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*Attorneys for Plaintiffs*

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF NAVAJO**

ANIL PATEL, an individual; and  
HOLBROOK MOTEL INVESTMENTS,  
INC., an Arizona corporation,

Plaintiffs,

vs.

CITY OF HOLBROOK, an Arizona  
municipal corporation,

Defendant,

Case No. S0900CV202400037

**PLAINTIFFS' MOTION FOR  
JUDGMENT ON THE  
PLEADINGS**

Pursuant to Ariz. R. Civ. P. 12(c), Plaintiffs Anil Patel and Holbrook Motel Investments, Inc. ("Plaintiffs") move for judgment on the pleadings on Count Two of Plaintiffs' Verified Complaint for Just Compensation and Declaratory Relief. Pursuant to A.R.S. § 12-1831–1846, Plaintiffs seek declaratory judgment that (1) Ordinance 23-02 ("Ordinance") is a "land use" law under the Arizona Private Property Rights Protection Act, A.R.S. § 12-1134; that (2) the Ordinance affected Plaintiffs' rights to use, sell, and possess private real property; and (3) Plaintiffs complied with the requirements of § 12-1134(E), and thus, the City of Holbrook ("City") is required to compensate Plaintiffs for the diminution in value the Property has suffered as a result of the Ordinance.

This motion is supported by the following memorandum of points and authorities.

1                                   **MEMORANDUM OF POINTS AND AUTHORITIES**

2                                   **INTRODUCTION**

3           Under the Arizona Private Property Rights Protection Act, when the state or a  
4 political subdivision enacts a land use law that reduces existing rights to “use, divide, sell  
5 or possess private real property,” and that law “reduces the fair market value of the  
6 property,” the owner is entitled to just compensation. A.R.S. § 12-1134(A), attached  
7 hereto as Appendix A. Thus, under A.R.S. § 12-1134(A), Plaintiffs must satisfy three  
8 factors to be entitled to relief: (1) the City enacted a “land use” law within the meaning of  
9 A.R.S. § 12-1136, Appendix A; (2) the land use law reduced Plaintiffs’ right to “use,  
10 divide, sell or possess private real property;” and (3) the land use law reduced the value of  
11 Plaintiffs’ property.<sup>1</sup> A.R.S. § 12-1134(A). The first two elements are *legal* questions on  
12 which this Motion is based; the last element regarding the *amount* of lost value may be a  
13 *factual* question, and is not at issue in this Motion.

14           On March 9, 2023, the City enacted Ordinance 23-02 (the “Ordinance”), which  
15 removed “Residential care services” as a “Principle Permitted Use,” in the C-1  
16 Neighborhood Commercial Zone, where Plaintiffs property is situated, and added  
17 “Residential care services” to the “Conditional Uses” section of the City Code. Ordinance  
18 23-02, attached as Exhibit B to Plaintiffs’ Verified Complaint for Just Compensation and  
19 Declaratory Relief (“Compl.”) and attached hereto as Appendix B. In other words, the  
20 Ordinance removed a use that was previously permitted under City Code, meaning that  
21 the use is *allowed* so long as the property owner meets zoning requirements, and changed  
22 that use to a permissive use, meaning that the use is *not allowed*, unless additional  
23 requirements are satisfied and the City approves it.

24           First, the City plainly enacted a land use law, which is an “ordinance ... enacted by  
25 ... a political subdivision ... that regulates the use ... or any interest in land.” A.R.S. § 12-

26 \_\_\_\_\_  
27 <sup>1</sup> A.R.S. § 12-1134(E) also has a procedural requirement that Plaintiffs must submit a  
28 written demand to the City for just compensation for the diminution in value to their  
property, which Plaintiffs plainly did and does not appear to be disputed here.

1 1136. The Ordinance was enacted by Holbrook, a political subdivision, and regulates an  
2 interest in Plaintiffs' land.

3 Second, the Ordinance reduced Plaintiffs' right to "use, divide, sell or possess  
4 private real property," because it removed a prior permitted use that did not require  
5 additional zoning approval, and made that use *conditioned* on other requirements and  
6 *conditioned* on City approval. That change fundamentally reduced both *whether* and *how*  
7 Plaintiffs could use, possess, and sell their property.

8 Thus, the two *legal* questions at issue here can be resolved in favor of Plaintiffs on  
9 the face of the Ordinance under the requirements of A.R.S. § 12-1134(A).

10 The City made these changes without providing Plaintiffs just compensation, as  
11 required under state law, and as requested by Plaintiffs under A.R.S. § 12-1134(E). What's  
12 more, according to statements made by City leaders, this measure was an effort to  
13 selectively exclude people from entering Holbrook and doing business there.

14 The City's actions therefore impaired Plaintiffs' ability to use and possess their  
15 property as well as to sell their property to a potential buyer at market rates, including to a  
16 buyer with whom Plaintiffs were already in escrow.

### 17 **FACTUAL BACKGROUND**

18 Plaintiff Anil Patel, by and through Holbrook Motel Investments, Inc. ("HMI"),  
19 owns real property located at 2608 Navajo Boulevard Holbrook, Navajo County, Arizona  
20 (the "Property"). Compl. ¶ 4. Plaintiff HMI is owned and operated by Plaintiff Patel and  
21 holds title to the Property. Compl. ¶ 5. The Property is located just off Interstate 40 in  
22 Navajo County and is currently a Howard Johnson motel. Compl. ¶ 11; Defendant City of  
23 Holbrook's Answer to Plaintiffs' Complaint ("Answer") ¶ 11.

24 The City is an Arizona municipal corporation organized under the laws of Arizona,  
25 located in Navajo County. Compl. ¶ 6; Answer ¶ 6.

26 In December 2022, the Property was zoned in a C-2 General Commercial Zone,  
27 which allowed the principal permitted uses of a hotel, inn, or motel. Compl. ¶ 12; Answer  
28 ¶ 12. The C-2 Commercial Zone also allowed for any principal permitted uses that were

1 allowed in a C-1 Commercial Zone. Compl. ¶ 13; Answer ¶ 13. One of the principal uses  
2 of a C-1 Commercial Zone was Residential Care Service, which is defined as “in-home  
3 care services for disabled and senior citizens.” *Id.*

4 In December 2022, Plaintiffs accepted an offer to sell the Property to a buyer who  
5 planned to use it as a Residential Care Service. Compl. ¶ 14. While the sale was pending,  
6 City Planning and Zoning Administrator Michael Young confirmed that a conditional  
7 permit would not be required for the buyer’s intended purpose of Residential Care  
8 Service. Compl. ¶ 15. Relying on Mr. Young’s statements regarding the zoning  
9 requirements, the Plaintiffs and buyer proceeded with the sale, and set a closing date for  
10 the end of February 2023. Compl. ¶ 16.

11 Then, at a Holbrook City Council meeting on February 23, 2023, Mr. Young  
12 proposed the initial reading and discussion of Ordinance 23-02 (“Ordinance”). Compl. ¶  
13 17; Answer ¶ 17. The Ordinance removed Residential Care Service from being a principal  
14 permitted use in a C-1 Commercial Zone. Compl. ¶ 19; Answer ¶ 19. Instead of a  
15 principal permitted use, the Ordinance made Residential Care Service a *conditional* use in  
16 C-1 and C-2 Commercial Zones. *Id.*

17 The City’s Mayor, Kathleen Smith, was aware that this Ordinance would affect the  
18 pending sale of Plaintiffs’ Property and would limit use of the Property. According to  
19 Mayor Smith, one purpose of the Ordinance was to give the City more “control” to keep  
20 newcomers out of Holbrook. Compl. ¶ 22; Answer ¶ 22. During the discussion of the  
21 Ordinance, one city council member specifically asked how the Ordinance would affect  
22 the pending sale of the Property. *Id.* Mayor Smith replied, that the Property “is exactly  
23 what this [Ordinance] is in regards to. ... [T]his [Ordinance] keeps our commercial  
24 property again, where we have a little more control of who’s coming in.” *Id.* The  
25 Ordinance was unanimously approved by the Holbrook City Council on March 9, 2023.  
26 Compl. ¶ 23; Answer ¶ 23.

27 By removing the principal permitted use of Residential Care Service and making  
28 this a conditional use instead, the Ordinance has the effect that property owners, such as

1 Mr. Patel, must obtain a conditional use permit subject to additional restrictions and  
2 discretionary review in order to use their property to provide Residential Care Service.  
3 Compl. ¶¶ 19, 24; Answer ¶ 19. Consequently, the Property’s buyer, a company called  
4 ChangePoint, applied for a conditional use permit—which was denied. Compl. ¶ 25. An  
5 appeal to the City Council of that denial was also denied. *Id.*

6 The Ordinance unquestionably restricted a use of the Property. Compl. ¶¶ 19, 24;  
7 Answer ¶ 19. Because the Ordinance restricted a property use, ChangePoint backed out of  
8 the sale of the Property. Compl. ¶ 26. Now, the Property does not have any other potential  
9 buyers. Compl. ¶ 28. As a result of the Ordinance, the Property’s fair market value was  
10 reduced, and Plaintiff was unable to complete the sale of the Property. *Id.*

11 On October 3, 2023, Plaintiffs submitted a written demand to the City for just  
12 compensation pursuant to Section 12-1134(E). Compl. ¶ 39, Exhibit A; Answer ¶ 39.  
13 Plaintiffs’ property value has been reduced by at least \$675,000.00. Compl. ¶ 30. The City  
14 did not offer any compensation for its enactment of the Ordinance, and did not offer to  
15 waive applicability of the Ordinance. Compl. ¶ 29; Answer ¶ 29. Indeed, the City did not  
16 respond to the written compensation demand at all. Compl. ¶ 39; Answer ¶ 39. Because  
17 the City did not respond to Plaintiffs’ written demand for just compensation, Plaintiffs  
18 have a cause of action under Section 12-1134(E).<sup>2</sup>

### 19 LEGAL STANDARD

20 Any party may move for judgment on the pleadings after the pleadings are closed.  
21 Ariz. R. Civ. P. 12(c). A motion for judgment on the pleadings “tests the sufficiency of the  
22 complaint” and the court accepts the “factual allegations of the complaint” as true. *Mobile*  
23 *Cnty. Council for Progress, Inc. v. Brock*, 211 Ariz. 196, 198 ¶ 5 (App. 2005) (internal  
24 quotation and citation omitted). A motion for judgment on the pleadings should be granted  
25 where the moving party is clearly entitled to judgment as a matter of law. *Food for Health*  
26 *Co. v. 3839 Joint Venture*, 129 Ariz. 103, 106 (App. 1981).

27 <sup>2</sup> Based on these undisputed facts, Plaintiffs also move for a declaration that they have  
28 complied with the requirements for just compensation under A.R.S. § 12-1134(E).

## ARGUMENT

In 2006, Arizona voters passed the Private Property Rights Protection Act. A.R.S. §§ 12–1131–1138. The Act requires, among other things, just compensation for diminution in value when “any land use law” enacted after an owner received an interest in property reduces “the existing rights to use, divide, sell or possess private real property.” A.R.S. § 12–1134(A). The Ordinance is a land use law that was enacted after Mr. Patel had an existing right to use, possess, and sell his Property as a Residential Care Service. He is thus entitled to just compensation for the lost value of his Property under Section 12-1134(E).

The Court can resolve as a matter of law whether: (1) the Ordinance is a land use law by examining the text of the Ordinance; and (2) whether the Ordinance affected Plaintiffs’ property rights in changing a principal permitted use to a conditional use by examining the text of the Ordinance and the changes it made to the prior ordinance it amended; and (3) whether Plaintiffs complied with A.R.S. § 12-1134(E) by examining the Verified Complaint and Answer. Plaintiffs are entitled to judgment as a matter of law.

### **I. The Ordinance is a land use law.**

A land use law is “any statute, rule, *ordinance*, resolution or law enacted by this state or *a political subdivision of this state* that regulates the use or division of land or any interest in land.” A.R.S. § 12-1136(3) (emphasis added).

Ordinance 23-02 is an “ordinance” passed by the City of Holbrook, a political subdivision of Arizona. Compl. ¶¶ 6, 19, 23; Answer ¶¶ 6, 19, 23.

The Ordinance “remov[ed] ‘Residential Care services’ from 6-1-14 C-1 Neighborhood Commercial Zone B Principal Permitted Uses.” Ordinance 23-02 § 1, Compl. Ex. B. *See also* Compl. ¶ 19; Answer ¶ 19. Thus, by its plain terms, the Ordinance “regulates the use ... of land [and] any interest in land.” A.R.S. § 12-1136(3); *see also Sedona Grand, LLC v. City of Sedona*, 229 Ariz. 37, 40 ¶ 13 (App. 2012) (“By its plain terms, the Ordinance regulates transactions involving the possession of real property, and is therefore a land use law within the meaning of A.R.S § 12–1136(3).”).

1 The Ordinance is a land use law.

2 **II. The Ordinance reduces existing rights to use, possess, and sell the Property.**

3 The Private Property Protection Act *requires* just compensation for any land use  
4 law that reduces “the existing rights to use, divide, sell or possess private real property.”  
5 A.R.S. § 12–1134(A). Removing a principal permitted use and reducing the right to a  
6 conditional use, reduces the existing rights to use, divide, sell or possess private property.

7 A principal use is a use of property that is permitted by right. *See* PAS Quick Notes  
8 No. 41, American Planning Association.<sup>3</sup> A principal permitted use is also of a more  
9 permanent duration than a conditional use. *Redelsperger v. City of Avondale*, 207 Ariz.  
10 430, 436 ¶ 23 (App. 2004) (compare to the temporary nature of a conditional use permit).  
11 A principal use is permitted in the zoning district and *not* subject to further review by the  
12 City. *Sw. Soil Remediation, Inc. v. City of Tucson*, 201 Ariz. 438, 441 ¶ 10 (App. 2001)  
13 (distinguishing between conditional uses, which are subject to approval by the City, from  
14 permitted uses, which are not).

15 Conditional uses, on the other hand, are subject to additional requirements and  
16 discretionary review. *Sw. Soil Remediation*, 201 Ariz. at 441 ¶ 10. *See also* A.R.S. § 9-  
17 462.01(C) (uses may be permitted on a conditional basis subject to additional  
18 requirements). *See also* Use, Black’s Law Dictionary (11th ed. 2019) (“conditional use. ...  
19 A use of property subject to special controls and conditions.”); PAS Quick Notes No. 41,  
20 American Planning Association (“[a] conditional use is a use that is permitted subject to  
21 compliance with a set of conditions or requirements set forth in the zoning ordinance.”).  
22 The planning commission has the initial authority to approve a conditional use permit,  
23 “the grant of which may be temporary or subject to renewal procedures.” *Redelsperger*,  
24 207 Ariz. at 436 ¶ 23.

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27 <sup>3</sup> [https://planning-org-uploaded-](https://planning-org-uploaded-media.s3.amazonaws.com/document/PASQuickNotes41.pdf)  
28 [media.s3.amazonaws.com/document/PASQuickNotes41.pdf](https://planning-org-uploaded-media.s3.amazonaws.com/document/PASQuickNotes41.pdf)

1 The Holbrook City Code defines principal use as “the main use to which the  
2 premises are devoted and the main purpose for which the premises exist.” Holbrook City  
3 Code § 6-1-3, attached hereto as Appendix C. In contrast, a conditional use requires  
4 compliance with additional requirements that do not exist for a principal permitted use,  
5 after which, it “must be approved” by the Planning and Zoning Commission. *Id.* at 6-2-  
6 1(I). What’s more, a conditional use automatically expires six months from the date of  
7 approval, and may be audited annually for possible revocation. *Id.*

8 Prior to the enactment of the Ordinance, Plaintiffs had a right to use the Property  
9 for “Residential Care services” as a “Principal Permitted Use” or permitted by right.  
10 Compl. ¶¶ 12–13; Answer ¶¶ 12–13. The Ordinance removed (i.e., reduced) the right to  
11 use the Property as a “Residential Care service” as a principal use to one that is  
12 conditional—subject to City approval, special requirements, and may be audited annually  
13 for possible revocation. Compl. ¶¶ 19, 23; Answer ¶¶ 19, 23. As a result, the Ordinance  
14 “contain[ed] new restrictions on land use,” *Sedona Grand, LLC*, 229 Ariz. at 41 ¶ 17, that  
15 did not previously exist, thus reducing Plaintiffs’ right to use, sell, and possess the  
16 Property. As a matter of law, the Ordinance is, therefore, a land use law that reduces a  
17 property use Plaintiffs previously enjoyed as defined by Section 12-1134(A)).

18 **III. Plaintiffs complied with A.R.S. § 12-1134(E), and are therefore entitled to just**  
19 **compensation for the City’s enactment of the Ordinance.**

20 Where a city’s enactment of a land use law reduces the fair market value of the  
21 property, the owner is entitled to just compensation. A.R.S. § 12-1134(A). To receive just  
22 compensation, the property owner must first make a written demand for a specific amount  
23 to the city that enacted the land use law. A.R.S. § 12-1134(E). Plaintiffs did so, and  
24 Defendant did not respond. Compl. ¶ 39 & Exhibit A; Answer ¶ 39. Plaintiffs have  
25 complied with the requirements of state law and can pursue this cause of action for the  
26 diminution in value to their Property as a result of the Ordinance.

27 What’s more, as a result of the Ordinance, the Property’s buyer must obtain a  
28 conditional use permit to use the Property as he had intended and as he originally had a



1 right to do. Compl. ¶¶ 19, 23; Answer ¶¶ 19, 23. Unsurprisingly, based on Mayor Smith's  
2 comments that the Ordinance was intended to "control ... who's coming in," the City  
3 denied the buyer's conditional use permit. Compl. ¶¶ 22, 25; Answer ¶¶ 22, 25.

4 As a consequence of the buyer's inability to use the Property as a Residential Care  
5 Service, the buyer backed out of the sale and left Plaintiffs without a buyer for the  
6 Property. Compl. ¶¶ 26, 28. The Property's value has been reduced by the enactment of  
7 the Ordinance.<sup>4</sup>

## 8 CONCLUSION

9 As a matter of law, the Ordinance is a land use law that reduces Plaintiffs' existing  
10 property rights. The Arizona Private Property Rights Protection Act requires cities to  
11 compensate owners when they enact ordinances restricting property owners' right to use  
12 their property.

13 Based on the foregoing, this Court should grant judgment on the pleadings on  
14 Plaintiffs on Count Two and declare that (1) the Ordinance is a land use law; that (2) the  
15 Ordinance affected Plaintiffs' rights to use, sell, and possess private real property; and (3)  
16 Plaintiffs are therefore entitled to just compensation.

17 **RESPECTFULLY SUBMITTED** this 21st day of June 2024.

18  
19 GOLDWATER INSTITUTE

20 /s/ Stacy Skankey

Jonathan Riches (025712)

21 Stacy Skankey (035589)

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24  
25  
26 <sup>4</sup> The only factual question to be resolved by the Court is the *amount* of that lost value.  
27 A.R.S. § 12-1134(E). Plaintiffs allege that the Property value has been reduced by *at least*  
28 \$675,000.00. Compl. ¶ 30 (emphasis added). Defendant denies this allegation. Answer ¶ 30.

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*Attorneys for Plaintiff*

**CERTIFICATE OF SERVICE**

ORIGINAL E-FILED this 21st day of June 2024, with a copy delivered via the ECF system to:

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Kris Schlott, Paralegal



Arizona Revised Statutes Annotated

Title 12. Courts and Civil Proceedings

Chapter 8. Special Actions and Proceedings Relating to Property

Article 2.1. Private Property Rights Protection Act (Refs & Annos)

A.R.S. § 12-1134

§ 12-1134. Diminution in value; just compensation

Effective: December 7, 2006

[Currentness](#)

**A.** If the existing rights to use, divide, sell or possess private real property are reduced by the enactment or applicability of any land use law enacted after the date the property is transferred to the owner and such action reduces the fair market value of the property the owner is entitled to just compensation from this state or the political subdivision of this state that enacted the land use law.

**B.** This section does not apply to land use laws that:

1. Limit or prohibit a use or division of real property for the protection of the public's health and safety, including rules and regulations relating to fire and building codes, health and sanitation, transportation or traffic control, solid or hazardous waste, and pollution control;
2. Limit or prohibit the use or division of real property commonly and historically recognized as a public nuisance under common law;
3. Are required by federal law;
4. Limit or prohibit the use or division of a property for the purpose of housing sex offenders, selling illegal drugs, liquor control, or pornography, obscenity, nude or topless dancing, and other adult oriented businesses if the land use laws are consistent with the constitutions of this state and the United States;
5. Establish locations for utility facilities;
6. Do not directly regulate an owner's land; or
7. Were enacted before the effective date of this section.

**C.** This state or the political subdivision of this state that enacted the land use law has the burden of demonstrating that the land use law is exempt pursuant to subsection B.

**D.** The owner shall not be required to first submit a land use application to remove, modify, vary or otherwise alter the application of the land use law to the owner's property as a prerequisite to demanding or receiving just compensation pursuant to this section.

**E.** If a land use law continues to apply to private real property more than ninety days after the owner of the property makes a written demand in a specific amount for just compensation to this state or the political subdivision of this state that enacted the land use law, the owner has a cause of action for just compensation in a court in the county in which the property is located, unless this state or political subdivision of this state and the owner reach an agreement on the amount of just compensation to be paid, or unless this state or political subdivision of this state amends, repeals, or issues to the landowner a binding waiver of enforcement of the land use law on the owner's specific parcel.

**F.** Any demand for landowner relief or any waiver that is granted in lieu of compensation runs with the land.

**G.** An action for just compensation based on diminution in value must be made or forever barred within three years of the effective date of the land use law, or of the first date the reduction of the existing rights to use, divide, sell or possess property applies to the owner's parcel, whichever is later.

**H.** The remedy created by this section is in addition to any other remedy that is provided by the laws and constitution of this state or the United States and is not intended to modify or replace any other remedy.

**I.** Nothing in this section prohibits this state or any political subdivision of this state from reaching an agreement with a private property owner to waive a claim for diminution in value regarding any proposed action by this state or a political subdivision of this state or action requested by the property owner.

#### **Credits**

Added by Proposition 207, sec. 3, approved election Nov. 7, 2006, eff. Dec. 7, 2006.

A. R. S. § 12-1134, AZ ST § 12-1134

Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of May 29, 2024.

Arizona Revised Statutes Annotated

Title 12. Courts and Civil Proceedings

Chapter 8. Special Actions and Proceedings Relating to Property

Article 2.1. Private Property Rights Protection Act (Refs & Annos)

A.R.S. § 12-1136

§ 12-1136. Definitions

Effective: December 7, 2006

[Currentness](#)

In this article, unless the context otherwise requires:

1. “Fair market value” means the most likely price estimated in terms of money which the land would bring if exposed for sale in the open market, with reasonable time allowed in which to find a purchaser, buying with knowledge of all the uses and purposes to which it is adapted and for which it is capable.
2. “Just compensation” for purposes of an action for diminution in value means the sum of money that is equal to the reduction in fair market value of the property resulting from the enactment of the land use law as of the date of enactment of the land use law.
3. “Land use law” means any statute, rule, ordinance, resolution or law enacted by this state or a political subdivision of this state that regulates the use or division of land or any interest in land or that regulates accepted farming or forestry practices.
4. “Owner” means the holder of fee title to the subject real property.
5. “Public use”:
  - (a) Means any of the following:
    - (i) The possession, occupation, and enjoyment of the land by the general public, or by public agencies;
    - (ii) The use of land for the creation or functioning of utilities;
    - (iii) The acquisition of property to eliminate a direct threat to public health or safety caused by the property in its current condition, including the removal of a structure that is beyond repair or unfit for human habitation or use; or
    - (iv) The acquisition of abandoned property.

(b) Does not include the public benefits of economic development, including an increase in tax base, tax revenues, employment or general economic health.

6. “Taken” and “taking” mean the transfer of ownership or use from a private property owner to this state or a political subdivision of this state or to any person other than this state or a political subdivision of this state.

**Credits**

Added by Proposition 207, sec. 3, approved election Nov. 7, 2006, eff. Dec. 7, 2006.

A. R. S. § 12-1136, AZ ST § 12-1136

Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of May 29, 2024.

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**ORDINANCE 23-02**

**AN ORDINANCE OF THE CITY OF HOLBROOK, ARIZONA, REGARDING RESIDENTIAL CARE SERVICES IN THE COMMERCIAL ZONES**

**WHEREAS**, Holbrook City Code section 6-1-14 C-1 Neighborhood Commercial Zone, lists Residential care services as a Principal Permitted Use; and

**WHEREAS**, Holbrook City Code section 6-1-15 C-2 General Commercial Zone B.28 allows for any principal use permitted in C-1 Commercial Zone; and

**WHEREAS**, Holbrook City Code section 6-2-1 General Regulations Y. Residential Care Service Criteria 3 is arguably inconsistent with Principal Permitted Uses by requiring a Conditional Use Permit; and

**WHEREAS**, it is the desire of the City Council to remove this contradiction and replace it with clear and concise language.

**NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF HOLBROOK:**

**SECTION 1:** Holbrook City Code is modified as follows:

By removing “Residential care services” from 6-1-14 C-1 Neighborhood Commercial Zone B. Principle Permitted Uses.

By adding “Residential Care Services meeting the criteria in Article 6-2-1, subsection Y” to 6-1-14 C-1 Neighborhood Commercial Zone C. Conditional Uses.

By adding “Residential Care Services meeting the criteria in Article 6-2-1, subsection Y” to 6-1-15 C-2 General Commercial Zone C. Conditional Uses.

**SECTION 2:** The City Manager is authorized to carry out the terms of this Ordinance.

**PASSED AND ADOPTED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF HOLBROOK, ARIZONA**, this March 9, 2023.

**APPROVED/EXECUTED:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Kathleen Smith, Mayor

\_\_\_\_\_  
Bradley A. Burns, City Attorney

**ATTEST:**

\_\_\_\_\_  
Lisa Hunt, City Clerk



# Holbrook City Code

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#### **6-1-1 Zoning Ordinance**

That certain document known as the Holbrook Zoning Ordinance of the City of Holbrook, Arizona, which was made a public record by Ordinance 97-3 on April 8, 1997, is hereby adopted into the Holbrook City Code and should be referred to as Article 6 of the Holbrook City Code and is made a part hereof as if fully set forth in the Code.

#### **6-1-2 Application, Interpretation and Purpose**

A. Provisions Declared Minimum. In the interpretation and application of the provisions of this ordinance, the provisions thereof shall be held to be the minimum requirements adopted for the promotion of the public health, safety, comfort, convenience and general welfare.

If any portion of this code is held invalid for any reason, the remaining herein shall not be affected.

B. Effect on Other Provisions. This Zoning Ordinance does not supersede or replace any other applicable City, State, or Federal regulations and requirements. Whenever the regulations of this article require a greater width or size of yards or other open spaces, or require a lower height of building or a lesser number of stories, or require

a greater percentage of a lot to be left unoccupied, or impose other higher standards than are required in any other statute, local ordinance, regulation, legal covenant, agreement or contract, the provisions of this article shall govern. Whenever the provisions of any other statute, local ordinance, regulation, legal covenant, agreement or contract require a greater width or size of yards or other open spaces, or require a lower height of building or a lesser number of stories, or require a greater percentage of a lot to be left unoccupied or impose other standards than are required by the regulations of this article, the requirements of this article shall not void the provisions of such statute, local ordinance, regulation, legal covenant, agreement or contract.

The City does not enforce any such legal covenants or deed restrictions that exist on a lot unless the City is the property owner or part of the association that is involved in the covenant.

- C. Authorization in One Zone Operates as Prohibition in More Restrictive Zones. The express enumeration and authorization herein of a particular class of building, structure, premises or use in a zone shall be deemed a prohibition of such building, structure, premises or use in all other zones of more restrictive classification.
- D. Zoning Affects Every Structure and Use. No building, structure or land shall hereafter be used and no building or part thereof or other structure shall be erected, raised, moved, reconstructed, extended, enlarged or altered, except in conformity with the regulations herein specified for the zone in which it is located except as hereinafter specified.
- E. Continuing Existing Uses. Any building, structure or use lawfully existing on the date of adoption of the Zoning Ordinance may be continued, even though such building, structure or use does not conform with the provisions of this article for the zone in which it is located. Similarly, whenever a zone shall be changed hereafter, the then existing lawful use may be continued.
- F. Penalties. Any person found guilty of violation of this code, except as otherwise provided, shall be guilty of a misdemeanor, upon conviction thereof may be punished by a fine up to twenty-five hundred (2,500) dollars or by imprisonment for a period not to exceed six months, or by both such fine and imprisonment.
- G. Roles of Community Development Department Staff. The role of the Zoning Administrator shall be held and executed by a member of the City Community Development Department staff for the purposes of this ordinance. The Zoning Administrator shall interpret this ordinance and render discretionary decisions and provide staff support to the Holbrook Planning and Zoning Commission and Board of Adjustment on all cases which come before said boards/commissions. In the absence of the Zoning Administrator, or in the case of a conflict of interest involving the Zoning Administrator, the City Manager or designee shall act on behalf of the City to make zoning interpretations, decisions, and staff recommendations and support to the Planning and Zoning Commission and Board of Adjustment. The Associate Planner shall conduct enforcement activities related to this ordinance and City Code, and shall represent the City in the Holbrook Magistrate Court on any enforcement cases involving code violations.

H. Applicability of Development Standards. Minimum lot area and lot width standards apply only to newly created or modified lots which are created or modified after the date of adoption of this ordinance.

6-1-3 Definitions

For the purpose of this article, the following words and phrases shall have the following meanings:

**ABANDONMENT** means to cease or discontinue a use or activity without intent to resume, generally for a period of six (6) months or longer, but excluding temporary or short-term interruptions to a use or activity during periods of remodeling, maintaining, or otherwise improving or rearranging a facility, or during normal periods of vacation or seasonal closure. Ceasing of maintenance or upkeep on a use or structure shall constitute abandonment. See also "Vacated".

**ABUTTING** means having a common boundary. Parcels or lots having only a common corner are not considered abutting.

**ACCESSORY USE OR STRUCTURE** means a use or a structure subordinate to the principal use or building on a lot, and serving a purpose customarily incidental to the use of the principal building, provided any such structure is built with or after the construction of the principal building. Under no circumstance shall a mobile or manufactured home be considered an accessory use or structure for any purpose. Recreational Vehicles (RVs) may be considered an accessory use in side and rear yards provided that no permanent occupancy or utility connection is executed. A carport shall not be considered an accessory structure for the purpose of these regulations. Please see "Carport" for definition and regulation of carports.

**ACRE** means forty-three thousand five hundred sixty (43,560) square feet.

**ADJACENT** means two (2) or more parcels or lots sharing a common boundary, or separated by an alley or other right-of-way twenty (20) feet or less in width. Parcels or lots having only a common corner are not considered adjacent or abutting.

**ADMINISTRATIVE AND PROFESSIONAL OFFICE** is a use which provides administrative, consulting, management, or professional services to businesses and individuals. Typical uses include legal services, securities and commodities brokers, real estate firms, travel agencies and employment services.

**ADULT DAY CARE** is a day care use, which provides care, supervision, planned activities, and assistance for periods of less than twenty-four (24) hours a day for senior citizens or physically/mentally challenged adults.

**AGRICULTURE** means the use of land for agricultural purposes, including farming, dairying, produce, pasturage, horticulture, and animal and poultry husbandry, and the necessary accessory uses for packing, treating, or storing the produce, provided, however, that the operation of any such accessory uses shall be secondary to that of normal agricultural activities.

**ALLEY** means a public way primarily for placement of utilities, ingress and egress to



properties and public services.

**APARTMENT HOUSE** means a building containing three (3) or more separate rented dwelling units.

**BAR OR TAVERN** means an establishment which is licensed to serve alcoholic beverages, where the primary business is the sale and serving of alcoholic beverages for consumption on the premises or carry out alcoholic beverages.

**BED AND BREAKFAST** means an establishment that provides sleeping accommodations and meals for its overnight guests as a commercial activity. The maximum duration of stay of any one guest shall be ten (10) days. The boarders must enter through the main entrance of the dwelling to access their rooms, with no separate entrances allowed. All parking must be accommodated on site. State and County Health Department approval and permits are required. State Business and Sales Tax Licenses are also required.

**BICYCLE** means a non-motorized device propelled only by human power having two (2) or three (3) wheels.

**BICYCLE PARKING SPACE** is an area designated within a facility for the parking of an individual bicycle.

**BILLBOARD** means a surface whereon advertising matter is set in view conspicuously and which advertising does not apply to premises or any use of premises wherein it is displayed or posted.

**BUILDABLE AREA** means the lot area where a building can be placed after setbacks from property lines, streets, buildings, delineated floodplains, designated drainage ways or any other point identified are deducted.

**BUILDING** means a structure having a roof supported by columns, posts or walls, and intended for the shelter, housing or enclosure of any person, entity, animal, process, equipment, goods, or materials of any kind or nature.

**BUILDING HEIGHT** is the vertical distance above the average highest existing grade measured to the highest point of the building.

**BUILDING SETBACK** means the right-angle distance from the property line to the closest point of any structure.

**CARETAKERS QUARTERS** means a dwelling unit located on the same parcel as a commercial or industrial use for the purpose of providing additional security to the principal commercial or industrial use.

**CARPORT** means a building, attached or detached, having open sides used by occupants of the principal building for the parking of personal vehicles. For the purpose of these regulations, a carport shall conform to the front yard principal structure setback requirements applicable for the Zoning District in which they are located, and the accessory structure side and rear yard setback requirements.

**CEMETERY** means a place used for human or pet burials or entombment.

**CENTER LINE** means a survey reference line generally located parallel to the edges of the improved right-of-way.

**CHILD CARE** means providing care, supervision, planned activities and guidance for periods of less than twenty-four (24) hours a day for children who are not related to the operator. Typical uses include child care centers, pre-schools, nursery schools, kindergartens, and before-and-after school programs.

**COMMON USE** means the usage and accessibility by all residents of a project, either by common ownership, covenant, easement or other similar legal means.

**CONDITIONAL USE** means a use that is allowable in a zone subject to approval by the Planning and Zoning Commission as a result of the Conditional Use Permit Process, and is subject to special requirements different from those usual requirements for the zone in which the conditional use may be located. All Conditional Use Permits may be audited on an annual basis by the Planning and Zoning Commission for possible revocation if conditions are not adhered to.

**CONDOMINIUM** means the legal arrangement in which a dwelling unit in a residential development is individually owned, but in which the common areas are owned, controlled, and maintained through an organization consisting of all the individual owners.

**CONSERVATION EASEMENT** means an easement delineating an area that will be kept in its natural state in perpetuity.

**CONVENIENCE STORE** Any retail establishment with not more than four thousand five hundred (4,500) square feet of gross floor area, offering for sale prepackaged food products, household items, newspapers and magazines, and sandwiches and other freshly prepared foods, such as salads, for off-site consumption.

**CORRECTIONAL USE** means the monitoring and control of the offender population, including persons on pre-trial status, on pre-release status or incarcerated to serve a sentence.

**CULTURAL USE** is the collection and display of objects having literary, artistic, historic, natural history, and/or scientific value for public appreciation. Typical uses include museums, libraries and botanical gardens.

**DAY CARE** means providing care, supervision, planned activities and guidance on a regular basis for periods of less than twenty-four (24) hours a day for persons not related to the operator. State of Arizona licensing shall be required per State Law for all day care operations within the City of Holbrook.

**DEDICATED** means the act of giving a gift or donation to another person or entity and that such a gift or donation has been accepted.

**DOMESTIC HOOFFED LIVESTOCK** means meat animals (not including swine), horses,

sheep, goats, mules and asses.

DETOX CENTER means a facility whose purpose is to shelter, detain, and provide medical care and/or psychological counseling to clients with substance abuse problems for a short or long term (but not permanent) period of time.

DEVELOPMENT means any human alteration to the natural state of land, including its vegetation, soil, geology or hydrology, for any residential, commercial, industrial, utility or other uses, including all areas used for vehicular access, circulation and parking.

DUPLEX means a building containing only two (2) dwelling units.

DWELLING UNIT means a building or portion of a building designed and used for permanent human habitation, with cooking, sleeping and sanitary facilities, which is designed, occupied or intended for occupancy as living quarters exclusively for a single household.

EDUCATIONAL USE is a use providing a student with knowledge and instruction through a course or group of courses. Educational uses are divided into the following subclasses:

- A. Elementary and Secondary Schools. Elementary and secondary schools are uses providing primary and secondary education for grades kindergarten through twelve (12), as required by the Arizona State Board of Education. Typical uses include elementary, middle, junior high and high school.
- B. Post-secondary Institution. A Post-secondary institution is a use providing academic, professional, business, technical or industrial education beyond the twelfth (12) grade, leading to a degree or entry into a paid occupation. Typical uses include universities, community colleges, and business, career, beauty or trade schools.
- C. Instructional School. An Instructional school is a use providing domestic, recreational and other types of instruction for all age groups. Typical uses include schools for dance, cooking, music, martial arts or handicraft instruction.

ENCLOSURE means a structure that confines an area.

ENTERTAINMENT is a use providing amusement or diversion for the spectator. Uses include concerts, movies and live performances.

EASEMENT means the right of a person, government agency, or public utility company to use public or private land owned by another for a specific purpose.

FACTORY-BUILT BUILDING means a residential or nonresidential building, including a dwelling unit or habitable room thereof, which is either wholly or in substantial part manufactured at an off-site location to be assembled on-site, except that it does not include a manufactured home, recreational vehicle or mobile home as defined in this section.

FAMILY means any number of individuals customarily living together as a single household unit.

FENCE means any artificially constructed barrier, including walls or any material or combination of materials, erected to enclose or screen areas of land.

FRONTAGE means the length of a lot line which abuts a street right-of-way.

GARAGE means an enclosed accessory building, attached or detached, used for storage of material or motor vehicles used by occupants of the principal building, and providing no public shop or services in connection therewith.

GARBAGE means foodstuffs, organic and inorganic matter paper, or plastic containers; any discarded matter that could attract insects or vermin.

GRANDFATHERING (See "NON-CONFORMING USE").

GROUP HOME means a dwelling shared by four or more persons, including resident staff, who live together as a single housekeeping unit in a long-term situation in which staff persons provide care, education and recreational activities with the primary goal of enabling the residents to live as independently as possible.

GUEST HOUSE means a secondary dwelling that is no larger than seventy percent (70%) the size in floor area of the principal dwelling unit. Both dwelling units shall be under the same ownership and within the same parcel of land.

HALFWAY HOUSE means a therapeutic residence that provides a sheltered and transitional environment for persons emerging from mental or penal institutions, or drug/alcohol treatment facilities.

HANDICAPPED ACCESSIBILITY, also known as barrier free accessibility, means functional access for semi-ambulatory and non-ambulatory persons, from a street or parking space to, into and through a building. Physically disabled means a person having a physical impairment that substantially limits that person's ability to move from place to place.

HEDGES mean a linear row or border of vegetation for decoration or screening. Hedges shall be kept in compliance with the same restrictions on height and location that walls and fences are regulated by. See Article 6-2-1 Subsection JJ, "Walls and Fences".

HOME OCCUPATION is the partial use of a dwelling unit for commercial or nonresidential uses by a resident thereof, which is subordinate and incidental to the use of the dwelling for residential purposes. See Article 6-2-1, Subsection S, "Home Occupation".

HOMELESS SHELTER means a facility, which regularly houses homeless people on a temporary basis, excluding shelters for people needing protection from domestic violence.

HOSPITAL means a building or a group of buildings in which sick or injured persons are given medical or surgical treatment, examination or care, including overnight residence, together with related facilities, including laboratories and outpatient departments that are an integral part of the principal use.

**INDUSTRIAL PARK** means a planned, coordinated development of a tract of land with two or more separate industrial businesses. Such development is planned, designed, constructed, and managed on an integrated and coordinated basis with special attention given to on-site vehicular circulation, parking, utility needs, building design and orientation, and open space.

**INTERIOR LANDSCAPE BORDER** means an area along the interior property line(s) of a site containing landscape materials, screening and open space that serves as a buffer between land uses of different intensities.

**JUNK/LITTER** means old, dilapidated, scrap or abandoned metal, paper, building material and equipment, bottles, glass, appliances, beds, rags, rubber, boats, motor vehicles or recreational vehicles that are unable to move on their own, or do not have current tags or license, and parts thereof.

**KENNEL-COMMERCIAL** means an enclosed, controlled area, inaccessible to other animals, in which a person keeps, harbors or maintains five or more dogs for commercial purposes. See ARS. § 11-1009.

**LANDSCAPING** means an exterior improvement of a site in accordance with an approved landscape plan and approved landscape methods, materials and maintenance.

**LOT** means a tract of land bounded on all sides by property lines, of sufficient size to meet minimum zoning requirements with legal access to a public street.

**LOT COVERAGE** means the area of a site occupied by buildings and structures.

**LOT DEPTH** means the horizontal distance between the front and rear lot lines, measured along the median between the side lot lines.

**LOT LINES** mean the property lines bounding the lot.

**LOT LINE, FRONT** in the case of a lot abutting on only one (1) street, means the line separating such a lot from the street. In the case of a corner lot, the front lot line shall be the lot line corresponding to the address used to identify the parcel in the Emergency-911 addressing dispatching system.

**LOT LINE, REAR** means the lot line which is opposite and most distant from the front lot line. The rear lot line of any irregular triangle shall be a line entirely within the lot ten (10) feet long, and parallel to and most distant from the front lot line.

**LOT LINE, SIDE** means any lot line not a front lot line or rear lot line.

**LOT WIDTH** means the horizontal distance between side lot lines, measured along the median between the front and rear lot lines.

**MANUFACTURED HOME PARK** means any parcel of land used or offered for use in whole or part for the parking or storage of three (3) or more manufactured homes on a single parcel.

**MANUFACTURED HOUSING** means a single or multi-sectional transportable dwelling larger than four hundred (400) square feet manufactured within the last ten (10) years to standards established by the U.S. Department of Housing and Urban Development suitable for year-round residential occupancy, and requiring the same method of water supply, waste disposal and electrical service as a site-built dwelling. (Ordinance 10-07)

**MEDICAL SERVICE** is a category of land use, which provides for “Low Impact” professional medical services including, but not limited to, Doctor, Dentist, Optometrist, Chiropractic offices, and “High Impact” professional medical services including, but not limited to, Hospitals, Pharmacies, Out Patient Clinics and Nursing Homes.

**MINI STORAGE** (See RENTAL STORAGE UNIT)

**MIXED USE** means a development on a site with two (2) or more separate principal land uses, designed, developed, and owned or managed as a single coordinated entity utilizing legally established common elements or shared facilities.

**MOBILE HOME** means a structure built within the last ten (10) years on a permanent chassis, capable of being transported in one or more sections and designed to be used with or without a permanent foundation as a dwelling when connected to on-site utilities, except recreational vehicles and factory-built buildings and manufactured homes. Under no circumstances shall a mobile home be allowed to be used as an accessory building for storage or other purposes after the date of adoption of this ordinance. (Ordinance 10-07)

**MODULAR HOME** shall mean a dwelling unit which is pre-assembled in whole or in part in a factory prior to delivery to the job site for final assembly, and which conforms to the following:

- A. Built to Uniform Building Code standards;
- B. Built with exterior materials customarily used on conventional site-built dwellings, e.g., wood siding, asphalt roof shingles;
- C. Minimum width of 20 feet;
- D. Constructed on a permanent foundation similar to site-built dwellings, e.g., footings and stem walls or piers, in compliance with the current building code adopted by the City of Holbrook. (Ordinance 10-07)

**MOTOR VEHICLE PARKING SPACE** means an area permanently reserved and maintained for the parking of one motor vehicle.

**MULTI-FAMILY STRUCTURE** means a building located on one lot, containing three or more dwelling units, also known as multi-dwelling structure.

**MUNICIPAL USES** mean municipal, County, State or Federal buildings or properties.

**NONCONFORMING USE** means a building, structure or land, which does not conform to the provisions of this article for the zone in which it is located, and which lawfully existed before this ordinance is put into force. A nonconforming use would be categorized as

“grand fathered” under the newer adopted ordinance.

OFF-STREET means to be within property boundaries and not within a public right-of-way, such as a street or alley.

PARCEL means one or more lots, defined by a single legal description or parcel ID number, and recorded as a single entity by the County Assessor.

PARKING LOT means an area not within a building where motor vehicles may be stored for the purpose of temporary, daily or off-street parking.

PARKING STRUCTURE means a structure used for the parking of vehicles where parking is accommodated on one or more levels.

PERSON(S) means any individual, as well as any firm, corporation, partnership, company, or any other form of multiple organization for the carrying on of business.

PRINCIPAL USE means the main use of land or structures, as distinguished from secondary or accessory uses on the same parcel.

PRIVATE ROAD means a street not dedicated for public use.

PRODUCE shall include dairy products, fruit and vegetable products, not including processing of live animals, rendering of hides or any other meat-packing activities.

RENTAL STORAGE UNIT means a commercial business, which engages in the short and long-term rental of storage space to the public for compensation. Rental Storage Units must be contained by a six-foot (6) fence or wall.

RECREATIONAL VEHICLE means a vehicular type unit which is:

- A. A portable camping trailer mounted on wheels and constructed with collapsible partial sidewalls, which fold for towing by another vehicle and unfold for camping.
- B. A motor home designed to provide temporary living quarters for recreational, camping or travel use, and built on or permanently attached to a self-propelled motor vehicle chassis, or on a chassis cab or van that is an integral part of the completed vehicle.
- C. A park trailer built on a single chassis, mounted on wheels and designed to be connected to utilities necessary for operation of installed fixtures and appliances and has a gross trailer area of not less than three hundred twenty (300) square feet and not more than four hundred (400) square feet when it is set up, except that it does not include fifth wheel trailers.
- D. A travel trailer mounted on wheels, designed to provide temporary living quarters for recreational, camping or travel use, of a size or weight that may or may not require special highway movement permits when towed by a motorized vehicle, and has a trailer area of less than three hundred twenty (320) square feet. This subdivision includes fifth wheel trailers. If a unit requires a size or weight permit, it shall be manufactured to the standards for park trailers in A 119.5 of the American

National Standards Institute code.

- E. A portable truck camper constructed to provide temporary living quarters for recreational, travel or camping use, and consisting of a roof, floor and sides designed to be loaded onto and unloaded from the bed of a pickup truck.

RESIDENTIAL CARE SERVICES are in home care services for disabled and senior citizens as more fully defined by Article 6-2-1, subsection Y, of this Article.

RECYCLING FACILITY is any location whose primary use is where waste or scrap materials are stored, bought, sold, accumulated, exchanged, packaged, disassembled or handled, including, but not limited to, scrap metals, paper, rags, tires, bottles and other such materials.

RIGHT-OF-WAY means an area reserved for public use, such as a street, alley or utility easement.

ROADWAY means the paved portion of a street, excluding curbs. On an unpaved street, the roadway is the area set aside for motor vehicle traffic.

SAFE HOUSE means a place providing shelter for victims of violent crimes.

SCREEN means opaque barrier designed to conceal areas used for storage, refuse, mechanical equipment, visually unattractive operations, parking, or delivery service loading bays from street and public view, or to buffer adjacent land use. Live vegetation may be used to screen any of the above uses, provided that vegetation is maintained and provides satisfactory concealment of visually unattractive operations.

SERVICE BAY means a specific location on a site reserved for servicing a motor vehicle. Such location can be within an enclosed building or in a screened area.

SETBACK means the distance from a set point to a set point.

SHOPPING CENTER means a mixed-use development planned constructed and managed as a total entity, utilizing common or shared facilities, such as structures, parking, and vehicular and pedestrian access.

SIGNS mean signs of any type or character whatsoever, and of any material whatsoever, placed for outdoor advertising on the ground, or on any structure or object whatsoever. The term "placed" as used herein shall include erecting, constructing, posting, painting, printing, tacking, nailing, gluing, sticking, carving or otherwise fastening, affixing or making visible in any manner. See Article 6-2-4.

SINGLE-FAMILY DWELLING means a building containing one (1) dwelling unit.

SITE means the land area consisting of a lot or contiguous lots, or parcel (not including dedicated public property), designated for development as a single entity and exclusive of any abutting public right-of-way.

SOLAR ACCESS means access to sunlight to protect active or passive solar energy



systems from shadows blocking exposure to the sun during hours of high insolation, from 9:20 a.m. to 3:20 p.m. local time.

SOUP KITCHEN means a facility that provides free meals on-site as its principal activity.

STABLE means a building in which domestic hooved livestock are fed and sheltered.

STREET means a dedicated public way that affords the principal means of vehicular access to abutting properties.

- A. ARTERIAL STREET means a major street or highway having considerable continuity beyond the City's limits.
- B. COLLECTOR STREET means a street with limited continuity serving the primary function of carrying traffic from local streets to arterial streets and the secondary function of providing access to abutting properties.
- C. LOCAL STREET means a street serving the primary function of providing principal access to abutting property.

STRUCTURE means any physical element constructed or erected with a fixed location on the ground, or attached to another physical element having a fixed location at, below or above grade.

SUBDIVISION-MINOR means the division of any tract or parcel of land into three (3) or four (4) lots, plots or other divisions of the land.

SUBDIVISION-MAJOR means the division of any tract or parcel of land into five (5) or more lots, plots or other divisions of the land.

SWAP MEET means a commercial activity characterized by the sale or barter of merchandise or farm products to the general public by individuals from a booth or stall. The term shall include a farmer's market, flea market and similar commercial activities. Swap meets shall be a conditional use. The Planning and Zoning Commission will review all swap meet applications for potential design featuring access and egress, parking, paved areas for public use, restrooms, lighting, trash containment/litter control, and hours of operation.

TEMPORARY USE means a prospective use intended for up to thirty (30) days or longer, with staff recommendation, to be located in a zoning district not permitting such use, and the temporary use shall not be a continuing nonconforming use or building.

TOWNHOUSE means an attached, privately owned single-family dwelling unit which is a part of, and adjacent to, other similarly owned single-family dwelling units that are connected to, but separated from, one another by a common party wall, which extends from the foundation to roof, having no doors, windows, or other provisions for human passage or visibility, and with open space on at least two (2) sides.

USE means the purpose for which land or a building is arranged, designed or intended.

- A. PRINCIPAL USE means the main use to which the premises are devoted and the main purpose for which the premises exist.

- B. ACCESSORY USE means a use subordinate to the principal use on a lot and the use is clearly incidental to those of the principal use.

VACATED means the act of giving up of public rights-of-way or easements to adjoining property owners.

VARIANCE allows a use that other property owners enjoy in the same zone, but, because of the particular physical surroundings, size, shape or topographical condition of the property, compliance would result in a particular hardship upon the owner.

WRECKING YARD is any place where damaged, inoperable or obsolete machinery, such as cars, trucks, and trailers, or parts thereof, are stored, bought, sold, accumulated, exchanged, disassembled or handled.

YARD means an open space on the same lot with a building, unoccupied and unobstructed from the ground upward, except as otherwise provided in this Ordinance.

- A. FRONT YARD means a yard extending the full width of the lot between a building and the front lot line.
- B. REAR YARD means the yard extending the full width of the lot between a building and the rear lot line.
- C. SIDE YARD means a yard extending from the front yard to the rear yard between a building or a series of buildings and the side lot line.
- D. SIDE YARD LEAST WIDTH means the shortest distance, measured horizontally, between any part of a building and the nearest side lot line.

YARD WASTE means dead vegetation, including, but not limited to, grass clippings, tree branches and similar vegetation.

#### 6-1-4 Establishment of Zoning Districts

In order to carry out the purposes of the Zoning Code, the City of Holbrook is hereby divided into the following zoning districts: R-7, R-10 and R-14, Single Family Residential Zone; RMH-1 Single Family and Mobile Home Zone; R-MHP Residential Manufactured Home Park; RMOD-1 Single Family Modular Home Zone; RM-1 Multi-Family Residential Zone; PUD Planned Unit Development Zone; RR Residential Ranch Zone; GA General Agricultural; R-C Residential-Commercial Zone; C-1 Neighborhood Commercial Zone; C-2 General Commercial Zone; RRC-1 Railroad District Historic Commercial Zone; I-1 Light Industrial Zone; I-2 Heavy Industrial Zone; FP Flood Plain; and AEZ Airport Enterprise Zone.

#### 6-1-5 R-7, R-10 and R-14 Single Family Residential Zone

- A. Uses. Within any "R-7, R-10, or R-14" residential zone, as indicated on the zoning map, no building, structure or land shall be used, and no building or structure shall be erected or altered which is intended or designed to be used in whole or in part for any other than one (1) or more of the following specified uses.

- B. Principal Permitted Uses.

## **6-2 GENERAL REGULATIONS**

6-2-1 General Regulations

6-2-2 Parking

6-2-3 Off-Street Loading

6-2-4 Signs

### **6-2-1 General Regulations**

#### **A. Above Ground Storage Tanks.**

1. Above ground storage tanks for the storage of gasoline, diesel fuel, automobile fluids, oil or waste-oil are permitted as accessory uses in conjunction with and for the purpose of a permitted principal use.
2. Exceptions.
  - a. A tank not to exceed one thousand (1,000) gallons can be used for storing propane, water or heating oil for consumptive use on the premises and is not regulated by this section.
3. No person shall install an accessory above ground storage tank unless the tank meets the following requirements:
  - a. The tank shall be used only for the purposes of servicing the vehicles used or serviced in connection with a permitted principal use.
  - b. Except as specified in this section, the setback regulations of the zoning district in which the tanks are to be located apply to all accessory storage tanks.
  - c. If the Building Inspector approves the location of a tank within an enclosed building, the minimum setbacks shall be determined by the Building Inspector, provided that the setbacks are not less than those required by the zoning district.
  - d. A tank that is not located within an enclosed building shall be set back as follows:
    - i. A minimum of fifty (50) feet from any property line adjacent to a residential zone, or anywhere, in the opinion of the Building Inspector, the tank could present a hazard or danger to person or property.
    - ii. The construction, installation and location of the above ground storage tanks and the type of materials to be stored in the tanks must be approved by the State Fire Marshal.
4. These regulations do not supersede or replace any other applicable City, State, or Federal regulations and requirements for above ground tanks as amended from time to time.

#### **B. Accessory Buildings in Residential Zones.**

1. Accessory buildings are allowed in any side or rear yard as follows, unless otherwise stated in the applicable Zoning District section of Article 6-1:
  - a. Maximum height, twenty-five (25) feet.
  - b. Side yard setback, five (5) feet.
  - c. Rear yard setback, five (5) feet.
2. Accessory buildings, except stables, may be erected as part of the principal building, provided all yard requirements of this ordinance are complied with.
3. This section is not intended to apply to buildings of five (5) feet or less in height, and ten (10) square feet or less in area, such as doghouses, refuse container enclosures or play equipment.

- C. Accessory Structure Across Common Lot Lines in Residential Zones. In any residential zone, a principle or accessory structure may not be built across a common lot line unless the lots are combined into a single assessor's parcel.
- D. Animals in Residential Zones. Animals allowed in residential zones shall consist of domestic animals such as dogs, cats, small fowl, hamsters, non-poisonous snakes, rabbits and like animals, unless otherwise stated in the applicable Zoning District Section of Article 6-1.
- E. Appeals Process.
  - 1. Appeals from decisions of the Zoning Administrator are heard by the Holbrook Board of Adjustment at a public hearing.
  - 2. Appeals from decisions of the Planning and Zoning Commission are heard by the Holbrook Board of Adjustment at a public hearing.
  - 3. Appeals to the Board of Adjustment must be filed within fifteen (15) days of the date of the decision being appealed.
- F. Board of Adjustment.
  - 1. The City Council of Holbrook shall serve as the Board of Adjustment, unless said City Council chooses to appoint a separate Board of Adjustment.
    - a. It shall be the duty of the Board to:
      - i. Hear and decide appeals in which it is alleged there is an error in an order, requirement or decision made by the Zoning Administrator, in the enforcement of the Zoning Code, and to reverse or affirm, wholly or partly, the decision of the Zoning Administrator.
      - ii. Hear and decide appeals for variances from the terms of the Zoning Code only if, because of special circumstances applicable to the property, including its size, shape, topography, location or surroundings, the strict application of the Zoning Ordinance will deprive such property of the same classification in the same zoning district. Any variance granted is subject to such conditions as will assure that the adjustment authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the same zoning district in which such property is located.
      - iii. Hear and decide appeals regarding interpretation of "similar uses" and Zoning Administrator decisions regarding the classification of "uses" listed in this ordinance under both permitted and conditional uses.
- G. Camping in Residential Zone Districts. Camping is permitted when the following requirements are met:
  - 1. Compliance with all health requirements of Navajo County and the State of Arizona.
  - 2. Compliance with all minimum setbacks for the zone.
  - 3. Camping on property over sixty (60) days, in one calendar year, will be considered permanent residence and will be in violation of these Regulations.
  - 4. No more than two (2) camping units, per lot, are allowed.
  - 5. During construction of a private dwelling, camping will be allowed for a six (6) month period, providing the following conditions are met:

- a. Water and sewage disposal systems are installed before moving onto the property, or the temporary living quarters are self-contained with water and sewage disposal systems.
    - b. All building permits must be current and posted on the property, with the building permit noting that there are campers on the property.
    - c. A six (6) month extension may be granted if the residence's water and sewer systems are installed.
  - 6. These Regulations do not permit the use of campers, trailers, lean-to, tents, motor homes, recreational vehicles or any other such property as a permanent living residence.
- H. Childcare in Residential Zones (Ten (10) Person Maximum).
- 1. These regulations provide for childcare services in residential zones throughout the City, subject to specific performance criteria. The regulations encourage and promote the establishment of childcare centers in safe, convenient and appropriate locations. For the purpose of this section, residential zones are the R-7, R-10, R-14, RMH-1, RMOD-1, RM-1, PUD, R-R and R-C zoning districts.
  - 2. The specific regulations, such as the limitations on the number of children, minimum site size or permitted hours of operation, which apply to Child Care uses within the residential zones shall comply with the following requirements and the requirements set forth in A.R.S. Title 36 Chapter 7.1.
    - a. Licensing. If licensing is required by the State of Arizona for the use, proof of such license shall be provided to the Community Development Department prior to issuance of a certificate of occupancy.
    - b. Building setbacks. Except as otherwise provided in this section, the minimum building setbacks from all property lines are the setback requirements outlined in each zoning district.
    - c. Maximum number of children/persons: ten (10).
    - d. Any child care operation caring for eleven (11) or more persons/children shall be considered a commercial child care business for the purpose of these regulations.
    - e. Parking. One (1) per every four (4) children, plus one (1) per employee. See also Article 6-2-2, Parking, of this ordinance for additional parking requirements.
- I. Conditional Use Permits.
- 1. Definition. Conditional uses are those which must be approved and are limited to only those uses listed under each zone as Conditional Uses.
  - 2. Written application must be submitted and the fees must be paid to the City as provided in Article 6-2-1, subsection M. The application shall include a site plan as outlined in Article 6-2-1, subsection BB.
  - 3. The Planning and Zoning Commission shall hear the request and ensure that all requirements of the Zoning Ordinance are met. At the Planning and Zoning Commission meeting the Commission shall by a majority vote make a decision as to approve, deny or postpone their decision on the conditional use.
  - 4. All conditional use permits may be reviewed for compliance with conditions on an annual basis or as specified in the Conditional Use Permit approval.
  - 5. Land owners within three hundred (300) feet of property lines shall be notified in writing by the Community Development Department in accordance with A.R.S. 9-462.04, stating the nature of the Conditional Use Permit request and the time and

date of the public hearing conducted by the Planning and Zoning Commission, and inviting them to submit written or verbal comment to the Community Development Department prior to the date of the hearing.

6. Section 6-2-1 subsection E appeals regarding denials of Conditional Use Permits shall be heard by the Board of Adjustment at a legally noticed public hearing within fifteen (15) days from the date of denial.
  7. Conditional Use Permits shall expire after six (6) months of date of approval (unless otherwise specified within the approval) if not executed.
  8. Notice shall be posted in accordance with A.R.S. 9-462.04.
  9. Where a Conditional Use Permit has been denied, no application for a Conditional Use Permit for the same or substantially the same use or issue, on the same or substantially the same site shall be filed within one (1) year from the date of denial. The Council may waive the one (1) year requirement when special circumstances exist.
- J. Day Care-home Occupation (Conditional Use to a Residence).
1. Purpose. The purpose of these regulations is to provide for day care as a conditional use to a residential use, while recognizing that it is different from other home occupations.
  2. Applicability. These provisions may be applied in any residential or commercial zone where the principal permitted use of the property is residential. The day care service must be provided in compliance with the following criteria, subject to review and approval by the Community Development Department, as provided for below. Provision of day care for less than five (5) persons is not regulated by these provisions. Day care for more than ten (10) persons is not allowed as a day care home occupation by these provisions.
  3. Criteria. The application for day care as an accessory use must indicate compliance with the following criteria:
    - a. The day care use is clearly incidental to the residential use of the dwelling.
    - b. No more than ten (10) persons are cared for in the home.
    - c. No more than one (1) full-time person, not residing on the premises, may be employed in the day care use.
  4. The day care use is conducted in a manner that does not create adverse impact on the residential character of the neighborhood.
  5. During the hours of the activity of the day care use, there will be no limit on the amount of floor area devoted to this accessory use.
  6. Outdoor activities and equipment associated with the use are permitted, and must be screened by a six (6) foot fence or wall.
  7. Hours of operation must be noted on the application, and those hours of operation shall not create an adverse impact on adjoining residences.
  8. Adequate areas must be provided for client drop-off and employee parking, either on-site or in a parking lane in the right-of-way adjoining the site.
  9. The day care use must be approved and licensed by the Arizona Department of Health Services and A.R.S. Title 36 Chapter 7.1 prior to final approval by the Community Development Department.
- K. Dumping or Disposal.
1. The use of land for dumping or disposal of scrap iron, junk, litter, garbage, rubbish, yard waste or other refuse, or of ashes, slag or other industrial waste or

- by-products, shall be prohibited in every zone except as otherwise provided in this Ordinance.
2. Every lot that stores non-functioning vehicles must screen or remove the vehicles from view from the adjacent properties.
- L. Enforcement by the Zoning Administrator and Building Inspector.
1. It shall be the duty of the Zoning Administrator, with the aid of the Building Inspector, to enforce this Zoning Ordinance.
  2. All applications for building permits shall be accompanied by plans in triplicate, drawn to scale, showing the actual shape and dimensions of the lot to be built upon, the exact size and location of the lot, of the building and accessory buildings existing, and the lines within which the building or structure shall be erected or altered, the existing and intended use of each building or part of a building, the number of families or housekeeping units the building is designed to accommodate, and such other information with regard to the lot and neighboring lots as may be necessary to determine and provide for the enforcement of this chapter. One (1) copy of such plans shall be returned to the owner when the Building Inspector has approved such plans. Both the Building Inspector and Community Development Department shall maintain records of such plans in compliance with statutory requirements.
  3. All dimensions shown in these plans relating to the location and size of the lot to be built upon shall be based on an actual survey or assessor plat map.
- M. Fees. The City Manager, with the approval of the City Council, is hereby authorized to establish fees to be imposed by the Community Development Department in connection with applications for conditional uses, temporary uses, variances and zone changes.
- N. Front Yard Measurement of Cul-de-sacs in All Residential Zones. On cul-de-sacs and eyebrow front lots, the minimum front yard depth may be measured from a straight line drawn between the front lot corners, rather than measured directly from the curved front property line. In no case, however, shall the minimum required front yard be reduced in excess of fifty (50) percent by this alternative measurement.
- O. Garage Sales. Garage or yard sales are limited to three (3) days per occasion and four (4) times per year. Garage sale proprietors shall be responsible for the removal of any advertising of said garage or yard sale. See also Article 6-2-4, subsection E, Signs.
- P. Golf Courses.
1. All direct vehicular access shall be from an arterial or collector street.
  2. All principal and accessory buildings shall be located not less than fifty (50) feet from any property line adjoining a residential zone. Fencing and/or screening may be required at the discretion of the Zoning Administrator.
  3. Golf fairways, greens, swimming pools, tennis courts and similar outdoor recreation facilities shall be located not less than twenty-five (25) feet from any property line.
- Q. Height Exceptions.

1. In any district architectural features including, but not limited to, church spires, belfries, cupolas and domes, monuments and water towers, provided that such structure shall be so located and constructed that if it should collapse, its reclining length would still be contained on the property on which it was constructed. A stamped structural drawing submitted by an engineer licensed to practice in the state of Arizona may be substituted for the above reclining length requirement at the discretion of the Zoning Administrator.
  2. In any district, radio antennas, television antennas and flagpoles are permitted, provided they are designed and installed according to the Uniform Building Code requirements and any other relevant regulations. Noncommercial radio or television antennas and flagpoles shall not exceed fifty (50) feet in height in any residential zones, measured from the lowest grade within property.
  3. In industrial zones, chimneys, smokestacks, derricks, conveyors, grain elevators or similar structures wherein the industrial process is involved customarily requires a height greater than otherwise permitted, shall be so located and constructed that if it should collapse, its reclining length would still be contained on the property on which it was constructed.
- R. Height Limitations on Corner Lots. Within a triangle formed by the street front and side lot lines, and a line connecting these lot lines at points measured along these lot lines a distance of twenty-five (25) feet from their intersections, all fixtures, walls, fences, construction, hedges, shrubbery and other planting shall be limited to a height not over three (3) feet above the elevation of the street line level at the same intersecting streets except a reasonable number of trees pruned high enough to permit unobstructed vision to vehicular traffic. Within the triangle, and in cases where front yards are terraced, the ground elevation of such front yards shall not exceed three (3) feet above the established street line elevation at the intersecting streets

On any corner lot no fence, structure, object or planting will be erected or maintained so as to interfere with sight visibility triangle provisions of Article 6-2-1, subsection Q.

1. Structures or a projection in front yards. The front yard requirements of this article do not apply to the following:
    - a. Front fence and planting walls not over three (3) feet high above the elevation of the street line level, except on corner lots as specified in Article 6-2-1, subsection Q, and to terraces and steps not over three (3) feet high above the elevation of the street line level and distance at least five (5) feet from every lot line.
    - b. Chimneys, flues, sills, pilasters, eaves, gutters and the like.
    - c. Certain other architectural features, which are part of a solar energy system, may project up to four (4) feet into required front yards. Such architectural features include, but are not limited to, overhangs, moveable insulating walls and roofs, detached solar collectors, reflectors and piping. However, the projection shall not encroach into a minimum fifteen (15) foot set back from the front property line unless the Zoning Administrator has approved a lesser setback.
- S. Home Occupations.
1. The activity is clearly secondary to the use of the structure as a dwelling.



2. Only members of the family residing on the premises are employed in the home occupation.
  3. No more than twenty-five (25) percent of the gross floor area of each dwelling is devoted to the home occupation.
  4. Except for signs as regulated by the Sign Code, Article 6-2-4, there shall be no external evidence of the activity such as outside storage, noise, dust, odors, noxious fumes, vibration or nuisances emanating from the premises.
  5. Any home occupation that produces food products for human or animal consumption shall conform with County Food Service regulations and shall display current County Food Service Permits.
- T. Inoperable or Junk Vehicles. Every lot that stores non-functioning vehicles must screen or remove the vehicles from view of adjacent properties.
- U. Nonconforming Uses. Nonconforming use are any lot, structures, use of land and characteristics of uses, which are prohibited under the terms of the current Zoning Ordinance, but were lawful at the date of the adoption of the Zoning Ordinance. The continuation of such non-conformities is allowed unless there is a compelling reason, such as imminent danger to health or safety to the public.
1. Expanding Nonconforming Use. Except when authorized by the Planning and Zoning Commission, no building or premises containing a nonconforming use shall hereafter be extended unless such extension shall conform with the provisions of this article for the zone in which it is located; however, nonconforming use may be extended throughout those parts of a building which were manifestly arranged or designed for such use prior to the time of enactment of this article, if no structural alterations, except those required by law or ordinance, are made therein.
  2. Reconstruction of Nonconforming Structures. Any nonconforming building or structure, or one (1) or more of a group of nonconforming buildings or structures related to one (1) industry and under one (1) ownership, which has been damaged by fire, flood, explosion, earthquake, war, riot or act of God, may be reconstructed and used as before, if the reconstruction is completed within twelve (12) months of such calamity or if the area restored does not exceed the square foot area as it existed at the time of such calamity. (Except where prohibited by other City, State or Federal regulations.)
  3. Resuming Nonconforming Use after Six Months Discontinuance. No building, structure or premises where a nonconforming use has been discontinued for more than six (6) months shall again be devoted to a nonconforming use. No building, structure or premises where a nonconforming use has been changed to a use permitted in the zone in which it is located for more than six (6) months and then reverted to the nonconforming use.
- V. Nuisance. For the purpose of this ordinance, a nuisance is anything, condition or use of property which endangers life or health, gives offense to the senses, and/or obstructs the reasonable and comfortable use of other property. Abandoned vehicles, debris, rubbish, trash and graffiti shall not be allowed on any lot or structure, outside of approved containment. Excessive over growth of weeds shall not be allowed to remain on any lot. All areas that store non-functioning vehicles must keep the vehicles screened from view of the adjacent properties. Please see Holbrook City Code Section 10.

W. Performance Standards.

1. The following performance standards shall apply to all uses in this zone.
  - a. Noise: At no point on the boundary of a residential or commercial zone shall the sound pressure level of any individual operation or plant exceed the decibel level in the designated octave bands shown below.

Octave Band Cycles Per Second	Maximum Sound Pressure Level in Decibels (.0002 Dynes Per CM (Squared))
0 to 75	72
76 to 150	67
151 to 300	59
301 to 600	52
601 to 1200	46
1201 to 2400	40
2401 to 4800	34
Above 4801	32

- b. Sound levels shall be measured with a sound level meter and associated octave band filter manufactured according to standards prescribed by the American Standards Association. Measurements shall be made using the flat network of the sound level meter. Impulsive type noises shall be subject to the performance standards, provided that such noises shall be capable of being so measured with such instrument. Noises capable of being so measured, for the purpose of this section, shall be those noises which cause rapid fluctuations of the needle of the sound level meter with a variation of no more than plus or minus two (2) decibels. Noises incapable of being so measured, such as those of an irregular or intermittent nature, shall be controlled so as not to become a nuisance to adjacent uses.
2. Smoke: No emission smoke from any source shall be permitted to exceed a greater density than that described as No. 1 on the Ring Lemann Chart. However, smoke may be emitted, which is equal to, but not darker than No. 2 on the Ring Lemann Chart, for not more than four (4) minutes in any thirty (30) minute period. For the purpose of grading the density of smoke, the Ring Lemann Chart as published by the U.S. Bureau of Mines shall be the standard.
3. Glare or heat: Any activity producing intense glare or heat shall be performed within a completely enclosed building in such a manner as not to create a nuisance or hazard along lot lines. No structure or modification to a structure shall produce intense glare that creates a nuisance or threat to public health, safety and welfare.
4. Odors: No emissions or odorous gases or other odorous matter shall be permitted in such quantities as to be offensive in such a manner as to create a nuisance or hazard beyond the property lines.
5. Vibration: No vibration shall be permitted which is discernible to the human senses beyond the lot line.
6. Ash, dust, fumes, vapors, gases and other forms of air pollution: No emissions shall be permitted which can cause damage to humans, animals or vegetation, or other forms of property, or which can cause any excessive damage and/or soiling.

7. Liquids and soils waste: No wastes shall be discharged in the streets, drainage ways, public sewage system or on any property, which is dangerous to the public health and safety.
- X. Rear Dwelling Restricted. In any residential zone, no lot shall contain any building used as a residence unless such lot abuts for at least twelve (12) feet on at least one (1) street, or unless it has an exclusive unobstructed private easement of access or right-of-way at least twelve (12) feet wide to a street. This is intended to prevent the splitting of lots that creates secondary dwellings/properties whose primary access is an alley.
- Y. Residential Care Service Criteria.
  1. These regulations provide for Residential Care Services in homes and facilities throughout the City, subject to performance criteria. The regulations recognize the rights of the elderly, physically and mentally ill, and the disabled to live in neighborhoods throughout the community.
  - a. All Residential Care Service uses shall comply with the requirements and restrictions set forth in this section, as determined in the regulations for each zone. The specific regulations which apply to Residential Care Service uses within a zoning district, such as the limit on number of residents, shall be determined by the size of the property and the size of the building. Unless otherwise specified in this section, the development criteria, such as setbacks and minimum lot size, are determined by the regulations of the zoning district.
  2. Accessory treatment, including counseling or other types of meetings, is not allowed for nonresidents of the facility.
  3. The use must be authorized by the Planning and Zoning Commission by approval of a Conditional Use Permit. The Commission must find that: Residential Care Services are not concentrated in one area; the design and appearance of the facility is compatible with the residential character of the neighborhood; and the number of clients is appropriate for the location, given the size of the property, the size of the building, the number of staff members and the nature of the service provided.
  4. If licensing is required by the State of Arizona for the use, proof of such license shall be provided to the Community Development Department.
- Z. Restoring Unsafe Buildings. Nothing in this article shall prevent the strengthening or restoring to a safe condition of any part of any building or structure declared unsafe by the Building Inspector, or from complying with the lawful requirements.
- AA. Satellite Dishes. Satellite dishes shall conform to the accessory structure requirements according to Article 6-2-1, subsection B, and any standards set forth in the zone in which the satellite dish is located.
- BB. Access to Incidental Solar Energy. Shadows cast from any proposed multi-story structure shall be taken into consideration as to their effect on adjacent properties. Where such shadows adversely affect solar energy systems between the hours of 9:00 a.m. and 3:00 p.m., a site plan shall show that the multi-story structure has been reoriented on the site to mitigate this effect or that other measures have been taken so as to minimize the adverse effects of the shading. Please refer to A.R.S. Title 9 for additional regulation of solar energy access.

CC. Site Plan.

1. When a site plan is required, it shall be submitted to the City for review and approval.
  - a. Plan requirements: A site plan shall include the following:
    - i. Technical information. An accurate map drawn to scale of not less than forty (40) feet to the inch showing the boundaries and dimensions of the site; a north arrow; names and dimensions of all streets, alleys and easements bounding or touching the site; location, dimensions, direction and bearing of any major physiographic features, such as railroads and drainage ways; and existing topographic contours at intervals of not more than five (5) feet.
    - ii. Development information. On the map shall be shown proposed finished grading of the site; proposed public dedications of the site, if any, within the site; the proposed location, finished grade, vertical dimensions, and use of all buildings and structures to be located on the site; and the location and use of buildings on abutting property within one hundred (100) feet of the site.
    - iii. Provisions of service. On the map shall be shown the location, quantity and typical stall dimension of off-street parking; trash enclosures; and loading of ingress and egress from the site, including width of curb cuts; internal circulation; refuse collection areas and fire lanes, if any; and off-site improvements, if any.
    - iv. Provisions of amenities. On the map shall be shown proposed location open space and recreational facilities on the site; location of landscaping used for screening; location and height of screen walls; and location and specifications for any other proposed features of development contributing substantially to the use of the site.
  - b. Site plan submittal, review and procedure: A development plan shall be submitted to the City for review and processing.
    - i. Review by the Zoning Administrator, Building Inspector and other City department personnel as needed.
    - ii. The City Manager or designee shall notify the applicant or developer within ten (10) working days following submittal of the plan of the recommendations or required modifications. The same schedule and procedures shall apply to all subsequent re-submittals.
    - iii. Appeals to the plan check requirements shall be filed in writing with the Community Development Department within thirty (30) days of notification of such requirements, requesting a meeting with City Staff. After said meeting with City Staff, if the applicant desires appeal of staff recommendation, applicant shall appeal to the Holbrook Planning and Zoning Commission during a regular public meeting.
    - iv. Following approval of a site plan, the approved site plan shall be filed with the official building records and shall be the basis for issuance of building permits. Subsequent applications for building permits involving construction which deviates from the site plan as originally approved shall be accompanied by drawings which include copies of an amended development plan bearing the stamp of approval of the Community Development Department.

DD. Solar Units. Solar heating and solar cooling units, solar greenhouses and associated apparatus may, notwithstanding any other provision of this ordinance, be located in a rear or side yard, provided that such apparatus does not cover more than thirty (30) percent of that side or rear yard and shall be no closer than five (5) feet to any lot line.

EE. Structures or Projections into Side Yards.

1. A wall or fence not over six (6) feet high may be erected within the limits of a side yard. Such wall or fence may be higher than six (6) feet if it is a retaining wall.
2. Bays, including their cornices and eaves, balconies and fire escapes, may project into a required side yard not more than three (3) feet.
3. Chimneys, flues, sills, pilasters, eaves, and gutters may project into or over required side yard not more than three (3) feet.
4. Certain other architectural features, which are part of a solar energy system, may project up to four (4) feet into required yards. Such architectural features include but are not limited to overhangs, moveable insulating walls and roofs, detached solar collectors, reflectors and piping.

FF. Swimming Pools. All outdoor swimming pools, whether private, public or commercial, shall comply with the following regulations:

1. No residential swimming pool shall be located in any required front yard, nor within the limits of any utility easement, nor closer than five (5) feet of any lot line or building.
2. No heater, filter, pump or other mechanical equipment shall be located within three (3) feet of any side lot line nor within five (5) feet of any rear lot line in a residential zone.
3. Every swimming pool, or the property on which it is located, shall be completely screened and surrounded by buildings, walls or fences, or combinations thereof, not less than four (4) feet in height above grade, which are so constructed, and maintained as to discourage unauthorized entry.

GG. Temporary Use Permits. Temporary uses or structures not otherwise permitted by the code provisions may be permitted by the approval of a Temporary Use Permit provided the applicant pay a fee to the City as provided in Article 6-2-1, subsection M, and:

1. That the need for the Temporary Use Permit has arisen from circumstances constituting a substantial hardship, including but not limited to a natural disaster, fire or governmental action, or construction or development of a permanent structure.
2. That the structure will not violate any applicable yard setbacks.
3. That any temporary use permitted must be capable of being removed within fifteen (15) days notice if the Temporary Use Permit is revoked or expires.
4. That the temporary use shall not be granted for more than one (1) year, except that an additional one-year period may be granted by the Zoning Administrator for good cause shown.
5. That a surety or cash bond of up to five thousand (5,000) dollars may be required by the City to guarantee termination of the temporary use. The decision to determine if a cash bond is necessary or not is the decision of the Zoning Administrator.

6. The Zoning Administrator may approve an application with such conditions, modifications and restrictions as the Zoning Administrator finds necessary to make the temporary use more compatible with the surrounding neighborhood and to carry out the objectives of the General Plan, specific plans, the Zoning Ordinance, the subdivision regulations and other official policies of the City.

#### HH. Trash Enclosures.

1. Any and all enclosures, and trash or recycling bins are to be approved by the Sanitation Superintendent and Community Development Department before being placed into service.
2. An adequate and safe ingress/egress is required for the collection vehicle in each new development.
3. Dumpster enclosures are not to be built on any curb or sidewalk or in the area between the curb and sidewalk.
4. Enclosures are not allowed in any area so as to obstruct safe sight distance.
5. Enclosure placement is not to obstruct or block drainage.
6. Enclosures are to be built so that the collection vehicles do not have to back into moving traffic, block traffic or obstruct vehicle parking spaces.
7. The storage and collection areas will be screened from view of adjacent development and from public rights-of-way.
8. Enclosures and bins are to have suitable hatches, doors, gates and covers to prevent material from overflowing, spilling or scattering onto surrounding premises. A sanitary condition will be maintained for fire prevention, ease of collection and health-related impacts.
9. Enclosures shall not be used for storage.
10. Enclosure gates must be secured and locked using a City issued lock.

#### II. Variances.

1. May only be granted by the Board of Adjustment because of special circumstances applicable to the property, including its size, shape, topography, location or surroundings, and due to the special circumstances, the strict application of the Zoning Code will deprive such property or privileges enjoyed by other properties in the same classification in the same zoning district. Any variance granted is subject to such conditions as will assure that the adjustment authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the same zoning district.
2. Written application must be submitted along with a site plan and the fees must be paid to the City as provided in Article 6-2-1, subsection M, prior to the initiation of the Variance Permit process.
3. Land owners within three hundred (300) feet of property lines shall be notified in writing by the Community Development Department (in accordance with A.R.S. Title 9-462.04), stating the nature of the Variance Permit request, and the time and date of the public hearing conducted by the Holbrook Board of Adjustment prior to the date of the hearing.
4. Notice shall be posted in accordance with ARS Title 9-462.04.
5. At public hearing the Board to Adjustment shall approve, amend or deny the petition.
6. Approved variance applications shall be void after six months of the date of approval unless other arrangements have been approved in writing with the Board of Adjustments.

7. Where a variance or appeal has been denied, no application for a variance or appeal for the same or substantially the same issue on the same or substantially the same site shall be filed within one (1) year from the date of denial. The Council may waive the one (1) year requirement when special circumstances exist.

JJ. Walls, Hedges and Fences.

1. Heights: No fence, wall or hedge in any residential zone may be more than four (4) feet in height above street grade along any required front yard unless on a corner lot which may be less (see Article 6-2-1, subsection R), nor shall a fence, wall or hedge be more than six (6) feet in height in any rear or side yard. Fences, walls and hedges may not exceed height limitations, including ornamental or decorative additions. Fences, walls and hedges may be built above these heights in the following situations:
  - a. Around schools and other public or quasi-public institutions when necessary for the safety or restraint of the occupants thereof. Hedges shall not be used for safety or restraint of occupants.
  - b. Within industrial zones.
  - c. In commercial and industrially zoned property, barbed and razor wire is permitted only above the six (6) foot height limitation.
2. Fences and walls in all zones shall be constructed of conventional fencing material and maintained and kept in good appearance. Hedges in all zones shall be maintained in a neat and orderly fashion.
3. Hedges shall not be used for the containment of animals.

KK. Yard Requirements Across Zoning Boundaries in less Restricted Zones. Along any zoning boundary line, on a lot crossing such boundary line in the less restricted zone, the more restricted development standards and zone requirements shall apply.

LL. Zoning for Annexed Areas. All newly annexed areas of the City of Holbrook shall be zoned in accordance with procedures outlined in A.R.S. 9-471.

MM. Zone Changes.

1. Any person proposing to initiate a zone change shall file with the Community Development Department an application for such amendment on the form provided by the Community Development Department and pay a fee to the City as provided in Article 6-2-1, subsection M.
2. The Community Development Department shall review the application for zone map amendments and forward its recommendations to the Planning and Zoning Commission.
3. Landowners within three hundred (300) feet of property lines shall be notified in writing by the Community Development Department (in accordance with A.R.S. 9-462-04), stating the nature of the Zone Change Permit request. Landowners shall also be notified of the time and date of the public hearing conducted by the Planning and Zoning Commission and the Community Development Department prior to the date of the hearing.
4. The Zoning Administrator shall set the date for a public hearing in front of the Planning and Zoning Commission. Notice of the hearing shall be mailed to all parties of interest, and notice shall be posted in accordance with Arizona State Statute.

5. At a hearing, the Planning and Zoning Commission shall make their recommendation to the City Council.
6. At a hearing, the City Council shall approve or deny the Zone Change Permit petition.

6-2-2 Parking

- A. Purpose. This Article establishes minimum requirements for motor vehicle and bicycle parking to ensure that such facilities are consistent with the objectives of the General Plan. As part of a balanced transportation system, these regulations are intended to promote public safety and environmental quality. Specifically, these regulations are intended to:
  1. Ensure sufficient off-street motor vehicle and bicycle parking facilities by establishing minimum parking requirements for land use.
  2. Encourage safe, convenient and efficient design of motor vehicle and bicycle parking spaces, circulation and access areas.
  3. In certain circumstances parking requirements may be reviewed and revised at the discretion of the Zoning Administrator.
- B. Applicability. The provisions of this article apply to:
  1. New development.
  2. New uses locating in an existing development.
  3. Any expansion of an existing use or any addition of a new use to an existing development as described below.
- C. General Provisions.
  1. Parking required for uses not listed: Required parking for uses not listed in this article shall be determined by the Zoning Administrator based on similarity to a listed use.
  2. Bicycle parking requirements: The number of required bicycle parking spaces is calculated as a percentage of the total number of motor vehicle parking spaces provided.
  3. Parking for the physically disabled: Off-street parking spaces for the physically disabled shall be provided as required by the Uniform Building Code and Americans with Disabilities Act.
  4. Calculation of required motor vehicle parking spaces: The number of parking spaces required for a use is calculated based on the particular characteristics of the use. The following methods shall be used to calculate the required number of motor vehicle parking spaces:
    - a. Based on fixed seats; use the total number of fixed seats to calculate the requirement. The number of fixed seats or, if individual seats are not provided, each eighteen (18) inches of benches, pews or similar seating facilities is considered one (1) seat.
    - b. Based on bedrooms; use the total number of bedrooms to calculate the requirement. Any habitable room which has a minimum area of sixty (60) square feet and which contains a closet will be considered a bedroom, whether termed a studio, family room, study, den or any other name.
    - c. Schools with students in the range of K-8 will also provide a dedicated area to pick up and drop off students in addition to the parking requirements.
    - d. Based on the square foot building area.
  5. Fractional amounts: When the final result of the calculation of required motor vehicle and bicycle parking spaces results in a fractional number, a fraction of one-