

P13-20

PENDING TEXT AMENDMENT

Falcon Zoning Ordinance
Conditional Use District & Permit (CUD) to Conditional Zoning (CZ)

CURRENT MEETING INFORMATION:

County Joint Planning Board, May 21, 2013 at 7:00 pm, Historic Courthouse, 130 Gillespie Street, Fayetteville, 2nd floor hearing room – if you wish to address the board, you must sign up prior to 6:55 pm outside the hearing room.

CASE HEADING:

P13-20. REVISION AND AMENDMENT TO THE TOWN OF FALCON ZONING ORDINANCE AMENDING ARTICLE II. GENERAL ZONING DISTRICT CLASSIFICATIONS, SECTION 2.1. STATEMENT OF INTENT, PURPOSE AND ZONE CHARACTERISTICS, SUB-SECTION 2.18. CONDITIONAL USE DISTRICTS; ARTICLE III. PERMITTED PRINCIPAL USES AND STRUCTURES, TITLE AND SECTION 3.1 TABULATION OF PERMITTED USES; ARTICLE IV. COMPANION DISTRICTS – CONDITIONAL USE DISTRICTS IN ITS ENTIRETY, INCLUDING THE TITLE; ARTICLE IX. SIGN REGULATIONS, SECTION 9.3. SIGNS PERMITTED IN ANY DISTRICT; ARTICLE X. DEFINITION OF TERMS, SECTION 10.2. DEFINITIONS OF SPECIFIC TERMS AND WORDS, SPECIFICALLY *CONDITIONAL USE & SPECIAL INFORMATION SIGNS*; ARTICLE XII. ADMINISTRATIVE PROVISIONS, SECTION 12.4. ADMINISTRATIVE PROCEDURES, SUB-SECTION 12.43. VARIANCE AND SECTION 12.5. AMENDMENTS, IN ITS ENTIRETY; AND UPDATING THE TABLE OF CONTENTS AS APPROPRIATE. (FALCON)

ADDITIONAL INFORMATION:

Complete text is attached.

CONTACT INFORMATION:

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P13-20
Town of Falcon
Zoning Ordinance Text Amendment
Conditional Zoning District

P13-20. REVISION AND AMENDMENT TO THE TOWN OF FALCON ZONING ORDINANCE AMENDING ARTICLE II. GENERAL ZONING DISTRICT CLASSIFICATIONS, SECTION 2.1. STATEMENT OF INTENT, PURPOSE AND ZONE CHARACTERISTICS, SUB-SECTION 2.18. CONDITIONAL USE DISTRICTS; ARTICLE III. PERMITTED PRINCIPAL USES AND STRUCTURES, TITLE AND SECTION 3.1 TABULATION OF PERMITTED USES; ARTICLE IV. COMPANION DISTRICTS – CONDITIONAL USE DISTRICTS IN ITS ENTIRETY, INCLUDING THE TITLE; ARTICLE IX. SIGN REGULATIONS, SECTION 9.3. SIGNS PERMITTED IN ANY DISTRICT; ARTICLE X. DEFINITION OF TERMS, SECTION 10.2. DEFINITIONS OF SPECIFIC TERMS AND WORDS, SPECIFICALLY *CONDITIONAL USE & SPECIAL INFORMATION SIGNS*; ARTICLE XII. ADMINISTRATIVE PROVISIONS, SECTION 12.4. ADMINISTRATIVE PROCEDURES, SUB-SECTION 12.43. VARIANCE AND SECTION 12.5. AMENDMENTS, IN ITS ENTIRETY; AND UPDATING THE TABLE OF CONTENTS AS APPROPRIATE. (FALCON)

AMEND Article II. General Zoning District Classifications, Section 2.1. Statement of Intent, Purpose and Zone Characteristics, by changing the title and contents of sub-section 2.18. Conditional Use Districts, as follows:

2.18. Conditional Zoning Use Districts.

2.181. Companion Districts. Each district includes a companion conditional ~~zoning use~~ district (e.g. R15 has R15/CZ ~~CUD~~) where no uses are permitted by right. This district is designed for the development and use of the property subject to predetermined ordinance standards and rules imposed as part of the legislative decision creating the district and applying it to the particular property ~~All uses in the companion conditional use districts also require a conditional use permit.~~

AMEND Article III. Permitted Principal Uses and Structures by deleting “PERMITTED” from the title and also AMENDING Section 3.1 Tabulation of Permitted Uses, by changing the title and contents, as follows:

ARTICLE III. ~~PERMITTED~~ PRINCIPAL USES AND STRUCTURES

SECTION 3.1 TABULATION OF ~~PERMITTED~~ USES

Within the various use districts, as established in Article II and subject to the requirements of this ordinance, no land, building or structure shall be used and no building or structure shall be erected which is intended or designed to be used in whole

or in part for any use other than the uses allowed ~~permitted~~ by the various districts as established herein. The use regulations for the various districts are intended to be permissive in nature and none other than those specifically listed shall be construed as being allowable uses. Some land uses, may be allowed through conditional zoning use ~~district and approval of a permit~~ or by issuance of a special use permit only upon findings that certain conditions exist or should be applied, and is requested and agreed to by the property owner. The establishment of these uses shall be allowed only after review through appropriate measures and approval of plans.

Permitted uses in the various districts are indicated under the appropriate heading of the following tables. Special uses, with Board of Adjustment approval and issuance of the permit, and some uses in conditional zoning use districts, after Board of Commissioner approval ~~and issuance of the permit~~, are also indicated in the tables. All proposed uses in any planned district require site plan review and approval and shall be in compliance with the standards of this ordinance and the Town's Subdivision Ordinance.

AMEND Article IV. Companion Districts – Conditional Use Districts by adding “ZONING” and deleting ‘USE” from the title and also AMENDING Section 4.1. General; Section 4.2. Restrictions on Filing of Applications; Section 4.3. Content of Applications and Conditions; Section 4.4. Action by the Joint Planning Board; Section 4.5. Action by the Falcon Board of Commissioners; 4.6. Modification to Approved Conditional Use Districts & Permits; Section 4.7. Time Limit; Section 4.8. Failure to Comply; and Section 4.9. Validation of Existing Conditional Use Overlays; as follows:

ARTICLE IV. COMPANION DISTRICTS-CONDITIONAL ZONING USE DISTRICTS

SECTION 4.1. GENERAL

The conditional ~~use~~-zoning districts set forth herein are authorized by N.C. Gen. Stat. §160A-382, and are intended to modify the uses to which the parallel zoning district is restricted. Generally, an applicant, by seeking to rezone property to a conditional zoning use district, will propose to restrict or eliminate permitted, conditional or special uses. Requests s for conditional zoning use district rezoning shall be processed administratively in the same manner as for amendments to this ordinance as established in Article 12.5.

Conditional zoning use districts are floating districts that parallel general zoning districts. Conditional zoning use districts are identical to their corresponding general zoning districts in all respects except that a ~~conditional-use~~ permit is required as a prerequisite to any use (permitted, conditional or special) or development within them.

Parallel conditional zoning ~~use~~ districts are provided as a voluntary alternative method of petitioning the Board of Commissioners for a zoning map or classification change. The owner may submit conditions that restrict the uses that would otherwise be allowed in the zoning district and only those uses specifically requested in the application shall be considered.

SECTION 4.2. RESTRICTIONS ON FILING OF APPLICATIONS

A request for a conditional zoning ~~use~~ district rezoning shall be initiated only by an application [petition] signed by all current record owners of the property.

SECTION 4.3. CONTENT OF APPLICATIONS AND CONDITIONS

~~A properly submitted application for a Conditional Use District incorporates a petition for rezoning and an application for a Conditional Use Permit, which may be combined in one application.~~ The conditional zoning ~~use~~ district application shall provide the minimum information requirements set forth below, however, additional information may be required by the Planning and Inspections Staff, Planning Board or the Board of Commissioners when requested if any of the aforementioned deem it necessary in order to be able to make a recommendation on, or decision regarding, the application a required finding. Such requests may include a requirement for a more detailed site plan, or one modified in accordance with additional or modified conditions and other performance criteria.

(a) *Proposed uses.* Proposed uses shall be set forth in detail, including the compatibility with the uses in the neighboring districts. Any limitations or conditions to be placed on the proposed uses to enhance compatibility with and benefit to surrounding areas shall also be set forth.

(b) *Dimensional requirements.* The application shall show that the uses comply with dimensional requirements for the district requested. If the applicant proposes to vary the dimensional requirements for the district requested, it shall be demonstrated that the public purposes to be accomplished by any such dimensional requirement are met to an equal or greater degree.

(c) *Sign requirements.* The application shall indicate the location of signs in accordance with Article IX, Sign Regulations. If the applicant proposes to vary the sign provisions for the district requested, it shall be demonstrated that the public purposes to be accomplished by any such provisions are met to an equal or greater degree.

(d) *Off-street parking requirements.* The application shall indicate the location of all off-street parking and internal drive areas in accordance with Article VIII, Off-Street Parking and Loading, provisions. If the applicant proposes to vary the off-street parking provisions of this ordinance for the use requested, it shall be demonstrated that the public purposes to be accomplished by any such provisions are met to an equal or greater degree.

(e) *Miscellaneous provisions.* The application ~~for a Conditional Use Permit~~ may also set forth other conditions and performance criteria, such as days and hours of operation, numbers of employees, exterior lighting, and noise, odor and smoke emission controls or other environmental conditions, which might be proposed to make the use of the property compatible with surrounding areas and uses allowed therein.

(f) *Site plan requirement.* The application shall include a site plan drawn to the specifications of Section 12.45. If the proposed uses involve development subject to the Town's Subdivision Ordinance, the site plan required may be general in nature, showing a generalized street pattern, if applicable, and the location of proposed uses. If the proposed uses include development not subject to the Town's Subdivision Ordinance, the site plan shall be of sufficient detail to allow the Planning and Inspections Staff, the Planning Board, and the Board of Commissioners to analyze the proposed uses and arrangement of uses on the site. It shall also include the footprints of all buildings to be placed on the site, the proposed number of stories, and the location and number of off-street parking and loading spaces. The site plan shall show proposed points of access to existing streets and internal circulation patterns. In addition, the location of all proposed buffers and fences shall be included on the site plan.

SECTION 4.4. ACTION BY THE JOINT PLANNING BOARD

The Joint Planning Board may hold a public hearing during which the applicant may voluntarily make modifications to the ~~Conditional Use Permit~~ request. ~~The hearing shall follow quasi-judicial requirements including sworn testimony, the reliance on competent evidence, avoiding ex parte contact and bias, and basing findings of fact on evidence in the record. Board members shall disclose on the record at the public hearing any site visit they may have made to the affected property or any incidental ex parte contact he/she may have had with an affected party.~~ The Planning Board shall review the request for a ~~Conditional Use Permit and~~ conditional zoning use district rezoning and make a recommendation to the Board of Commissioners. When favorably recommending approval of the conditional zoning use district, the Planning Board shall issue a statement addressing the reasonableness of the proposed rezoning, in addition to addressing the request's consistency with the current Land Use Plan for the area in which the subject property is located. ~~In recommending the Conditional Use Permit, the Planning Board shall find that:~~

~~(a) The use will not materially endanger the public health or safety if located according to the plan submitted and recommended;~~

~~(b) The use meets all required conditions and specifications;~~

~~(c) The use will maintain or enhance the value of adjoining or abutting properties, or that the use is a public necessity; and~~

~~(d) The location and character of the use, if developed according to the plan as submitted and recommended, will be in harmony with the area in which it is to be located and in general conformity with the Town's most recent Land Use Plan and adopted planning policies.~~

SECTION 4.5. ACTION BY THE FALCON BOARD OF COMMISSIONERS

The Board of Commissioners shall hold a public hearing to consider the conditional zoning ~~use~~ district rezoning and ~~Conditional Use Permit~~. ~~The hearing shall follow quasi-judicial requirements including sworn testimony, the reliance on competent evidence, avoiding ex parte contact and bias, and basing findings of fact on evidence in the record. Board members shall disclose on the record at the public hearing any site visit they may have made to the affected property or any incidental ex parte contact he/she may have had with an affected party.~~

~~The Board of Commissioners~~ shall review the application, recommendations from the Joint Planning Board, suggested conditions, and other information presented at the public hearing. If the Board of Commissioners approves the rezoning application, a statement analyzing the reasonableness of the proposed rezoning along with addressing the consistency of the request with the current Land Use Plan for the area in which the subject property is located shall be made a part of the record. ~~Only upon approval of the Conditional Use District shall the Board of Commissioners consider approval of the Conditional Use Permit.~~

In approving the application, the Board of Commissioners, with mutual agreement of the property owner(s), by separate motion, ~~shall approve the Conditional Use Permit~~ and may attach such reasonable requirements or conditions in addition to those specified in the Joint Planning Board's recommendation, ~~and shall find that the application meets the findings listed in Section 4.4. Sub-sections (a) through (d). All conditions shall be stated in the permit and no condition shall be less restrictive than the standards of the parallel general use district.~~ The conditions may include, but shall not be limited to:

- (a) The location of the proposed use on the property;
- (b) The number and location of structures;
- (c) The location and extent of accessory and support facilities, such as parking lots, driveways, fences and access streets;
- (d) The location and extent of buffer areas and other special purpose areas on the property;
- (e) The height of any structure;
- (f) The phasing of development;

(a) Other restrictions on the use of the property that adhere to the purposes of this ordinance and maintain the public health, safety and welfare; and

(b) Such other matters as the applicants shall propose.

The record shall reflect that the applicant voluntarily agrees to all conditions proposed ~~for approval of the Conditional Use Permit.~~

SECTION 4.6. MODIFICATION TO APPROVE CONDITIONAL ZONING USE DISTRICTS ~~& PERMITS~~

All modifications, including changes in use and/or increase in density, to approved conditional zoning use districts ~~and Permits~~, other than those listed below, shall be reviewed in the same manner as a new project.

The following minor modifications to the approval for a conditional zoning district Use Permit may be approved by the Planning and Inspections Staff without re-approval by the Board of Commissioners, provided no variance is required, the use does not change, the intent and layout of the approved plan is generally followed, density is not increased, conditions of approval are not violated, and such changes do not cause a significant adverse impact:

(a) Slight variations in the building dimensions that do not depart from the general approved layout and not exceeding ten percent of the original approved dimensions;

(b) Minor changed in parking lot or traffic lane dimensions;

(c) Minor dimensional changed to individual lots;

(d) Minor site modifications due to necessary engineering requirements;

(e) Change of location of elements included on the site plan that generally maintains relative alignment and orientation to the approved site plan; and

(f) Other similar insignificant changes.

In reviewing such changes, the Planning and Inspections Staff may require that the modification be handled in the same manner as a new application.

SECTION 4.7. TIME LIMIT

Once the conditional zoning use district rezoning is ~~and Conditional Use Permit are~~ approved, all conditions attached thereto shall be binding upon the property and all subsequent development and use of the property shall be in accordance with the

approved application ~~permit~~ and conditions. Since the intent of this type of district is to provide for workable alternative uses of property, it is intended that land will be zoned in accordance with firm plans to develop. Therefore, at the end of two years from the date of approval, the Board of Commissioners may examine progress made to determine if active efforts are proceeding. If the Board of Commissioners determines that active efforts to develop are not proceeding, the board may institute proceedings to rezone the property to its previous zoning classification.

SECTION 4.8. FAILURE TO COMPLY

If for any reason any condition imposed pursuant to this section is found to be illegal, or if the applicant should fail to accept any condition, the authorization of such conditional zoning district ~~use Permit~~ shall be null and void and of no effect, and the Town Board of Commissioners or the Planning and Inspections Director, hereinafter Director, property shall initiate a rezoning to ~~remain in, or~~ revert the zoning of the property to its previous zoning classification.

Compliance with all conditions of a conditional zoning district ~~use permit~~ is an essential element of the conditional zoning district's ~~use permit~~ continued validity and effectiveness. If the ~~Planning and Inspections Director, hereinafter Director,~~ determines that a developer has failed to comply with a condition of an approved conditional zoning district ~~use permit~~, the Director shall so notify the property owner(s) or the property owner(s)' developer or the developer's successor in interest in writing and shall place the matter on the Board of Commissioners' agenda, after consideration by the Joint Planning Board and upon issuance of its recommendation, for the ~~Board of Commissioners' hearing and decision whether or not to revoke the conditional~~ zoning district ~~use permit and revert the zoning of the property to its previous zoning district.~~ Such hearing shall be on reasonable written notice to the property owner(s) or the property owner(s)' developer or the developer's successor in interest ~~and shall be a quasi-judicial proceeding according to quasi-judicial procedures.~~ The decision of the Board of Commissioners shall be a final decision, and a decision to revoke the conditional zoning district ~~use permit~~ may be appealed to the Superior Court of Cumberland County within 30 days after the property owner(s) or the property owner(s)' developer or the developer's successor in interest has been served with written notice of the Board of Commissioners' decision. Service by personal delivery or certified mail, return receipt requested, of a certified copy of the Board of Commissioners' approved minutes for its meeting at which such decision is made, shall constitute written notice and service of the Board of Commissioners' decision hereunder.

SECTION 4.9. VALIDATION OF EXISTING CONDITIONAL USE OVERLAYS AND CONDITIONAL USE DISTRICTS AND PERMITS.

Nothing in this ordinance shall be interpreted to affect or impair any rights accrued pursuant to any conditional use overlay district and permit, under the Town Zoning Ordinance of March 5, 1991, and subsequent amendments, prior to the effective date of

this amendment. In addition, nothing in this ordinance shall be interpreted to affect or impair any rights accrued pursuant to a conditional use district and permit approved prior to <enter date of adoption of this amendment>. All valid and legally approved conditional use overlay districts or conditional use districts and the permits shall continue to be valid provided that terms of the permit are not substantially or materially altered or expanded in any manner, that all conditions and requirements of the permit are and continue to be complied with and that the use does not cease for a period of one calendar year. Failure to comply with the conditions of the permit for the conditional use overlays or a conditional use district will subject the property owner and/or developer ~~and/or current owner~~ to possible revocation pursuant to Section 4.8 above.

AMEND Article IX. Sign Regulations, Section 9.3. Signs Permitted in any District, as indicated below:

SECTION 9.3. SIGNS PERMITTED IN ANY DISTRICT

9.36. Special Informational Signs.

Signs and on-site signs pertaining to ~~specified conditional~~ uses where not otherwise permitted may be approved by the Board of Adjustment subject to a special use permit specifying the size, location, lighting, design, and display. Such signs shall be limited to those which are necessary to inform the public as to location and information concerning facilities, institutions, business districts, fraternal orders and service clubs, or such other activity as the board may judge to be beneficial to the total community.

AMEND Article X. Definition of Terms, Section 10.2. Definitions of Specific Terms and Words, specifically the terms *Conditional use* and *Special informational signs*, as indicated below:

SECTION 10.2 DEFINITIONS OF SPECIFIC TERMS AND WORDS

Conditional use: A use or occupancy of a structure, or a use of land, permitted only upon the successful rezoning to a conditional zoning use district ~~and subsequent issuance of a Conditional Use Permit~~ and made subject to the limitations and conditions specified therein.

Special informational signs: For the purpose of giving directions and information, on-site signs pertaining to ~~specified conditional~~ uses where not otherwise permitted, and off-premises signs may be approved by the Board of Adjustment subject to subject to a permit specifying the size, location, lighting, design and display in accordance with Article IX. Sign Regulations. Such signs shall be limited to those which are necessary to inform the public as to location and information concerning facilities, institutions, business districts, fraternal orders and service clubs, or such other activity as the Board may judge to be beneficial to the total community.

AMEND Article XII. Administrative Provisions, Section 12.4. Administrative Procedures, sub-section 12.43. Variance, as follows:

12.43. Variance.

[Editor's note: Below is the very last paragraph of the section and is the only item proposed to be amended within Section 12.43.]

The Board of Adjustment is not authorized to grant variances to the conditional uses allowed in conditional zoning ~~use-overlay~~ districts or to the specific conditions or other performance criteria imposed upon such uses.

AMEND Article XII. Administrative Provisions, Section 12.5. Amendments, sub-section 12.51. Submissions to and Consideration Thereof by the Planning Board; 12.52. Petitions for Amendments Limited; Reapplications Limited; and 12.53. Approval by the Town Board of Commissioners; as indicated below:

12.51. Submissions to and Consideration Thereof by the Planning Board.

(a) Petitions for amendments or other changes of this ordinance shall be submitted in the form set forth in this ordinance, if applicable, or otherwise as prescribed by the Planning Board. Submissions by the Town Board of Commissioners ~~Council~~ or by the Planning Board on its own initiative are not subject to any requirement of form.

(b) The Planning Board, upon receipt of a proposal for amendment, by petition or otherwise, and upon notice to land owners as by law required, will consider each proposed amendment or change and may hold public hearings, ~~public notice of which shall be given,~~ for such consideration. Upon petition or other proposal for an amendment of the ordinance for the purpose of establishing a specific zoning district or specifically establishing a specific zoning district or for the purpose of establishing a conditional zoning ~~Use~~-district or specifically changing the classification of a existing district or part thereof, the Planning Board may consider proposing an amendment to amending the ordinance to provide a classification or reclassification other than that specifically requested, and so recommend, provided that the notice to land owners and notice of public hearing required by law states that classifications or reclassifications other than that requested will be considered. If upon receipt of a proposal to reclassify one type of general zoning district to another, the Planning Board proposes or has received a proposal from the Town Board of Commissioners to consider establishment of a conditional zoning ~~use~~-district, it must refer such proposal to the owners of the property to be included in such district for submission of a petition in accordance with the provisions of Article IV hereof; no consideration of such a proposal can be made unless and until such a petition is received.

(c) Following consideration of proposed amendments, supplements, changes, modifications, or repeal of provisions of the ordinance, the Planning Board will report all proposals it has considered to the Town Board of Commissioners ~~Council~~ and make

recommendations pertaining thereto. Failure of the Planning Board to make a report and recommendation within a period of ~~thirty (30)~~ days after a petition for a specific amendment has been referred to it will constitute a favorable report and recommendation for such amendment.

12.52. Petitions for Amendments Limited; Reapplications Limited.

After the initial zoning process in a zoning area, an initial petition to amend the zoning ordinance so as to reclassify property in that area may be submitted at any time. After the first such petition has been submitted, regardless of the outcome thereof, no subsequent petition, by the same or other persons, to reclassify the same property or any portion thereof, whether in conjunction with other property or not, shall be considered earlier than one (1) full year after the date of the last public hearing before the Town Board of Commissioners ~~Council~~ on the most recent prior application to reclassify such property or portion thereof. A petition to amend the zoning ordinance so as to reclassify property may be withdrawn without establishing a new one-year time limit only by a written instrument submitted to the office of the Planning and Inspections Director prior to the first official notification to the public concerning the petition. If the instrument withdrawing a petition to reclassify property is received after such first notification of the public, the withdrawal shall be effective, but a subsequent petition to reclassify the same property or part thereof, as set forth above, shall not be considered earlier than one (1) full year after the date of the receipt of the withdrawal instrument. The foregoing time limits on petitions to reclassify property shall not apply to amendments of any nature initiated by the Planning Board or the Town Board of Commissioners ~~Council~~.

12.53. Approval by the Town Board of Commissioners.

(a) Upon receipt of reports and recommendations from the Planning Board concerning proposed amendments, supplements, changes, modifications, or repeal provisions of this ordinance, the Town Board of Commissioners ~~Council~~ shall schedule a public hearing, upon notice to landowners of proposed action and notice of the public hearing as required by law, and thereafter shall approve or deny the proposed action. A failure to approve a proposed action shall constitute a denial of the proposal.

(b) The Town Board of Commissioners ~~Council~~ may approve an amendment of the ordinance to provide a classification or reclassification of a zoning district or part thereof, other than that specifically requested by a petitioner, provided that the notice to land owners and the notice of public hearing required by law states that classifications or reclassifications other than that requested will be considered and further provided that the Planning Board has considered such other classifications or reclassifications and reported on them to the Town Board of Commissioners ~~Council~~. If such notice or such consideration has not been accomplished, the Town Board of Commissioners ~~Council~~ shall refer its proposal to amend the ordinance in a way other than that proposed by the petitioner to the Planning Board for further action in accordance with this ordinance.

(c) To approve any amendment, supplement, change, modification, or repeal of any provision of this ordinance, the Town Board of Commissioners shall address the consistency of the action with the current Land Use Plan; and make a finding and determination, entered in the minutes of the meeting, that such action is reasonable, neither arbitrary or unduly discriminatory and in the public interest. In the case of the approval of the establishment of a general zoning district or the reclassification of an existing general zoning district to another type of general zoning district, the board shall make an additional finding and determination that the property within the district is suitable for all uses permitted by the new classification. Consideration of any conditional [zoning](#) ~~use~~-district is governed by Article IV of this ordinance.