approve the amendment, or approve it with modifications. If the Planning Commission determines that the proposed amendment is a Major Amendment, the Planning Commission shall refer the proposed amendment to City Council together with its recommendation based on the stated purposes of the district involved and the public health, safety, and general welfare of the city.

(c) Action by City Council on Major Amendments

The Planning Commission shall forward Major Amendments to City Council, which shall consider the amendment as a proposed new plan of development for the district in the same manner as other zoning ordinances. If Council has

⁸¹ This Section consolidates and simplifies very detailed provisions for the creation and amendment of plans of development in the current RC-6, Industrial Transformation, and Waterfront Redevelopment districts. These provisions allow the Planning Commission to approve amendments to plans of development, after a public hearing, if they meet stated criteria, and further provide that if the proposed amendment does not meet the criteria it shall be treated as a revised plan of development for the zoning district and shall be forwarded to City Council for action.

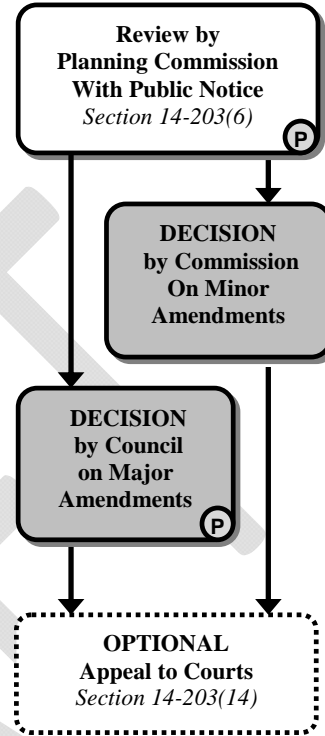
not acted to approve, approve with changes, or disapprove the amendment within 45 days when Council is in session after referral of the amendment by the Planning Commission, Council will be deemed to have concurred with the recommendation of the Planning Commission.

(d) General Criteria for Planning Commission Approval

The Planning Commission shall approve a proposed amendment as a Minor Amendment to a plan of development only if it determines that the amendment complies with all of the following criteria:

- (.1) The amendment is consistent with the stated purpose of the district, the stated purpose of existing plan of development, the sound development needs of the district, and the requirements of any applicable overlay district.
- (.2) The amendment only includes uses listed in Table XX [Permitted Use Table] as a permitted or conditional use for the district in which the land is located and the amendment complies with all dimensional requirements listed in Table XX [Dimensional Requirements] for the district in which the land is located. If the application includes a conditional use listed in Table XX [Permitted Use Table] it shall not be approved unless the Planning Commission determines that the criteria of Section 14-204(4)(d) have been met.
- (.3) The amendment complies with all additional criteria listed in subsections (e) through (h) applicable to the zoning district where the land is located.

Amendments to Plans of Development



(P) Indicates Public Meeting or Hearing Requirement

(e) Criteria for Amendment of RMU-1 District Plans⁸²

The Planning Commission shall approve a proposed amendment as a Minor Amendment to an RMU-1 plan of development only if it determines that the amendment also complies with the following criteria.

- (.1) Any relocation of buildings, driveways, or access roads results in equal or less environmental impact or lessens impacts on any existing historically significant structure, building or natural amenity, and does not reduce any setback of a building, driveway, or access road from any zoning district boundary.

(f) Criteria for Amendment of RMU-2 District Plans⁸³

- (.1) If the application is for a plan of development or amended plan of development in the approved Waterfront Redevelopment portion of the RMU-2 zoning district, the Planning Commission shall take no action until it first (a) refers the plan to the Streets Department and the Water Department for their recommendation and (b) waits 30 days to receive the recommendations of the two departments. If no response or recommendation is received within that period, the Planning Commission shall assume that neither department has any objection to approval of the plan or plan amendment.
- (.2) The Planning Commission shall approve an amendment to an RMU-2 plan of development only if it determines that the amendment includes only the following types of changes⁸⁴:
 - (.a) Reductions in the proposed gross floor area, building height, or percentage of commercial space;

⁸² From current 14-215(2)(b), but with significant changes. The revised provisions do not require the plan amendment to go to City Council if the listed criteria are met, and do not provide that Council's silence for 45 days will be treated as an approval.

⁸³ Referral requirement is carried over from current 14-216(3)(c). This may be moved to the RMU-2 district provisions in Chapter 14-300 when those have been drafted. The criteria consolidate the plan amendment procedures and criteria from current 14-216 *Waterfront Redevelopment District*, 14-217(2) *Permitted Areas for the Establishment of [ITD] District*, and 14-217(3) *Procedures for Establishment and Amendment of [ITD] District*, but with changes. These provisions do not require the Planning Commission to consider all building and zoning permits – permit issuance remains with L&I, but any proposed amendment of the plan of development comes to the Planning Commission. The Planning Commission can approve the plan change after a public hearing if it meets stated criteria (taken primarily from the ITD district). If it does not, then it goes to City Council as a proposal for a revised district plan. Provisions for lapsing of development if not undertaken within one year have been deleted, since lapsing is now covered by Section 14-203(15).

⁸⁴ These criteria are carried over from the Industrial Transformation District, but would now apply to the Waterfront Redevelopment District as well, and to any future RMU-2 District plans of development. The current language requiring that the amendment not modify any public benefits commitments has been dropped since, pursuant to Section 14-109, the City does not enforce public benefits agreements.

- (.b) Reductions in the number of residential units;
- (.c) Replacement of one type of dwelling structure with another provided that there is no increase in the total number of units results;
- (.d) Substitution of one type of permitted commercial use for another;⁸⁵
- (.e) Reductions or increases in the number of proposed parking or loading spaces, provided that no reduction in overall parking or loading ratios results; and/or
- (.f) Changes in permitted signage or temporary uses.

(g) Criteria for Amendment of Institutional Development District Plans⁸⁶

The Planning Commission shall approve an amendment to an Institutional Development District plan of development only if it determines that the amendment only approves:

- (.1) Conditional uses listed for the IDD district in TableXX [Permitted Use Table]; and/or
- (.2) Changes to the types and locations of permitted signage that do not increase the amount or height of permitted signage; and/or
- (.3) Changes to the location or design of required parking, loading, and/or landscaping that do not reduce the total amount of parking, loading, or landscaping shown in the approved development plan; and/or
- (.4) Temporary facilities or structures that are consistent with the overall intent of the adopted plan of development; and/or
- (.5) Additions to buildings or changes in building footprints that do not reduce impervious surface within the district by more than 5% or by more than 5,000 sq. ft., measured collectively from the date of adoption of the district.⁸⁷

⁸⁵ Text clarifying that the amount of commercial use not be increased was deleted as unnecessary – substitution of a use does not include an expansion of the use.

⁸⁶ These standards are new, because the current code does not allow for Planning Commission approval. They are intended to allow minor amendments to be processed by Planning Commission without City Council action. The right of appeal to City Council remains.

⁸⁷ This fifth provision is new.

(h) Criteria for Amendment of Sports Stadium District Plans⁸⁸

The Planning Commission shall approve an amendment to a Sports Stadium District plan of development only if it determines that the amendment also complies with the following criteria.

- (.1) The amendment includes only (a) changes to the types and locations of permitted signage, but does not increase the amount or height of permitted signage, and/or (b) changes to the location or design of required parking, loading, and/or landscaping that do not reduce the total amount of parking, loading, or landscaping shown in the approved development plan, and/or temporary facilities or structures that will not undermine the overall intent of the adopted plan of development, and/or (c) additions to buildings or changes in building footprints that do not reduce impervious surface within the district by more than 5% or by more than 5,000 sq. ft., measured collectively from the date of adoption of the district.⁸⁹
- (.2) Notwithstanding the provisions of Section 14-204(3)(d) only City Council shall have the power to approve conditional uses listed in a Sports Stadium District.

(i) Criteria for Amendment of Commercial Entertainment District Plans⁹⁰

- (.1) If the application is for a plan of development or amended plan of development in the Commercial Entertainment District, the Planning Commission shall take no action until it first (a) refers the plan to the Streets Department and the Water Department for their recommendation and (b) waits 30 days to receive the recommendations of the two departments. Except as noted in subsection (2) below, if no response or recommendation is received within the 30 day period, the Planning Commission shall presume that neither department has any objection to approval of the plan or plan amendment.
- (.2) If the approval of the Streets Department is required before the issuance of a permit pursuant to Sections [currently 14-404(2)(h)] and [14-408(2)] relating to off-street parking and the Streets Department

⁸⁸ These standards in subsections (h) and (i) are new, because the current code does not allow for Planning Commission approval. They are intended to allow minor amendments to be processed by Planning Commission without City Council action. Because of citywide interest in the sports stadiums and casinos, Planning Commission cannot approve conditional uses, and those would go to City Council as part of the plan amendment. The right of appeal to city council remains. As for all other districts, approval of permits that are consistent with adopted plans would not require Planning Commission review or approval.

⁸⁹ Clause (c) is new.

⁹⁰ Carried over from 14-404(3) and (4).

does not approve, disapprove, or conditionally approve the proposal within 30 days after submission of the proposed plan or amendment to the Streets Department, the Planning Commission shall presume the Streets Department has approved the plan or amendment.⁹¹

- (.3) The Planning Commission shall approve an amendment to a Commercial Entertainment District plan of development only if it determines that the amendment includes only (a) changes to the types and locations of permitted signage, but does not increase the amount or height of permitted signage, and/or (b) changes to the location or design of required parking, loading, and/or landscaping that do not reduce the total amount of parking, loading, or landscaping shown in the approved development plan, and/or temporary facilities or structures that will not undermine the overall intent of the adopted plan of development, and/or (c) additions to buildings or changes in building footprints that do not reduce impervious surface within the district by more than 5% or by more than 5,000 sq. ft., measured collectively from the date of adoption of the district.⁹²
- (.4) Notwithstanding the provisions of Section 14-204(3)(d) only City Council shall have the power to approve conditional uses listed in a Commercial Entertainment District.

(j) Criteria for Amendment of River Road Overlay District Plan⁹³

If the application is for a plan of development or amended plan of development in the RR-O district, it shall be referred to the Department of Public Health, Environmental Health Services Unit, and to the Water Department. The amendment shall not be approved unless the Department of Public Health confirms that the amendment will have no material negative impacts on the public health for the area and the Water Department confirms that the sewer infrastructure has the capacity to handle additional material resulting from the proposed new development. If no response or recommendation is received from one of those departments within 30 days after the referral, the Planning Commission shall presume that the department has no objection to approval of the plan or plan amendment.

⁹¹ As with review by the Planning Commission, the review period for streets has been reduced from 45 to 30 days.

⁹² Clause (c) is new.

⁹³ Carried over from 14-1635(5)(f) and (g). The 30 day response time has been added.

(4) Conditional Use Approval⁹⁴

(a) Applicability

This Section shall apply to all applicants for a conditional use that is permitted in the zoning district where the property is located as shown in Table XX [Permitted Use Table].

(b) Review by L&I

The application shall be filed with L&I, which shall review the application for consistency with the criteria in subsection Section 14-204(4)(d) and forward the application to the ZBA for consideration.

(c) Hearing and Action by the ZBA

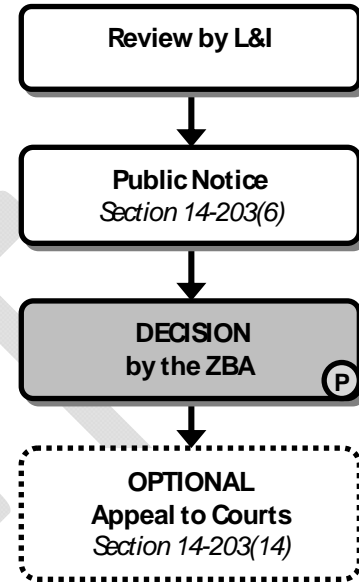
The application shall be reviewed by the ZBA and a public hearing shall be held pursuant to Section 14-203(7). The applicant shall have the burden of presenting evidence that the criteria in subsection (d) below have been met. The ZBA may approve, approve with changes, or disapprove the application based on its determination as to whether those criteria have been met.

(d) Criteria for Review and Action by the ZBA⁹⁵

The ZBA shall approve or approve with conditions, only if it determines that the proposed conditional use meets the following conditions: ⁹⁶

- (.1) The application is consistent with the comprehensive plan for the city, any adopted area redevelopment plan, and any other adopted plans for the area where the property is located; and⁹⁷
- (.2) Complies with all applicable Use-Specific Standards in Section XX; and⁹⁸

Conditional Use Approval



(P) Indicates Public Meeting or Hearing Required

⁹⁴ As noted in the Change Memo to the *Detailed Recommendations*, the categories of Certificated Uses and Special Uses have been merged into a single process for ZBA approval of conditional uses.

⁹⁵ Some of these materials are carried over from current 14-1803 *Criteria for Granting a Special Use Permit*.

⁹⁶ The burden of proof provisions are under review by the Law Department.

⁹⁷ This consolidates criteria referring to plans, adds a references to adopted area plans, and replaces the vaguer “will be in harmony with the spirit of this title.” A criteria citing “general welfare” was deleted since the other criteria are the indicators of that general welfare.

- (.3) Will not substantially increase congestion in the public streets or transportation systems; and
- (.4) Will not overcrowd the land or create an undue concentration of population; and
- (.5) Will not impair an adequate supply of light and air to adjacent property; and
- (.6) Will not unduly burden water, sewer, school, park, or other public facilities; and⁹⁹
- (.7) Will not impair or permanently injure the use of adjacent conforming properties; and
- (.8) Will not increase the danger of fire or otherwise endanger the public health or safety.

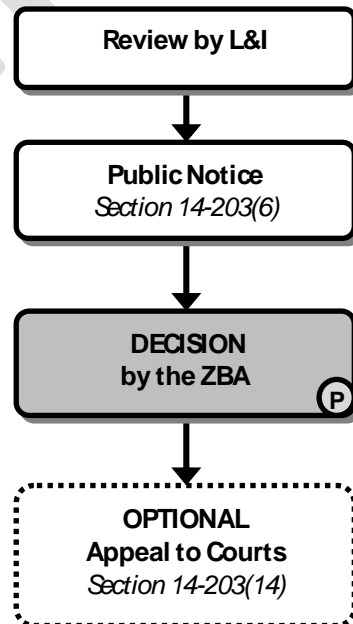
(5) Regulated Use Approval¹⁰⁰

(a) Legislative Findings

The Council reaffirms the findings it made in 1977 that:

- (.1) There has been a recent proliferation, concentrating in certain areas of the City, of certain uses.
- (.2) That the concentration of these uses causes a deleterious effect on the aesthetics and economics of the areas in which these uses are located.
- (.3) That the concentration of these uses causes the areas in which these uses have located to become a focus of crime.

Regulated Use Approval



(P) Indicates Public Meeting or Hearing Required

⁹⁸ This is a new criterion, since the list of special use conditions in 14-1803 and the conditions on certificated uses will be consolidated into the Use-Specific Standards Section of the New Zoning Code.

⁹⁹ A repetitive reference to transportation systems was removed here.

¹⁰⁰ From current 14-1605 *Regulated Uses*. The necessity of including these findings is under review.

- (.4) Certain uses are particularly inappropriate in or around residential neighborhoods and residentially related uses, because of, for example, deleterious health, safety, or environmental effects.
- (.5) In order to prevent the further deterioration of communities and neighborhoods in the City, and to provide for the orderly, planned future development of the City, that in addition to existing zoning regulations, certain additional special regulations are necessary to insure that these adverse effects will not continue to contribute to the blighting or downgrading of surrounding neighborhoods; and
- (.6) For the purpose of controlling the concentration of certain uses, special regulations relating to the location and operation of these uses are necessary.¹⁰¹

(b) Review and Approval

The procedure for reviewing and approving Regulated Uses is the same as the procedure for Conditional Use Approval Section 14-204(4), except that the criteria for approval are those shown in subsection (c) below.

(c) Criteria for Review and Action by the ZBA

The ZBA shall approve or approve with conditions, only if it determines that the proposed Regulated Use meets all of the Use-Specific Standards for that use set forth in Section XX.

(6) Design Review

[These provisions are reworded from the proposal made by Executive Director Alan Greenberger to the Planning Commission in early 2009, and may be revised as that proposal is refined following the results of the continuing facilitated dialogue between neighborhood and development interests.]

(a) Applicability

(.1) Required Review

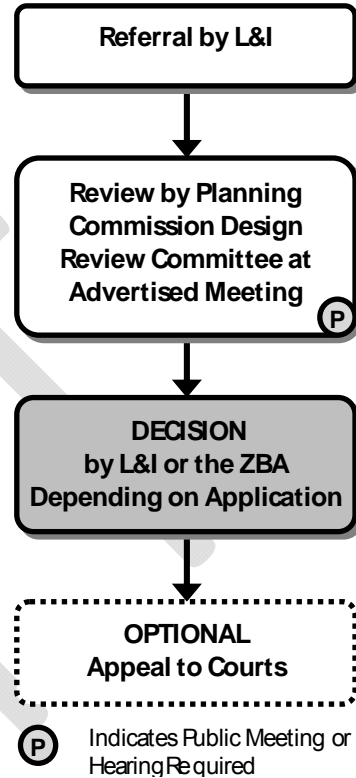
This Section applies to any development that requires either a zoning change from City Council or a variance from the ZBA and that meets the criteria in one of the two subsections below:

- (.a) Large Projects. The project contains more than 100,000 square feet of gross floor area and/or more than 25 residential units.

¹⁰¹ Reference to operation of the use has been added.

(.b) Smaller Projects. The project contains less floor area or fewer residential units than those listed in subsection (.a) but the proposed development would (a) exceed the maximum development density or intensity permitted in the zoning district by 200 percent or more, and/or (b) exceed the maximum height permitted in the zoning district by 200 percent or more, and/or (c) would reduce any required setback, side yard or rear yard from property lines, zoning district boundaries, or other structures by 50 percent or more.

Design Review



(.2) Other Reviews

A project that is required to be reviewed by another department, agency, board, or commission of the City under this Zoning Code may require additional review under subsection (.1) above to cover additional aspects of project design not included in the earlier review.

(.3) Optional Review

This Section may also apply to development proposals that do not meet the criteria in Section 14-204(6)(a)(.1) if the applicant consents to design review, and both the chair of the Design Review Committee and the Executive Director of the Planning Commission agree that Design Review would be in the best interests of the city.

(b) Advisory Review

Design review under this Section shall be advisory. While the applicant is encouraged to accept the results of design review and incorporate them into the design, failure to incorporate any or all design review recommendations

shall not be a factor in review or approval of the project by L&I, the ZBA, the Planning Commission, or City Council.

(c) Review by Design Review Committee

- (.1) L&I will advise the Planning Commission and the applicant when it concludes that an application for permit qualifies for design review. The Planning Commission will approve or disapprove the project for design review and will notify the applicant as to whether the project will receive design review within seven working days after receiving a notice of qualification from L&I.
- (.2) The Design Review Committee will meet two weeks prior to each Planning Commission meeting, and will complete its review of each application or proposal within 45 days after the Executive Director's approval of a project for Design Review. If the Committee does not deliver to the Planning Commission a design review recommendation within the 45 day limit, the project will be assumed to be recommended for approval as designed
- (.3) The Committee's meetings will be public. Agendas will be posted online and distributed in advance of each meeting.
- (.4) Each proposal will be reviewed as follows. The first review will be for information only and to offer the Committee members and the public an opportunity to ask questions, offer criticisms, and otherwise learn about the proposal. Following further review by the Planning Commission and a review of any revisions volunteered by the applicant subsequent to the first review, the Committee will discuss the proposal a second time and may discuss a recommendation to the Planning Commission. The Committee may require a proposal to come back for a third review if significant issues remain unresolved after two reviews.
- (.5) In those cases where the Design Review Committee intends to make a recommendation, the committee chair will prepare a summary report of the recommendation, present it to the Planning Commission at a regularly scheduled meeting, and post the recommendation on the Planning Commission's website.
- (.6) For proposals that require an adopted Plan of Development subsequent to the recommendation of the Committee, a determination will be made by the Planning Commission as to whether the design as reflected in the Plan of Development requires an additional Committee review or is substantially in conformance with the previous recommendation and may be sent directly to the Planning Commission for final approval.

(d) Criteria for Review

Design review shall focus on the impact of building and site design on the public realm, particularly streets, sidewalks, trails, public parks, and open spaces. The Committee's review is not intended to evaluate the architectural style or compositional aspects of a project outside of their clear impact on the public realm. Criteria for review shall include the following, and any recommendations for changes to the proposal shall be directed toward improving performance in the following areas:

- (.1) Whether the design, including but not limited to curbside management and vehicular and pedestrian access points, contributes to the walkability of adjacent streets;
- (.2) Whether the ground level of the proposal contributes to street activity on adjacent streets;
- (.3) Whether the design of streets and open spaces within the boundaries of the proposal are appropriate for their intended function and reinforce the importance, safety, and enjoyment of public use of those spaces;
- (.4) Whether the design allows adequate light and air for nearby public streets, sidewalks, trails, parks, and open spaces;
- (.5) Whether the design is consistent with the intended character of streets, sidewalks, trails, parks, and open spaces indicated in any adopted plan, redevelopment plan, and/or any plan of development for the area where the property is located.

(7) Subdivision Plats

(a) Applicability

This Section applies to the approval of all subdivision plats, amendments to subdivision plats, and variances to subdivision plats.

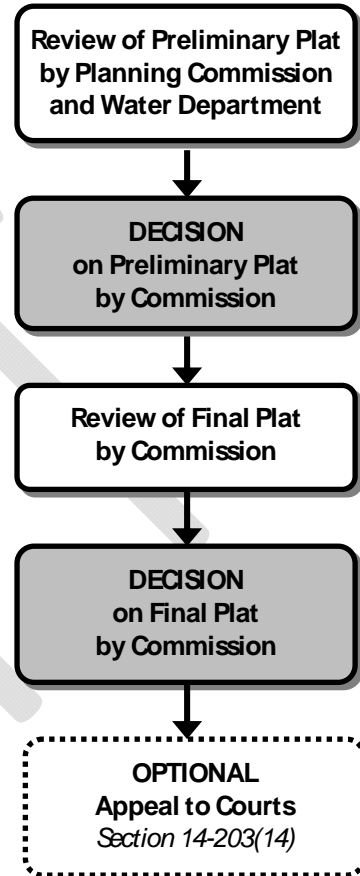
(b) Property Data Map¹⁰²

- (.1) Every subdivider shall file with the Planning Commission two copies of a Property Data Map meeting the requirements in the Zoning Code Administrative Manual prior to filing an application for the conditional approval of the Preliminary Plat.

¹⁰² The following several sections are from current 14-2106 *Filing of Maps and Plats*.

- (.2) Following the filing of the Property Data Map and prior to the preparation of the Preliminary Plat, the Planning Commission shall refer the application to the Department of Records to verify the accuracy of the Property Data Map. If the Department of Records has not responded within 30 days, the Planning Commission may assume that the Property Data Map is accurate. The Planning Commission shall also notify the subdivider of (a) any elements of adopted plans, and (b) any planned or anticipated public works or public land acquisitions that should be taken into consideration in the design of the subdivision.

Subdivision Plat



(c) Preliminary Plat

- (.1) The applicant shall submit 25 copies of the Preliminary Plat and supplementary data meeting the requirements of the Zoning Code Administrative Manual to the Planning Commission together with a written application for conditional approval. The Planning Commission shall forward two copies of the Preliminary Plat to the Water Department. The Water Department shall approve the proposed method of control of storm water run-off, including that from lots, before the Planning Commission may give conditional approval of the Preliminary Plat.
- (.2) The Planning Commission shall act on the application for approval of the Preliminary Plat at its first regularly scheduled meeting held not less than 22 days following the date of filing of that application. If it approves the Preliminary Plat the Planning Commission shall express its decision as a conditional approval and shall notify the subdivider and the Department of Streets of that decision. If it disapproves the Preliminary Plat, the Planning Commission shall notify the subdivider in writing of its action and the reasons for the decision within seven days after the decision.

- (.3) The action of the Planning Commission shall be noted on three copies of the Preliminary Plat. One copy shall be forwarded to the Department of Streets, one copy shall be returned to the subdivider, and one copy shall be retained by the Planning Commission.
- (.4) Conditional approval of a Preliminary Plat shall not constitute approval of the Final Plat, but shall be deemed an expression of approval of the layout submitted as a guide to the preparation of the Final Plat.

(d) Criteria for Approval of Preliminary Plat

The Planning Commission shall approve a Preliminary Plat only if it finds that:

- (.1) It complies with all technical requirements for the plat document in the Zoning Code Administrative Manual;¹⁰³ and
- (.2) It is consistent with adopted plans, redevelopment plans, and plans of development for the area containing the land to be subdivided; and
- (.3) Each lot or parcel to be created (a) meets the requirements of this Zoning Code applicable to the zoning district and any overlay districts applicable to the land to be subdivided, or (b) meets the requirements of the district(s) included in a proposed rezoning of the property, in which case the Planning Commission's approval shall not become effective until the rezoning has been approved by City Council.¹⁰⁴

(e) Final Plat

- (.1) An application for approval of the Final Plat shall be submitted to the Planning Commission within 15 months after approval of the Preliminary Plat; otherwise the Preliminary Plat shall become null and void unless an extension of time is applied for and granted by the Planning Commission.
- (.2) At the subdivider's option a Final Plat may consist of a portion of the approved Preliminary Plat.
- (.3) The Planning Commission shall act upon the application within 45 days of submission or the subdivision shall be deemed approved.
- (.4) If the Final Plat is approved, the approval of the Planning Commission shall be noted on five copies of the Final Plat. One copy shall be sent to the Department of Streets, one copy to L&I , two copies to the subdivider, and the Planning Commission shall retain one copy. Upon the completion of any resurvey, one copy of the portion of the Final Plat

¹⁰³ The manual will include the technical requirements of current Sections 2105(3) and 2105(4).

¹⁰⁴ This is a new statement of approval criteria, because the current code has none.

covered by said resurvey shall be recorded by the subdivider in the Office for the Recording of Deeds. An approved Final Plat shall be valid for three years, but if no recording of any portion of the Final Plat occurs within three years the Final Plat shall become null and void.¹⁰⁵

- (.5) If it disapproves the Final Plat, the Planning Commission shall notify the subdivider in writing of its action and the reasons for the decision within seven days after the decision.
- (.6) When new streets are involved in any land subdivision, the Planning Commission may require, as a condition of its approval, confirmation by the Streets Department Board of Surveyors of the appropriate City Plan changes.

(f) Criteria for Approval of Final Plat

The Planning Commission shall approve a Final Plat shall only if it finds that it:

- (.1) Complies with all the technical requirements of the plat document in the Zoning Code Administrative Manual; and
- (.2) Is in substantial conformity with the approved Preliminary Plat.

(g) Compliance with Technical and Engineering Standards

Following approval of the Final Plat, all improvements such as streets, driveways, water mains, and sewers shall be constructed in accordance with the specifications established by the City departments having jurisdiction over those improvements.¹⁰⁶

(h) Variances of Subdivision Standards¹⁰⁷

The Planning Commission may authorize such variance from the terms of this Section as will not be contrary to the public interest and where, owing to special conditions, a literal enforcement of the provisions of the standards otherwise applicable to the subdivision will result in serious practical difficulty.

¹⁰⁵ The Planning Commission is currently reviewing its subdivision approval procedures, and provisions regarding final approval and recording may be revised.

¹⁰⁶ From current 14-2104(14) *Approval of Appropriate L&I Departments*.

¹⁰⁷ From current 14-2107 *[Subdivision] Variances*. The phrase “provided that the purpose and spirit of this Chapter shall be observed and substantial justice done” was deleted from the end of the sentence because it is too vague.

(i) Records and Review¹⁰⁸

- (.1) The Planning Commission shall keep a record of its findings, decisions, variances and recommendations relative to all subdivision applications filed with it. All such records shall be public records.
- (.2) Any person aggrieved by any administrative decision of any employee of the Planning Commission, with respect to any interpretation or requirement related to subdivisions of land shall have the right to a review by the Planning Commission within 30 days of the mailing or communication of such decision. Any person requesting such review may appear before the Planning Commission in person or by agent or attorney.

(8) Designation of Historic Structure or District¹⁰⁹

(a) Review by Planning Commission

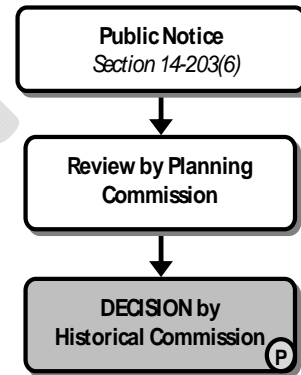
During the 60 days after notice has been posted pursuant to Section 14-203(6) and the date of a Historical Commission hearing on designation of a historic district, the Planning Commission shall review and comment on creation of the district and transmit its comments to the Historical Commission.

(b) Decision by Historical Commission

The application shall be reviewed by the Historical Commission and a public hearing shall be held pursuant to Section 14-203(7). The Historical Commission may approve, approve with changes, or disapprove the designation based on its determination as to whether at least one of the criteria has been met.

(c) Criteria for Designation¹¹⁰

Designation of Historic Structure or District



(P) Indicates Public Meeting or Hearing Required

¹⁰⁸ From current 14-2108 *Records and Review*.

¹⁰⁹ Carried over from current 14-2007 *Historic Buildings, Structures, Sites, Objects, and Districts*.

¹¹⁰ Carried over from current 14-2007(5) *Criteria for Designation*.

Administration and Procedures
Section 14-204: Specific Procedures
(8) Designation of Historic Structure or District

A building, complex of buildings, public interior portion of a building, structure, site, object or district may be designated for preservation if it meets the following standards:

- (.1) Has significant character, interest or value as part of the development, heritage or cultural characteristics of the City, Commonwealth or Nation or is associated with the life of a person significant in the past; or
- (.2) Is associated with an event of importance to the history of the City, Commonwealth or Nation; or
- (.3) Reflects the environment in an era characterized by a distinctive architectural style; or
- (.4) Embodies distinguishing characteristics of an architectural style or engineering specimen; or
- (.5) Is the work of a designer, architect, landscape architect or designer, or engineer whose work has significantly influenced the historical, architectural, economic, social, or cultural development of the City, Commonwealth or Nation; or
- (.6) Contains elements of design, detail, materials or craftsmanship which represent a significant innovation; or
- (.7) Is part of or related to a square, park or other distinctive area which should be preserved according to an historic, cultural or architectural motif; or
- (.8) Owing to its unique location or singular physical characteristic, represents an established and familiar visual feature of the neighborhood, community or City; or
- (.9) Has yielded, or may be likely to yield, information important in pre-history or history; or
- (.10) Exemplifies the cultural, political, economic, social or historical heritage of the community.

(d) Amendment

Any designation of a building, structure, site, object or district as historic may be amended or rescinded in the same manner as is specified for designation.

(9) Construction, Alteration, or Demolition in Historic Area

No person shall alter or demolish an historic building, structure, site, object or public interior portion of a building, or alter, demolish, or construct any building, structure, site, object, or public interior portion of a building, within an historic district unless a building permit is first obtained from L&I.

(a) Review by Historical Commission

(.1) Before L&I may issue a permit to alter or demolish an historic building, structure, site, object, or public interior portion of a building or to alter, demolish or construct a building, structure, site, object, or public interior portion of a building within an historic district, the permit application shall be forwarded to the Historical Commission for its review.

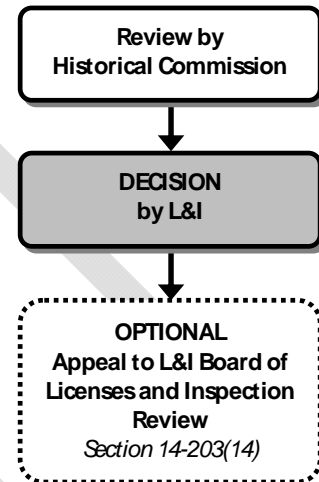
(.2) The Historical Commission shall comment on applications referred to it under this Section 14-204(9) within 60 days of receiving the referral. The Commission's regulations require decisions within a shorter time in some circumstances.

(.3) At the time that a permit application is filed with L&I for alteration, demolition, or construction subject to the Historical Commission's review, the applicant shall submit to the Historical Commission the plans and specifications of the proposed work, including the plans and specifications for any construction proposed after demolition and such other information as the Historical Commission may reasonably require to exercise its duties and responsibilities under this Section.

(.4) If the applicant claims that a building, structure, site, object or public interior portion of a building cannot be used for any purpose for which it is or may be reasonably adapted, or where a permit application for alteration, or demolition is based, in whole or in part, on financial hardship, the owner shall submit, by affidavit, the following information to the Historical Commission:

(.a) Amount paid for the property, date of purchase, and party from whom purchased, including a description of the relationship,

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or Demolition
in Historic Area**



Administration and Procedures
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(9) Construction, Alteration, or Demolition in Historic Area

- whether business or familial, if any, between the owner and the person from whom the property was purchased;
- (.b) Assessed value of the land and improvements according to the most recent assessment;
 - (.c) Financial information for the previous two years including, as a minimum, annual gross income from the property, itemized operating and maintenance expenses, real estate taxes, annual debt service, annual cash flow, the amount of depreciation taken for federal income tax purposes, and other federal income tax deductions produced;
 - (.d) All appraisals obtained by the owner in connection with his purchase or financing of the property, or during his ownership of the property;
 - (.e) All listings of the property for sale or rent, price asked, and offers received, if any;
 - (.f) Any consideration by the owner as to profitable, adaptive uses for the property; and
 - (.g) The Historical Commission may further require the owner to conduct, at the owner's expense, evaluations or studies, as are reasonably necessary in the opinion of the Historical Commission, to determine whether the building, structure, site, object, or public interior portion of a building has or may have alternate uses consistent with preservation.
- (.5) Within 60 days after receipt by the Historical Commission of a permit application, the Historical Commission shall determine whether or not it has any objection to the proposed alteration or demolition.
- (.a) If the Historical Commission has no objection, L&I shall grant the permit subject to the requirements of any applicable provisions of the Zoning Code and regulations and subject to any conditions of the Historical Commission pursuant to the subsection (.7) of this section.
 - (.b) If the Historical Commission has an objection, L&I shall deny the permit.

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(9) Construction, Alteration, or Demolition in Historic Area

- (.c) If the Historical Commission acts to postpone the proposed alteration or demolition pursuant to subsection (.6) of this Section, L&I shall defer action on the permit application pending a final determination by the Historical Commission approving or disapproving the application.
 - (.d) Before taking any action, the Historical Commission shall afford the owner an opportunity to appear before the Historical Commission to offer any evidence the owner desires to present concerning the proposed alteration or demolition. The Historical Commission shall inform the owner in writing of the reasons for its action.
- (.6) If the Historical Commission has determined that the purpose of this Section may best be achieved by postponing the alteration or demolition of any building, structure, site, object or public interior portion of a building subject to its review, the Historical Commission may, by resolution, defer action on a permit application for a designated period not to exceed six months from the date of the resolution. During the time that action on a permit application is deferred, the Historical Commission shall consult with the owner, civic groups, public and private agencies, and interested parties to ascertain what may be done by the City or others to preserve the building, structure, site, object, or public interior portion of a building which is the subject of the permit application. When appropriate, the Historical Commission shall make recommendations to the Council.
- (.7) The Historical Commission may require that a permit for the alteration or demolition of any building, structure, site, object, or public interior portion of a building subject to its review be issued subject to such conditions as may reasonably advance the purposes of this Section. L&I shall incorporate all such requirements of the Historical Commission into the permit at the time of issuance. In cases where the Historical Commission, pursuant to subsection (.8) agrees to the demolition of an historic building, structure, site or object, or of a building, structure, site, object, or public interior portion of a building located within an historic district which contributes, in the Historical Commission's opinion, to the character of the district, the Historical Commission may require that the historic building, structure, site, object, or public interior portion of a building be recorded, at the owner's expense, according to the documentation standards of the Historic American Buildings Survey and the Historic American Engineering Record (HABS/HAER) for deposit with the Historical Commission.

- (.8) No permit shall be issued for the demolition of an historic building, structure, site, object, or public interior portion of a building or of a building, structure, site, object, or public interior portion of a building located within an historic district which contributes, in the Historical Commission's opinion, to the character of the district, unless the Historical Commission finds that issuance of the permit is necessary in the public interest, or unless the Historical Commission finds that the building, structure, site, object or public interior portion of a building cannot be used for any purpose for which it is or may be reasonably adapted. In order to show that building, structure, site, object or public interior portion of a building cannot be used for any purpose for which it is or may be reasonably adapted, the owner must demonstrate that the sale of the property is impracticable, that commercial rental cannot provide a reasonable rate of return and that other potential uses of the property are foreclosed.

(b) Criteria for Determination

In making its determination as to the appropriateness of proposed alterations, demolition or construction, the Historical Commission shall consider the following:

- (.1) The purposes of Section XX [Historic Resources];
- (.2) The historical, architectural or aesthetic significance of the building, structure, site, object or public interior portion of a building;
- (.3) The effect of the proposed work on the building, structure, site, object or public interior portion of a building and its appurtenances;
- (.4) The compatibility of the proposed work with the character of the historic district or with the character of its site, including the effect of the proposed work on the neighboring structures, the surroundings and the streetscape; and
- (.5) The design of the proposed work.
- (.6) In addition to the above, the Historical Commission may be guided in evaluating proposals for alteration or construction by the Secretary of the Interior's "Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings" or similar criteria.

(c) Exemption

If due to special conditions a literal enforcement of the provisions of this Section would result in unnecessary hardship the Historical Commission shall by a majority vote grant an exemption from the requirements of this Section, subject

to such terms and conditions as the Historical Commission may decide, so that the spirit of this Section shall be observed and substantial justice done.

(d) Effect on Permit Issuance

L&I shall not issue any permit for the demolition, alteration or construction of any building, structure, site, object or public interior portion of a building which is being considered by the Historical Commission for designation as historic or which is located within a district being considered by the Historical Commission for designation as historic where the permit application is filed on or after the date that notices of proposed designation have been mailed, except that L&I may issue a permit if the Historical Commission has approved the application or has not taken final action on designation and more than 90 days have elapsed from the date the permit application was filed with the Historical Commission. Where the Historical Commission takes final action to approve the designation within that 90 day period, any permit application on file with L&I shall be deemed to have been filed after the date of the Historical Commission's action for purposes of this subsection (d).

(10) Zoning Variances¹¹¹

(a) Applicability

This Section applies to all applications for a variance from the terms of this Zoning Code as they affect a specific lot or parcel, but not including (a) applications for variances to the subdivision standards, which are not subject to ZBA review and which are addressed in Section 14-204(7)(h), and (b) variations from historic area regulations, which are addressed in Section 14-204(9)(c).

¹¹¹ From current 14-1802 *Criteria for Granting Variances* (Current Code) and Section 14-1501 *Area Surrounding an Airport: Height Regulations*.

(b) Review by Planning Commission¹¹²

The Planning Commission shall review each application for a variance shall make a recommendation to the ZBA as to whether the application meets the general criteria for a variance listed in subsection (d) below, as well as any specific criteria in subsections (e) through (h) below applicable to the type of use or facility for which the variance request is made.

(c) Hearing Before the ZBA

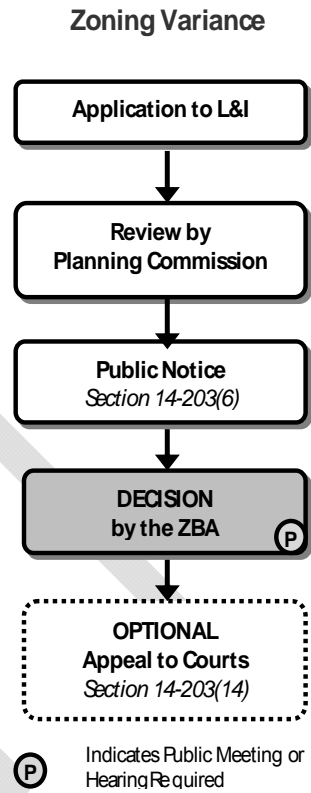
Following the receipt of an application for a variance relief, public notice shall be provided pursuant to Section 14-203(6), and a public hearing shall be held pursuant to Section 14-203(7). The applicant shall have the burden of presenting evidence that all applicable criteria in subsections (d) through (h) below have been met. The ZBA shall grant a variance only if it determines that those criteria have been met, and shall otherwise deny the variance. The ZBA may grant a variance other than that requested, or with conditions other than those requested, if it determines that the alternative variance would better respond to the special conditions affecting the property or would permit use or development of the property with less impact on the surrounding area.

(d) General Criteria for Approval

The ZBA shall grant a variance only if it determines that the following criteria have been met and that any applicable criteria in subsections (.2) (e) through (h) below have been met.

(.1) Use Variances¹¹³

A variance to allow the use of the property for any use not listed in Table XX [Permitted Use Table] as either a permitted or conditional use in the zoning district where the property is located shall only be granted



¹¹² The text has been changed to reflect current practice, which includes Planning Commission review.

¹¹³ This is a new criterion to reduce the City's heavy reliance on use variances.

if the property owner has no reasonable economic use of the property unless the variance is granted and the variance is therefore necessary to avoid an unconstitutional taking of property. Use variances are discouraged. The ZBA may approve variances to other provisions of this Zoning Code if it determines that those variances would allow a reasonable economic use of the property without the need for granting a use variance.

(.2) Variances to Dimensional Standards or Conditions¹¹⁴

- (.a) Because of the particular physical surrounding, shape, or topographical conditions of the specific structure or land involved, a literal enforcement of the provisions of this Zoning Code would result in unnecessary hardship;
- (.b) The special conditions or circumstances forming the basis for the variance are unique to the property for which the variance is sought and did not result from the actions of the applicant;
- (.c) That any requested variance to the maximum building height otherwise applicable to the property will not allow any building or structure to exceed that maximum height limit by more than 25 percent.¹¹⁵
- (.d) That any requested variance to the gross floor area ratio permitted on the property or the maximum amount of non-residential gross floor area in the proposal will not allow the proposal to exceed the maximum limits otherwise applicable to the property by more than 25 percent.¹¹⁶
- (.e) The variance will not substantially or permanently injure the appropriate use of adjacent conforming property or impair an adequate supply of light and air to adjacent conforming property;

¹¹⁴ From current 14-1802 *Criteria for Granting Variances* (Current Code), with changes and consolidations. The current language says that the ZBA will “consider” these factors in its review of variance requests, but the revised language requires the ZBA to find that these criteria are met. The existing criteria “that the grant of the variance will be in harmony with the spirit and purpose of this Title” was deleted as being too vague to be helpful. Similarly, the criteria “that the grant of the variance will not overcrowd the land or create an undue concentration of population” was deleted because the negative impacts of additional population are covered by other criteria in the list.

¹¹⁵ This is a new standard to limit the use of variances when a rezoning should be sought.

¹¹⁶ This is a new standard to limit the use of variances when a rezoning should be sought.

- (.f) The grant of the variance will not substantially increase congestion in the public streets, increase the danger of fire, or otherwise endanger the public health, safety, or general welfare;
- (.g) The grant of the variance will not adversely affect transportation or unduly burden water, sewer, school, park or other public facilities;
- (.h) That the grant of the variance will not adversely and substantially affect the implementation of any adopted plan for the area where the property is located or any area redevelopment plan approved by City Council; and
- (.i) The grant of the variance will not create any significant environmental damage, pollution, erosion, or siltation, and will not significantly increase the danger of flooding either during or after construction, and the applicant will take measures to minimize environmental damage during any construction.

(.3) Nonconforming Uses, Structures, and Lots¹¹⁷

A property containing a legal nonconforming use or structure shall not be required to obtain a variance as a pre-condition to issuance of a zoning or building permit that does not involve the portion or aspect of the property that is nonconforming. For example, a property with a legal nonconforming use shall not be required to obtain a variance prior to obtaining a building permit for a building or addition that would be permitted if the building contains a conforming use. Similarly, a property with a nonconforming structure shall not be required to obtain a variance in order to substitute one permitted or conditional use for another if that substitution would be allowed for a conforming structure.

(e) Additional Criteria for Flood Plain Variances¹¹⁸

Where all or part of the property is located in an area subject to flooding as provided in Section XX[Flood Plain Controls], the ZBA shall only approve a

¹¹⁷ This new provision removes some of the need for nonconforming properties to have hearings before the ZBA simply because they are nonconforming, and avoids the need for a separate provision declaring that very old structures and lots shall not be deemed to be nonconforming. This provision may be moved to Section 14-205 Nonconformities.

¹¹⁸ From current 14-1802(3) *Criteria for Granting Variances*.

variance if it determines that the application meets the following criteria in addition to those in Section 14-204(10)(d).

- (.1) Any requested variance for property located within the Floodway will not result in any increase in flood levels during the Regulatory Flood;
- (.2) Any requested variance for property located within Floodway Fringe will not significantly increase the danger of flooding; and will not endanger the loss of property.
- (.3) Any variance in either the Floodway or Floodway Fringe involves the least modification of flood plain controls necessary to allow the proposed development to proceed.

(f) Additional Criteria for Center City Height Controls¹¹⁹

Where all or part of the property is located in an area subject Center City Overlay district height controls in Section XX [Center City Overlay district], the ZBA shall only approve a variance if it determines that, in addition to meeting those criteria in Section 14-204(10)(d), the grant of the variance will not substantially alter historic views of the City Hall Tower or the Center City skyline.

(g) Additional Criteria for Wireless Service Towers¹²⁰

In granting a variance relating to the construction of wireless service towers, the ZBA shall consider all of the following criteria in addition to those in Section 14-204(10)(d).

- (.1) Evidence of the lack of space on suitable existing towers, buildings or other structures to co-locate the proposed antenna, cells, microcells and the lack of space on existing tower sites to construct a tower for the proposed antenna within the service area;
- (.2) Whether the wireless service provided will be unable to provide wireless services without the tower site;
- (.3) Whether the application represents a request for multiple use of a tower or site, or use on a site contiguous to an existing tower site;

¹¹⁹ From current 14-1802(4) and (5) *Criteria for Granting Variances*. The current provision prohibiting a variance from height if there is also a variance from gross floor area limits has been deleted because the proposed limitation of variances to 25% limits the danger of combined variances.

¹²⁰ From current 1401802(6). The structure of this Section is different from other criteria sections because the federal Telecommunications Act constrains the ZBA's ability to deny approvals for wireless facilities in some circumstances.

- (.4) Whether the application contains a report that other potential users of the site and tower have been contacted, and they have no current plans, to the best of their ability to determine, that could be fulfilled by joint use;
- (.5) Whether the application shows how the tower or site will be designated or laid out to accommodate future multiple users. Specific design features evaluated shall include but not be limited to height, wind loading, and coaxial cable capacity; and
- (.6) Whether the proposed tower is to be located in an area where it would be unobtrusive and would not substantially detract from aesthetic or neighborhood character or property values, due either to location, shape of the tower (such as an imitation pine tree tower) or to the nature of surrounding uses (such as industrial use), or to lack of visibility caused by natural growth, landscaping or other factors.
- (.7) In addition to those factors listed in subsection (d) above, for purposes of wireless service towers only, hardship sufficient for the granting of a variance shall include the effect upon the applicant's ability to provide wireless service.

(h) Additional Criteria for Height Variances Near the Airport¹²¹

Where all or part of the property is located in an the Airport Environs Overlay district, the ZBA shall only approve a variance from those height controls in Section XX [Airport Environs Overlay district] if it determines that the proposed structure, or use of land will not constitute an airport hazard and the grant of the variance is consistent with purpose of the Airport Environs Overlay district and the requirements of the Federal Aviation Administration. Compliance with the General Criteria in Section 14-204(10)(d) is not required.

(11) Administrative Permits¹²²

(a) Applicability

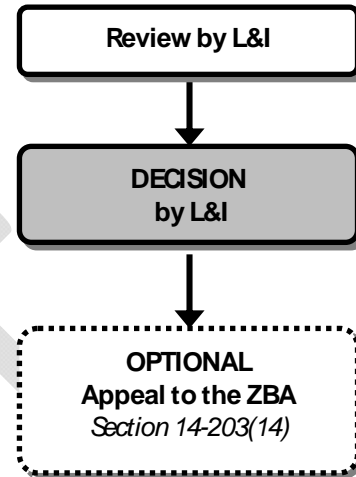
This Section applies to all applications where the decision on a permit is to be made by L&I, including but not limited to those specific decisions listed in subsection (b) below. L&I shall have authority to issue the permits and approvals listed in this subsection (11):

¹²¹ The City is currently preparing amendments to these controls, and any changes to these criteria will be incorporated into the final draft of the Zoning Code.

¹²² These provisions address the process for zoning review of "by-right" development , some of which are carried over from current 14-1703 *Permits*.

- (.1) Regardless of whether the lot, structure, or use is currently in conformance with the provisions of this Zoning Code; and
- (.2) Regardless of whether the lot, structure, or use is currently the subject of a variance, permit, certificate, or proviso issued by the ZBA, as long as the issuance of the permit is consistent with the terms of that variance, permit, certificate, or proviso. If the requested permit or approval is not consistent with the terms of a variance, permit, certificate, or proviso approved by the ZBA, the permit shall be referred to the ZBA for action pursuant to Section 14-204(10).

Administrative Permits



(b) Types of Administrative Permits

(.1) Zoning Compliance Permits

Zoning Compliance Permits generally confirm that the application complies with this Zoning Code. They may be issued where (a) the use is listed as a permitted use for the property in Table XX [Permitted Use Table], (b) the application complies with all applicable requirements of this Zoning Code, and (c) no design review is required under Section 14-204(6). Specific types of Zoning Compliance Permits used by L&I include the following:¹²³

- (.a) Zoning permits, which confirm that the proposed structure, site improvements, or construction comply with this Zoning Code.
- (.b) Use registration permits, which confirm that the proposed land use complies with this Zoning Code.
- (.c) Temporary use permits, which confirm that proposed temporary uses comply with Section XX [Temporary Uses].

¹²³ This list may be expanded to match current practice and terms used by L&I .

(.d) Zoning permits for signs extending beyond the building line.¹²⁴

(.2) Accommodations for Federal Laws

Adjustments in any of the requirements of Table XX [Dimensional Standards Table] when an applicant has made a request (a) for “reasonable accommodation” under the federal Fair Housing Act Amendments of 1988 (42 U.S.C.S. 3601 *et. seq.*) or (b) for a site or structure modification required to comply with the Americans with Disabilities Act of 1990 (42 U.S.C.A. 12101 *et. seq.*), and the adjustment is the least modification of required dimensions that will accommodate the proposed structure or facility, and the adjustment complies with the fire code.

(c) Permits¹²⁵

- (.1) No permit shall be issued unless the owner or his authorized agent files six copies of a plan drawn to scale showing the actual lot dimensions, use or intended use, height or size, and location of the building or buildings on the lot, together with such other information and data as L&I may require; and that plan is approved by L&I as in compliance with the applicable provisions of this Zoning Code.¹²⁶
- (.2) When approved by L&I, the plan described in subsection (.1) shall be final and conclusive. One copy of that plan, as approved, shall be returned to the applicant stamped as approved by L&I.
- (.3) Administrative permits required for construction and use of a property, or where interior alterations are involved, shall expire three years after the date of issuance, unless construction work is begun before that date and is carried on to completion without voluntary interruption. Administrative permits where no construction or interior alterations are involved, shall expire three months from the date of issuance unless the approved use has begun.
- (.4) Whenever an application is filed for alterations to an existing structure that does not change the area, height, floor area or bulk of the structure and the existing use is legal and unchanged, the application will be designated as approved by a stamp stating "Permit Not Required".

¹²⁴ These permits are addressed in current 14-1903.

¹²⁵ Carried over from current 14-1703 *Permits*.

¹²⁶ The City is currently considering whether some types of plans (not including 1 and 2 family home) should be required to be professionally sealed in order to improve application completeness and reduce processing time.

(d) Criteria for Approval

L&I shall approve the application only if it determines that it complies with the following criteria.

- (.1) The application complies with all applicable provisions of Zoning Code, as adjusted by Section 14-204(11)(e); and
- (.2) The application is consistent with the terms of all variances, permits, certificates, or provisos previously issued by the ZBA for the uses, structures, and property involved in the application.

(e) Minor Adjustments¹²⁷

(.1) Eligibility for Adjustments

The following conditions shall be deemed minor adjustments to the standards in Section XX [Dimensional Standards Table] or Section XX [Parking and Loading] that may be approved by L&I. These adjustments may only be approved if all of the following conditions are met:

- (.a) The application is for a single structure or parking area on a lot. Adjustments may not be approved for multiple lots or for multiple buildings as part of a multi-lot or multi-building development.
- (.b) The adjustment is needed because (a) the applicant's lot is smaller, narrower, less deep, or more constrained by topography or environmental constraints than at least one of the adjacent lots, or (b) the applicant is installing equipment or constructing site or building features designed to promote those elements of sustainability listed in Section XX [Sustainability]. The burden shall be on the applicant to show that these conditions apply to the property.
- (.c) The applicant is unable to comply with the requirements of SectionXX [Dimensional Standards] and/or Section XX [Parking and Loading] through reasonable modifications of the design of the proposed building, structure, addition, or parking area. The

¹²⁷ These provisions carry forward the consultant's recommendation that the city allow L&I to approve applications that almost comply with the dimensional standards for the property in certain cases. The rationale is that these minor adjustments often have only minor affects on surrounding areas and that allowing these to be addressed administratively will reduce backlogs at the ZBA of Appeals. The Work Plan Committee of the ZCC may recommend allowing up to 10% adjustment in the listed standards.

burden shall be on the applicant to show that these conditions apply to the property.

(.2) Adjustments Permitted

L&I may approve applications that comply with subsection (.1) above and that comply with the provisions of Section XX [Dimensional Standards Table] and/or Section XX [Parking and Loading] as adjusted in up to two of the following ways:

- (.a) The front, side, or rear setbacks of a new structure or addition are no more than one (1) foot smaller than the minimum setbacks required by Table XX [Dimensional Standards Table]; and/or
- (.b) The height of a new or modified structure is no more than two (2) feet taller than the maximum required by Table XX [Dimensional Standards Table]; and/or
- (.c) The amount of on-site open space is no more than five (5) percent smaller than the minimum required by Table XX [Dimensional Standards Table]; and/or
- (.d) For properties where Section XX [Parking and Loading] requires more than three off-street parking spaces, the site contains one (1) less parking space than is required.

L&I may not approve applications that require more than two of the adjustments listed above.

(f) Action by L&I

L&I shall review each application under this Section and shall approve or deny the application pursuant to the criteria in 14-204(11)(d).

(g) The One Year Rule¹²⁸

- (.1) L&I shall determine whether a substantially similar application was finally denied within one year prior to the date of the application, or whether an appeal is pending (either before the ZBA or before a court) of the denial of a substantially similar application.

¹²⁸ This provision is carried over from current 14-1703(6). The one year rule has been applied to all administrative approvals, since the zoning and use registration permits referenced in the current code are now in the administrative approval category.

- (.2) If such a determination is made and if the application is not one that L&I may grant as of right, then L&I shall deny the application and note on the application "Denied - One Year Rule".
- (.3) The issuance of a refusal or referral denoted, "Denied - One Year Rule", may be appealed to the ZBA. On such an appeal, the ZBA shall hold a hearing limited to two issues: (i) whether L&I properly applied the One Year Rule; and (ii) whether, because of materially changed circumstances, the application should be considered notwithstanding the One Year Rule. Following a public hearing pursuant to Section 14-203(7) the ZBA shall make a decision limited to those two issues.
- (.4) If the ZBA's decision is that the application should not be denied on the basis of the One Year Rule, then the ZBA shall consider the appeal on the merits in accordance with its usual procedures, including the holding of an additional hearing in accordance with Section 14-203(7) for which reposting shall be required in accordance with subsection A14 - 300:(1)(a)(.4) and applicable ZBA regulations, but for which no additional fee shall be imposed.
- (.5) The failure of L&I to deny an application on the basis of the One Year Rule may be raised by any affected party in an appeal from L&I's issuance of a permit, or in an appeal to the ZBA from L&I's refusal to issue a permit for reasons other than application of the One Year Rule.

Section 14-205 Nonconformities¹²⁹

(1) Purpose¹³⁰

This Section recognizes that many land uses, buildings, parking areas, lots, accessory signs, and site improvements in the city do not conform with the requirements of this Zoning Code either because (a) they were established before the adoption of zoning, or (b) they were legal when established but have become nonconforming due to later zoning amendments. It is the purpose of this Section to accommodate these nonconformities and to allow for the continued existence, use, modification, and expansion of these uses, buildings, parking areas, lots, signs and site improvements

¹²⁹ From current 14-104 *Nonconforming Structures and Uses*, but with substantial changes. These provisions carry forward the recommendations on this topic contained in the Detailed Recommendations document, several of which involve narrowing the definitions of nonconformity to allow more property in the city to be treated as conforming. These provisions also incorporate several suggestions of the work group on nonconformities convened by the ZCC after the *Detailed Recommendations* were drafted. The Section has been expanded to cover not only buildings and uses but also lots and site improvements (fences, walls, landscaping, accessory signs, etc.).

¹³⁰ This replaces current 14-104(1), which reads "It is the purpose of this Section to discourage and eventually eliminate nonconforming uses and structures because they are detrimental to the orderly development of the city."

subject to conditions designed to avoid or mitigate negative impacts on the surrounding area.

(2) Types of Nonconformities¹³¹

Six different types of nonconformities exist and are subject to the requirements of this Section 14-205.

- (a) Nonconforming Uses
- (b) Nonconforming Buildings and Structures (not including non-accessory signs)
- (c) Nonconforming Parking
- (d) Nonconforming Site Improvements
- (e) Nonconforming Lots
- (f) Nonconforming Accessory Signs

(3) Exceptions

Notwithstanding the provisions of Section 14-205(2), the following situations are not nonconformities. Properties in these categories are considered to comply with the Zoning Code.

- (a) If this Zoning Code is or has been amended to increase minimum off-street parking requirements, or to lower the maximum amount of off-street parking that can be provided, no property developed prior to those amendments shall be considered nonconforming simply because it no longer complies with the revised minimum or maximum parking requirements.¹³²
- (b) A use, building, parking area, site improvement, lot, or accessory sign that would not be permitted by this Zoning Code but that has been authorized through a variance or other action of the ZBA, or that has been authorized by Court order, is not a nonconforming use, building, parking area, site improvement, lot or accessory sign, so long as it complies with the terms of that authorization.¹³³

¹³¹ This is a new provision. The distinction between nonconforming uses and structures approved by the ZBA reflects current city practice.

¹³² This revises the last clause of current 14-104(2) to address maximum as well as minimum parking requirements.

¹³³ This carries forward current 14-104(4)(b).

(4) General Requirements¹³⁴

- (a) Nonconforming uses, buildings, parking areas, site improvements, lots, and accessory signs may continue following any amendment to this Zoning Code that creates a condition in which those uses, buildings, parking areas, site improvements, lots or accessory signs have been made nonconforming.
- (b) Any nonconforming use, building or lot may be sold or rented to new owners or occupants.
- (c) The operation, expansion, and replacement of the nonconforming uses, buildings, site improvements, lots, or accessory signs shall be subject to the limitations in this Section 14-205.
- (d) A nonconformity in a building, parking area, site improvement, lot, or accessory sign that is destroyed or discontinued through the actions of the owner or occupant of the property may not thereafter be re-created or re-instated by action of any owner or occupant of the property.¹³⁵

(5) Nonconforming Uses and Variance Uses¹³⁶

(a) Expansion¹³⁷

A nonconforming use that is located in a conforming building may be expanded within that building, or within any expansion of that building that complies with Table XX [Dimensional Standards], provided that (i) a nonconforming use shall not be expanded to occupy a new or additional floor of a multi-story building that it did not occupy at the time the use became nonconforming, and (ii) the expansion shall not increase the area occupied by the nonconforming use by more than 25 percent more area than it occupied when it became nonconforming.¹³⁸

(b) Replacement

(.1) Uses Discontinued for Three Years or Less -- General

¹³⁴ This replaces current 14-104(1) and (2), but with changes. References to properties nonconforming at the time the 1933 code was adopted have been deleted as unnecessary.

¹³⁵ This Section restates current 14-104(4)(a)

¹³⁶ These provisions now apply to both nonconforming uses and use approved through variances, because the effect of discontinuance should be the same. Under the current code, nonconforming uses discontinued for three years or less can be restarted with the same use, but use variance uses cannot.

¹³⁷ The current code limits these expansions to 10%.

¹³⁸ Pennsylvania law requires that reasonable expansions be available, and we believe this standard (together with opportunities for variance) meet that requirement.

Except as provided in subsection (.2), a nonconforming use or use approved by the ZBA that is currently in operation or has been discontinued for three consecutive years or less may be replaced with another nonconforming use the existing/discontinued use and the proposed replacement use are in the same use category as shown in Table XX [Permitted Use Table]. The replacement may be approved by L&I.¹³⁹

(.2) Uses Discontinued for Three Years or Less -- I-M and I-H Districts¹⁴⁰

The use of any land or building zoned "G-2" or the "LR" prior to the adoption of this Zoning Code and for which L&I issued a use registration permit prior to December 15, 1987 shall be subject to the provisions of this Section 14-205, except that a nonconforming commercial use in an existing building that is discontinued for a period of less than three consecutive years may only resume as either (a) the same nonconforming use, or (b) another retail commercial use or service specifically permitted in the CMU-6 district.¹⁴¹ If the resumed use is not the same as the discontinued use but is a use permitted in the CMU-6 district, it must meet the following conditions:¹⁴²

- (.a) The commercial use be limited to that portion of the lot, floor of a building, or portion of a floor of a building for which the use registration permit had been issued prior to December 15, 1987.

¹³⁹ This replaces current 14-104(5)(a) by extending the provision to apply to non-discontinued uses and by allowing replacement with another nonconforming use. The current language "may be replaced by the same use and no other" may result in properties remaining vacant in hopes of re-opening a use with more neighborhood impacts when a less-disruptive use of the property is available. In addition, it is sometimes not clear what the "same" use is, since some use definitions are so broad that fairly different activities could claim to be the "same" use. Since the existing and replacement uses are required to come from the same category in the Permitted Use Table, the replacement will have similar impacts. It also encourages the continued use of existing properties by making this an administrative decision.

¹⁴⁰ Carried over from current 14-508(11) *G-2 District*.

¹⁴¹ The reference in the current code is to the ASC district, which is being merged into the CMU-6 district. After Module 2 (Districts and Uses) is drafted this provision will be reviewed to ensure that the uses permitted in the replacement district are comparable to those in the ASC district.

¹⁴² Provisions prohibiting dwellings, hotels, hospitals, sanitarium, eleemosynary and public welfare institutions, open air theater or motion pictures; amusement parks, outdoor entertainment or public assembly, indoor theater or motion pictures, and any other entertainment of guests and patrons have been deleted.

- (.b) Any use that is a conditional use in the CMU-6 district, and that is not a permitted use in the I-M or I-H districts, shall require the approval of a conditional use pursuant to Section 14-204(4).
- (.c) Any use-specific conditions listed in Section XX [Use-Specific Standards] or dimensional restrictions listed in Section XX [Dimensional Table] that would have applied to the use if conducted in the CMU-6 district shall apply to the use in the I-M or I-H districts.¹⁴³

(.3) Uses Discontinued for Longer Periods

A nonconforming use or use approved through a use variance that has been discontinued for more than three consecutive years shall be considered abandoned and may not be resumed or replaced by another nonconforming use. Any subsequent use of the land or structure must comply with the use requirements of the district in which the land is located.

(.4) Determination of Discontinued Nonconforming Use

- (.a) A “discontinued use” is a nonconforming use that is no longer being actively operated on the property and for which there is evidence that the owner no longer intends to use the property for that purpose. Evidence of a discontinued nonconforming use may include but shall not be limited to (a) removal of improvements necessary to that use, (b) modifications to the property that make it unsuitable for that use, (c) lapsing of permits or licenses necessary to operate that use for two or more consecutive years, or (d) failure to pay property taxes or taxes related to the nonconforming use.
- (.b) Upon receipt of an application or request for action regarding a permit, L&I shall notify the property owner that a determination of discontinued use is under review and request any evidence that the use has not been discontinued. Evidence that a use has

¹⁴³ The current language states that “the provisions of Sections 14-312 and 14-313 pertaining to commercial rules and exceptions shall be complied with” but the material in those Sections will be relocated to these two new Sections.

not been abandoned may include but is not limited to (a) improvements made to the property to accommodate that use during a time when the use was not actively operating, (b) efforts to market the property or improvements for that use during the time when the use was not actively operating, or (c) the maintenance of any licenses or permits necessary for the use or business during the time it was not actively operating. L&I's determination shall take into consideration any response received from the property owner, but that response shall not be determinative if other evidence suggests that that use has been discontinued.

- (.c) A successful application for a permitted use or conditional use in the district where the land is located shall be conclusive evidence that the prior nonconforming use has been abandoned.
- (.d) A writing from the property owner that it has discontinued the use and has no intention of reinstating that use shall be conclusive evidence that the prior nonconforming use has been abandoned.

(6) Nonconforming Buildings¹⁴⁴

Nonconforming buildings may be expanded or extended, provided that the extended or expanded area (a) complies with all provisions of Table XX [Dimensional Standards] applicable to the zoning district where the property is located, (b) complies with the provisions of this subsection 6, and (c) does not increase any existing nonconformity.

- (a) All expansions of nonconforming structures shall be limited to the lot or parcel of land occupied by the structure at the time it became nonconforming. Any purchase of adjacent lands or merger of adjacent lands into a single lot or parcel shall not permit the expansion of a nonconforming structure in a way that increases any existing non-conformity.¹⁴⁵
- (b) In those zoning districts that limit maximum floor area, any nonconforming building that contains more than the permitted amount of floor area shown in Table XX [Dimensional Standards] may not be modified so as to create more

¹⁴⁴ These provisions replace those in current 14-104 (3)(b),(8), and (9), with changes as noted. This is a change from the current code, which limits expansions of nonconforming uses to 10% above the area they occupied when they became nonconforming.

¹⁴⁵ This provision is carried over from current 14-104(7)(a), which applies to nonconforming structures with nonconforming uses, but now applies to all nonconforming structures.

floor area. Any nonconforming building that contains less than the maximum permitted floor area shown in Table XX [Dimensional Table] may expand up to that limit provided that the addition complies with all other requirements in that Table.¹⁴⁶

- (c) Where a building front or side wall does not meet a required setback, side yard or court requirement, a vertical extension of that wall that complies with the height limit and gross floor area ratio limit in Table XX [Dimensional Standards] is not an increase of that specific nonconformity, and is permitted.¹⁴⁷
- (d) Where a building rear wall does not meet a rear yard minimum depth requirement, a vertical extension of that wall is an increase of that specific nonconformity, and is not permitted. Vertical extensions of a rear building wall that does not comply with minimum required rear yard minimum depth or yard areas must meet the requirements in Table XX [Dimensional Standards].¹⁴⁸
- (e) Where a building side wall does not meet a required side yard or court provision, a horizontal extension of that wall is an increase of that specific nonconformity, and is not permitted. However, horizontal extension of a rear wall that requires with the setback requirement and maintains the minimum open space requirement is not an increase of that specific nonconformity and is permitted.¹⁴⁹
- (f) Elevator shafts or fire towers that existed at the time a building began to be nonconforming may be extended in height without respect to the height regulations of the district in which such structures are located.
- (g) Repairs to or renovation of a nonconforming building that reduce risks to public health and safety by bringing the building or site improvement into greater compliance with the adopted building code are permitted, regardless of whether they extend the useful life of the building or site improvement.¹⁵⁰
- (h) Where a nonconforming building contains a nonconforming use, the nonconforming use may also be extended within any expansion of the building

¹⁴⁶ This may be revised to permit minor increases in floor area ration in the Center City area where the additional floor area would be in additions designed to better connect buildings to the street edge and promote a more walkable environment.

¹⁴⁷ This is a significant change from current 14-104(10) which would have required that vertical extensions of side walls meet requires setbacks.

¹⁴⁸ Subsections 5 and 6 carry over the provisions of current 14-104(10).

¹⁴⁹ Note that this is a change from current 14-104(12) *Extensions and Additions to Courts and Side Yard*, which would allow horizontal extensions of side walls that are no longer than the existing wall.

¹⁵⁰ This new provision was suggested by the nonconformities working group.

permitted under this subsection (6), provided that the expansion complies with the provisions of Section 14-205(5)(a).

(7) Nonconforming Lots¹⁵¹

If a lot is nonconforming because it does not meet the requirements of Table XX [Dimensional Table], nothing in this Zoning Code shall prohibit (a) the use of that lot, or (b) the erection, construction, or alteration of structures upon that lot, or (c) in the case of a group of adjacent nonconforming lots, the erection or construction of an equal or lesser number of structures upon such lots, provided that such use, erection, construction, or alteration otherwise complies with the regulations of the district in which that lot is located. New subdivisions or re-subdivisions of land pursuant to Section 14-204(7) after the effective date of this code must meet the requirement of Table XX [Dimensional Standards] as well as all other applicable provisions of this Zoning Code.

(8) Nonconforming Accessory Signs¹⁵²

A nonconforming accessory sign may be structurally altered, reconstructed, maintained, or replaced in the same location and position in any way that does not increase the size, height, or degree of illumination of the accessory sign, and does not create a new nonconformity, or increase an existing nonconformity. Without limiting the previous sentence, routine maintenance of the accessory sign face or accessory sign structure and changes to the accessory sign message are permitted as long as no new violation of Zoning Code is created.

(9) Nonconforming Parking or Site Improvements¹⁵³

Where a conforming lot contains only conforming building and uses, but the amount or location of off-street parking or amount, location, or design of site improvements (for example, landscaping) does not meet the requirements of this Zoning Code, those nonconformities may remain and be used until the property owner (1) redevelops the property with a new primary structure¹⁵⁴, (2) expands the floor area of an existing primary structure by more than 50 percent, or (3) removes and replaces at least 50 percent of the floor area of an existing primary structure.

(10) Minor Adjustments

The authority granted to L&I to approve Minor Adjustments in Section 14-204(11)(e) shall extend to nonconforming lots, uses, buildings, site improvements, or accessory signs, provided that the approval of the Minor Adjustment does not increase any

¹⁵¹ This is carried over from current 14-104(11), but the clause applying this standard to lots “recorded on or before the effective date of this ordinance” was deleted because other nonconforming lots exist and some will be created by zoning decisions in the future.

¹⁵² This is a new provision

¹⁵³ These are new provisions.

¹⁵⁴ A primary structure is one that contains the primary use of the property.

(11) Reconstruction of Structures Destroyed or Declared to be Imminently Dangerous

specific nonconformity applicable to the property. For example, on a property that is nonconforming because one building wall is too close to one lot line, no Minor Adjustment may allow that building wall to be located even closer to that lot line.

(11) Reconstruction of Structures Destroyed or Declared to be Imminently Dangerous¹⁵⁵

(a) Applicability

Notwithstanding the provisions of 205(1) through (10) above, the provisions of this subsection (11)(b) shall apply when:

- (.1) Nonconforming buildings are rendered unoccupiable or nonconforming uses, lots, parking, site improvements, or accessory signs are destroyed or rendered unusable by any means other than the direct or indirect action or neglect of the owner, or
- (.2) Nonconforming buildings, lots, parking, site improvements, or accessory signs are declared to be imminently dangerous by the City because their condition makes them unsafe for occupancy or use.

(b) Rights Following Involuntary Destruction or Declaration

Following involuntary destruction or a City declaration of imminent danger, (a) a replacement structure that does not exceed the area, heights, or setbacks of the destroyed structure may be constructed, and (b) the nonconforming use that existed prior to the destruction may be re-established, and (c) the property need not provide any more off-street parking spaces or loading areas than the property had before the destruction or declaration of imminent danger. These provisions shall apply only if reconstruction begins within three years after the destruction or declaration of imminent danger and is completed without interruption; otherwise the building, use, lot, parking, site improvement, or accessory sign may only be reconstructed in compliance with the Zoning Code for the zoning district where it is located.

(c) Voluntary Destruction or Delay in Reconstruction

Notwithstanding the provisions of subsections 205(1) through (10) above, any nonconforming building, use, lot, parking, site improvement, or accessory sign destroyed through the direct or indirect action of the owner may only be reconstructed in compliance with the Zoning Code for the zoning district where it is located.

¹⁵⁵ The term “condemned” has been replaced with “declared to be imminently dangerous”.

Section 14-206 Enforcement

(1) Enforcement¹⁵⁶

In order to administer and enforce the provisions of this Zoning Code, L&I shall have the power to take any of the following actions, individually or in combination, and in any order. L&I's decision to take one of the listed actions shall not prevent it from taking additional listed actions in the future.

(a) Investigation

The City may conduct investigations and surveys to determine compliance with the provisions of this Zoning Code. In connection with those inspections and surveys, an authorized representative of L&I may enter into and upon and may inspect any land or structure during normal daylight working hours. A refusal by the owner or occupier to permit such entry and inspection after the issuance by L&I of an order for that inspection shall be a violation of this Title. The right of entry and inspection may be enforced by application to, and proper orders from, a Court of proper jurisdiction.

(b) Compliance Order to Property Owner

The City may make orders requiring an owner or occupant to comply with the provisions of this Zoning Code within 30 days of receipt of the violation. Such orders shall be served personally or by registered or certified mail upon the person, firm, or corporation that L&I deems to be violating this Title. If that person, firm, or corporation is not the owner of the land or the structure where the violation is deemed to exist or to have occurred, a copy of the order shall be sent by registered or certified mail to the last registered owner of the land or structure and a copy of the order shall be posted on the premises. The date of mailing shall be deemed the date of service of any order sent by registered or certified mail. If the order is not complied with, a finding of violation shall be made and L&I may begin action to enforce compliance.

(c) Compliance Order to Permit or Certificate Holder

The City may serve a written notice of violation on the holder of a permit or ZBA certificate whenever L&I determines that any person has violated any condition of that permit or certificate. The notice shall state the nature of the violation and shall require the holder of the permit or certificate to comply with all the requirements of the permit or certificate within 30 days of receipt of the notice of violation. If at the expiration of the time afforded for compliance the violation has not been corrected, L&I may revoke the permit or certificate. The

¹⁵⁶ From current 14-1704 *Enforcement*, and 14-1905 *Administrative Provisions [for Signs]*.

notice of violation and revocation of any permit or certificate may be served in accordance with Section 14-206(1)(b) above.

(d) Cease Operations Order

The City may issue a cease operations order directing that occupancy, use, and other activities cease immediately and that the premises be vacated pending compliance with the cease operations order whenever (1) any occupancy, use, or other activity is being performed in or on any building, structure, or land without one or more required permits or certificates, and either (2) the missing permits or certificates are required to protect public health or safety, or (3) the continued occupancy, use, or activity without the required permits or certificates is creating a public nuisance.¹⁵⁷ The provisions of subsection (2) below shall apply to cease operations orders.

(e) Abatement of Signs

(.1) Whenever any sign is erected or maintained in violation of the provisions of Section XX [Signs] or related regulations issued by L&I, L&I shall serve a written notice requiring the violator to bring the sign into compliance within 30 days of receipt of that notice. If the violation has not been corrected within 30 days and no appeal is pending, L&I may itself or by contract remove the violating sign or, if it may be done with less expense, may bring the sign into compliance. The costs incurred by L&I shall be charged against the sign owner and the Law L&I may take any action to collect those costs from the owner authorized by law at the time of the violation. No permit for any similar sign at that place shall be granted until those costs have been paid to the City. Within 15 days after removal of any sign pursuant to these regulations, the owner may reclaim any materials salvaged by L&I after payment of the cost of removal incurred by L&I.

(.2) Notwithstanding the provisions of Section 14-206(1)(e)(.1), if any violation of Section XX [Signs] results in an immediate peril to persons or property, L&I may require immediate compliance. If the owner does not immediately comply with the provisions of Section XX [Signs] creating the risk of peril, L&I may without any additional notice, and in addition to any other remedies available in this Zoning Code (a) correct the violation itself, or contract to have the violation corrected by a third party, and recover the costs and allow salvage of materials as described in subsection (2), and/or (b) apply with the approval of the Law L&I to any Court of Common Pleas of Philadelphia for relief by injunction or restraining order.

¹⁵⁷ This changes the current enforcement provision. The current provision allows the issuance of cease orders regardless of whether the operation endangers public health and safety or creates a nuisance.

(f) Historic Resource Compliance Order

In the case of a violation of Section 14-204(9), L&I may issue orders directing compliance with the requirements of that Section. An order shall be served upon the owners or person determined by L&I to be violating the requirements of this Section. If the person served is not the owner of the property where the violation is deemed to exist or to have occurred, a copy of the order shall be sent to the last known address of the registered owner and a copy shall be posted on the property. Where the owner's address is unknown, a copy of the order shall be posted on the property.

(g) Court Proceedings

Institute any appropriate action or proceedings in a Court of Common Pleas or the Municipal Court of Philadelphia at law or in equity to prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, occupancy, or use of any building, structure, or land to restrain, correct or abate a violation of this Title, to prevent the occupancy of the building, structure, or land where a violation is deemed to have occurred, or to prevent any illegal act, conduct, business or use in or about such premises. The imposition of any penalty under this Section shall not prevent L&I from instituting any appropriate action or proceeding to require compliance with the provisions of this ordinance and with administrative orders and determinations made pursuant to this Title.

(2) Requirements for Cease Operations Orders

When L&I issues a cease operations order, the following standards shall apply.

- (a) The cease operations order shall describe the occupancy, use, or other activity that is being performed without required permits or certificates, how the violation can be corrected, and the conditions under which occupancy, use, or other activity can be resumed. If L&I observes a condition that creates an immediate risk to public health and safety, the order may be oral in the first instance.
- (b) The cease operations order shall be served on the person required to act or comply and on the owner of the premises. Upon notice of the cease operations order, all occupancy, use, or other activity shall stop immediately and the premises shall be vacated and closed to the public until there has been compliance with the terms of the cease operations order.

- (c) The cease operations order shall be posted at the premises in conspicuous places clearly visible to the public, and shall remain posted on the premises until there has been compliance with its terms.
- (d) L&I shall promptly notify the Police of the issuance of every cease operations order. The Police, upon the request of L&I, shall render assistance in the enforcement of any cease operations order and shall have the right to enter the premises and to arrest anyone violating any cease operations order.
- (e) L&I may, in addition to issuing a cease operations order, revoke any permits that may previously have been issued related to the occupancy, use, or activity that is the subject of the order. Revoked permits shall not be reinstated except upon compliance with the terms of the cease operations order and payment of required fees.
- (f) No person with knowledge of a Cease Operations Order shall:
 - (.1) Continue any occupancy, use, or other activity in or about any part of any building, structure, or land after a cease operations order has been issued, except work required to comply with the cease operations order;
 - (.2) Enter any part of any building, structure, or land, on which a cease operations order has been posted, except for the purpose of complying with the cease operations order;
 - (.3) Permit any part of any building, structure, or land, to be occupied by the public until the cease operations order has been lifted by L&I;
 - (.4) Remove, damage or deface any cease operations order; or
 - (.5) Resist or interfere with any inspector or other official in the performance of their duties or the enforcement of any provision of this Section 14-306.

(3) Penalties¹⁵⁸

Penalties for violations of this Zoning Code are listed in the Philadelphia Administrative Code.

¹⁵⁸ Although the current code lists penalties in Section 14-1707 *Penalties*, we have deleted them from the New Zoning Code because the City currently addresses penalties in the Philadelphia Administrative Code and repeating them in the Zoning Code could lead to inconsistencies.